1. AUTHORITY

The Privileges Committee is a Select Committee of the Parliament of the Republic of Fiji automatically convened pursuant to Standing Order 123(1).

2. MEMBERSHIP

The membership is as set out in Standing Order 127 and announced in the Speaker's Communications on Friday 15 May 2015, with one substitution [Hon. Tupou Draunidalo substituting Hon. Salote Radrodro].

3. MATTER FOR CONSIDERATION

A referral of a matter of privilege by Madam Speaker.

4. COMMITTEE WORK PLAN

To be endorsed at the first meeting taking into consideration the Committee must report back to Parliament no later than Thursday, 21 May 2015.
5. **PROCESS**

The Committee to call evidence as may be necessary.

The Committee to call the member accused of breach of privilege to provide an explanation.

The Committee to call other relevant persons to provide clarification.

The Committee to finalise and table its Report in Parliament.

6. **MOTION TO BE MOVED IN PARLIAMENT**
Parliament of the Republic of Fiji
Privileges Committee Work plan
Referral of Matter by Madam Speaker on Monday 18 May 2015

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To be decided by Committee
Persons to be called in addition to Hon. Member, if any

*All times are subject to adjournment of Parliament and other amendments made by the Honourable Members of the Committee.*
Witnesses Called

1. Mr Vijay Narayan
2. Mr Semi Turaga
3. Hon. Ratu Naiqama Lalabalavu
ELIGIBILITY OF ATTORNEY-GENERAL TO SIT ON PRIVILEGES COMMITTEE INQUIRY

I now wish to rule on a point of order raised by the Hon. Bulitavu regarding the eligibility of the Attorney-General to sit on the Privileges Committee inquiry as he was the mover of the motion referring the allegation of breach of privilege to the committee.

A member may not sit on a committee if he or she has a direct pecuniary interest or a personal interest in a matter under inquiry by the committee. In my opinion, personal interest should be interpreted in the very narrow sense of an interest peculiar to a particular person.

In this instance, the eligibility of the Attorney-General to sit on the committee is acceptable because firstly, there is no claim of him having a direct pecuniary interest in the inquiry, and secondly, in my opinion the Attorney-General does not have a personal interest to the extent where he might derive a personal benefit from the outcome.

In my view, the Attorney-General simply moved the motion on behalf of the Government and may well have not moved it himself had the Prime Minster been in attendance.

I therefore rule that there is no impediment to the Attorney-General participating in the inquiry.

Finally, I take this opportunity to also advise Members that it would assist the Committee's process if Members refrained from further discussing the matters under consideration in the House until the report is presented. There will be ample opportunity to debate the issues after that time.
Privilege Ruling

Last week the Hon. Roko Tupou Draunidalo raised a matter of privilege in the House. I will now make my ruling.

The essence of the matter raised was that the requirements of the Public Order Act requiring members to get a permit for holding public meetings with constituents is an infringement of the rights of the Member.

In ruling on this matter, regard must be had to the principle of the protection of the proceedings in Parliament. Members will be aware that freedom of speech and debates on proceedings in Parliament enjoy absolute protection. As well as debates in the Chamber, this protection extends to proceedings in committees. It may be that a meeting with constituents is related to the proceedings of Parliament—for example, perhaps a meeting is to give a member information for them to use for a speech in the House.

However, while members’ work with constituents is a very important and a large part of their job as a Member of Parliament, it does not fall within the definition of proceedings in Parliament and therefore protected by Parliamentary Privilege.

The Public Order Act makes clear the requirement to obtain a permit and all members are required to comply with, and are bound by, the provisions of the law.

I therefore rule that there has been no breach of privilege in this matter.
Robati v Privileges Standing Committee - Judgment 1 [1994] CKCA 2; CA 156.1993 (7 February 1994)

IN THE COURT OF APPEAL OF THE COOK ISLANDS
CA No. 156/93

BETWEEN

PUPUKE ROBATI
of Rarotonga, Member of Parliament
Plaintiff

AND

THE PRIVILEGES STANDING COMMITTEE
of the Parliament of the Cook Islands
First Defendant

AND

THE SPEAKER
of the Parliament of the Cook Islands
Second Defendant

Coram: Quilliam J.A. (Presiding)
Barker J.A.
Dillon J.A.

Counsel: Mr McFadzien, Solicitor General and
Dr G.P. Barton Q.C. for Defendants
Mr B.H. Giles, Mr M.C. Mitchell and Mrs S.R.A. Anderson for Plaintiff

Hearing: 17 December 1993
Date of Judgment: 7 February 1994

JUDGMENT OF QUILLIAM J.A.

A motion by the Defendants to strike out an action commenced by the Plaintiff in the High Court has been removed into this Court. It concerns an important constitutional question which requires determination as to the jurisdiction of the Courts to review the proceedings of Parliament.

It is necessary first to set out the facts alleged in the Plaintiff's Statement of Claim and it needs to be noted that, for the purposes of an application to strike out, it must be assumed that the facts alleged will be capable of proof.
The Facts

The Plaintiff is a member of the Cook Islands Parliament. The first Defendant is a Standing Committee established by Parliament pursuant to its Standing Orders. The second Defendant is the Speaker of the Parliament.

On 13 July 1993 the First Defendant ("the Committee") considered and made recommendations to Parliament in Parliamentary Paper No. 9 ("Paper No. 9") in respect of disciplinary offences in relation to Parliamentary conduct.

On 23 August 1993 the Plaintiff spoke in Parliament in a debate on what was known as Parliament Paper No. 6 concerning a report on an audit of the country's financial statements. On 24 August the Speaker permitted Paper 9 to be tabled in the House. On 27 August Parliament resolved to accept and adopt Paper 9 to be effective as and from the date on which it was tabled, namely 24 August.

On 29 September 1993, in accordance with a resolution of Parliament, the Speaker issued a summons to the Plaintiff requiring him to attend before the Committee to answer a charge expressed in these terms:

"That the Honourable Member Dr Pupuke Robati, Member for Rakahanga be referred to the Privileges Standing Committee pursuant to the recommendations of the Privileges Standing Committee following its meeting on 13 July 1993 and tabled in this House on Tuesday 24 August 1993 on the grounds that the Honourable Member Pupuke Robati made a wilfully misleading statement in this House on Monday 23rd August 1993 when he alleged inter alia that the Honourable Vincent Ingram, Member for Mikao/Panama-

(a) is being paid above his Member of Parliament salary in an amount exceeding $200,000;

(b) that this sum is being deducted from $7 million appropriated for ECIL;

(c) and that the ECIL car in Auckland was not being utilised for the work of the Sheraton and ECIL but family purposes."

The Plaintiff appeared before the Committee in answer to the summons. He requested the right to be represented by counsel, but this was declined. The Committee then considered the charge and in due course made a finding that the actions of the Plaintiff did not amount to a deliberate act to mislead the House and the public.

The Committee then submitted a report to Parliament on the hearing of the charge and, notwithstanding its findings, recommended that the Plaintiff be ordered to make himself available in Parliament to:

"10.1 (a) Apologise fully to the Honourable Member Vincent Ingram for the misleading and damaging allegations he made against the Honourable Vincent Ingram on 23 August 1993."
(b) Apologise fully to the members of the family of the Honourable Member Vincent Ingram for the disparaging remarks Dr Robati made against that family on 23 August 1993.

(c) Fully and completely retract all those misleading, erroneous, and damaging allegations against the Honourable Member Vincent Ingram and his family.

10.2 That the apology and retraction by the Honourable Member Dr Pupuke Robati are to be acknowledged by the Chairman of the Privileges Committee.

10.3 That an approved copy of the set of apologies and retractions be broadcasted and publicized over the National Radio, the Cook Islands Television and the Cook Islands News."

The Speaker then gave the Plaintiff notice to make the apologies referred to. On 19 October 1993 the Plaintiff was suspended from Parliament until such time as he tendered the apology referred to.

It needs to be observed that the terms of Paper 9 have not been pleaded and so this Court is not aware whether it created the offence with which the plaintiff was charged, nor whether it created some lesser offence of misleading Parliament although without having done so wilfully. For present purposes, however, the Court must assume that Paper 9 did at least create the offence of wilfully misleading Parliament. It must also be noted that, in terms of the Speaker's summons to the Plaintiff, it was pursuant to Paper 9 that the Committee was required to consider the charge against the Plaintiff.

The Plaintiff's Claim

On the basis of these allegations of fact the Plaintiff's claim is:

1. That, in accordance with the principles of natural justice, he was entitled to be represented by counsel at the hearing conducted by the Committee.

2. That, in accordance with Standing Orders, he could not in any event have been suspended from Parliament for a period exceeding 7 days.

3. That as the resolution of Parliament adopting Paper 9 was made retrospective only to 24 August, it could not have given the Committee or Parliament power to deal with a charge in respect of a matter occurring prior to that date. The Plaintiff has accordingly claimed that the proceedings and decisions of the Defendants in respect of what occurred were ultra vires, in excess of jurisdiction and/or without jurisdiction and/or were unreasonable or unfair and has sought declarations to that effect.

The Motion to Strike Out

By way of a preliminary response to the Statement of Claim the Defendants had moved to strike out the Plaintiff's action on the ground that, in accordance with the Constitution, the High Court does not possess jurisdiction to hear and determine the action or grant the declarations sought.
This motion raises the important constitutional question of the extent to which, if at all, the Courts have the jurisdiction to review and pronounce upon the proceedings of Parliament, and it will have been for this reason that the motion was removed into this Court.

The Statutory Provisions

The Plaintiff relies upon Articles 64 and 65 of the Cook Islands Constitution Act 1964, namely:

"64. Fundamental human rights and freedoms - (1) It is hereby recognised and declared that in the Cook Islands there exist, and shall continue to exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental human rights and freedoms:

(a) The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;

(b) The right of the individual to equality before the law and to the protection of the law;

(c) The right of the individual to own property and the right not to be deprived thereof except in accordance with the law:

Provided that nothing in this paragraph or in Article 40 of this Constitution shall be construed as limiting the power of Parliament to prohibit or restrict by Act the alienation of Native land, (as defined in section 2(1) of, the Cook Islands Act 1915 of the Parliament of New Zealand);

(d) Freedom of thought, conscience, and religion;

(e) Freedom of speech and expression;

(f) Freedom of peaceful assembly and association.

(2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed by any enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of the Cook Islands."

"65. Construction of law - (1) Subject to subclause (2) of this Article and to subclause (2) of Article 64 hereof, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared by subclause (1) of Article 64 hereof, and in particular no enactment shall be construed or applied so as to-

(d) Deprive any person of the right to a fair hearing, in accordance with the principals of fundamental justice, for the determination of his rights and obligations before any tribunal or authority having a duty to act judicially; or

(e) Deprive any person charged with an offence of the right to be presumed innocent until he is proved guilty according to law in a fair and public hearing by an independent and impartial tribunal; or

..............
(g) Authorise the conviction of any person or any offence except for the breach of a law in force at the time of the act or omission;

"(2) Every enactment, and every provision thereof shall be deemed remedial, whether its immediate purpose is to direct the doing of anything that the enacting authority deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal attaintment [[of the object]] of the enactment or provision thereof according to its true intent, meaning and spirit."

"(3) In this Article the term "enactment" includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom, being an Act in force in the Cook Islands, and any regulation, rule, order, or other instrument made thereunder."

The Defendants place reliance on:

"34. Procedure

(5) Subject to the provisions of this Constitution, Parliament may from time to time make, amend, and repeal Standing Orders for the regulation and orderly conduct of its proceedings and the dispatch of business."

"36. Privileges of Parliament and of its members - (1) the validity of any proceedings in Parliament or in any committee thereof shall not be questioned in any Court.

(2) No officer or member or Speaker of Parliament in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) No member or Speaker of Parliament and no person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof.

(4) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding.

(5) Subject to the provisions of this Article, the privileges of Parliament and of the committees thereof, and the privileges of members and the Speaker of Parliament and of the persons entitled to speak therein may be determined by Act.

Provided that no such privilege of Parliament or of any committee thereof may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by enactment for the trial and punishment of the person concerned by the High Court."

Reference also needs to be made to s.4A of the Legislative Assembly Powers and Privileges Act 1967:
"4A Privileges of Assembly Subject to the provisions of the Constitution, the Assembly and the Committees and Members thereof shall have, hold, enjoy and exercise the like privileges, immunities and powers as are held, enjoyed and exercised by the House of Commons of the Parliament of Great Britain and Northern Ireland and by the Committees and Members thereof whether such privileges, immunities and powers are held, possessed or enjoyed by custom, statute or otherwise, and the Leader of the House may at any time give such instructions as may be necessary to ensure the orderly progress of parliamentary business and which are authorised or notified by the Assembly."

The jurisdiction of the High Court is contained in Article 47 of the Constitution and, in particular, Article 47 (2):

"47(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction, including jurisdiction (both civil jurisdiction, including jurisdiction in relation to land, and criminal jurisdiction) as may be necessary to administer the law in force in the Cook Islands."

Finally in respect of the principal statutory provisions, reference was made to Article 9 of the Bill of Rights 1688 (Eng.):

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court of place out of Parliament."

The Constitutional Principles

In a full and careful submission Dr Barton on behalf of the Defendants placed great reliance upon the words of Article 36(1) set out above, and upon the cases in England in particular which have, in effect, upheld the principle of the freedom of proceedings in Parliament from the scrutiny of the Courts. I do not refer in detail to those cases because the general principle appearing from them is well recognised and has not been contested in this case. The real question, however, concerns what truly are the "proceedings" of Parliament and whether the principle is absolute or permitting of exceptions.

I have derived considerable assistance from some decisions of Courts in countries which, like the Cook Islands, have a written constitution. In particular, a decision, of the Supreme Court of Zimbabwe is one with marked similarities to the present case. This was the case of Smith v Mutaso & Another (1990) 1 LRC (Const.) 87. It concerned the former Prime Minister of Zimbabwe (previously Southern Rhodesia) who was a member of the House of Assembly of the new country. He had, while visiting the United Kingdom, made remarks derogatory of the black people and their representatives in Zimbabwe. He was found guilty of a contempt of Parliament. He subsequently made further remarks of a similar kind and was then suspended by the House of Assembly for a year and deprived of his salary and allowances. He applied to the High Court for an order restoring his salary and allowances. The Speaker gave a certificate that the matter was one of privilege and the High Court held that the proceedings should thereupon be stayed on the basis that they had been finally determined. On appeal from the decision the Supreme Court
allowed the appeal on the ground that there was no legal authority for the suspension of the remuneration.

While the Supreme Court was prepared to uphold the right of Parliament to deal with matters of privilege without scrutiny by the courts, and upheld also the principle of the supremacy of Parliament, it drew a distinction in the case of Parliament having acted unlawfully and contrary to its Constitution. In that case Parliament had the power to deal with Smith in respect of his remarks as a matter of privilege, but none of the prescribed penalties for such a matter included the power to suspend salary. Parliament had accordingly purported to act beyond its legal powers, and the Supreme Court was prepared to accept jurisdiction to deal with the matter.

That decision is one of compelling persuasion in the present case. If it is the case that the Committee purported to deal with the Plaintiff on 23 August for an offence which did not come into existence until the following day (and for present purposes we must accept that it did so) then the Committee was acting contrary to the provisions of Article 65(1)(g) and so in a manner which was unconstitutional. In such circumstances it must be proper for the Court to intervene.

In *Smith v Mutasa* the Court summarised the position at p 94 in this way:

"The Constitution of Zimbabwe is the supreme law of the land. It is true that Parliament is supreme in the legislative field assigned to it by the Constitution, but even then Parliament cannot step outside the bounds of the authority prescribed it by the Constitution."

This comment has obvious application to the present case.

To similar effect are the observations of Barwick CJ in *Cornack v Cope* [1974] HCA 28; (1974) 131 CLR 432 at p.453:

"Whilst it may be true the Court will not interfere in what I would call the intra-mural deliberative activities of the Parliament, it has both a right and a duty to interfere if the constitutionally required process of law making is not properly carried out."

And later, at p.464:

"Second, it is not the case in Australia, as it is in the United Kingdom, that the Judiciary will restrain itself from interference in any part of the law-making process of the Parliament. Whilst the Court will not interfere in what I have called the intra-mural deliberative activities of the House, including what issues called 'intermediate procedure' and the 'order of events between the House', there is no Parliamentary privilege which can stand in the way of this Court's right and duty to ensure that the constitutionally provided methods of law making are observed."

While there may be considerable doubt as to the Plaintiff's claim that he had the right to representation by counsel before the Committee, there seems little doubt that, accepting the facts as pleaded, there was never any constitutional right for Parliament to have dealt with the Plaintiff for an offence which did not exist at the time it was alleged to have been committed, nor to have
imposed an indefinite suspension in the absence of any provision in the Constitution permitting such a course.

Notwithstanding the characteristically thorough argument presented on behalf of the Defendants, I am satisfied that this Court has both the jurisdiction and the duty to allow the Plaintiff’s action to proceed. Perhaps I should add that, if the facts are indeed as pleaded, then appropriate steps could well be taken for the Defendants to correct what has happened without the need for the action to proceed further.

The members of the Court being agreed on the result, the Defendants’ application to strike out is declined, with costs to the Plaintiff.

QUILLIAM J.A.

IN THE HIGH COURT OF FIJI
[AT SUVA]
CIVIL JURISDICTION

CIVIL ACTION NO. HBC0208 OF 1993

BETWEEN:

SAKEASI BUTADROKA
of Queens Road, Naboro, Fiji.
PLAINTIFF

AND

ATTORNEY-GENERAL OF THE
SOVEREIGN DEMOCRATIC
REPUBLIC OF FIJI
DEFENDANT

Mr. S. Stanton (Of the New South Wales Bar) with
Mr V. Parmananandam for the Plaintiff
Mr. A. Cope with Mr. W. Rigamoto for the Defendant

Date of Hearing: 7th, 8th, 9th and 15th of June, 1993
Date of Delivery of Judgment: 18th day of June, 1993

JUDGMENT

In the case before the court the Plaintiff, by way of Originating Summons seeks the following Declarations:-

1. A Declaration that in the events that have occurred the suspension of the Plaintiff purported to be pursuant to Standing Orders of the House of Representatives of Fiji (hereafter S.O.) and in particular SO 66(4)(a) and/or SO 30(4) and 30(5) was:

(a) null and void and of no effect in that it was contrary to the manner and form of the SO; and

(b) was in excess of the jurisdiction conferred; and

(c) did not represent in fact or otherwise a proper exercise of a privilege or the adjudication into the question of whether there had been a breach of the S.O. or any such privilege; and
(d) was null void and of no effect on account of the fact that the Plaintiff was denied natural justice in all the circumstances.

2. A Declaration that in the circumstances the suspension of the Plaintiff from attending the House of Representative of Fiji was contrary to the Standing Orders in that there was:

(a) no ground available and/or applicable in respect of SO 30 in the circumstances;

(b) no certificate was sought nor produced in compliance with SO 30(3) in respect of the alleged conduct of the Plaintiff amounting to a breach of privilege;

(c) there was a total failure to comply with and/or implement the due observance of the manner and form of the procedure of SO 30 and 31.

3. A Declaration that in the circumstances that have occurred the SO of the House of Representatives of Fiji are or have the tendency to infringe the fundamental freedoms of the Constitution of Fiji in that:

(a) they fail to ensure secure protection of law contrary to s.11 of the Constitution;

(b) they fail to provide and/or ensure freedom of expression contrary to s.13 of the Constitution;

(c) they fail to allow and/or protect freedom of assembly and association and conscience contra to ss.15 and 12 of the Constitution.

4. A Declaration that the suspension of the Plaintiff on the Report of the Select Committee of a Privilege was null void and of no effect on account of the fact that the Plaintiff was denied natural justice.

5. A Declaration that in the events that had occurred the Plaintiff having been dealt with and suspended from attending the House of Representatives for 3 (THREE) days such suspension to occur on and from 20th April, 1993 the matter was of at an end and all parties were functus officio."

The facts are as follows. The Plaintiff is the elected member for the Constituency of Rewa Province in the House of Representatives in the Parliament of Fiji. During the April 1993 sittings of the Parliament the Plaintiff took part in the debates of the House of Representatives. On Monday the 19th of April members of the House spoke against the Plaintiff because of alleged opinions he held in relation to a prominent member of Fijian society. After the morning tea adjournment the Plaintiff was accused in the House by some members of creating instability within Fiji, and damaging national unity. Reference again was made to the Plaintiff's opinion concerning the respected member of Fijian society.

During the course of debate the Plaintiff took offence at the accusations made against him, and when he replied he spoke in equally strong terms in defence of himself. During the course of the Plaintiff's reply, the Speaker began to interrupt him and called him to order. The interruptions by the Speaker increased and eventually the Plaintiff and the Speaker began to raise their voices and shouted at each other. The House then adjourned.
On Wednesday the 21st of April the House of Representatives reconvened and the Plaintiff resumed his speech. Shortly after resuming, another member of the House interjected with a point of order which the Speaker began to adjudicate upon. The Plaintiff began to repeat the matter raised by the interjecting member and was ordered by the Speaker to withdraw certain remarks made by him. The Plaintiff questioned the Speaker in this regard and then became involved in another heated exchange with yet another member of the House. The Speaker again reprimanded the Plaintiff and indicated that he would be stopped from speaking further if he did not behave. The Plaintiff continued speaking and was interrupted by a member who sought a ruling from the Speaker on a point of order. Debate then took place on the point of order which had been raised. When the Plaintiff resumed his speech another member raised a further point of order for the Speaker to rule on. The Speaker discontinued the Plaintiff's speech and the Plaintiff again remonstrated with the Speaker over being discontinued. The Speaker then ordered the Plaintiff to leave the House which he did.

After the luncheon adjournment on that day the Plaintiff was advised in writing that he had been suspended from the House of Representatives for three sitting days and that he could resume his seat on Monday the 26th of April.

When the Plaintiff resumed his seat on the morning of Monday the 26th of April he was served with a copy of a report of the Select Committee of the House of Representatives on Privileges concerning his alleged breach of privilege in the House on Wednesday the 21st of April.

The report recommended that the Plaintiff be suspended from the House of Representatives for the June/July sittings of the Parliament. The House then resolved in accordance with the recommendation and the Plaintiff is now so suspended.

The issues to be determined in this case are as follows:-

1. To what extent, if at all, are the actions of the Speaker, committees and members of the House of Representatives within the internal proceedings of the House, subject to the scrutiny and control of the High Court?

2. Do all the general provisions of the Constitution of Fiji apply to the internal proceedings and privileges of the Parliament, in particular Sections 11, 12, 13, 14 and 15 set out in Chapter 2 therein?

3. Did the manner in which the Speaker applied the Standing Orders of the House of Representatives against the Plaintiff, and his ultimate suspension from the House of Representatives amount to a violation of his guaranteed constitutional rights set out in Ss. 11, 12, 13, 14 and 15 of the Constitution, and thus render the Plaintiff’s suspension void?

4. Are the Standing Orders of the House of Representatives unconstitutional?

The Standing Orders of the House of Representatives could fairly be described as occupying the
position of the statute law of the House relating to its internal proceedings. They are to all intents and purposes rules for regulating the procedure of the House of Representatives, their chief characteristic being to make provision for the efficient and effective progress of the business of the House by checking and limiting the opportunities for debate.

The Standing Orders are concerned to see that all the members of the House of Representatives are given an opportunity to participate in the debates of the House. The position and role of the Speaker in this scheme is to act as a neutral referee whose duty is to ensure fair play in this regard. As one of the principal features of Parliament is debate, the position and powers of the neutral Speaker are of paramount importance with regard to the limiting of debate.

The power to limit and control debate is set out in Standing Order 39. Under that Standing Order the Speaker is vested with a wide discretion in order to ensure equal opportunity and fair play during the debates of the House. An adjunct to this is the power of the Speaker to enforce his decisions and maintain the order of the House. The ultimate authority on the matter of order etc. is the House itself, however, the Speaker occupies the position of Chief Executive Officer of the House by whom the rules set out in the Standing Orders are enforced. Standing Order 42 invests the Speaker with wide powers and discretion in dealing with breaches of order. This ranges from reprimanding a member and discontinuing his speech, to suspending him from the House. Standing Order 42(8) empowers the House of Representatives to deal with any breach of order of the House in any way it thinks fit.

Closely associated with the application of Standing Orders with regard to the maintenance and control of the order of the House of Representatives is the application of the privileges enjoyed by the members. I can do no better than quote from the 21st edition of "PARLIAMENTARY PRACTICE" by Mr. Erskine May at page 69 in this regard. At that page the learned author states:-

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. This privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeached use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament."

If a member breaches the privileges of the House he is then liable to be punished under Standing Orders.
One of the privileges of Parliament is the right to the exclusive cognizance of its own internal proceedings. Such principle was clearly established in England in 1689 with the enactment of Article 9 of the Bill of Rights. Article 9 states:-

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

This had the effect of making the House of Commons in England the sole Judge of its own proceedings and empowering it to settle its own code of procedure. The House of Commons thus became the sole Judge of the lawfulness of its own proceedings and was able to depart from its own procedure without having such departure questioned in a court of law. This was the case even where the procedure of the House, or the right of the member to take part in the proceedings of the House was ensured under statute.

In *BRADLAUGH v. GOSSETT* (1883-4) 12 QBD 271 the court gave unqualified recognition to the principle obtaining under the Bill of Rights by authoritatively pronouncing on its own incompetence to inquire into the internal proceedings of the Houses of Parliament.

With regard to the House of Commons procedures, COLERIDGE C.J. at 274 said that the House:-

".....as for certain purposes and in relation to certain persons it certainly is, and is on all hands admitted to be, - the absolute judge of its own privileges, it is obvious that it can, at least for those purposes and in relation to those persons, practically change or practically supersede the law."

His Lordship Mr. Justice Stephen expressed the view that even if the House of Commons prohibited a member of the House from doing what a statute required him to do, and in order to enforce the prohibition, excluded the member from the House, the Court had no power to interfere. In this regard, he said at p.278:-

"I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable. The whole of the law and custom of Parliament has its origin from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.'"

Further, at p.280 he said:-
"It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly."

The proceedings of the Houses of Parliament relate to the formal actions such as the business of the House of which a principal aspect is debate. A member takes part in the proceedings of the House by debating, and voting etc. The House of Commons Select Committee on the Officials Secret Act in 1938-39, when reporting on the meaning of the term "proceeding" described it as covering:-

".....both the asking of a question and the giving of written notice of such question, and includes everything said or done by a Member in the exercise of his functions as a Member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. .......While taking part in the proceedings of a House, Members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself."

See "PARLIAMENTARY PRACTICE" by E May 21st Ed. at p.92.

The question of jurisdiction between the Court and the Houses of Parliament in relation to their privileges and proceedings is not new, but has been litigated at various times over the past 500 years.

From the mid 1400s attempts were made by litigants to have the High Court intervene in questions concerning the privileges and proceedings of Parliament. These attempts were always unsuccessful, the court holding that there was a body of law known as the Law of Parliament which was not part of the general law and was therefore not known to the common law of the realm and was thus not justiciable nor reviewable by the courts of judicature.

In the 19th century the court continued to hold that the proceedings and privileges of the Houses of Parliament were part of the Law of Parliament and not part of the general law, and thus not reviewable in the High Court.

In 1836 in STOCKDALE v HANSARD 3 state TR NS 748, the court accepted that the House of Commons had exclusive jurisdiction over its own internal proceedings and privileges, and that the court could only determine whether a particular claim fell within that category and inquire no further.

As mentioned previously the case of BRADLAUGH v GOSSETT (1883-4) 12 OBD 271, established that in matters relating to its own internal management, procedure and privileges the House of Commons had an exclusive jurisdiction which was not reviewable by the High Court even if the House wrongly interpreted a statute prescribing rights within the House itself. This
would also apply to Standing Orders.

In recent times in the United Kingdom the courts have continued to recognise the need for an exclusive jurisdiction of the Parliament in this area as being necessary for the maintenance of the dignity of the Houses of Parliament. The courts have held that when a matter is a proceeding of the House of Commons commencing and terminating within the House itself it is outside the jurisdiction of the court. However the view has been expressed that if a proceeding of the House affected the rights of persons exercisable outside the House, the jurisdiction of the court might be invoked so as to inquire whether the act complained of was duly covered by the privilege of the House.

In BRITISH RAILWAYS BOARD v PICKIN (1973) QBD 231, Lord Denning said at p.231:-

"In my opinion it is the function of the Court to see that the procedure of Parliament itself is not abused, and that undue advantage is not taken of it. In so doing the court is not trespassing on the jurisdiction of Parliament itself. It is acting in aid of Parliament, and, I might add in aid of justice."

As powerful a statement as that is in going against the established principle of the inviolability of the internal proceedings of Parliament by the courts, and by as eminent a jurist as Lord Denning, the House of Lords (See (1974) WLR 208) in overruling the decision in that case took an equally strong opposing view re-affirming the traditional position based on the 19th century authorities that a court could not inquire into the internal proceedings of Parliament. Lord Reid held that the authorities for the past century supported that conclusion. Lord Simon of Glaisdale held that any other conclusion would impeach the proceedings of Parliament contrary to Article 9 of the Bill of Rights.

In R v THE SECRETARY OF STATE FOR TRADE AND OTHERS, Exp. ANDERSON (1983) 2 ALL ER 233 Dunn LJ held that for a court to inquire into what had been said or done within the walls of Parliament during its proceedings for the purposes of Judicial Review of those proceedings, would be contrary to Article 9 of the Bill of Rights.

The development of the case law in the United Kingdom over the last 500 years is clear. The High Court will not, in fact considers that it cannot, inquire into the internal proceedings and privileges of the Houses of Parliament even where the House, or an officer of the House has misinterpreted or misapplied the statute law, or, I might add, the rules of the House itself under Standing Orders.

**POSITION IN FIJI**

I now turn to consider firstly the relevant statute law as applies in Fiji.

Section 2 of the 1990 Constitution states:-
"This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void."

Section 61 of the Constitution recognises the supremacy of the Constitution within the realm of law making for Fiji. Section 61 states:-

"Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Fiji."

These sections make clear that a law enacted by Parliament which breached the provisions of the Constitution would be void and of no effect. Parliament in its legislative role is thus clearly subordinate to the provisions of the Constitution with respect to law making for Fiji in general. While Section 61 addresses itself to the legislative power of the Parliament for Fiji as a whole, Section 63 focuses on regulating the internal procedures of each of the Houses of Parliament. Section 63(1) states:-

"5.63(1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including, in particular, the orderly conduct of its own proceedings."

This subsection gives the mandate to each House of Parliament to regulate its own procedure and make rules relating thereto, subject to the provisions of the Constitution. This would appear to be the subsection under which the Standing Orders of the House of Representatives are made, as these orders deal with matters such as the transaction of the business of the House, order of business, debating and passing of bills, committees etc. Standing Orders along with Parliamentary Practice and Rulings of the Speaker from the Chair form the rules of procedure for regulating the smooth flow of the business of the House. The House can make, amend and alter any of its rules or orders in this regard provided that such rules or orders do not offend or violate the provisions of the Constitution applicable under that subsection.

Thus, it would appear that under that Section 63(1) the same principles apply to each of the Houses of Parliament internally as apply to the Parliament externally under Section 61, to the extent that any Standing Order or Rules of Procedure which are inconsistent with, or violate an applicable provision of the Constitution, would be void and of no effect.

Under Section 63(3) Parliament is empowered by the Constitution to provide for the Powers, Privileges and Immunities of each House, its Members and Committees. Section 63(3) states:-

"Parliament may, for the purpose of the orderly and effective discharge of the business of each House, make provision for the powers, privileges and immunities of each House and the committees and members thereof."
This subsection would appear to be that which confers on the Parliament the power to grant to each House, its committees and members their privileges and immunities in addition to the powers to apply and enforce their own Standing Orders and regulations made under Section 63(l). For example, the power of the Speaker under Standing Orders to limit debate, keep order and suspend a member from the House etc. It is interesting to note that this subsection is not made subject to the provisions of the Constitution.

How have the courts in Fiji interpreted the application of Section 63 of the Constitution to the internal proceedings of Parliament? In 1973 in the case of JAMES MADHAVAN v JOHN NIEL FALVEY AND OTHERS 19 FLR 140, the Fiji Court of Appeal was called upon to consider this question. While dealing with the provisions of the 1970 Constitution, those provisions are in identical terms to their counterparts in the 1990 Constitution. For the sake of ease I will refer to the sections considered in that case by their Section numbers in the 1990 Constitution. In that case the manner in which the position of the Speaker of Parliament was occupied during a sittings of the House of Representatives was challenged in the High Court. The Defendants were successful in having the Plaintiffs application struck out as disclosing no reasonable cause of action on the grounds that the matter related to the internal proceedings of the House of Representatives which were not cognizable in the High Court. The Plaintiff appealed to the Court of Appeal.

The facts of the case were that the Appellant was a member of the House of Representatives. At the end of a duly convened sittings the Speaker adjourned the House under Standing Orders. The Respondents objected to the adjournment and physically took over the House and the fifth Respondent purported to sit as Deputy Speaker. The Appellant sought amongst other things a Declaration from the High Court that the actions of the fifth Respondent in physically taking over the chair of the Speaker, and sitting as Deputy Speaker when the Speaker was still present was a breach of Section 67(1) of the Constitution. Section 67(1) states:-

"The Speaker or in his absence the Deputy Speaker or in their absence a member of the House of Representatives (not being a Minister or Assistant Minister) elected by the House for the sitting or sittings shall preside at any sitting of the House."

The Court of Appeal held inter-alia that:-

1. The privilege of the House of Representatives to control its own proceedings had become part of the Law of Fiji unless the Constitution otherwise required, and,

2. The House of Representatives had exclusive control over its own internal proceedings under Section 63 (1) of the Constitution, and,

3. The decision as to whom should preside as Speaker of the House was exclusively one of internal procedure and not reviewable in the Court.
Their Lordships took the view that by Section 2 of the Constitution it was the supreme law of Fiji and that to the extent that the privilege of the House of Representatives having control over its own proceedings, was inconsistent with the Constitution then, to the extent of the inconsistency the privilege would be void. However, their Lordships held that the internal proceedings of the House of Representatives could not be inquired into by the court. In relation to the alleged breach of Section 67(1) of the Constitution by the Respondents, their Lordships stated that the court could only ascertain whether the requirements of Section 67(1) had been met in so far as the Speaker, Deputy Speaker or an elected member had in fact presided at the sittings. Such a view would be in accordance with the requirements of the Constitution in relation to its application to the privilege of Parliament to control its own proceedings. The application of that principle did not however extend to reviewing the internal proceedings by which one of the persons mentioned in Section 67(1) came to so preside, or the manner in which they came to so preside. That was a matter for the House of Representatives itself to determine free from the interference of the court.

In this regard their Lordships said at p. 148 lines D-G and following:-

"With respect we agree entirely with what the Chief Justice has said there about the purpose of Article 57(1) [S.67(1)] being to ensure that there will be someone to preside over the sittings of the House. At least in part, it is procedural but, unlike most procedural matters, it has been made a part of the Constitution. That being so, it must be a provision of the Constitution within the wording of Article 97 [S.113] and contravention of its terms may, provided the other requirements of Article 97 [S.113] are fulfilled, be the subject of an application to the Supreme Court under that Article. The Court would have jurisdiction to ascertain whether there had been a contravention. The Constitution is, by Article 2 thereof, the supreme law, and to any extent that the Parliamentary privilege was inconsistent with it, but only to that extent, the privilege would be void.

It is to be noticed that in an example given by Stephen J. in BRADLAUGH V GOSSETT (supra) at p.278, he says -

"The legal question which this statement of the case appears to me to raise for our decision is this:- Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable."

It is one of the functions of a Court so to construe the law as to avoid conflict, if that can properly be done. The passage just quoted from the judgment of Stephen J. indicates that even the statute law will not be examined by the Courts if it relates to the internal proceedings of the House. We think it both permissible and proper to apply that approach to Article 57(1)[S.67(1)] and to hold that the basic requirements that the Speaker, Deputy Speaker or elected Member shall preside are constitutional, and if material business is transacted at a
sitting of the House not so presided over it may be a contravention of the Constitution challengeable (by a person qualified) under Article 97(5.113). But the decision which of the persons mentioned shall preside is essentially one of internal procedure, which must necessarily be resorted to by the House in deciding the question. In that sphere the privilege mentioned continues to operate and the Courts may not inquire whether the House has interpreted the law correctly or not.”

Thus, as I understand it, the decision in Madhavan’s case established that the privilege of the House of Representatives of Fiji to control its own internal proceedings was part of the law of Fiji. Also, the House of Representatives has exclusive control over its own internal proceedings. As such, the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court. The High Court can only inquire into the internal proceedings of the House where it can do so in its capacity as guardian of the Constitution, and that will only be where the internal proceedings of the House are specifically provided for in the Constitution, such as found in Section 67(1) where the Constitution specifically sets out the requirement that someone must preside at a sittings of the House of Representatives and defines whom it is that should preside. The jurisdiction of the court to inquire in such an instance being based on the fact that a part of the internal procedure of the House of Representatives has been specifically incorporated as a provision of the Constitution.

It follows from this, that where a procedure of the House of Representatives is not specifically incorporated into the Constitution then the High Court has no jurisdiction to inquire into the internal proceedings of the House. From this it would further follow that the manner of the application of Standing Orders by the Speaker, and the activities of the privileges committee, in matters concerning the internal proceedings of the House of Representatives, unless specifically provided for in the Constitution, are not cognizable in the court.

Other relevant legislation which should be considered as supportive of this view is Article 9 of the Bill of Rights of 1689. By virtue of Section 22(1) and Section 24 of the Supreme Court Act Cap 13, Article 9 of the Bill of Rights is part of the Law of Fiji. That Article clearly established the supremacy of Parliament with regard to the control of its own proceedings, and not having them called into question in the courts of law.

Also the Parliamentary Powers and Privileges Act Cap.5 is relevant. Section 28 of that Act states:-

"Neither the Speaker, Deputy Speaker, President or Vice President nor any other officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in such officer by or under this Act."

Clearly, the intention of Section 28 is that the activities of the named officers with regard to the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court.
Mr. Stanton, on behalf of the Plaintiff made a number of submissions which can be categorised conveniently as follows:-

1. That the Plaintiff's suspension from the House of Representatives under the Standing Orders was void in that the procedure as set out in the Standing Orders had not been properly followed by the Speaker and the Privileges Committee.

2. That the actions of the Privileges Committee in inquiring into and recommending the Plaintiff's further suspension from the House of Representatives for the June/July sittings amounted to a breach of one of his fundamental rights guaranteed under Section 4 of the Constitution and set out in Section 11(8).

3. That the Standing Orders of the House of Representatives in themself were unconstitutional in that they breached the Fundamental Freedoms set out in Sections 11, 12, 13 and 15.

4. That the suspension of the Plaintiff from the Parliament amounted to a breach of the Fundamental Freedoms guaranteed to him under Sections 12, 13, 14 and 15 of the Constitution.

Mr. Stanton filed written submissions in this case. I have read them and find that the questions raised therein for determination can best be answered on the grounds of general principle.

Central to the determination of the questions before the Court is a consideration of Section 63(1) and (3) of the Constitution. Of crucial importance is the decision in Madhavan's case. The Fiji Court of Appeal authoritatively pronounced on matters similar to those raised in this case. The court there construed and applied Section 63(1) of the Constitution.

The decision in that case being a decision of the Court of Appeal is binding on this Court.

As I have mentioned previously, Madhavan's case decided that the Privilege of the Houses of Parliament having exclusive control over their own internal proceedings was part of the law of Fiji, and, that under Section 63(1) of the Constitution the House of Representatives had exclusive control over its own internal proceedings. As also has been noted, Section 63(1) is expressed as being, "Subject to the provisions of this Constitution......". How did the Court of Appeal approach the application of those words to the matter before it? This would seem to be set out at p.148 of the decision which I have referred to at pp. 21 and 22 herein. The words "...even the statute law...." have significant meaning in relation to the questions to be answered in this case. Mr. Stanton submitted that Madhavan's case clearly decided that while the House of Representatives had exclusive control over its own internal proceedings, Section 63(1) also clearly established that those internal proceedings were subject to all the provisions of the Constitution, and that when an internal proceeding of the House breached any of the provisions of the Constitution, and in particular the Chapter 2 provisions (which set out the Fundamental Freedoms in Sections 11, 12, 13, 14 and 15), then those proceedings would be void. He submitted that clearly the Chapter 2 provisions applied to the internal proceedings of the House of Representatives and that if any of those provisions were breached during the course of the proceedings of the House then the High Court could rightfully and properly intervene and
adjudicate on the correctness or otherwise of those proceedings. He submitted that Madhavan’s
case at p. 148 line D where their Lordships said:-

"The Constitution is, by Article 2 thereof, the supreme law, and to any extent that the
Parliamentary privilege was inconsistent with it, but only to that extent the privilege
would be void."

was ample authority for that proposition.

Mr. Cope on the other hand, submitted that what might be called the narrow construction to
Section 63(1) applied. He submitted that because the decision in Madhavan’s case affirmed that
the House of Representatives had exclusive control over its own internal proceedings, such
proceedings were subject only to the Constitution where the Constitution specifically referred to,
and provided for the proceedings of the Parliament, such as found in Section 67(1). He said that
in that Section the Constitution clearly referred to the office of the Speaker and who should
occupy that position, and that it was only where specific provision was made, such as in that
section, that the Constitution applied to the internal proceedings of the House of Representatives.
He emphasised that Madhavan’s case was not an authority for the proposition that all the
provisions of the Constitution such as found in Chapter 2, applied to the internal proceedings of
Parliament. In support of his submission he referred the court to page 148 of their Lordship’s
judgment where the court said:-

"........even the statute law will not be examined by the Courts if it relates to the internal
proceedings of the House. We think it both permissible and proper to apply that approach to
Article 57(0)[S.67(1)] and to hold that the basic requirements that the Speaker, Deputy Speaker
or elected Member shall preside are constitutional, and if material business is transacted at a
sitting of the House not so presided over it may be a contravention of the Constitution
callengeable (by a person qualified) under Article 97[S.113]. But the decision which of the
persons mentioned shall preside is essentially one of internal procedure, which must
necessarily be resorted to by the House in deciding the question. In that sphere the privilege
mentioned continues to operate and the Courts may not inquire whether the House has
interpreted the law correctly or not. It has often been said that this particular privilege is one
of necessity and it would lead to a chaotic situation if any member could rush to the Courts for
a declaration that the election of a member to preside was in some way defective."

I believe that it is this question, i.e. the degree or extent of the application of the Constitution to
the internal proceedings of the House of Representatives, as per the construction of Section 63(1)
that is the nub of the case now before the court. It is the application of what I might call the
Madhavan principle that will be decisive to the matters raised for consideration here.

After reading Madhavan’s case a number of times I am satisfied that the narrow application to the
construction of Section 63(1) as submitted by Mr. Cope is the only way to give effective legal
sense to the decision.
Sections 63(3) gives Parliament power, for the purpose of the orderly and effective discharge of the business of each House to make provision for the powers, privileges, and immunities of each House and the committees and members thereof. This section I believe arms and enforces the procedures set out under Standing Orders. The powers and privileges created under this subsection do not appear to be subject to the Constitution. Madhavan's decision in relation to the House of Representatives maintaining exclusive control over its own proceedings would appear to reflect this. I might also add that this subsection would appear to reflect the sentiments of 500 years of the common law, Article 9 of the Bill of Rights, and Section 28 of the Parliamentary Powers and Privileges Act.

Section 63(1) ensures that Standing Orders as drawn do not violate the Constitution with regard to the procedural aspects of Parliament which are specifically set down in the Constitution. If the Standing Orders do offend in this regard they may be challenged under Section 113. In such an instance the court would have jurisdiction, to intervene, and, to the extent that the Standing Orders were inconsistent with any specific procedural provisions of the Constitution, could strike down the offending Standing Orders. However, where the Standing Orders do not offend the Constitution in this regard the question of how the privileges of Parliament under Standing Orders are applied, I believe, is purely an internal procedure of the House and in the light of Madhavan's case, is clearly not subject to the jurisdiction of this Court.

I refer again to the judgment of Stephen J. in BRADLAUGH V. GOSSETT 1883-4 12 QBD 271 at pp. 285-6 where His Lordship said:-

"The assertion that the resolution of the House goes beyond matter of procedure, and that it does in effect deprive both Mr. Bradlaugh himself and his constituents of legal rights of great value, is undoubtedly true if the word "procedure" is construed in the sense in which we speak of civil procedure and criminal procedure, by way of opposition to the substantive law which systems of procedure apply to particular cases. No doubt, the right of the burgesses of Northampton to be represented in parliament, and the right of their duly-elected representative to sit and vote in parliament and to enjoy the other rights incidental to his position upon the terms provided by law are in the most emphatic sense legal rights, legal rights of the highest importance, and in the strictest sense of the words. Some of these rights are to be exercised out of parliament, others within the walls of the House of Commons. Those which are to be exercised out of Parliament are under the protection of this Court, which, as has been shown in many cases, will apply proper remedies if they are in any way invaded, and will, in so doing be bound, not by resolutions of either House of Parliament, but by its own judgment as to the law of the land, of which the privileges of Parliament form a part. Others must be exercised, if at all, within the walls of the House of Commons; and it seems to me that, from the nature of the case, such rights must be dependent upon the resolutions of the House. In my opinion the House stands with relation to such rights and to the resolutions which affect their exercise, in precisely the same relation as we the judges of this Court stand in to the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it. If they misunderstand it, or (I apologise for the supposition) wilfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their
decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses. This is enough to justify the conclusion at which I arrive.

We ought not to try to make new laws, under the pretence of declaring the existing law. But I must add that this is not a case in which I at least feel tempted to do so. It seems to me that, if we were to attempt to erect ourselves into a Court of Appeal from the House of Commons, we should consult neither the public interest, nor the interests of Parliament and the constitution, nor our own dignity. We should provoke a conflict between the House of Commons and this Court, which in itself would be a great evil:......"

I am of the opinion that provided the privileges set out in the Standing Orders do not breach a specific Constitutional provision with regard to the procedure of the House of Representatives, the court will go no further. The court will not examine the internal proceedings of the House of Representatives to see if the application of the Standing Orders by either the Speaker or the Privileges Committee was either incorrect in terms of its own procedure, or led to a breach of the Chapter 2 provisions of the Constitution. As the Parliament under S. 63(3) is not subject to the provisions of the Constitution in providing for its own powers and privileges etc, for the orderly conduct of its business, I am of the opinion that the Chapter 2 provisions of the Constitution do not apply to the internal proceedings of the House of Representatives as no specific constitutional provision is made for the application of that Chapter to the proceedings of Parliament. In my view the proper construction of Section 63 (1) of the Constitution is that the High Court is concerned to see that the Standing Orders and their application conform to the provisions of the Constitution where the Constitution specifically provides for the procedure of the House. That is where the jurisdiction of the High Court ends. That being so, once the House acts under Standing Orders then the jurisdiction of the court is satisfied. The manner of the application of Standing Orders, whether in accordance with the procedures set out therein or not is an internal matter within the walls of Parliament relating to the powers and procedure of the House, and, in accordance with the decision in Madhavan's case is clearly not cognizable in this court.

I think that Mr. Cope's submission that Madhavan's case has established that the general provisions of the Constitution, including the provisions of Chapter 2, do not apply to the internal proceedings of the House of Representatives, and that those proceedings are only subject to the Constitution where it specifically provides for the internal proceedings of the House, is a sound analysis. Such an analysis makes sense of, and reinforces the reasoning and decision in Madhavan's case. To come to the conclusion as submitted by Mr. Santon on behalf of the Plaintiff would mean that the court would have to scrutinise the internal proceedings of the House of Representatives to see if a breach of the Chapter 2 provisions had occurred. This would lead to precisely what the decision in Madhavan's case said that the court could not do. If the provisions of Chapter 2 applied to the internal proceedings of the House those proceedings would be open to investigation by the High Court every time a member alleged that the authority of the House, its Committees or its Officers had violated those provisions either in the manner of the application of Standing Orders themselves, or in any ultimate sanction imposed under them.
This could lead to every aggrieved member of the House who had been silenced, suspended or otherwise dealt with under Standing Orders, alleging a breach of his Fundamental Freedoms under Chapter 2 and seeking to have the High Court adjudicate on the internal proceedings of the House that gave rise to the complaint. Clearly such an occurrence would be neither desirable nor in the best interests of the Parliament. For this court to inquire into, and adjudicate on the activities of the Speaker and the Privileges Committee in the application of the powers and privileges set out under the Standing Orders, without a specific mandate to do so from the Constitution, would involve in my opinion an unlawful invasion by the court into the Constitutionally guaranteed right of the House of Representatives to regulate its own proceedings, and to provide for its own powers, privileges and immunities free from the interference of the Court. I return to the dicta of their Lordships in Madhavan's case where at page 148 they said:-

"It is one of the functions of the court so to construe the law as to avoid conflict if that can properly be done."

I believe that to apply the authority of the decision in the Madhavan's case in the manner as submitted by Mr. Cope fulfils their Lordships exhortation.

I am further fortified in this view by the dicta of Lord Morris of Borth-y-Gest in PICKIN v BRITISH RAILWAYS BOARD (1974) WLR 208, where at page 220 His Lordship said:-

"The conclusion which I have reached results, in my view, not only from a settled and sustained line of authority which I see no reason to question and which I think should be endorsed but also from the view that any other conclusion would be constitutionally undesirable and impracticable. It must surely be for Parliament to lay down the procedures which are to be followed before a Bill can become an Act. It must be for Parliament to decide whether its decreed procedures have in fact been followed. It must be for Parliament to lay down and to construe its Standing Orders and further to decide whether they have been obeyed: it must be for Parliament to decide whether in any particular case to dispense with compliance with such orders. .................. It would be impracticable and undesirable for the High Court of Justice to embark upon an inquiry concerning the effect or the effectiveness of the internal procedures in the High Court of Parliament or an inquiry whether in any particular case those procedures were effectively followed."

Mr. Staunton submitted that the Plaintiff's suspension from Parliament was void because the Speaker and the Privileges Committee of the House did not follow, and did not apply correctly the procedure for suspending a member as set out in the Standing Orders. He submitted that the court had the jurisdiction to inquire into those allegations and if found to be true to declare the resolution of the House void. Again, I think the decision of BRADLAUGH V GOSSETT (1883) 12 QBD 271 is helpful to consider, remembering that in that case a similar question as here arose, but one relating to the House of Commons not complying with an act of Parliament as opposed to Standing Orders. The Court there nevertheless held that it could not interfere with the
internal proceedings of the House of Commons. I am satisfied that the same applies in Fiji. The
court does not have either the power or jurisdiction as contended for it by Mr. Stanton. The
manner of the application of Standing Orders by the Speaker, and the activity of the Privileges
Committee are purely matters of internal procedure over which the House has exclusive
jurisdiction and control. Standing Orders set out the rules of procedure of the House and the
powers vested in the House and its Officers to enforce those rules. I am satisfied that under
Section 63(1) of the Constitution those rules are only subject to the Constitution where it
specifically provides for the proceedings of Parliament. The powers contained in the Standing
Orders derive from Section 63(3) of the Constitution. Those powers are not subject to any
provisions of the Constitution. The Court is thus only able to adjudicate upon the question as to
whether the Standing Orders as such are in conformity with any specific provision of the
Constitution which relates to the proceedings of the Parliament. Once so satisfied the jurisdiction
of the court ends there. The manner, method and degree of application of Standing Orders by the
Speaker etc. are not subject to review in this court.

With regard to the submission as to the general applicability of all the provisions of the
Constitution to the internal proceedings of the House of Representatives under Section 63(1),
Mr. Stanton emphasised the paramountcy of the Plaintiff's fundamental rights as set out in
Chapter 2 in Sections 11(8), 12, 13, 14 and 15. He submitted that such was the importance of
those rights in Fiji that the internal proceedings of the House could not but be subject to them.
Such a submission I believe treats those fundamental rights as absolutes. I think it is also
important to bear in mind that those rights are in fact not absolute but subject to proviso's. Those
proviso's need to be weighed against the position, role and function of the Houses of Parliament
in Fiji. The proviso's themselves place limits upon the particular Fundamental Freedoms in the
interests of those freedoms being respected in others, or in the interests of the public generally
and public order. A helpful statement in this regard was made by GAUDRON J. of the High
Court of Australia when discussing powers conferred by Section 51 of the Australian
Constitution which were made "Subject to the Constitution". In NATIONWIDE NEWS
PROPRIETARY LTD. v WILLS (1992) CLR 658, at page 689 Gaudron J. said:-

"......powers conferred by s 51 of the Constitution, because they are conferred "subject to the
Constitution"......do not authorise laws which impair or curtail freedom of political
discourse, albeii that that freedom is not absolute. Because that freedom is not absolute and
for the reasons which I state in AUSTRALIAN CAPITAL TELEVISION PTY. LTD. v THE
COMMONWEALTH NO.2, freedom to discuss matters pertaining to government institutions
and agencies may be curtailed by a law under s 51, but only if its purpose is not to impair
freedom, but to secure some end within power in a manner which, having regard to the
general law as it has developed in relation to the written and spoken word, is reasonably and
appropriately adapted to that end."

In R. V. JACKSON (1987) 8 NSW LR 116 Hunt J. when reviewing the standing of the
privileges of Parliament said at p.121:-

"The English and American authorities stress the immense historical importance of art 9 [of
the Bill of Rights]. They also stress that the privileges and rights of Parliament go beyond the
interests of an individual member of Parliament and are necessary to represent the interests of Parliament as a whole."

These dicta, in conjunction with an examination of the proviso's themselves set out in Sections 11, 12, 13, 14 and 15 of the Constitution assist me in reaching the conclusion that the Fundamental Freedoms set out in those sections are not absolute, but are tempered generally by the need to place their operation in the context of the competing interest of others in the setting to which they are to be applied.

The limitation upon the natural operation of those sections in Chapter 2 of the Constitution when applied side by side with the authoritative decision in Madhavan's case, which would require the Constitution to do that which it has not done, i.e. to make specific provision for the application of the Chapter 2 provisions to the internal proceedings of Parliament, further reinforces me in the view that an alleged breach of any of the Chapter 2 provisions of the Constitution arising from internal proceedings of the House of Representatives is neither cognizable nor reviewable in the High Court. Thus, the words "Subject to the provisions of this Constitution" as set out in Section 63(1) do not have the effect of applying the Chapter 2 provisions to the internal proceedings of the House of Representatives and making such proceedings subject to those provisions.

The compelling authority of the common law and the law as applies in Fiji I believe forcefully and logically can only lead to the conclusion that Parliament in its internal proceedings should not be, and is not subject to the scrutiny or jurisdiction of the High Court unless specifically provided for in that capacity in the Constitution.

Parliament must be free to control and regulate its own internal proceedings free from the interference of the court. In a society where the rule of law is paramount, Parliament is presumed to, and can be relied upon to act properly and to lawfully regulate itself. Given the unique and onerous responsibility of the Parliament as being in effect, and fact, the people of Fiji acting through their elected representatives as the supreme law making body of the land, it must be free to order its own affairs without interference from the court. It must be unfettered in controlling its own proceedings, empowering itself to give force and effect to those proceedings and applying those powers in a manner and with the discretion of its own choosing.

The court can only inquire into, and adjudicate on those proceedings where the mandate to do so is clearly established. I am of the opinion that the law in Fiji is clear in this regard.

In the management of its own internal proceedings, powers and privileges The House of Representatives has the exclusive control of those proceedings subject only to the Constitution, where it specifically provides for the regulation of those proceedings.

The matters of which the Plaintiff complains arose out of the internal proceedings of the House of Representatives which are not specifically provided for in the Constitution, and as such, fall within the category of being wholly internal proceedings of the House into which this court cannot inquire.
The remedy that the Plaintiff seeks is not to be found in a court of law, but within the walls of Parliament by appealing to the conscience and charity of the members themselves. In this regard I echo the sentiments of COLERIDGE C. J. in BRADLAUGH v GOSSETT (1883-4) 12 QBD 271, at page 277 where His Lordship said:

"The history of England, and the resolutions of the House of Commons itself, shew that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy it be, lies, not in actions in the courts of law (see on this subject the observations of Lord Ellenborough and Bayley, J. in BURDETT v ABBOTT, 14 East, 150, 151, and 160, 161), but by an appeal to the constituencies whom the House of Commons represents."

While the court is sympathetic to the position that the Plaintiff finds himself in with regard to his suspension from the House of Representatives, it cannot interfere with the proceedings of the House which led to that result.

From the foregoing I believe that the questions raised under issues 1 and 2 can be answered in the following. The internal proceedings in the House of Representatives of Fiji are not subject to the jurisdiction of the High Court. The regulation of procedure, and the manner of the application and enforcement of the powers, privileges and immunities of the House by the Speaker and Committees under Standing Orders, are part of the internal proceedings of the House of Representatives and as such remain within the exclusive jurisdiction, control and discretion of the House itself and are not subject to the jurisdiction of the High Court.

I am also satisfied that all the provisions of the Constitution generally do not apply to the internal proceedings of the House of Representatives, and that those proceedings are only subject to the Constitution where provision is specifically made with regard to the operation, function and procedures of the Houses of Parliament.

Accordingly I am satisfied that the declarations sought by the Plaintiff in paragraphs 1, 2, 4 and 5, of the Originating Summons relate to matters of privilege and procedure which are purely internal proceedings of the House of Representatives, and are not subject to the jurisdiction of this court. I decline to grant the declarations sought in those paragraphs.

With regard to the submission that the Standing Orders of the House of Representatives are unconstitutional, Mr. Stanton said that the Standing Orders as drawn infringed or at least had the tendency to infringe the provisions of Chapter 2 of the Constitution in that they were in breach of the Fundamental Freedoms set out in Sections 11, 12, 13 and 15 therein. Those sections provide for the protection of law, freedom of conscience, freedom of expression and freedom of movement. This submission is reflected in paragraph 3 of the Originating Summons. I am satisfied that the authority of Madhavan's case establishes that under Section 63(1) of the Constitution the internal proceedings of the House of Representatives including Standing Orders are only subject to specific Constitutional provisions dealing with the procedure of each House of Parliament. They are not subject generally to all the provisions of the Constitution, and this includes the Fundamental Freedoms set out in Chapter 2. I am satisfied that the Standing Orders
of the House of Representatives as published refer to, and make provision for the regulating of procedure, privileges, powers and immunities of the House of Representatives in accordance with the requirements of Section 63(1) and (3) of the Constitution. They are not subject to the provisions of Chapter 2 and as such do not infringe the Constitution in this regard. Accordingly, I decline to grant the declaration sought in paragraph 3 of the Plaintiff's Originating Summons.

That addresses matters raised in the Plaintiff's pleadings.

I now turn to consider further submissions made by Mr. Stanton on behalf of the Plaintiff that also raised grounds for relief, but were not pleaded in the Plaintiff's Originating Summons.

Those submissions were based on the allegation that the manner in which the Speaker applied the Standing Orders against the Plaintiff also violated his Fundamental Freedoms set out in Section 11(2) and (8) of the Constitution, and that his suspension from the Parliament was in itself a violation of Sections 12, 13, 14 and 15 of the Constitution, therefore unconstitutional and void.

Although those matters were not specifically pleaded in the Originating Summons, Mr. Stanton sought to raise them before me pursuant to Section 19 of the Constitution which gives the court power to hear complaints by persons who allege that any of their constitutional freedoms set out in Chapter 2 have been breached.

Mr. Cope on behalf of the Defendant objected to the court hearing submissions on those matters as they had not been specifically pleaded by the Plaintiff. I decided to hear the further submissions of Mr. Stanton as the allegations raised questions which were of constitutional significance and did not raise any new matters or take the Defendant by surprise.

In relation to the submission that the manner in which the Standing Orders were applied against the Plaintiff breached his constitutional rights under Section 11(2) and (8). The manner of the application of the Standing Orders by the Speaker within the House of Representatives being exclusively an internal proceeding of the House of Representatives is not subject to the jurisdiction of the Court. Also, given that I am satisfied that the internal proceedings of the House of Representatives are not subject to the provisions of Chapter 2 of the Constitution then clearly Section 11(2) and (8) have no application in this regard and thus fall from consideration. I might add however, that even if this section did raise itself for determination it is difficult to see how Section 11(2) could apply to the Plaintiff's suspension. That subsection specifically relates to the rights of a person who has been charged with a criminal offence. The Plaintiff's suspension from the House of Representatives did not arise as a result of any criminal act on his part, nor was he charged with any such offence. In relation to Section 11(8). That subsection sets out the obligation incumbent upon any court or authority, which is required or empowered by law to determine the existence or extent of any civil right or obligation, to be both independent and impartial, and to afford a person a fair hearing within a reasonable time. Neither the Speaker, nor the Privileges Committee in dealing with the Plaintiff under Standing Orders were an authority called upon to determine the existence or extent of a civil right or obligation of the Plaintiff. They were simply dealing with proceedings internal to the House of Representatives. Mr. Stanton submitted that the Plaintiff had a civil right to be heard before the Privileges Committee.
before it reached the decision to recommend his further suspension from the House. I am not satisfied that such a right exists. The Plaintiff in his affidavit acknowledged the existence of the privilege of the House of Representatives to have exclusive control over its internal proceedings. He thus did not challenge the existence of the privilege. Neither did he challenge the extent of the privilege. He challenged the manner of its application. I would further add that I am not satisfied that the Privileges Committee is in fact an authority within the meaning of the subsection. Under Standing Order 66(4) the Privileges Committee is a committee whose duty is to:

"4. (a) To bring to the attention of the House any breach of the privilege of the House committed by any person or persons and recommended to the House what action should be taken;

(b) To consider and report upon such questions of privilege as may be referred to it by the House;

(c) To conduct enquiry into any complaint that may be referred to it by the House concerning any breach of privilege on the part of any person or persons from time to time; and for such purposes to have and exercise the powers available to the House in respect of any matter for consideration by the House or any committee thereof."

Those matters relate to the privileges of the House of Representatives. The Privileges Committee is not empowered by any law to determine the existence or extent of the civil rights or obligations of the members of the House of Representatives. The Privileges Committee when acting under Standing Order 66 is not a court or authority that carries out any of the responsibilities set out in Section 11(8) and thus is not a body to which Section 11(8) is addressed or applies. That subsection I believe, would apply to bodies such as courts of law or administrative tribunals, e.g. immigration tribunals etc.

I turn now to consider the submission by Mr. Stanton that the Plaintiff's suspension itself breached Sections 12, 13, 14 and 15 in that the suspension violated the Plaintiff's freedom of conscience, expression, assembly and association and movement.

I am satisfied that the Plaintiff's suspension from Parliament was not in any way unconstitutional. The suspension does not breach any of the Fundamental Freedoms set out in Sections 12, 13, 14 and 15. All those freedoms are still available to the Plaintiff, unhindered outside the walls of Parliament. As I have mentioned earlier, those freedoms are not absolute but limited by the considerations of public order, and respect for those same rights in others. To fail to place such limitations upon those Fundamental Freedoms would, I believe, given the nature of man as it is, have a tendency to lead to anarchy. In other words those rights are limited for the orderly conduct of society. The Houses of Parliament are also mandated by the Constitution to regulate themselves to provide for the orderly conduct of their own business and proceedings.

I might further add that those sections anticipate that the Fundamental Freedoms set out therein may also be limited by the consent of the individual himself. The fact that the Plaintiff took his
seat in the House of Representatives implies consent on his part to be bound by the rules of the House and to accept the limitations imposed on members for the orderly conduct of its business and proceedings. The suspension of the Plaintiff from the House of Representatives was pursuant to its own internal rules. As I have said earlier the suspension does not affect those Fundamental Freedoms in the Plaintiff outside the Parliament and in society in general, it is just that he cannot exercise them within the walls of Parliament for two months. I cannot see that any rights in the Plaintiff have been infringed, for his rights in relation to the taking of his seat in the House of Representatives is the right to take that seat in accordance and compliance with the rules and regulations of the House of Representatives.

Finally, Mr. Stanton submitted that the suspension of the Plaintiff was void because the rights of all the constituents of Rewa to be represented by the Plaintiff in the Parliament had been breached. I am not persuaded by this submission. Under Section 19 of the Constitution it is for a constituent of Rewa himself who alleges a grievance to apply to the court. The Plaintiff cannot apply on his behalf. There has been no such application, and if there was would such constituent be able to point to any breach of his Fundamental Freedoms by the Plaintiff's suspension from the House of Representatives? Those Fundamental Freedoms exercisable by him individually are in no way violated by the Plaintiff's suspension.

Also, it is important to note that the constituents of Rewa are still represented in the House of Representatives by their second member who may continue to take his seat during the Plaintiff's suspension. The right of the constituents of Rewa if any, with regard to the Plaintiff taking his seat in the House of Representatives is surely the right to be represented by their elected member, taking his seat in accordance, and in compliance with the rules of the House of Representatives and not otherwise.

Thus, the questions raised under issues 3 and 4 are answered in the negative. I therefore decline to grant the declarations sought and dismiss the Plaintiff's Originating Summons.

I make no order as to costs.

David E. Ashton-Lewis
Judge

IN THE HIGH COURT OF FIJI

AT SUYA

CIVIL JURISDICTION

MISCELLANEOUS ACTION NO. 0003 OF 1998

IN THE MATTER

of an application by the Attorney General of Fiji

for leave to apply for an order of commital

AND:

IN THE MATTER of MAHENDRA PAL CHAUDHARY

Mr. S. Banuve and Mr. S. Kumar for the Applicant
Mr. R. Naidu for the Respondent

JUDGMENT

The Fiji Labour Party is one of the four political parties represented in Parliament. Last year on Friday the 11th of July the 12th Annual Delegates Conference of the Party was held at the Tokatoka Resort Hotel in Nadi.

Mahendra Pal Chaudhary ('the respondent') is and was the Secretary-General of the Fiji Labour Party ('FLP') at all material times. He prepared for presentation to the FLP Annual Delegates Conference, a comprehensive 30-page report dated the 8th July 1997 and entitled: FIJI LABOUR PARTY 1997 Activities Report ('The report').

Chapter 6 of 'the report' is entitled: LAW AND ORDER and contains ten (10) paragraphs of which it is only necessary, for present purposes, to refer to two (2) which reads:

"Allegations of corrupt practices in the Police, DPP's Office and the judiciary have received wide publicity in the media. A recent disclosure on corrupt practices in the judiciary resulted in an inquiry being appointed by the Attorney General but its report has not been made public."
There has been public suspicion since the coups that many in our judicial system are corrupt. In several cases well known lawyers have been identified as receiving agents for magistrates and judges. A number of lawyers are known to arrange for them to appear before their preferred magistrates or judges."

(my underlining)

On the 14th of July 1997 edition of the Daily Post newspaper under a front page article carrying a large bold headline: "JUDICIARY CORRUPT" the above latter paragraph was extensively quoted in speech marks and attributed to the Secretary General of the Fiji Labour Party.

Six (6) months later on the 22nd of January 1998 the Attorney-General sought leave under Order 52 of the High Court Rules: '... to apply for an order of committal against Mahendra Chaudhary' on the following basis as set out in paras. 2 & 3 of the accompanying Statement which reads:

"2. THE relief sought herein is an Order that the Applicant be at liberty to apply, for an order of committal in respect of Unionist and Member of Parliament Mahendra Pal Chaudhary of Suva, for his contempt of this Court on the 12th day of July, 1997 in a pamphlet duly signed by the said Mahendra Pal Chaudhary and delivered at the Labour Party Convention at Sabeta, Nadi, which was published in the Daily Post on the 14th July, 1997.

3. THE grounds upon which the said order is sought are the words used in the said pamphlet in particular the fourth paragraph of page 22 of the said pamphlet. In particular the words 'in several cases well known lawyers have been identified as receiving agents for magistrates and judges', which scandalise this Honourable Court in that they are a scurrilous attack on the Judges and Magistrates thereby lowering the authority of this Honourable Court."

On 5th February 1998 leave was granted to the Attorney-General to issue contempt proceedings and on the 10th of February 1998 a Notice of Motion was issued against Mahendra Pal Chaudhary seeking his committal to prison for "... his contempt of this Honourable Court in publishing pamphlets and causing it (sic) published in the issue of 'The Daily post dated the 14th July, 1997, under the Heading 'JUDICIARY CORRUPT'"

It is convenient at this stage to deal with the respondent's first 'head' of defence which seeks to attack the form and contents of the proceedings undertaken by the Attorney-General.

To begin with, counsel for the respondent writes in his written submissions: '... there is no proof of service (of the motion)'. It is not entirely clear what is meant by the sentence in the absence of an affidavit denying service, but if it means that counsel should be served with the papers or a copy of an Affidavit of Service or that he be advised of the same, then I entirely disagree.

Order 52 r.3(3) of the High Court Rules 1988 merely requires 'personal service on the person sought to be committed' of the Notice of Motion, together with a copy of the Statement and affidavit in support of the application for leave under Rule 2.
Suffice it to say that there is an *Affidavit of Service* in the court file dated the 17th day of February 1998 deposed by an employee of the Attorney-General's Chambers which fully complies with the requirements of the above Order. There is no merit in this submission.

Secondly, counsel writes: *'No grounds of the alleged contempt are contained in the motion.'* This, it is submitted, is a fatal non-compliance with the requirements of the rules and Counsel refers to several cases in support, chief amongst which, are the judgments of the English Court of Appeal in *Harmsworth v. Harmsworth* (1987) 3 All E.R. 816 and *Chiltern D.C. v. Keane* (1985) 2 ALL E.R. 118. Both were decisions dealing with contempt for disobedience of court orders.

Both cases refer to prescribed *Forms* and court *Rules* that requires the *Notice of Motion* to set out particulars sufficient to let the person alleged to have been guilty of contempt know the subject matter of the breach(es) alleged against him.

In particular the relevant *County Court Form* in *Harmsworth's* case provides for there to be set out in the *'notice to show cause'* the particular breach(es) of the order alleged, and, in *Chiltern's* case, the relevant court *Rule* expressly required the *Notice of Motion* to commit to *(state) the grounds of the application'.

There is no such requirement in respect of the *Notice of Motion* to commit in Order 52 of our *High Court Rules* which only requires the *Statment* under Order 52 r.2(2) to set out *'the grounds on which ... committal is sought'*. I accept however that:

"... no person should be punished for contempt of court, which is a criminal offence, unless the specific offence charged against him be distinctly stated and an opportunity of answering it given to him ..." [In re Pollard (1880) L.R. 2 P.C. 506, 520.]

But as was said by Woolf L.J. in *Harmsworth's* case (ibid. at p.823):

"What is not required by the relevant rules is that the notice of motion should be drafted as though it was an indictment in criminal proceedings."

The *'test'* as propounded by Sir John Donaldson M.R. in *Chiltern's* case (ibid. at p.119) is:

"... that what is required is that the person alleged to be in contempt shall know, with sufficient particularity to enable him defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court."

and later the learned Master of Rolls said at p.120:

"Every notice of application to commit must be looked at against its own background. The test as I have said, is: 'Does it give the person alleged to be in contempt enough information to enable him to meet the charge?'"
Clearly with those principles in mind the framers of our High Court Rules determined that it would be sufficient for a copy of the Statement to accompany the 'Notice of Motion' when service is effected upon the person sought to be committed.

It is undisputed in this case that a copy of the Attorney-General's Statement together with the affidavits in support of the application for leave were personally served on the respondent along with the 'Notice of Motion'. That is all that is required under our High Court Rules.

Turning then to, counsels highly pedantic analysis of the Notice of Motion, having considered all four (4) documents served together with the annexures, I am more than satisfied that the information supplied to the respondent not only strictly complied with the High Court Rules, but also contained sufficient particulars to enable the respondent to defend himself against the contempts alleged against him.

It must be remembered that the simple 'background' to the present application is the publication in a local newspaper of the offending paragraph attributed to the respondent. We are not here dealing with several court orders or injunctions or even with numerous alleged breaches occurring over an extended period of time.

Viewed against that 'background' the Notice of Motion read with paragraphs 2 & 3 of the Attorney-General's Statement (earlier set out at pp. 2 & 3) and the Daily Post newspaper article, gives more than sufficient information both as to the nature and details of the particular contempt alleged, as well as, the manner and occasion when it is alleged to have been committed. I accordingly reject this submission.

The Attorney-General's motion is supported by two (2) very brief affidavits, one deposed by Mesake Koroi of the Fiji Daily Post Co. Ltd. and, the other, by Kamal Iyer, a senior journalist in the employ of Fiji Broadcasting Commission. Both affidavits annexed a copy of 'the report' and described how the respective deponents came to be in possession of the same.

In particular, Mesake Koroi deposed that:

"ON 12th of July, 1997, I was at the Parliament Complex at Veitato, Nausese, Suva where I picked up a copy of a pamphlet which was disseminated for public consumption."

Kamal Iyer for his part, deposed:

"THAT I was given a pamphlet at the Fiji Labour Party's annual delegates conference held at the Tokatoka Hotel on Friday July 11th, 1997."

Neither identified the supplier or source of the 'pamphlet' nor, in Mesake Koroi's case, the exact place from where it was picked up.

The Attorney-General's motion was fixed to be heard on the 26th of February 1998.
The relevant papers were duly served on the respondent on the 13th of February, 1998. On the hearing date the respondent appeared by counsel who sought a short adjournment to enable answering affidavits to be filed on his behalf. This was granted and on the 4th of March 1998, three (3) affidavits were filed. They are deposed by Rajendra Pal Chaudhary Administrative/Research Officer in the Fiji Labour Party Office at the Parliamentary Complex at Veituo (the 'FLP Office'); by Dipika Patel, Secretary in the same office and by Rakesh Chandra the Office Messenger/Clerk. There was no affidavit from the respondent.

The latter two affiants merely deposed that on the 12th of July 1997, a Saturday, neither was present at the 'FLP Office' and neither was 'aware of any reason why the FLP Parliamentary Office would be open on that day'.

Rajendra Chaudhary for his part whilst confirming the closure of the 'FLP Office' on the 12th of July 1997; and the holding of the FLP Annual Delegates Conference at the Tokatoka Resort Hotel on Friday, 11 July 1997; and the presentation of 'the report' thereat, deposed inter alia that: 'The delegates conference was a private meeting, attended by approximately 60 delegates from the FLP's various branches around Fiji' and 'Neither the media nor the general public was invited to attend the delegates Conference.'

He further deposed that the 'the report' was 'not intended for circulation to the general public' but there is no suggestion that the copies of 'the report' in the possession of Mesake Koroi and Kamal Iyer were either unauthorised copies or unlawfully obtained.

It is plain from the answering affidavits that issue was being taken on the date (i.e. '12th July 1997') when Mesake Koroi deposed he 'picked up' a copy of 'the report'; also, on the source or supplier of 'the report' to the respective reporters; and on who was responsible for its subsequent publication in the Daily Post. The authorship, intended readership and actual contents of 'the report' are not denied however.

In this latter regard 'the report' bears in the middle of its cover page the following wording:

"presented by the Secretary-General to the 12th Annual Delegates Conference";

and on the first page under the heading, the following attribution appears:

"Report of the Secretary-General to the 12th Delegates Conference
Tokatoka Resort NADI - 11 July, 1997."

'The report' then opens with the personal words: "I shall begin the report..." which suggests to my mind that it was intended to be delivered orally, and the last page bears the date '8 July, 1997' and carries a hand-written signature above the words:

'Mahendra P. Chaudhary
SECRETARY GENERAL'
On the 5th of March, when the Attorney-General's motion was being heard in open court, State Counsel mindful of the above, orally sought from the bar table to amend the date in Mesake Koroi's affidavit and when this was disallowed, Mesake Koroi was called into Court and after identifying a copy of 'the report', testified, over defence counsel's objections, that on the afternoon of the 11th July 1997 he was called into the 'FLP Office' at the parliamentary complex and was given a copy of 'the report' by Mr. Rajendra Chaudhary who was packing at the time.

It is convenient at this stage to deal with the second 'head' of defence advanced by counsel for the respondent entitled: 'LACK OF PROOF TO ANY STANDARD', which as the name suggests, seeks to challenge the quality of the evidence adduced in support of the Notice of Motion.

The allegation against the respondent may be conveniently summarised as follows - that he published (and I would here emphasise the disjunctive nature of the charge) or caused to be published in the 14th of July 1997 issue of the Daily Post, words which constitute a contempt of Court in that they are a scurrilous attack on the Judges and Magistrates thereby lowering the authority of the Courts.

In the absence of any affidavit evidence from the respondent, Counsel submits that the respondent neither published 'the report' or caused it to be published in the Daily Post.

In this latter regard the evidence of Mesake Koroi is that he personally wrote the article in the Daily Post which was based on a copy of 'the report' that he had obtained from the 'FLP Office'. There is no evidence however that the respondent either supplied 'the report' or authorised or knew of the article or indeed, that he in any way caused the article to be written or published in the Daily Post newspaper. I am accordingly not sufficiently satisfied that the respondent 'caused' the offending words to be published in the Daily Post albeit that they were undoubtedly extracted from 'the report' presented by him.

Did he then in any way publish 'the report' containing the allegedly contemptuous passage? Counsel for the respondent although accepting that 'in the face of (the report) it was circulated to 60 political party delegates' nevertheless submits, that that is not a sufficient 'publication'. I cannot agree.

I cannot accept that 'publication' for the purpose of contempt arising out of written matter is in any way dependant on the number of persons for whom and to whom the matter is circulated. Were this so then a letter written personally to the Chief Justice and containing scurrilous abuse of the Chief Justice would not amount to contempt and Martin's case (1747) 34 R.R. 1771 where an intending suitor had written to the Lord Chancellor referring to his proposed action and enclosing a 20 note plainly disproves this proposition albeit that that was a blatant if somewhat, hopeless case of attempted bribery.

Nor in my view, does the limited partisan nature of the readership or intended audience of 'the report' have any bearing on the question. In Attorney-General v. Butler (1953) N.Z.L.R. 944 which concerned a circular letter dictated by a Union Secretary and sent by post to ten branches
of the Union and which inter alia described an Arbitration Court’s award as ‘a travesty of justice’, the New Zealand Supreme Court on a Motion to commit the Union Secretary “for the contempt of Court in publishing a circular letter to the members of the (named branches) ...” found him guilty of contempt and ordered him to pay the costs of the proceedings.

Clearly in that case the Supreme Court did not consider itself constrained by the necessarily restricted circulation of the secretary’s letter or by the essentially private internal nature of the correspondence.

Bearing in mind counsel’s concession, the clear purpose and intended readership of ‘the report’, and Rajendra Chaudhary’s sworn affidavit to the effect that ‘the report’ was ‘presented to (the FLP annual delegates) Conference’, I am satisfied beyond a reasonable doubt that the respondent did ‘publish’ the offending words albeit to a limited audience.

Counsel for the respondent also criticised the use of the word ‘pamphlet’ in the papers filed by the Attorney-General. Suffice it to say that in my view, nothing turns on that description.

This limb of the second ‘head’ of defence is accordingly dismissed.

The respondent for his part entered a ‘not guilty’ plea through his counsel and upon the Court’s intimation elected through his counsel to rely solely upon the affidavits filed on his behalf.

So much then for the evidence in this case.

I turn next to consider the law. In R. v. Gray (1900) 2 Q.B. 36 Lord Russell of Killowen C.J. in holding that the contents of the newspaper article in that case constituted a contempt of court said at p.40:

“Any act done or writing published calculated to bring a Court or a judge of the Court into contempt or to lower its authority, is a contempt of Court ... (which) ... belongs to the category which Lord Hardwicke L.C. characterised as ‘scandalising a Court or a judge’ That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or exposition is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.”

More recently Lord Diplock in delivering the opinion of the Privy Council in Chokolingo v. Attorney General of Trinidad (1981) 1 All E.R. 244 described the contempt of ‘scandalising the court’, at p.248:

“(as) a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice.”
Quite plainly in my view, and with this there can be little disagreement, the nature of the contempt (if any) committed by the respondent in this case is that of 'scandalising the Court'. Certainly that is the terminology adopted by the Attorney-General in his Statement in support of the application for leave and uniformly addressed in counsels submissions to the Court.

As for the 'purpose' of this jurisdiction to summarily punish contempt of Court, Rich J. in the High Court of Australia said in R. v. Dunbabin ex-parte Williams [1955] HCA 34; (1955) 53 CLR 434, at 442:

"This jurisdiction ... exists for the purpose of preventing interferences with the course of justice ... such interferences may ... arise from publications which tend to detract from the authority and influence of judicial determinations, publications calculated to impair the confidence of the people in the Court's judgment because the matter published aims at lowering the authority of the Court as a whole or that of its Judges and excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office."

then in similar vein to the 'qualification' earlier referred to in Lord Russell's judgment in R. v. Gray (ibid.), his honour continues:

"The jurisdiction is not given for the purpose of protecting the Judges personally from imputations to which they may be exposed as individuals. It is not given for the purpose of restricting honest criticism based on rational grounds of the manner in which the court performs its functions. The law permits in respect of courts, as of other institutions, the fullest discussions of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose."

In this country too, the Court of Appeal had occasion to deal with this 'rare' form of contempt of court in the case of Vijaya Parmanandam v. Attorney-General [1972] 18 FLR 90 and, in upholding the Supreme Court's finding of contempt, said at p.95:

"The power to punish for contempt (of scandalising the Court itself) is not for the personal vindication of the judges; the real offence is the wrong done to the public by weakening the authority and influence of a tribunal which exists for the public good alone."

As to the 'standard of proof' required of such a contempt, Lord Russell said in R. v. Gray (ibid.) at p.41:

"It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt."

In similar vein it was held in Attorney-General (N.S.W.) v. Munday (1972) 2 NSWR 887 that:

"Scandalising the court is a form of criminal contempt triable on indictment except in exceptional circumstances, for instance where the contempt is established clearly and beyond reasonable doubt ..."
Quite plainly in this instance this Court did not consider it necessary to deal with the respondent either summarily or in 'brevi manu'. The Attorney-General however, in his wisdom and upon his independent and impartial assessment of the public interest in maintaining the due administration of justice in all its integrity, has decided to bring this matter to the Court's attention and consideration by way of a Notice of Motion to commit the respondent for his contempt of Court, and for that, this Court makes no criticism.

Having said that however, I am firmly of the view that not every unwarranted or discourteous criticism of the Judiciary amounts to the contempt of 'scandalising the Court'. Before such criticism may constitute scandalising contempt it must, viewed objectively, amount to what has been termed 'scurrilous personal abuse of a judge' or, be of such a nature as to be 'calculated to excite misgivings as to the integrity, propriety and impartiality' of the Courts.

What's more, in both instances, the Court must be satisfied that there is 'a real risk as opposed to a remote possibility of interference with the due administration of justice'.

I disagree however with counsel's attempt to link this 'requirement' with the question of publication. In my view it is not so much the audience to which the offending words is addressed that determines the question but, whether or not the offending words themselves are, viewed objectively, calculated to bring the administration of justice or the Courts into disrepute and the author's intention is irrelevant.

As was said by Lord Reid in Attorney-General v. Times Newspapers Ltd. (1973) 3 All E.R. 54 said at p.63:

"The question whether there was a serious risk of influencing ... is certainly a factor to be considered in what course to take by way of punishment, as is the intention with which the comment was made. But it is I think confusing to import this into the question whether there was any contempt at all or into the definition of contempt."

In any event bearing in mind the respondent's position within the FLP; the representative nature of the participants attending the FLP annual delegates conference drawn from throughout Fiji; and counsel's concession that 'the report' was 'circulated to 60 political party delegates', I am satisfied that there was a real risk of bringing the Courts into disrepute.

Needless to say I disagree with the elevation of this requirement into 'an element of the actus reus', preferring to see it instead, as a factor in the exercise of the Court's ultimate discretion whether or not to impose punishment.

For the sake of completeness and in the absence of any evidence or submissions in that regard, I record my respectful agreement with the judgment of the New Zealand Court of Appeal where it held in Solicitor-General v. Radio Avon Ltd. and Anor. (1978) 1 N.Z.L.R. 225 that:
"It is not necessary in proceedings for contempt consisting of lowering the authority of a court or judge to prove that the defendant intended his action to have that effect ... but the defendants intention is relevant to the penalty to be imposed."

So much then for the applicable law.

I turn next to consider the offending paragraph in 'the report' (earlier set out at p.2) and in particular the words:

"In several cases well known lawyers have been identified as receiving agents for magistrates and judges ..."

In doing so, I have been guided by the applicable law. I have also borne in mind the necessarily limited and partisan audience for whom 'the report' was originally intended and adopted an open even cynical mind. I have also given the words used, their plain and ordinary meanings and considered the context and content of 'the report' in which they occur, and I am mindful that no denial, explanation, justification or rationalisation has been proffered, at any time, by the respondent for his deliberate choice of words.

It is immediately noticeable that no specific names or details of 'cases' are mentioned in the paragraph which begins with a general allegation that 'many in our judicial system are corrupt' to be immediately followed by what can only be described as an instance of a highly corrupt practice namely, the soliciting or acceptance of bribes by judicial officers using lawyers as 'receiving agents'.

Learned counsel for the Attorney-General submits that the above paragraph is a:

"scurrilous attack upon the judiciary as a whole ... without specificity and its whole tenor questions their integrity i.e. personal financial gain is a factor which sways the decision of a magistrate or judge in a particular litigated matter."

and further (at p.4):

"... the said words ... by its very lack of specificity and the inflammatory words utilised constitutes a scurrilous attack on the Judiciary or Magistracy of this country as a whole with no other intent (by the choice of the words used) but to undermine public confidence in it."

and finally:

"(the) words utilised are a scurrilous abuse of the Courts of this country, and the passage ... constitute contempt, in imputing that judges and magistrates as a whole are on the take. The gravamen of the offence is that determinations by magistrates and judges of this country in their official capacities are often swayed by personal financial gains solicited through well-known lawyers as agents, rather (than) on argument based on legal issues governing the cases before them."
In his defence on this aspect, learned counsel for the respondent sought 'protection under the constitutional right to free speech' conferred under Section 13(1) of the 1990 Constitution.

I would point out however, that there is an important difference between a 'right' and a 'freedom'. A 'right' is conferred in positive language whereas a 'freedom' may be negatively defined as what remains after all restrictions or regulations in a particular area or sphere of activity has been accounted for.

What's more the protection afforded by Section 13 is not and has never been absolute.

In this latter regard section 13(2) expressly provides (so far as relevant for present purposes):

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(b) 'for the purpose of ... maintaining the authority and independence of the Courts ...';

except so far as that provision ... is shown not to be reasonably justifiable in a democratic society."

and as for the particular 'law' in question, Section 121 of the Constitution specifically recognises that:

"The superior courts shall have power to punish persons for contempt in accordance with the law."

There is not the slightest doubt in my mind that the law of contempt of court is a legitimate, necessary and 'reasonably justifiable law in a democratic society' and has, as its sole purpose, the maintenance of the authority and independence of the Courts. There cannot be, and it has certainly not been 'shown' to this Court, that the position is otherwise.

The Supreme Court (now High Court) in dismissing a similar argument in Vijaya Parmanandam's case said at p.2:

"The Court has been addressed by Counsel for the respondent on the right of the respondent under the Constitution of Fiji to freedom of speech. However there is a profound difference between freedom, be it freedom of action or freedom of expression, and licence. While justice is not a cloistered virtue and it is open to all to criticise temperately and fairly the administration of same, criticism which is actuated by malice or which imputes improper motives to those taking part in the administration of justice or which is calculated to bring a Court or a judge of the Court into contempt or to lower his authority cannot shelter behind the bulwark of freedom of speech.

Abuses of the freedom of speech are the excrescences of liberty and to curtail such abuses is not to imperil liberty but to safeguard it and ensure its natural and healthy growth."
In so far as learned counsel referred to the Canadian case of *R. v. Kopyto* 47 DLR (4th) 213 in support of his submission, I would respectfully point out that the Canadian *Charter of Rights* does not contain any express exclusions or limitations as in *Section 13(2)* of our *Constitution* and, with all due respect to the opinions of the majority of the Court, and except as to the requirement of *mens rea*, I prefer the dissenting judgment of *Dubin J.A.*

I would dismiss this ground of defence.

Without the confidence of the people and their representatives, the *Judiciary* in this country could not function and the *rule of law* would be gravely undermined. The respondent himself recognised this when he wrote in *the report* (at p.22): "*It is indeed damming for Fiji that such is the public perception of our law enforcement agencies. It has shaken public confidence in our system of preserving law and order in the society.*"

If I may say so the respondent's earlier contemptible remarks on that same page can only further undermine that public confidence so vital to the proper functioning of the Courts and the administration of justice.

The words deliberately chosen and used by the respondent were intemperate and inflammatory, and the context in which they occur in *the report* only serves to highlight their wanton and gratuitous tone and satisfies me beyond a reasonable doubt that they constitute a *technical contempt* of this Court in scandalising the Court by unfairly, improperly and indiscriminately imputing to unnamed members of the Court the commission of serious criminal offences in the performance of their judicial functions.

I accordingly find the respondent guilty of contempt of this Court and order him within seven (7) days to pay the costs of these proceedings which I fix at $590.00.

*D.V. Fatiaki*

*JUDGE*

At Suva,
7th April, 1998.
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PARLIAMENT OF THE REPUBLIC OF FIJI

PRIVILEGES COMMITTEE

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ANAND BABLA

v.

DEVAKAR PRASAD & THE ATTORNEY-GENERAL

[HIGH COURT, 1998 (Tuivaga CJ) 18 August]

Constitution- Parliament- whether subject to scrutiny by the High Court- whether internal disciplinary proceedings subject to fundamental constitutional rights and freedoms- whether suspension of a member of Parliament constitutional- whether standing orders constitutional. Constitution (1990), Chapter II, Sections 63 (1), 63 (3), 67 (1) - Parliamentary Powers and Privileges Act (Cap 5) Section 28- High Court Act (Cap 13) Section 22 (1).

The Plaintiff, who was a member of the House of Representatives, was suspended from the House after the Privileges Committee of the House found him to be in contempt of Parliament. The Plaintiff sought declarations that his suspension was unconstitutional. The High Court, relying on established precedents HELD: (1) absent specific constitutional provisions to the contrary the internal proceedings of Parliament are not subject to judicial scrutiny and (2) that neither the Plaintiff's freedom of movement nor his right to represent his constituents had been violated by his suspension.

Cases cited:

Bradlaugh v. Gasquet (1884) Q.B.D. 271
Church of Scientology of California v. Johnson Smith (1972) 11 All E.R. 379
Kelley v. Carson (1842) - 4 Moo PCC 63
Madhavan v. Falvey & Ors (1973) 19 FLR 140

Proceedings for declaratory Judgment in the High Court.

Sir Vidy R. Singh Counsel for the Applicant  
The Solicitor-General (N. Nang) with E. Walker for the Respondents

Tuivaga CJ:

This originating motion is brought by Anand Babla, the Indian Member in the House of Representatives for Tavua/Ra West Constituency (“Babla” henceforth) claiming that the decision of the Deputy Speaker suspending him from the House for two consecutive meetings was unlawful and made without jurisdiction or in excess of jurisdiction.

The case arose in this way. In September 1997 Babla submitted in a letter to
the Secretary-General to Parliament several questions on which he wanted
answers relating to various payments made to Ministers, Speaker, President
of the Senate and Leader of the Opposition.

On November 14, 1997 the Secretary-General wrote to Babla informing him
that his questions had been considered, and were disallowed. Part of the
reply reads:

"As for your question which relates to the number of official
trips taken by all Government Ministers, etc. since 1994, this
has also been disallowed by the Speaker, as it is felt that the
time and staff resources required from different Ministries to
collect the information cannot be justified."

On 21 November, 1997 Babla wrote back to the Secretary-General.

"Firstly, it is my entitlement, as an elected representative of the
people, to ask questions which pertain to public funds. This is
clearly contained in Standing Order 29.

...... On the second question on that of official trips etc. again
your answer that "time and staff constraints make the collection
of this information unjustified." is again an obvious attempt on
your part to protect the interest of the Speaker, Government
Ministers, President of the Senate, Senators, Members of
Parliament and yourself who is implicated in this question. Such
unethical standards from you on the advice of the Speaker, sets
a dangerous precedent on questions pertaining to the use of
public funds.

If Parliament cannot guarantee transparency and accountability
of funds, how can we expect any better from others?

I expect a comprehensive answer to my questions to be tabled
in Parliament or I shall be compelled to take this matter up by
way of a parliamentary motion."

Babla apparently not content to leave the matter there saw fit to tell the "Fiji
Times" about his complaints and allegations which were given front-page
publicity. The Speaker obviously considered Babla's conduct as seriously
out of line and should be inquired into. The Speaker brought up the matter in
the House in these terms:

"Honourable Members, the Member for Tavua (A. Babla) is
not in the House but my attention has been drawn to an article
which appeared on the front page of the Fiji Times on Saturday,
November 22nd titled "MP seeks answers on Ministers' trips"
by Geoffrey Smith."
THE PUBLISHED ARTICLE CONTAINED PART OF MY REPLY TO A QUESTION RAISED BY THE HON. MEMBER FOR TAVUA. FOR THE INFORMATION OF THE HOUSE ALTHOUGH HE IS NOT HERE, I WILL READ OUT THE QUESTION AS THE HONOURABLE MEMBER FOR TAVUA HAS ALREADY DEEMED IT FIT TO ADVISE THE MEDIA.

The Speaker then gave details of the questions Babla had raised. The Speaker explained the position as follows:

"A question shall not be asked seeking information which can be found in accessible documents or ordinary works of reference.

"As one who has never worked in a Government department, the honourable Member can be excused for not realising the mammoth task involved in gathering such data for the last four years from different ministries taking into account that this would have to be done manually: gathering of residential telephone bills for the last four years from different ministers, some of whom have now left Cabinet.

I will leave it there for the time being because the honourable Member is not here. Instead of the honourable member coming back to me he has seen fit to give his questions to the press and I deeply regret that. If that was not enough, the honourable Member, following my decision, went further in the papers to say that the reaction to his queries was an obvious attempt to protect the interests of the Speaker, Government Ministers, President of the Senate, Senators, Members of Parliament and the Secretary-General.

My decision is based on Standing Order 31 which is very transparent. I want to inform the honourable Member for Tavua to substantiate his claim that "this was an obvious attempt to protect the interests of the Speaker and Members of Parliament ". I am giving him 24 hours to substantiate the accuracy of his own statement in writing and following that, I will decide what to do."

On Tuesday, 25 November, 1997 when the House met Babla was present. He was questioned by the Speaker about the allegations he was making. The exchange in Parliament that morning is reported in Hansard as follows:

"MR. SPEAKER - Honourable Member, I just want to ask whether you still stand by your statement or not. After hearing my communication.

HON. A. BABLA - No.

MR. SPEAKER - Do you still stand by it? HON. A. BABLA -
No.

A

MR. SPEAKER - Are you withdrawing it?

HON. A. BABLA - Yes.

MR. SPEAKER - Therefore, what you have been saying is not true, that the ruling from the Chair was to protect the interests of those whom I have already mentioned - the honourable Prime Minister, the Leader of Opposition, parliamentarians, et cetera. So that statement is not correct?

HON. A. BABLA - "Yes."

On the Fiji One news later that day Babla spoke to TV One which broadcast this statement by Babla in their evening news service:

C

"I stand by my question and I was this morning deeply disturbed by the Speaker's conduct of the matter. I had replied to the Speaker under considerable duress. I asked for time to reconsider the situation, but he did not allow me to respond, to give me time, I was under pressure to withdraw my remarks."

D

On Wednesday, 26 November 1997 the House passed a resolution that Babla's conduct be referred to the Privileges Committee of the House to determine and report whether his conduct constituted contempt of the House.

After their deliberations on the matter the Privileges Committee concluded that Babla's conduct constituted contempt and as already noted he was suspended from the House for two sittings.

E

In his affidavit the Speaker deposed that the inquiry into Babla's conduct was part of the internal proceedings of the House of Representatives and therefore was not subject to the jurisdiction of the court.

F

In this case Babla claims that the decision of the Deputy Speaker of the House of Representatives to suspend him:

1. Is unlawful as being made without jurisdiction or in excess of jurisdiction;

2. Contravenes sections 4 and 13(1) of the Constitution by denying the applicant his freedom of speech in the House on all matters under its consideration;

3. Contravenes sections 4 and 14(1) of the Constitution by denying the applicant his freedom to assemble and associate with other members in the chamber and in the precincts of the House;
ANAND BABLA v. DEVAKAR PRASAD & THE ATTORNEY-GENERAL,

4. contravenes 4 and 15(1) of the Constitution by denying the applicant the freedom of movement in and within the precincts of the House customarily enjoyed by other members of the House;

5. contravenes the Constitution by usurping the functions of the judiciary, in particular section 11 of the Constitution, in that the first respondent has purported to adjudicate and impose a penalty upon the applicant for an alleged offence against section 20(h) of Parliamentary Powers and Privileges Act.

6. contravenes the Applicant’s right conferred upon him by Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian constituency.

7. contravenes paragraphs (1) and (3) of section 41 of the Constitution to the disadvantage of the applicant.

and consequently Babla seeks the following relief and remedies -

1. A Declaration that the Deputy Speaker and House of Representatives had no lawful power to suspend him from the service of the House for two consecutive meetings of the House.

2. A Declaration that the Deputy Speaker and House of Representatives had no jurisdiction or power to penalise him by suspending him as aforesaid for an alleged criminal offence against section 20(h) of the Parliamentary Powers and Privileges Act Cap 5 and in purporting so to do, infringed the protection afforded to the applicant by section 11 of the Constitution.

3. A Declaration that the Deputy Speaker had no lawful power or jurisdiction to cause him to be removed from the precincts of the House.

4. A Declaration that his fundamental freedoms conferred by sections 4, 13(1), 14(1) and 15(1) of the Constitution have been contravened by reason of his suspension.

5. A Declaration that his suspension contravened the rights conferred upon him under Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian Constituency.

In the judgment of the Court of Appeal in Madhavan v. Falvey & Ors (1973) 19 FLR 140 a similar issue was raised and there the court held that the House of Representatives had exclusive control over its internal proceedings and
over the conduct of its members. It is a matter of parliamentary privilege sanctioned both by the common law and the Constitution. In that case the Court referred to relevant provisions of the Constitution and cited in support two short passages from the judgment in Bradlaugh v. Gossett (1884) Q.B.D. 271 where at page 275 Lord Coleridge C.J. said:

“...What is said or done within the walls of Parliament cannot be enquired into in a court of law....”

and at page 278, Stephen J. said:

“I think that the House of Commons is not subject to the control of Her Majesty’s Courts in its administration of that part of the statute law which has relation to its own internal proceedings....”

Reference was also made to this statement from Dicey on the “Law of the Constitution” (10th Edn):

“No court today would seriously challenge that matters concerning the proceedings within either House are to be discussed and adjudged in that House and not elsewhere.”

Sir Vijay Singh, counsel for Babla, sought in his written and oral submissions to argue that the decision in the Madhavan case was drawn too widely and therefore obiter. Sir Vijay submitted that the decision cannot be regarded as an authority on the powers of the House of Representatives to punish for contempt. This is because no such powers are given under the provisions of the Parliamentary Powers and Privileges Act (Cap. 5) and therefore the House cannot arrogate to itself such powers. Sir Vijay criticised in particular the following statement at page 146 in the Madhavan’s case:

“The Parliamentary Powers and Privileges Ordinance provides for some powers and privileges but does not purport to be an exclusive list and is concerned largely with procedural matters and offences by individuals. It is not in our opinion intended by implication to abolish those established privileges of the House itself, the power to punish for contempt and the exclusive right to control its own internal proceedings.”

Sir Vijay submitted that an analysis of the Act shows that much more than procedural matters are dealt with there; it covers all applicable aspects of parliamentary privileges. Moreover, the Act deliberately precludes the House from the power to punish for contempt which is vested in the judiciary. Sir Vijay contended that the House of Representatives as established by the 1970 and 1990 Constitutions came into existence with no established privileges of its own. Sir Vijay said the powers and privileges of the House to control its internal proceedings are limited to those contained in section 63(1) of the 1990 Constitution and the Act. Parliament however could abridge, enlarge or
otherwise amend the privileges contained under those provisions but these can only be effected by legislative processes pursuant to the provisions of the Constitution. Sir Vijay submitted the House could have provided for itself the same regime of powers and privileges as is vested in the House of Commons of the United Kingdom under similar legislation to that of section 49 of the Australian Federal Constitution, which states:

"The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and committees of each House, shall be such as are declared by Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the time of the establishment of the Commonwealth."

In the absence of such legislation, the powers and privileges of the House of Representatives are necessarily confined to those provided under section 63(1) of the Constitution and those contained in the Parliamentary Powers and Privileges Act (Cap.5). Section 63(1) of the Constitution reads:

"Regulation of procedure in each House

63.- (1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure and may make rules for that purpose, including, in particular, the orderly conduct of its own proceedings"

But as can be seen the Constitution or the Act makes no specific provisions for conferment of any power on the House to punish any member for contempt. Thus Sir Vijay argued that in relation to the case of Babla the House was purporting to exercise a power it did not have or possess. According to Sir Vijay the House could have under the provisions of section 63(3) given itself the requisite powers to deal with any form of disorderly or contemptuous conduct by a member of the House. Section 63(3) of the Constitution states-

63.- (3) Parliament may, for the purpose of the orderly and effective discharge of the business of each House, make provision for the powers, privileges and immunities of each House and the committees and members thereof."

Sir Vijay contends that the House has not enacted under section 63(3) any legislation relating to parliamentary powers and privileges but the provisions of the Act have only dealt with certain aspects of those powers and privileges. However, the House has full control over its proceedings by virtue of section 63(1) under which Standing Orders are made for the conduct of its business. The Standing Orders made by the House to regulate its proceedings embody some of the laws relating to parliamentary privileges relating to the conduct of the members of the House. Sir Vijay therefore questions the correctness and soundness of the statement in the Madhavan's case earlier quoted to the effect
that established privileges of the House have been preserved and the Act has not by implication abolished the power to punish for contempt and the right to control its own internal proceedings. Sir Vijay places much reliance on the case of *Keilley v. Carson* (1842) - 4 Moo PCC 62 and in particular on what Baron Parke said at page 89:-

"But the power of punishing any one for past misconduct as contempt of its authority, and adjudicating upon the facts of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the facts may be, is of a different character, and by no means essentially necessary for the exercise of its functions by a local legislature, whether representative or not ....... It is said however, that this power belongs to the House of Commons in England; and this, it is contended, affords authority for holding that it belongs as a legal incident, by the Common Law, to an Assembly with analogous functions. But the reason why the House of Commons has this power is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription: the *lex et consuetudo Parliamenti*, which forms part of the common law of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one."

Sir Vijay has made valiant attempt to circumscribe severely the powers of the House of Representatives to discipline its members for contempt in the circumstances disclosed by Bahl’s conduct. However, whatever the true legal merits of his submissions in this case, I must say that this Court sitting at first instance is bound as a matter of precedent to follow the law on parliamentary privileges as laid down in *Madhavan’s case*. As was noted earlier that was a decision of the Court of Appeal which in hierarchical terms stands above this Court in decisional precedence. That decision was followed by this Court in the case of *Sakasei Butadroka v. Attorney-General* (1993) 39 FLR 115 where Ashton-Lewis J. at page 126 observed:

Thus, as I understand it the decision in *Madhavan’s case* established that the privilege of the House of Representatives of Fiji to control its own internal proceedings was part of the law of Fiji. Also, the House of Representatives has exclusive control over its own internal proceedings. As such, the internal proceedings of the House of Representatives are not subject to the jurisdiction of the Court. The High Court can only inquire into the internal proceedings of the House where it can do so in its capacity as guardian of the Constitution, and that will only be where the internal proceedings of the House are specifically provided for in the Constitution, such as found in Section 67(1)
ANAND BABLA vs. DEVAKAR PRASAD
& THE ATTORNEY-GENERAL

where the Constitution specifically sets out the requirement that someone must preside at a sitting of the House of Representatives and defines who it is that should preside. The jurisdiction of the Court to inquire in such an instance being based on the fact that a part of the internal procedure of the House of Representatives has been specifically incorporated as a provision of the Constitution.

It follows from this that where a procedure of the House of Representatives is not specifically incorporated into the Constitution, then the High Court has no jurisdiction to inquire into the internal proceedings of the House. From this, it would further follow that the manner of the application of Standing Orders by the Speaker, and the activities of the privileges committee, in matters concerning the internal proceedings of the House of Representatives, unless specifically provided for in the Constitution, are not cognisable in the Court.

I am satisfied that the inquiry into Babla’s conduct by the Privileges Committee of the House and the findings thereof are part of the internal proceedings of the House. As such this court cannot inquire into them. The court has no jurisdiction to do so.

Sir Vijay also contended in his argument that the House of Representatives as a latter-day institution could not claim the same ancient usage and prescription; the Act et consuetudo Parliamenti (the law and custom of Parliament) as part of the common law as was explained in Keilley’s case. It appears however that the common law of England also applies to Fiji, including ancient usage and custom of Parliament which are part of the common law of Fiji by virtue of section 22(1) of the High Court Act which states:

“22.—(1) The common law, the rules of equity and the statutes of general application which were in force in England at the date when Fiji obtained a local legislature, that is to say, on the second day of January, 1875 shall be in force within Fiji ............”

The Solicitor-General Mr. N. Nand in opposing this motion by Babla has submitted that the issues complained of in this case are all matters relating wholly to the internal proceedings of the House of Representatives. He said that the Standing Orders of the House could be described as being the statute law of the House which control the entire proceedings of the House. They regulate all proceedings on meeting and business of the House including rules on debates and privileges, motions and voting, standing committees, and select committees and the like. The members of the House enjoy as an incident of the inherent functions of the House various privileges. Breach of a privilege by a member may be dealt with under the Standing Orders or under the Parliamentary Powers and Privileges Act (Cap.5). Section 28 of the Act which contains an exclusion clause states:
“S. 28 - Neither the Speaker, Deputy Speaker, President or Vice President or any other officer of Parliament shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in such officer by or under this Act.”

Mr. Nand submitted that the courts over many years now have recognised that the internal proceedings in Parliament are not subject to control by the courts and he has quoted cases to illustrate the point. It is true that injustice may be done to a member of the House but the remedy is not with the courts. He said the explanation for this is to be found in the words of Lord Coleridge C.J. in Braddhaug v Gossett (1884) 12 Q.B.D.27 where at page 277 he said:

“The history of England and the resolutions of the House of Commons itself, show that now and then injustice has been done by the House to individual members offis. But the remedy, if remedy be it lies not in actions in the courts of law, but by an appeal to the constituencies whom the House of Commons represents.”

Therein and as far back in legal history lies the reason why courts will not encroach on the ambit of jurisdiction of Parliament pertaining to parliamentary privileges. The privileges are part of the law and custom of Parliament. Mr. Nand has referred to quotations from several recent cases about the true relationship between the courts and Parliament. It suffices for the purpose of this case if I just mentioned two of them. In Church of Scientology of California v. Johnson Smith (1972) 1 All E.R. 379 an action was brought for libel against the defendant, a member of parliament, for defamatory remarks made by the defendant during a television interview. There the court ruled that parliamentary proceedings could not be challenged in court. In this case Browne J. at page 381 observed:

“And I accept his (A-G’s) proposition which I have already tried to quote, that is, that what is said or done in the House in the course of proceedings there cannot be examined outside Parliament for the purpose of supporting a course of action even though the course of action itself arises out of something done outside the House. In my view this conclusion is supported both by principle and authority.”

The other case is Rost v. Edwards [1990] 2 All E.R. 641 where at page 645 Popham J. stated:

“The Courts must always be sensitive to the rights and privileges of Parliament and the constitutional importance of Parliament retaining control over its own proceedings. Equally, as Viscount Radcliffe put it in A.G. of Ceylon v. D’Olivera [1962] 1 All E.R. 1009, the House will be anxious to confine its own or its
members' privileges to the minimum infringement of the liberties of others. Mutual respect for an understanding of each others respective rights and privileges are an essential ingredient in the relationship between Parliament and the Courts.

I am satisfied both on principle and authority that the same legal relationship applies in Fiji between the Courts and Parliament. It is important that these two most revered institutions in the land should recognise and respect each other's jurisdiction. This is necessary to ensure the proper discharge of their respective constitutional responsibilities. It is not a mere matter of comity but one of well-established law and custom.

On the other contentions of Babla on which declarations are being sought from this Court. I find them to have also been adequately dealt with in the Solicitor-General's submissions. If I may say so, his approach to them is clear and perceptive and one I would also adopt.

One of these contentions is that Babla's suspension contravened his fundamental freedoms as conferred by Sections 4, 13(1), 14(1) and 15(1) of the Constitution. Those sections will be found under Chapter II of the Constitution which is concerned with the protection of the fundamental rights and freedom of the individual. Similar contentions had been raised in Rutaboda's case and the following passage from the judgment of Ashton-Lewis J. at page 135 is apposite:

"These dicta, in conjunction with an examination of the proviso's themselves set out in sections 11, 12, 13, 14 and 15 of the Constitution assist me in reaching the conclusion that the Fundamental freedoms set out in those sections are not absolute, but are tempered generally by the need to place their operation in the content of the competing interests of others in the setting to which they are to be applied.

The limitation upon mutual operation of those sections in Chapter 2 of the Constitution when applied side by side with the authoritative decision in Madhavan's case, which would require the Constitution to do that which it has not done, i.e. to make specific provision for the application of Chapter 2 provisions to the internal proceedings of Parliament, further re-in forces me to the view that an alleged breach of any of Chapter 2 provisions of the Constitution arising from internal proceedings of the House of Representatives is neither cognisable nor reviewable in the High Court."

That conclusion by the Court in that case is unexceptional which I would also apply in relation to the circumstances of the present case. In the result I would reject as of no substance any of those contentions.
The other contention relied upon is that Bable’s suspension contravened rights conferred upon him under Chapter VI Part 2 of the Constitution to represent the electorate of Tavua/Ra West Indian Constituency. A similar contention was also advanced in the Bundroks case where at page 49 of the judgment Ashton-Lewis J. explained why he rejected it:

"Finally Mr. Stanton submitted that the suspension of the Plaintiff was void because the rights of all the constituents of Rewa to be represented by the Plaintiff in the Parliament had been breached. I am not persuaded by this submission.

Under section 19 of the Constitution it is for a constituent of Rewa himself to apply to the Court. The Plaintiff cannot apply on his behalf. There has been nosuch application and if there was would such constituent be able to point to any breach of his Fundamental Freedom by the Plaintiff’s suspension from the House of Representatives? Those Fundamental Freedoms exercisable by him individually are in no way violated by the Plaintiff’s suspension."

Here too I accept the judge’s finding as sound in law and would make a similar finding in this case.

In the result the motion by Bable is dismissed with costs.

(Motion dismissed)

(Editor’s Note: The 1997 Constitution of Fiji (Constitutional Amendment Act 13/1997) commenced on 27 July 1998)
of understanding between the UK Government and each of the devolved governments. The Scottish Affairs Committee reported on the
status of the convention as it applied to Scotland in 2006,24 and a number
of its recommendations in that report were repeated in its report on the
convention on Scottish Devolution in 2010.25

The 'self-denying ordinance'

Questions and adjournment debates are procedures of the House which
were intended to engage Ministers on matters on which they are responsible
Parliament. After devolution, it was clear that the range of matters for
which responsibility has been devolved by legislation to the Scottish
Parliament or the National Assembly for Wales unless the question
(a) seeks information which the United Kingdom Government is competent
to respond to;
(b) relates to matters which:
(i) are included in legislative proposals introduced or to be introduced
by the United Kingdom Parliament,
(ii) are concerned with the operation of a concordat or other instruc
tion between the United Kingdom Government and the devolved executive,
or
(iii) United Kingdom Government ministers have taken an official inter
est, or
(c) persons for action by United Kingdom ministers in areas in which they
have administrative powers.26

During those periods when the Executive and Assembly in Northern Ireland
have been suspended, the restrictions imposed by this resolution have not
been applied. Equally, the process of rolling devolution in Northern Ireland
Wales has meant that the responsibilities of UK ministers have altered
over time. The saving for matters which the United Kingdom Government
ministers have taken an official interest in has encouraged a degree of flexibility
in the interpretation of the resolution. In debate the Chair has taken a gen
erally permissive approach to devolved matters.

11. Power and jurisdiction of Parliament

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Penal jurisdiction of both Houses

The power of both Houses to punish Members and non-Members for
careless and disrespectful acts has much in common with the author
in the superior courts 'to prevent or put an end to any conduct which tends to
improve or abuse them' while in the exercise of their responsibility.

By this means the two Houses are enabled to safeguard and enforce their
independent authority without the compromise or delay to which recourse to the
Edinburgh courts would give rise.28 The act or omission which attracts the penal
attention of one House may be committed in the face of the other or of
the common interest, within the Palace of Westminster29 or outside it. Nor is it
necessary that there should have been a breach of one of the privileges enjoyed
individually or collectively, either House acting of course or a member by act
within the definition of contempt (see p 231), even if there is no
incident, may be punished. Nevertheless the House of Commons has
ruled that it should exercise its jurisdiction as sparingly as possible and only
when satisfied that it is essential to do so to prevent obstruction of its business
(p 218).

Power of both Houses to secure attendance of persons on
matters of privilege

The House of Commons has the power to send for persons whose conduct has
been brought before the House on a matter of privilege by an order for their
take part in the proceedings, without specifying in the order the object or the causes for
which their attendance is required,30 and in obidence to the order Members attend
their places, and other persons at the Bar31 (see p 216).

It was the ancient practice in both Houses that in appropriate cases persons
were brought into the Bar to act as rearranging charges of contempt. In the
need to order them to be attached and brought before the House to answer


Bentley v Abbott (1811) 106 ER 554, 559; Select Committee on Proceedings relating to Sir
Francis Burdett, Second Report, Cl (1840) 732; Lord Brougham in Shirreff v Middlebrooke
(1840) 113 ER 419, esp at 426, and 1 Hare, App 6; CII also Duniclair v Malles, where the
European Court of Human Rights considered proceedings taken under the European Con
vention on Human Rights against the Maltese House of Representatives for an exercise of
penal jurisdiction in response to the publication of an allegedly defamatory charge against
members of the House. The court judged the impartiality of the House in adjudicating heard
to doubt, because the Member who had allegedly been defamed participated in the
founding of a party and the denial of this. The Maltese House was therefore breach
of the Convention (App No 13057/87, see A vol 210, (1992) 14 ECHR 47).

In some cases the fact that the act is done within the precincts of the House is the essence
of the offence. Thus, the arrest of a Member on a criminal charge, if effected within the precincts
of the House, while it was sitting, would constitute a contempt, but not if it took place beyond
the walls of Parliament, see Report from the Select Committee on the Official Secrets Act, HC
79 (1938-39) paras 23 and 95.

See 2 CoS Deb 321 for the Speaker's suggestion that service of the order of the House by
delivery a copy thereof at the usual place of abode of the person therein named should be
done personal service.

CJ (1893) 117; Parl Deb (1982) 1, 700; CJ (1907) 361; ibid (1908) 416.

LJ (1878-79) 201, 256, 296; ibd (1860-61) 222 et al; CJ (1874-75) 175, 680, 886; ibid
(1874-75) 215; ibd (1772-73) 705; ibd (1774-75) 333; ibid (1821) 445; ibid (1826-27) 56.

LJ (1840) 30, 16, 59; ibid (1880) 19; Criser v House (1847) 116 ER 1352, and see also
Appendix DC to Second Report of Select Committee on Printed Papers, HC 397 (1846) p 104.
Committal

The origin of the power to punish for contempt is probably to be found in the medieval concept of the English Parliament as primarily a court of justice. The power to fine or imprison for contempt brings at least a measure of common law to all courts of record. The House of Lords has been held to be a court of record, and as such has power not only to imprison but to impose fines (see p.196). It may also imprison for a fixed time, and order security to be given for his good behaviour, and their customary form of committal is by attachment. The Commons' power to commit offenders was exercised frequently until the end of the nineteenth century, and repeatedly recognized by the courts. Offenders committed by order of either House have been either detained in one of HM prisons or in the custody of Black Rod or the Serjeant at Arms, as the case may be.49

Committal without a warrant

The Serjeant, without specific order of the House of Commons, but by virtue of Standing Order No 161, takes into custody strangers who intrude themselves into the House or otherwise misconduct themselves (in the gallery or elsewhere).41 Black Rod has similar powers under Lords Standing Order No 13(1).

Otherwise the Lords attaches and commits persons by order, without any warrant. Such an order, signed by the Clerk of the Parliaments, is the authority under which the officers of the House execute their duty. In the Commons also, in earlier times, it was not the custom to prepare a formal warrant for the execution of its orders, and the Serjeant arrested persons with the Mace as his only authority.42

Warrants of committal

The Commons, when ordering the committal of an offender, direct the Speaker to issue a warrant to the Serjeant at Arms and, if appropriate, also to the governor of a prison.

Warrants issued by order of the House of Commons are not limited by or reversible on the grounds of irregularities of form. The courts have considered it their duty to presume that the orders of the House and their execution are according to law.43 Such warrants are construed on the same principles as the writs of a superior court, and not as the warrants of a magistrate.

Warrants are sometimes expressed in general terms, as for instance that the prisoner is committed for a "high contempt" or a breach of privilege,44 and in this case it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt. This is the case although

44 See proceedings collected in the Appendix to the Second Report of the Select Committee on Printed Papers, HC 397 (1843) p 104.
45 See Grotius v Howard (1647) 11 ER 172.
46 Per Lord Mansfield, recognising oaths, is Jones v Randall (1776) 9 ER 701. It has been held, as in R v Flower (1799) 13 ER 460, that the Lords, while exercising a legislative (or as opposed to judicial) capacity, are not a court of record. However, the case concerned a breach of privilege, and the court accepted that in imposing such a breach by committal to prison and a fine the House was ‘sitting in a judicial capacity’, in the absence of any express provision on this in the Constitutional Reform Act 2005, s appears likely that the House of Lords remains a court of record for certain purposes.
47 It was calculated in 1810 that the number of instances of committal of felons at the order of the Commons was ‘little less than a thousand’ (C W Williams Whyn Argent, the Jurisdiction of the House of Commons (1810) 7). Between 1810 and 1880 there were a further 80 committals. The issue was in the Commons of介质是 a Member of that of Bradington (CJ (1880) 235), and in respect of a non-member, that of Geisler in the same year (CJ (1880) 71).
48 The Jarrow Men, R v Fay (1704) 2 ER 232, Brassey v Coxe’s case (1771) 85 ER 1005, Burdett v Atkins (1835) 204 ER 320, Sheriff of Middlesex (1840) 113 ER 419; see Select Committee on Printed Papers, HC 397 (1843), HC 397 (1847). For consideration of whether the House of Commons is a court of record, see p.196 and Erskine May (3rd edn, 2004) p 160.
49 LJ (1767-70) 18(44); ibid 575; ibid (1779-83) 191; ibid (1785-87) 613, 67; ibid (1797-80) 338; ibid (1790-92) 498; ibid (1798-99) 241; ibid (1796-98) 501; ibid (1789-1800) 182; ibid (1802-03) 545; ibid (1809-10) 618; ibid (1814-15) 51; ibid (1819-20) 676; ibid (1825-26) 532; ibid (1830-31) 582; ibid (1835-36) 101; ibid (1843) 528; ibid (1860-61) 336; ibid (1878-79) 415; ibid (1880) 77.
50 LJ (1838-39) 94; ibid (1834-35) 267; ibid (1831-32) 387; ibid (1834) 763; ibid (1847) 729; ibid (1848-49) 131; ibid (1870) 77. See also ibid 1972; 1973; 1974 and SO No 13.
51 CJ (1823) 425; ibid (1835) 101; ibid (1843) 523; ibid (1850) 888; ibid (1863) 336; ibid (1876-79) 366; ibid (1880) 535.
52 When at the time of committal the place of punishment was not determined (Par Deb (1818-19) 431, as 1354) or the person adjudged guilty of contempt was not in the Serjeant’s custody (CJ (1835) 203; ibid (1847) 523), the Commons has made an order for the offender to be taken into the custody of the Serjeant and then committed him to prison. The Joint Committee on Parliamentary Privilege recommended the abolition of both Houses’ powers of imprisonment, but not the power of temporary detention of those misconducting themselves within the precincts (HL 43/1, HC 214 (1998-99), para 303.41
53 CJ (1781-84) 231; ibid (1818-19) 337; ibid (1830) 416; ibid (1830-31) 323; ibid (1833-34) 246; ibid (1847) 99.
54 An account of the practice of the Serjeant at Arms in dealing with persons against whom complaints are made or who are adjudged to be in contempt of the House (including strangers who misconduct themselves in the gallery of the House) is contained in the Minutes of Evidence taken before the Select Committee on Parliamentary Privileges, 1967 (HC 64 (1967-68) p 127). In this context, the Speaker, when accompanied by the Mace, has ordered persons into custody for disreputable conduct committed in his presence, without any order of the House (Harrel v Fawcett (1755) 14 Eliz 629; 1667-68) 352, 315, Par Deb (1831) 23, 240. Upon information that a Member had been assaults in the lobby, the Speaker directing the Serjeant to take the supposed offender into custody (CJ 1824 483).
55 CJ (1795-96) 136; 1 Hamlet (2) 537 (1834) 43; see also W & E Kynaston, Rules for the Order of the House of Commons (1993) 95-99.
56 For fuller details of the procedure used by the Commons to commit offenders, see Erskine May (2nd edn, 1997) pp 135-38.
57 A refusal by the government to receive and deliver the delivery of a warrant would be treated for the House as a gross contempt (Par Deb (1818-19) 431, as 1354) or the person adjudged guilty of contempt was not in the Serjeant’s custody (CJ (1830) 203; ibid (1847) 523), the Commons has made an order for the offender to be taken into the custody of the Serjeant and then committed him to prison. The Joint Committee on Parliamentary Privilege recommended the abolition of both Houses’ powers of imprisonment, but not the power of temporary detention of those misconducting themselves within the precincts (HL 43/1, HC 214 (1998-99), para 303.41
58 The Jarrow Men, R v Fay (1704) 2 ER 232, Brassey v Coxe’s case (1771) 9 ER 1014, Haberfield’s case (1820) 106 ER 716; Jones v Russell (1832) 3 JP 942, 32 (1919) 344.
59 Grotius v Howard (1847) 116 ER 138, reversing Howard v Grotius (1845) 116 ER 139; and see Howard v Grotius (1847) 172 ER 553.
60 Earl of Shetfheather’s case (1877) 86 ER 792; Sheriff of Middlesex (1840) 113 ER 419; CJ (1886) 23.
61 CJ (1606-07) 960; 3 Stat 114; The Protector v Streater (1854) 82 ER 18, Burdett v Abbott (1831) 104 ER 518, Sheriff of Middlesex (1840) 113 ER 425; Grotius v Howard (1847) 116 ER 138 at 172. It was held in 1953 by the High Court of Australia that the full powers of the United Kingdom’s House of Commons being enjoyed by the Commonwealth Parliament and
the habeas corpus Act 1679 is binding on all persons who have prisoners in their custody, and since 1705, it has been the practice for the Sergeant at Law and others, by order of the House of Commons, to make return to writs of habeas corpus. Those who are committed for contempt may not be admitted to bail. This was well stated in Jarman's case in 377 R. v. House of Commons, 685. When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence an execution and no court can discharge or bail a person that is in execution by the judgment of any other court. The House of Commons, therefore, having authority to convict, and their commitment being execution of such a contempt, can do nothing in such case this court is not a court of appeal. If, however, the warrants state the particular facts constituting the contempt, divergent views have been held in the courts as to their duty of inquiry. In earlier cases the judges disclaimed any power to inquire, but subsequently judicial opinion changed. Lord Ellenborough observed in Barrett v. Abbott in 1810 (which was an action for assault and not on a writ of habeas corpus) that he could conceive that a cause of committal could be brought before the Court of King's Bench on the form, for example, of a justification pleaded or an action of trespass, in such a way that the court might be obliged to consider it and pronounce it defective. It would be more doubtful, however, whether a matter coming directly before the court, such as an order to return the habeas corpus, would lead the court to believe the subject of the committal of the House in any other case whatever.

Warrants of committal issued by the Speaker by order of the House of Commons justify the officers acting under them against actions for trespass, assault, or false imprisonment, unless the causes of commitment stated in the warrants appear to be beyond the jurisdiction of the House. It is not necessary that any cause of committal should be stated in the warrants, or that the prisoner should have been adjudged guilty of contempt before being taken into custody (see p. 251). If the officer does not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal according to the rules by which the warrants of inferior courts are tested.

Period of committal and discharge

The Lords have power to commit offenders to prison for a specified term, even beyond the duration of the session. The Commons abandoned its former practice of imprisoning for a time certain, and is now considered as without power to imprison beyond the session. Prisoners are accordingly released on reprobation. The practice of the Commons has been to commit offenders for any specified term, but generally or during pleasure, and to keep them in custody until they presented expressing proper contrition for their offences and praying for their release, or until, upon motion made in the House, it was resolved that they should be discharged. A similar course has been pursued by the Lords.

In the case of such commitment . . . we must look at it as a matter of justice and must inquire from what cause it may proceed to have proceeded. The view received the support of Lord Denman CJ in Stockdale v. Howard in 1839, 11 ER 116, and in Sheriff of Middlesex in 1840, 119 ER 424, 26. See also R. v. House of Commons in 1820, 106 ER 716.

The case was argued by counsel for the defendant, and the Court of King's Bench decided that the House of Commons had no power to commit the defendant for contempt. In 1840, 135 ER 147, 148, 150; and p. 399.

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Persons who are taken into custody of the Sergeant at Arms acting by virtue of the directions given to her by Standing Orders Nos 161 and 162 to take into custody those who misconduct themselves in the gallery or in a select or a general committee (see pp 14-15, 817) are normally discharged at the rising of the House on the day in question.

Punishment of non-Members other than by committal

Fines

The House of Lords in its capacity as a court of record has had power to inflict fines, either in substitution for, or in addition to, committal.55 The status of the House of Commons as a court of record has been doubted, and the Commons has not imposed a fine since 1660.56 Select committees in 1677 and 1777 and the Joint Committee on Parliamentary Privilege in 1999 have recommended legislation to give the Commons a statutory power to fine.57

Reprisal or admonition

Where the offence is not so grave as to warrant the committal of the offender he is generally directed to be reprimanded or admonished formally by the Speaker or Lord Speaker.58 In the Commons, the offender, if he is in attendance, is brought to the Bar of the House forthwith by the Sergeant at Arms, and is there reprimanded by the Speaker in the name and by the authority of the House.59 The offender is then

55. LJ (1620-21) 276; ibid (1660-61) 554; ibid (1666-71) 774; ibid (1683-91) 144; ibid (1700-04) 491 (Report of Proceedings); ibid (1767-70) 575; ibid (1709-90) 109; ibid (1798-1800) 181; ibid (1801-02) 40, 103. Cases are recorded in which the Lords ordered a member to pay for good conduct (ibid (1660-61) 552; ibid (1790-91) 331).
56. CJ (1660-61) 670; ibid (1747-52) 670; and 1 Parl Hist 1230. In Jones v. Russell, Lord Mansfield remarked (ibid (1766-74) ER 709, 944, and in R v. Firth, it was said (ibid (1762) 97 ER 861). The Fine Act 1851 c. 59, s 23-25, implicitly confirmed the understanding that the Lords imposed fines and the House of Commons fines not by, requiring the Clerk of the Commons' records, return of fines and recognizances, and from the Clerk of the House of Commons a record of recognizances only. In Bedwell v. Abbot (1811) 104 ER 535, however, the court held that the House of Commons, whether or not it was a court, ought to have the power to prevent such obstruction and, to maintain its dignity and character. Newbury, R. M. (2000) 58, paras 279, 301.
57. HC 34 (1796-7) paras 197, 217, HC 477 (1776-77) paras 35, 43, HC 214 (1899-98) paras 279, 301, paras 79, 101, 161.
58. LJ (1762-3) 187; ibid (1798-1800) 646; ibid (1801-02) 60; ibid (1812-23) 341, 399; ibid (1830-1831) 125; ibid (1830-31) 183; ibid (1828-29) 399; ibid (1837-38) 316; ibid (1839-40) 278; ibid (1840-41) 233; ibid (1848-49) 106; ibid (1891-92) 166; ibid (1892-93) 303.
59. CJ (1826-27) 206; CJ (1831-32) 294; ibid (1842-43) 141; ibid (1876-78) 189; ibid (1892-93) 166; ibid (1832-33) 593. No such admonition or reprimand has been made since the Lord Speaker was elected in 2006. The Lords have formerly ordered offenders to be taken into the custody of Black Rod and then to be called in and reprimanded by the Lord Speaker and to be discharged upon payment of their fine (ibid (1800-01) 630), or to be continued in custody until they have entered into recognizances for good behaviour (ibid (1805-06) 340). In one instance, the Lords ordered that an offender should be discharged without any punishment but should be acquitted if he repeated his offence he would not meet with such leniency (ibid (1767-70) 122).
60. CJ (1794-97) 42; and if ibid (1793-7) 64. The practice of making prisoners kneel at the Bar to receive the judgment of the House has long been discontinued (ibid (1776-72) 594).

discharged. If, however, he is not in attendance, he may be ordered either to be taken into the custody of the Sergeant and brought to the Bar the following day or some other day later, there to be reprimanded and discharged,60 or to attend the House on a future day to be reprimanded.61

What is said by the Speaker in reprimanding or admonishing offenders is ordered to be entered in the Journals

When an offender is brought to the Bar to receive judgment of committal, or any other punishment, or to be discharged out of custody (see p 153), the Sergeant at Arms stands by him with the Mace.62

Prosecution of offenders

In cases of breach of privilege which are also offences at law, where the punishment which the Commons has power to inflict would not be adequate to the offence, or where for any other cause the House has thought it expedient to punish the offender, the Attorney-General has been directed to prosecute the offender.63

Punishment of Members: House of Commons

In the case of contempts committed against the House of Commons by Members, or where the House considers that a Member's conduct ought to attract some sanction (see pp 246-257), other penalties are available in addition to those already mentioned: suspension from the service of the House,64 and expulsion,52 sometimes in addition to committal.65

Reprisal or admonition

In the Commons, it was previously the case that Members received a reprimand or admonishment standing in their places,66 unless they were in the custody of the Sergeant, in which event they were reprimanded at the Bar. When a Member is ordered to be reprimanded or to be admonished he may be called in to receive the reprimand or admonishment forthwith,67 or he may be ordered to attend the House in his place the following or some other day later.
More recently, however, Members have been reprimanded (and suspended) by virtue of a resolution of the House to that effect, and have not then received the House’s censure, standing in their place or otherwise.92

Suspension

Although suspension from the service of the House of Commons is now prescribed under Standing Order No 44 for Members who have disregarded the authority of the Chair or abused the rules of the House (see pp 456–458), such a disciplinary power existed under ancient usage.93 Suspensions may also be carried out by specific order of the House. Such suspensions most frequently follow reports by select committees, most notably the Committee on Standards and Privileges, in respect of allegations made against the Member, and for conduct falling below the standards the House was entitled to expect,94 but there have also been suspensions in respect of the terms of a letter addressed by a Member to Mr Speaker and of his conduct in the House on preceding days95 for publishing a letter reflecting on Mr Speaker’s conduct in the Chair96 and for damaging the Mace (after the rising of the House) and conduct towards the Chair on a preceding day.98

Suspension and the salary of Members

Since the passing of Standing Order No 45A in 1998, withholding of the Member’s salary is an automatic consequence of suspension.99 Subsequently the House agreed with a recommendation from the Committee on Standards and Privileges that, in appropriate cases, the Committee should recommend as a penalty the withholding of a Member’s salary for a specified period without suspending the Member.100

Expulsion

The expulsion by the House of Commons of one of its Members may be regarded as an example of the House’s power to regulate its own constitution.101

92 [1895-96] 27 Eng. & Scot. Law Rev. 355; [1899-1900] 178, c. 181; and [1999-2000] 186 and HC Deb (1999-2000) 238, c. 382. Cf also HC Deb (1993-94) 244, c. 342, where the Speaker rebuked the Member whose conduct fell below the standards the House was entitled to expect.

93 There are a number of cases of such suspensions for varying periods in the seventeenth century (C 1642-44, 128, 122; P 1654-55, 123; P 1661-62, 329; P 1667-68, 129, 96, 96). Although there has been no case since 1662, the Speaker ruled in 1877 that any Member presently and willfully obstructing public business without just and reasonable cause shall be guilty of a contempt of the House, and liable to proceedings, whether by censure, suspension from the service of the House or otherwise, according to the judgment of the House (P 1877); C 1877; C 1878-1880).

94 [1895-96] 27 Eng. & Scot. Law Rev. 355; [1899-1900] 186, c. 181; and [1999-2000] 186 and HC Deb (1999-2000) 238, c. 382. Cf also HC Deb (1993-94) 244, c. 342, where the Speaker rebuked the Member whose conduct fell below the standards the House was entitled to expect.

95 [1895-96] 27 Eng. & Scot. Law Rev. 355; [1899-1900] 186, c. 181; and [1999-2000] 186 and HC Deb (1999-2000) 238, c. 382. Cf also HC Deb (1993-94) 244, c. 342, where the Speaker rebuked the Member whose conduct fell below the standards the House was entitled to expect.

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power to discipline its Members; the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures. The duty imposed by the writ is thus not absolute, but is subject to various implied conditions, which are reflected in the many rules governing the conduct of Members which have been adopted over time by the House.

The Committee for Privileges therefore concluded that:

1. The House has no power, by resolution, to require that the writ of summons be quashed from a Member otherwise entitled to receive it; as a result, it is within the power of the House by resolution to expel a Member permanently.

2. The House does possess the power to suspend in Members for a defined period not longer than the remainder of the current Parliament.

On 20 May 2009 the House formally adopted these conclusions.211 The same day, two Lords were suspended from the service of the House for the remainder of the 2008-09 session of Parliament.212 In October 2010 three further Lords were suspended, one for the remainder of the 2010-12 session of Parliament, the others for four and eight months.213

Such suspensions take immediate effect. Any suspended Lord is expected to withdraw immediately from the precincts of the House, and a barred from access to the precincts for the duration of the suspension. He or she is not entitled to stand or vote in any election for the office of Lord Speaker (Standing Order No 19).

POWER TO SUMMON WITNESSES

Either House may summon witnesses to appear before it and answer questions. For details of the procedure, see pp. 817-825, 876 and 879.

MINISTERIAL ACCOUNTABILITY TO PARLIAMENT

Following a recommendation of the Public Service Committee of the Commons,214 both Houses came to Resolutions to the following effect:

That, in the opinion of this House, the following principles should govern the conduct of ministers of the Crown in relation to Parliament: ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps Agencies; it is of paramount importance that ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity; ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister; ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should...

211 See [2008-09] 537.
212 See Committee for Privileges and Conduct, Fourth, Fifth and Sixth Reports, HL 36, 37 and 38 (2010-12), Minutes of Proceedings, 21 October 2010.
be decided in accordance with relevant statute, and the government's policy. Similarly, ministers should require civil servants who give evidence before ministerial committees on their behalf and under their directions to be as help-possible in providing accurate, truthful and full information, in accordance with duties and responsibilities of civil servants as set out in the Civil Service Code. The Resolutions were presented as clarifying the role of Ministers in relation to Parliament. It was not intended to affect or derogate from the duty of Ministers owe to Parliament in their capacity as Members of one of the Houses and imposing on Ministers the additional duty to offer their resignations to the Prime Minister does not affect the rights of either House to punish them in a case of alleged contempt, as it might proceed against them in a case of alleged contempt, as it might proceed against other Members. The Code was issued in 1996 under the Civil Service (Amendment) Order 1996, amended in 1999 to take account of devolution.

**THE PRIVILEGE OF PARLIAMENT**

That constitutes privilege

Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded exercise of such rights. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, the only right or the effective discharge of the collective functions of Parliament is that the individual privileges are enjoyed by Members.

The Speaker has ruled that parliamentary privilege is absolute, and when any of these rights and immunities is disregarded or attacked, the House is called a breach of privilege and is punishable under the law of libel or slander. Each House also claims the right to punish contempts, that is, actions which, while not breaches of any specific privilege, obstruct or impede the performance of its functions, or are offences against its authority or Members or its officers. The power to punish for contempt has been traditionally considered to be inherent in each House of Parliament and rest as a

In this and the five following chapters, the term 'privilege' is used in the sense of fundamental rights necessary for the exercise of constitutional functions. The use of the term in the context of the financial powers of the Commons, including rights held against the Crown and against the Lords, is dealt with separately in Chapters 32 to 36.
the privilege at law.\textsuperscript{10} It was subsequently judicially assumed that the court in 1917 considered that it was no more than taking notice of the fact that the speech had been made.\textsuperscript{11} Certainly the House of Commons had taken no steps to 'waver' any statutory duty—which in any event rests on the courts and not on the House—not to impede or question proceedings in Parliament. The most recent authority for the contention that the privilege enshrined in the Bill of Rights may be altered only by an amending statute is the view implicitly taken by the Judicial Committee of the Privy Council in 1994. The committee reversed a conclusion reached by the New Zealand Court of Appeal to the effect that article 11 need not be interpreted so as to exclude the possibility of a waiver by a resolution of a legislature to the proceedings of which it applied.\textsuperscript{12}

LORDS: PRIVILEGES OF PARLIAMENT AND OF PEERAGE

The Lords enjoy their privileges simply because of their immortal role in Parliament as advisers of the Sovereign. In addition to privilege of Parliament, which is enjoyed by all Members of the House of Lords, whether they are bishops or peers, there is a separate privilege of peers, which extends to all peers, whether or not they have seats in the House, including peers who are minors, and also to wives and widows of peers.\textsuperscript{13} Unlike privilege of Parliament, it is not interpreted by a long protracted dissolution.\textsuperscript{14} The extent of the privilege of peers is not entirely clear, but it has been shown in recent times to confer immunity from


\textsuperscript{11} Lord Donovan LJ, however, expressly recognized that absolute privilege attached to speeches in the House of Commons 'in the further of high public policy,' but he added that it was not right that such privilege, intended to safeguard liberty of discussion, should be torn into a constituent instrument of oppression. (Adam v Ward [1977] AC 309).


\textsuperscript{13} By the Act of Union of 1706 and 1800 peers of Scotland and Ireland were accorded the same privilege as peers of England (Proctor v Television New Zealand Ltd (1995) 1 All ER 228, 233-34, [1994] 3 All ER 407); one of the arguments in support of the view that the Commons could not be compelled to waive its privilege was its essential character as a peerage privilege. (Cooper v United States [1977] 1 All ER 228, 233-34, [1994] 3 All ER 407). For a peer of Ireland it is not entitled to privilege of peers as long as it continues to be a member of that House (Union with Ireland Act 1800, 4 Geo. 3, 3 & 4, ch. 84). The Penom procedures Act 1944 (20 Hen. 6, c. 9) conferred the right of trial by the House of Lords upon peers, since that time it has been the law that women peers and wives and widows of peers have the same immunity from arrest or civil process as peers (Courts of Queen's Bench rule C, J) 

\textsuperscript{14} For interpretation of privilege of peers, see p. 265, House of Lords SO No 82, Sir Edward Coke First Part of the Institutes (1622) xiv [18]. (1560-66) 299; (ibid) 1693-96 241; (ibid) 1666-76 714; (ibid) 1675-81 67, 80, 81, 85.
12. The privilege of Parliament

The Joint Committee on Parliamentary Privilege recommended its abolition. The Joint Committee on Parliamentary Privilege recommended its abolition.

HISTORICAL DEVELOPMENT OF PRIVILEGE

At the commencement of every Parliament it has been the custom for the Speaker to open and, on behalf of the Commons, to lay before the House of Commons the ancient and undoubted rights and privileges; particularly freedom of speech in debate, freedom from arrest, freedom from access to the Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings. The Speaker's pronouncement is of symbolic importance rather than of practical effect.

The Presiding Commissioner of a Royal Commission under letters patent replies to the Speaker's petition that, 'Her Majesty, by and through the House of Commons, by Her Majesty or any of her royal presence as aforesaid', if so requested, would be present. By contrast with the Lords, the acquisition and enforcement of these privileges by the Commons was both complex and prolonged. The importance of privilege today cannot be entirely divorced from its past. Each of Speaker's petitions is briefly considered in its historical context in this chapter together with related powers and privileges. Subsequent chapters then develop each of the themes in current procedure.

Freedom of speech

The first claim in the Speaker's petition, and regarded as the most significant for freedom of speech, is freedom of speech. By the latter part of the eighteenth century, the House of Commons seems to have enjoyed an undefined right to freedom of speech, as a matter of tradition rather than by virtue of a privilege sought and obtained. Earlier Speakers made no claim for such a privilege but instead to the favourable construction of their remarks and those of the House. The earliest evidence of a shift of emphasis away from reliance on traditional assumptions and attempts to avoid the violation of royal displeasure on the Speaker, and towards a distinct claim of privilege for the House, appears to be the petition of Speaker Sir Thomas More in 1523, asking Henry VIII to ‘take all in good part, interpreting every word, of any meaning he may judge to be proper, or may be couched, to proceed year of a good zeal towards the profit of your Realme’. More's plea may or may not have been answered, and what was sought in the immediately following Parliaments is not clear. By the first Parliament of Elizabeth, however, a claim for freedom of speech in debate was certainly made, and in 1563 it was justified as 'according to the old usage'.

Although it was recognised that freedom of speech was important and the Crown ought not to act against a Member directly for something said in the House, it seems to have been common ground that decorum and obedience to the Sovereign's wishes ought to be respected. Just as the House increased its ability to protect its Members from arrest and molestation, so it was frequently ready to take punitive action, without waiting for the Crown or Council, against those who overspilled the mark in debate. Much was made in these debates with which the Commons agreed. Lord Keeper Sir Edward Coke emphasized the executive's view in 1593 when he reminded the Speaker that:

"Her Majesty granted you liberal but not licentious speech, liberty therefore but not with unlimited freedom. . . . To say yea or no to bills, God forbid that any man should be constrained or afraid to answer according to his best liking . . . which is the true liberty of the House, not, as some suppose, to speak there of all causes as he listeth . . . No King is fit for his state will such absurdities . . ."

Much of what was unresolved under Elizabeth remained debatable in the years before the civil war, though when Charles I asserted the absolute power of the crown, the likelihood of resolution diminished. Those who took the view that the basis of freedom of speech was inherent in the Constitution of 1604 that it was erroneous to believe that the House's privilege would be granted because it was renewed in 1640. The view was expressed in Committee of the Commons on the petition in 1610 that freedom of speech 'could not well be taken from us...
12. The privilege of Parliament

without shaking the foundations of the liberties of Parliament. In 1621, James VI and I challenged these assumptions. Privileges, he said, "were derived from the grace and permission of our ancestors and us. To this the House rejoined:

that every Member of the House of Commons hath and of right ought to have freedom of speech ... and ... like freedom from all impeachment, imprisonment and mortification (other than by censure of the House itself) for or concerning any speaking, reasoning or declaring of any matter or matters touching the Parliament or parliament business.

The Protestantation of 1621 had much in common with Elizabethan views, not least because it explicitly contemplated the reference to the king of anything questioned or complained of in Parliament, provided it was with the advice and consent of all the Commons.23

The actions of Charles I appeared to challenge this tradition, particularly when in 1639 Sir John Eliot and two other Members were arrested and found guilty in King's Bench of seditious words spoken in debate and for violence against the Speaker, who had been physically restrained in the Chair in order to delay the adjournment of the House. Among the Crown's arguments were the contentions that parliamentary privilege did not protect seditious comments in the Chamber, and that King's Bench could properly take note of day-to-day events in the High Court of Parliament, such as the assault on the Speaker.24

By the time of the final breakdows in the early 1640s, the House had in practice bypassed Elizabethan conventions which denied Members the initiative in debate on great matters of state, and the limits of what was unacceptable in criticism of the government had been drastically narrowed.

When the 11 years of Charles I's personal rule came to an end, the attention of the Commons returned to free speech and the events of 1629. Consequently, in 1641, as the political relationship between Parliament and the King was on the verge of breakdow, the arrests of Eliot and the others were declared to be contrary to the law and privilege of Parliament.25 It is apparent that on the return of the Stuart's from exile in 1660, not only was Parliament anxious to preserve at least some of what had been gained in the years of the Republic and the Commonwealth but that the arrests of 1629 still rankled in some quarters.

A bill for maintaining and confirming the rights and privileges of Parliament was read for the first time in the Commons within months of the re-establishment of the monarchy. Much of its purpose was to ensure that the Parliament of England and the Members thereof shall forever hereafter fully and freely enjoy all their ancient and just rights and privileges in as ample a manner as formerly.26 The following year, the Treason and Sedition Practices Act 1641, c. 1. The Act included a provision that in case of free speech should deny Members of the House "they are not ancient and just rights and privileges in as ample a manner as formerly."27

Historical development of privilege

repeated in statutory form the claim to freedom of speech in debate.28 In 1667, a Commons committee was nominated to review the issue of freedom of speech, and in particular the case of the arrests, then nearly 40 years in the past. The Commons declared that the Court of King's Bench should not have accepted jurisdiction in the cases of Eliot and the others, and that the judgment was illegal and against the privileges of Parliament.29 The Lords then took up the cause. One of those arrested in 1629, by then a peer, successfully moved to reverse the judgment.30

Though the decision of a court had been overruled, there remained the possibility of direct royal intervention in debate, in response to what Charles II or James II deemed politically unacceptable. In the event, such a threat failed to materialise.31 Nevertheless, when in the revolutionary circumstances of 1688-9 the constitutional initiative passed to Parliament, the opportunity was taken to repeat in the fullest form the claim to freedom of speech, and to protect its status by grounding it in statute, secure from royal interference or through the courts. The assertion in article IX of the Bill of Rights that freedom of speech and debates and proceedings in Parliament are not to be impeached or questioned in any court or place out of Parliament was intended to stifle both the courts and the Crown.32

Chapter 13 will illustrate the elaboration in practice of the principles confirmed in 1689.

Freedom from arrest

The second of the Speaker's customary petitions on behalf of the Commons at the beginning of a Parliament is for freedom from arrest. The development of this privilege is in some ways linked to that of other privileges. Arrest was frequently the consequence of the unsuccessful assertion of freedom of speech, for example. At the same time, there are some distinctive features in chronology and development which mark off freedom from arrest from other such claims made by the House. Some elements which still underpin the

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24 R v. Eliot, Holbe and Valentine, (1629) 3 State Tr 293-336, esp. 309-10. In R v. Speaker (2013) 1242 SCOC 52 Lord Phillips remarked that Eliot published that nothing said in Parliament by a Member such as could be created as an offence by the ordinary courts, but on that occasion Lord Justice Duff and Mr Justice Williams pointed out that the clear statement that "the Parliament of England and the Members thereof shall forever hereafter fully and freely enjoy all their ancient and just rights and privileges in as ample a manner as formerly" (1640-1) 44, 49, 80. Despite several reminders from the Commons, the Lords failed to return the bill before the end of the session (ibid 303).
25 1641, c. 1. The Act included a provision that in case of free speech should deny Members of the House "they are not ancient and just rights and privileges in as ample a manner as formerly." 26 1643-45, 2 State Tr 294.
27 R v. Williams (1684-5) 2 State Tr 294.
28 1666-7, c. 1. The Act included a provision that in case of free speech should deny Members of the House "they are not ancient and just rights and privileges in as ample a manner as formerly."
privilege are found at a very early period. In other areas, the House has subsequently voluntarily narrowed the scope of the privilege.44 Whatever the origin of the privilege of freedom from arrest, whether in some recollection of the liberties attached to attendance at traditional popular assemblies or in the principle that the King's servants doing duty in a superior court should not be impeded by litigation in a lower tribunal, the principle was clearly established at a relatively early date. The first known assertion of freedom from arrest seems to date from 1230,45 when the King released a Member from prison during the Parliament following that in which he had been prevented, by his detention, from taking his seat. In 1404, the Commons claimed that it was privileged from arrest for debt, contract, trespass or of any kind, according to the custom of the realm.46

Though the principle may have been deeply engrained, its implementation was patchy and often beyond the power of the Commons alone to enforce. The delay in releasing the Member in 1440 simply illustrates this, as does the case of Mr Speaker Thorne, a century later, in 1542. Thorne had been imprisoned and retained in gaol by order of the House of Lords, despite advice from his assistants the judges that he was entitled to his release. In that instance, the Commons accepted the position and ejected a new Speaker.47 Indeed in two separate cases in 1472, the courts disallowed writs of supersedeas staying actions for debt on the grounds that Members of Parliament and their servants were protected by custom from being arrested, imprisoned or impeded for debt during the time of Parliament; the judges upheld the plaintiff's view that there was no such custom.48

Subsequent developments, however, were to establish relatively clearly, if slowly, the basis and the limitations of the privilege. In the first place, it had always been recognized that privilege could not be pleaded against criminal proceedings, then adequately supported by felony, and breach of the peace. The Commons accepted this in 1429,49 as did the judges in Thorne's case in 1452.50 A resolution of the Commons in 1675 declared that "by the laws and usage of Parliament, privilege of Parliament belongs to every Member of the House of Commons, in all cases except treason, felony and breach of the

44 An exhaustive review of the earlier historical basis for the privilege of freedom from arrest in civil cases is to be found in Gandy, Sir, "The privilege of freedom from arrest in civil cases", 1841 (35) ER 817. A claim of privilege in a case previously made in this connection in respect of writs of ejectment for the first time in 1532. Freedom from 'inconveniences' (for the precise meaning of which we have (1676-80)

45 para. 109-12 and p 93) was claimed until 1866. The privilege of not being imprisoned (as used) was considerably limited by statute in the seventeenth and eighteenth centuries, and the claim which afforded protection to members of Parliament and their servants, having been effectively extin-
guished by statute in 1776, was no longer made after 1819 (Parr Deb (1827) 1, c. 18; 2 Hallen 63; Colman's case (1825) 635 (see p 214).


47 Following the punishment meted out to the individual who subjected Richard Chadsher, a Member of the Commons, to "iniquitous arrest at mid-day", the Act 5 Hen 4 c 6 (1604); provided that those who assaulted the servants of Members of Parliament should pay double damages besides a fine: 5 Rot Parl 542; 1 Harr 15-17). The same penalty was later imposed by a special statute for offences committed in Parliament (59 Hen 8 c 15 (1632); 1 Harr 17).

48 5 Rot Parl 235; 1 Harr 28-34.

49 1 Hardey 44-5.

50 The case of Lake, the servant of a Member of the Commons, against whom damages for a trespass were awarded, 1 Rot Parl 317; 1 Harr 17-22.

51 5 Rot Parl 320; 1 Harr 28-34.
ment. The House insisted in 1477 that the privilege had existed "whereof the tyrant that manye mynde is soot the contrary." Writs of attachment were first issued to stay such actions but from the beginning of the seventeenth century the Speaker was ordered to stay suits by a letter to the judge, and sometimes also by a warrant to the party, and the parties and their attorneys who commenced the actions were brought by the Serjeant to the House. In the sixteenth century, the privilege was not always allowed, and subsequently statute first eroded and then extinguished it. Under the Parliamentary Privilege Act 1770, any person may at any time commence and prosecute an action or suit in any court of law against peers of Members of Parliament and their servants; and no such action or process shall be interfered with under any privilege of Parliament. It is also, however, enacted that nothing in the Act should subject the person of any Member of Parliament to arrest or imprisonment. Under this Act, a Member of Parliament may be arrested by every legal process, except attachment of his body. However well established the principle of freedom from arrest, practical problems remained. When a Member of the Commons had been imprisoned in a civil suit, the House faced the difficulty of first how to secure his release, and secondly, when the Member was in execution, how to do so without damage to the rights of the plaintiff, since a Member released by pleading his privilege could not be arrested, and the creditor lost his claim.

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12. The privilege of Parliament

Initially, these problems were solved (as in 1540) with the assistance of the Crown or of the courts, when a writ of privilege would be issued by the Lord Chancellor addressed to the keeper of the prison. To save the rights of plaintiffs' special statutes might authorize the Lord Chancellor to issue writs for false release of Members. Ferrers' case in 1542 is often seen as signifying an advance over previous arrangements for securing the release of an imprisoned Member. Ferrers, a Member was arrested as a surety for a debt, and the House took the novel step of sending the Serjeant, with the Mace as his only authority, to secure Ferrers' release from the City authorities. When this was resisted, the Commons laid the matter before the Lords, who, judging the contempt to be very great, referred the punishment thereof to the Commons House. The Commons refused the Lord Chancellor's offer of a traditional writ of privilege. By this time Ferrers had been released, but the House sent for and committed for contempt those who had been responsible for his detention.

Although this was in the past seen as the assumption of striking new authority by the Commons, the significance of Ferrers' case is probably more limited. His release may have been obtained principally because Ferrers was Henry VIII's servant, not because he was Burgess for Plymouth, against the background of the King's reported remark that he, being the head of Parliament and having the bench in his own person, would not permit the business thereof to be taken upon him, and whatever offence or injury . . . was offered to the nearest Member of the House or to the whole court of Parliament. Moreover, the practice of seeking writs of privilege out of Chancery in order to secure the release of Members, in preference to sending the Serjeant with the Mace, continued after 1542, though no writ was obtained without a warrant previously signed by the Speaker. In particular, in Smalley's case in 1576, when a Member attempted to use privilege in order to avoid paying a sum owed and not merely to escape prison for himself or his servant, the House first maintained that a writ out of Chancery was necessary, and only at the insistence of Arthur Hall, Burgess for Grantham, and Smalley's master, did the House consent to enforcing the privilege by the authority of the Mace. It seems clear, however, both from the events of Smalley's case and from incidents in 1572 when the action taken over Ferrers was quoted though not followed,

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Historical development of privilege

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For example, C 1547-1628 48, 536-37; and see D'Ewes 436; 8 Rex Parl 377; 5 id 651; 6 id 657; 7 id 669; 8 id 670; 9 id 671; 10 id 672; 11 id 673.

8 8 Rex Parl 377; also 5 id 651, 659, 674; 4 id 659, 669; 1 id 671.

9 See G.R. Elton The Tudor Constitution (1942) 261 and 273-77, where the reliability of the repute of the King's speech is doubted. See also 1 Harelss 33-39.

10 When Hall's fraud was discovered, he was committed by order of the House till the debt was paid and several quartered by the House (C 1547-1628 107, 109); and see J. E. J. Nade Elizabeth I and her Parliaments (1951) 334 ff; and G.R. Elton The Parliament of England (1956) 3, 5-6; and the fraud attempted by Hall and Smalley was not unique, C 1547-1628 551.

11 In the case of Fincher in 1539 the House ordered that the Speaker should seek a writ of habeas corpus out of Chancery to secure the release of an imprisoned Member, though the habeas corpus of a Member was also argued (D'Ewes 479, 481, 502, 514), and the Lord Keeper himself thought it "in regard to the ancient rights and privileges of the House that the Serjeant be sent with the Mace. See also C 1547-1628 807, 820 (id 1667-87 411, id 1715-18); 11 id 1687.
The next stage in the development of the privilege in the Commons came in 1604. Sir Thomas Shirley, who had been elected to the Commons, but had been imprisoned in the Fleet in execution before the meeting of Parliament, was discharged at the demand of the Court of the House (though not before an attempt to bring him into the House by habeas corpus had failed). The Warden of the Fleet was committed for contempt, having initially refused to release the Member. These events were followed by the Exclusion Act 1603, which statutorily recognized the privilege of Parliament. But a statute of 1700, while it maintained the privilege of freedom from arrest and the right of publication of proceedings, did not prevent the Warden of the Fleet from being discharged at the demand of the House, and the right to release those who were in prison or to procure arrest. In order to comply with this, the Warden was discharged by the House, and the right to release those who were in prison or to procure arrest. The House might then issue writs, and arrest and execute a new writ. No sheriff or similar officer from whose arrest or custody persons were delivered by privilege was to be chargeable with any action.

The principal earlier cases in the Lords show an uncertainty in their practice similar to that of the Commons. In the Lords, privileged persons were sometimes released immediately by order and sometimes by writ. During the same period, when the property of peers of their servants was detained, the Lords were accustomed to interfere by their own authority, but privilege did not apply to the property held by a peer as a trustee only. A statute of 1700, while it maintained the privilege of freedom from arrest and the right of publication of proceedings, did not prevent the Warden of the Fleet from being discharged at the demand of the House, and the right to release those who were in prison or to procure arrest. In order to comply with this, the Warden was discharged by the House, and the right to release those who were in prison or to procure arrest. The House might then issue writs, and arrest and execute a new writ. No sheriff or similar officer from whose arrest or custody persons were delivered by privilege was to be chargeable with any action.

The freedom of a Member from arrest in civil cases having been given to a Member's release changed. Peers and their peers and Members of the Commons were normally discharged immediately upon motion in the court from which the process issued, and writs of privilege were discontinued.

Since the enactment of the Judgments Act 1838, and subsequent legislation, imprisonment in civil process has been practically abolished. The position of Members in respect of imprisonment (or attachment for contempt of court) is dealt with at pp. 243-249, as are the bankruptcy and statutory determination. The position of Members in respect of imprisonment is dealt with at pp. 243-249, as are the bankruptcy and statutory determination. The position of Members in respect of imprisonment is dealt with at pp. 243-249, as are the bankruptcy and statutory determination. The position of Members in respect of imprisonment is dealt with at pp. 243-249, as are the bankruptcy and statutory determination.
Favourable construction

The final petition which the Speaker makes is that the most favourable construction should be placed upon all the House's proceedings. As in the case of the privilege of free access, this claim was, before the reign of Elizabeth, for the benefit of the Speaker rather than the House (see above). Even in 1539, Speaker Sir Thomas Gargrave asked that 'if in anything himself should mistake or misreport or oversight, which should be committed unto him to declare, that it might without prejudice to the House be better declared, and that his unwilling miscarriage therein might be pardoned'; to which the Queen replied that the petition should be granted, provided that 'your diligence and carefulness be such, Mr Speaker, that the defaults in that part be rare as may be. The request is now listed more as a formal courtesy, as the proceedings of the House are guarded against any interference on the part of the Crown not authorized by the laws and constitution of the country; and as by the law and custom of Parliament the Queen cannot take notice of anything said or done in the House, but by the report of the House itself.

Privilege with respect to membership of the House

It is a privilege of the House of Commons to provide for its own proper continuation as established by law.

The origins of this privilege are to be found in the sixteenth century. In 1515, Henry VIII transferred to the Speaker, acting for the House, the authority to license Members to depart before the end of the session.77 Though much was to flow from the elaboration of this principle, the transfer of substantial authority was delayed. In 1536 the King authorised Thomas Cromwell to continue to sit in the Commons though he had been elevated to the peerage before the session began.78 Thereafter, however, the House steadily advanced claims to consider qualifications for membership. In 1570, the House determined the vexed questions of whether a Member who was also Queen's Serjeant should take his seat in the Commons or act as an official assistant in the Lords and similar issues concerning those ill, or abroad on official duty, or peers' sons.79 At the same period, general rules were laid down by the House on the right to continue to sit of those who were arrested for debt, indicted for felony or even outlawed.80 In the 1580s, Chancery began to issue writs for new elections only when notified by the House of a vacancy,81 and for the first time the House decided the outcome of a disputed election.82 In 1593, the scrutiny of elections and returns was entrusted to the Committee of Privileges which

(heading aside the appointment of ad hoc bodies in previous sessions) had first been set up in 1584-85.83

In the following reign, however, events were to show that much disputed ground remained, particularly as the Buckinghamshire election dispute of 1604, in which an attempt was made by Chancery to unseat a Member because of his technical outlawry, ended in compromise. The exclusive right of the Commons to determine the legality of returns and the conduct of returning officers was not recognised by the courts till the case of Barnardiston v Soame in 167484 upheld by the House of Lords in 168985 and by other contemporary cases.86 The Commons' jurisdiction in determining the right of election was further acknowledged by the Parliament's Election Returns Act 1695.87 But in regard to the right of electors the cases of Ashby v White and R v Partington led the House of Lords to draw a distinction between the right of electors and the right of the elected, one being a property right by common law, and the other a temporary right to a place in Parliament.88 In the eighteenth century, however, the Commons continued to exercise the sole right of determining whether electors had the right to vote,89 while inquiring into the conflicting claims of candidates for seats in Parliament, until, in 1868, the House delegated its jurisdiction in controversial elections to the courts of law, retaining its jurisdiction over cases not otherwise provided for by statute.

Whatever a doubt arises as to the qualification of any of its Members the House also has the right to inquire into the matter and decide whether a new writ ought to be issued.90

MODERN APPLICATION OF PRIVILEGE LAW

Throughout the long history of parliamentary privilege, the need to balance two potentially conflicting positions—those first enunciated in the seventeenth century—has become clear. Indeed, the clarity of the rules varies from time to time and from place to place.

On the one hand, the privilege of Parliament is rights absolutely

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necessary for the due execution of its powers;\textsuperscript{1} and on the other, the privilege of Parliament granted in regard of public service must not be used for the danger of the commonwealth.\textsuperscript{9} In consequence, it was agreed in 1704, for example, that "neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament.\textsuperscript{10} A number of privileges have been surrendered or modified over the years. A few examples may suffice.

Following the Parliamentary Privilege Act 1770, the privilege of freedom from arrest previously enjoyed by Members' servants was extinguished (see p. 212). The Privileges Committee concluded at the beginning of the Second World War that the detention of a Member under emergency powers legislation should be regarded as akin to arrest under the criminal law, so that no breach of privilege was involved.\textsuperscript{9} The Criminal Justice Act 2003 abolished the category of persons 'excusable as of right' from jury service, including Members and officers of either House (see p. 249).

The conclusions of the Select Committee on Parliamentary Privilege of 1967–68\textsuperscript{99} and the recommendations of the Privileges Committee in 1976–77\textsuperscript{100} (the latter agreed to by the House)\textsuperscript{101} established the contemporary frame of reference for the House's exercise of its penal jurisdiction. In general, the House exercises such jurisdiction in any event as sparingly as possible and only when satisfied that to do so is essential to provide reasonable protection for the House, its Members or its officers from such improper obstruction or attempt at or threat of obstruction causing or likely to cause substantial interference with the performance of their respective functions (see pp. 261–265).

The report of the 1967–68 committee also recommended that legislation be promulgated to extend and clarify specific provisions of both absolute and qualified privilege.\textsuperscript{102} This theme was picked up by several subsequent committees (see pp. 238–239). In 1999 the Joint Committee on Parliamentary Privilege recommended the introduction of a Parliamentary Privilege Act to implement a number of its recommendations and to include a statutory code covering the whole field of parliamentary privilege.\textsuperscript{103} The recommendations of the Joint Committee are noted in the appropriate places in subsequent chapters. In 2009 the report of the Joint Committee on the Draft Bribery Bill rejected the Government's proposal to allow the use of proceedings in Parliament as evidence in court where they related to the words or conduct of Members accused or co-accused of bribery offences. The Committee argued that legislating in a piecemeal fashion risked undermining the important constitutional principles of parliamentary privilege without consciousness of the overall impact of doing so.\textsuperscript{104}

\textsuperscript{1} Handel 1.

\textsuperscript{2} CJ (1660–92) 261: This important statement is, however, the observation of a committee rather than the conclusion of the House.

\textsuperscript{3} CJ (1702–04) 553, 560.

\textsuperscript{4} HC 16 (1939–40).

\textsuperscript{5} HC 34 (1967–68).

\textsuperscript{6} HC 41 (1976–77).


\textsuperscript{8} HC 38 (1967–68) para 87.


\textsuperscript{101} HC 351 (1994–95) 10, a comprehensive covering an article in The Sunday Times relating to the conduct of Members.

\textsuperscript{102} CM 2830.

\textsuperscript{103} HC 637 (1994–95).
Misconduct by officers

The Serjeant at Arms has been regarded as in contempt of the House of Commons for willfully neglecting to take into his custody persons committed to him, and for permitting persons committed to have liberty without any order of the House. An officer of the Lords has been considered in contempt of the House if he failed to attend the Lords on the order of the House. The House of Commons has been considered in contempt if officers had been appointed by permission of the House to enforce the attendance of certain persons against their will, as was the case in 1798. The House of Commons has been considered in contempt if the Speaker had given evidence of his absence at the time the House was sitting, and the Commons agreed to a resolution retaliating that leave must be given in such circumstances.

CONSTRUCTIVE CONTEMPTS

Reflections on either House

Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been punished by both Houses if such actions have an effect upon the House, if the actions of the House tend to diminish respect for its members. The House of Commons has been considered in contempt if its members were not named or if their actions were not specific.

Publication of false or perverted reports of debates

The House of Commons agreed in 1791 to rescind their ban on the publication of their debates and proceedings, or those of any committee. Since then, no complaint based on a report of debate, whether or not misrepresentation was alleged, has been received. However, the Speaker has ruled that deliberate or reckless misrepresentation of the House's proceedings remains a contempt and is likely to attract qualified privilege.

Premature publication or disclosure of committee proceedings

As early as the mid-seventeenth century it was declared to be against the custom of Parliament for any act done at a committee to be divulged before being reported to the House. Subsequently, the House of Commons, 1797, found it increasingly difficult to enforce effectively its rules against the disclosure of proceedings in the Chamber, the privilege of committee proceedings and the prior right of the House itself to a committee's conclusions was upheld, and punishment was inflicted on a newspaper proprietor who published the contents of a draft report laid before a select committee but not considered by it or presented to the House. In 1837, the House of Commons resolved that:

Between 1837 and the middle of the twentieth century, there were relatively few cases of premature publication of committee proceedings or unprotected evidence. Subsequently, however, a number of cases arose, the majority
15. Contempt

involving the disclosure of the contents of draft reports, though one concerned evidence taken in private. Although successive Committees of Privileges concluded that such interference with the work of select committees and contraventions of the Resolution of 1837 were a contempt of the House and damaging to the work of Parliament, in most of the modern cases involving draft reports it has not been possible to identify those responsible for the original disclosure. In the absence of such information, Committees of Privileges were usually unwilling to recommend exercise of the House's residual powers against those who gave wider publicity to the disclosure, and where they did so the House was not prepared to agree. In a recent case involving the leaking of the heads of report of a select committee, the Committee on Standards and Privileges recommended that certain individuals' access to the House (as research staff) be withdrawn. The House agreed to the Committee's recommendation and the individuals were ordered to withdraw from access to the House and its facilities.

The procedure for dealing with improper disclosure of select committee evidence or proceedings was altered in 1985, following a report from the Committee of Privileges. For an account of current practice, see Chapter 37. The Chair has continued to deprive premature disclosure.

Other indignities offered to either House

Other acts, besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency


Select also pp 83-84.

Committee of Privileges, Second Report, HC 357 (1967-68) and CJ (1967-68) 361. Written evidence already circulated to third parties before being sent for by a committee may be referred to in the House or elsewhere before being reported, notwithstanding that it was marked confidential on reaching the committee (HC Deb (1984-85) 69, cc 349-50, 351). See also Local Government (Access to Information) Act 1975, s 2 and 3 of which obliges local standards and Privileges, and the Committee on Publicity (Evidence) Act 1975, which may include draft memoranda to be submitted to select committees—under consideration at public meetings of the authority.

The Committee of Privileges recommended in 1975-76 (First Report, HC 22 (1975-76)) that the editor of a weekly journal in which a disclosure was published and the journalist who wrote the article should be excluded from the proceedings for six months. The House rejected the recommendation (CJ (1975-76) 64) and no legislation has been introduced to enable the House to deal with the matter, as the Committee believed appropriate to the case. In 1985-86, the Committee of Privileges recommended the temporary exclusion from the premises of a journalist in similar circumstances, and the reduction for a time of the number of Lobby passes available to the press (HC Deb (1985-86) 374). During the 1980s, the House took a different view (HC (1985-86) 374). During the 1980s, the House took a different view (HC (1985-86) 374).


HC Deb (2008-09) 463. e 622.

Obstructing Members of either House to produce this result indirectly by bringing such House into odium, contempt or discredit or by lowering its authority, may constitute contempt.

For example, serving or executing civil or criminal process within the precincts of either House while the House is sitting or while it is not sitting, as is disorderly conduct within the precincts of either House while the House is sitting. However, where such misconduct has led to criminal proceedings against the individual or individuals concerned, the House has not pursued the matter as a contempt. This was the case when the Speaker was charged with breach of trust in 1975 and the Commons was not pursued the matter as a contempt. The Speaker was then charged. This was the case when the Speaker in 1985 was charged with breach of trust in 1975 and the Commons was not pursued. The Speaker was then charged.

The House of Commons has considered the sending of a letter to the Speaker in very indirect and insolent terms in connection with the execution of a warrant issued by the Speaker to a contempt. Contempt proceedings amount to contempt, and are not to be taken lightly.

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OBSTRUCTING MEMBERS OF EITHER HOUSE IN THE DISCHARGE OF THEIR DUTY

The House will proceed against those who obstruct Members in the discharge of their responsibilities to the House or in their participation in its proceedings. Not all responsibilities currently assumed by Members fall within this definition. Correspondence with the House, information and services provided by Members, and the provision of information sought by Members on matters of public concern will very often, even on the circumstances of the case, fail...
outside the scope of 'proceedings in Parliament' (see pp 269-271) against
which a claim of breach of privilege will be measured (see p 203).76

Arrest
An attempt to infringe the privilege of freedom from arrest in civil causes
ejoyed by Members of both Houses is itself a contempt and has been
punished.77

Molestation, reflections and intimidation
It is a contempt to molest a Member of either House while attending
the House, or coming to or going from it, and in the eighteenth century
both Houses roundly condemned 'assailing, insulting or menacing Lords or
men in their conduct in Parliament.'78 Members and others have been
punished for such molestation occurring within the precincts of the House,
whether by assault79 or insulting or abusive language,80 or outside the
public House, as in the case of a Member from entering a room where a
standing committee was meeting.81

To molest Members on account of their conduct in Parliament is also a
contempt. Correspondence with Members of an insulting character in refer-
cence to their conduct in Parliament or reflecting on their conduct as Mem-
bers,82 threatening a Member with the possibility of a trial at some future time
claimed to be defamatory,83 calling for his arrest as an arch-traitor,84 offering
to contradict a Member from the gallery,85 or proposing to visit a pecunary
loss on him on account of conduct in Parliament86 have all been considered
contempts. The Committee of Privileges has made the same judgment on those
whom it considered to be defamatory,87 and commenced inquiries as to
whether their publications were defamatory against the House.88

The Metropolitan Police Act 1829 (c. 49) s 1 is the principal means by which Parliament is
protected from tumultuous assemblages.89 It is not
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78 See HC Deb (1851-52) 413, col 304.
79 LJ (1851-52) 11, 58, 65; CJ (1722-27) 504, ibid (1809) 210, 213 and Parl Deb (1809) 14, c. 31.
80 When a Member of the House of Commons was arrested in error, the House regarded the
procedure as criminal and proceeded to make a complaint against the Member who had
arrested the Member of the House of Commons. CJ (1851-52) 122, c. 329.
81 The Metropolitan Police Act 1829 (c. 49) s 12 is the principal means by which Parliament is
protected from tumultuous assemblages. It is not
enough for the House to refer it to the police80

82 CJ (1851-52) 209; CJ (1722-27) 115; ibid (1771-75) 902.
83 LJ (1851-52) 93, 314, 315, 317, ibid (1826-27) 483 and Parl Deb (1824) 11, c. 1204; and CJ
84 Similarly, it is not enough for the House to refer it to the police, as in the case of a Member
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86 CJ (1851-52) 381.
87 The Committee of Privileges recommended in 1867 that a Member who considered that he had been defamed
should seek a remedy in the courts, and not be permitted to invoke the penal jurisdiction of the House in lieu of
so as to obtain a remedy (Third Report, HC 34 (1867-68) para 42). Subsequently, the Committee of Privileges
took the view that it would be unnecessary for the House to adopt a similar course in the event of a
complaint against an individual Member in the courts as a substitute for its own penal jurisdiction. The Committee
might have added that difficulties such as those which gave rise to the Defamation Act 1868 (see p 299) were likely to arise in
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92 CJ (1851-52) 381.
them of corruption in the discharge of their duties,\textsuperscript{109} challenging their motives or veracity,\textsuperscript{110} or describing their conduct as 'inhuman' and 'degrading'\textsuperscript{111} have also been found objectionable and proceeded against:

To attempt to intimidate a Member in his parliamentary conduct by threats is also a contempt, cognate to those mentioned above. Actions of this character which have been proceeded against include impugning the conduct of Members and threatening them with further exposure if they took part in debates,\textsuperscript{112} threatening to communicate with Members' constituents to the effect that, if they did not reply to a questionnaire, they should be considered as not objecting to certain sports,\textsuperscript{113} publishing posters containing a threat regarding the voting of Members in a forthcoming debate,\textsuperscript{114} informing Members that to vote for a particular bill would be regarded as treasonable by a future administration,\textsuperscript{115} summoning a Member to a disciplinary hearing of his trade union in consequence of a vote given in the House,\textsuperscript{116} and threatening to end investment by a public corporation in a Member's constituency, if the Member persisted in making speeches along the lines of those in a preceding debate.\textsuperscript{117} When a Member stated his intention of influencing a local authority to the detriment of other Members, a complaint was referred to the Committee of Privileges which concluded that the words spoken constituted a threat but recommended no further action.\textsuperscript{118}

In 1966 the then Prime Minister said that he had given instructions that there was to be no official tapping of telephones of Members of the House of Commons (known as the Wilson Doctrine). In exceptional circumstances the House would be informed.\textsuperscript{119} The doctrine has been several times restated by the Prime Minister and most recently, in a case involving a Member, by the Home Secretary.\textsuperscript{120} The Committee on Standards and Privileges has concluded that in certain circumstances 'phone hacking', which it defined as 'gaining of unauthorised direct access to a remotely stored mobile telephone communication', in respect of Members' mobile phones could potentially constitute a contempt.\textsuperscript{121}

\textsuperscript{110} The Italian Statesman, HC 294 (1876-79).

\textsuperscript{111} CJ (1677-78) 81, 90; ibid (1732-37) 248; ibid (1838) 639, 674 and Parl Deb (1836) 35, cc 157, 252; CJ (1839-41) 631 and Parl Deb (1839-41) 20, cc 112; CJ (1851-54) 416; Report of the Committee of Privileges, HC 118 (1946-47) and CJ (1950-51) 42, 43. See also ibid (1934-35) 201 and HC Deb (1934-35) 931, cc 1599-1602.

\textsuperscript{112} CJ (1891) 355; ibid (1906) 99; Report of the Committee of Privileges, HC 55 (1926); Committee of Privileges, First Report, HC 20 (1974-75) and see also Report of the Committee, HC 112 (1947-48).

\textsuperscript{113} DJ (1850) 55, 74 and Parl Deb (1850) 253, cc 797, 1108.

\textsuperscript{114} CJ (1873) 60 and Parl Deb (1873) 316, cc 733.

\textsuperscript{115} CJ (1894-95) 201 and HC Deb (1934-35) 305, cc 1485.

\textsuperscript{116} Report of the Committee of Privileges, HC 181 (1932-33).

\textsuperscript{117} Committee of Privileges, Second Report, HC 228 (1964-65).

\textsuperscript{118} HC Deb (1974) 877, cc 446-447. The complaint was not pursued, following a letter of apology.

\textsuperscript{119} Report of the Committee of Privileges, HC 214 (1980-81). Although the Committee was unable to establish the facts alleged, it observed that such an allegation, if established, would certainly reveal a breach of privilege.


\textsuperscript{121} HC Deb (1966-67) 375, cc 639; ibid (2001-02) 377, cc 3678 (see, for the House of Lords, HL Deb (1998-99) 356, cc 32137-8).

\textsuperscript{122} HC Deb (2007-08) 472, cc 318-39. For example of consequences by the Prime Minister, see HC (2005-06) 448, cc 95-96; HC (2007-08) 441, 21035W.

\textsuperscript{123} Fourth Report, HC 628 (2010-11).

Improper influence

Attempts by improper means to influence Members in their parliamentary conduct may be considered contempt. One of the methods by which such influence may be brought to bear is bribery and, at it is as culpable for an individual to offer a corrupt consideration to a Member of either House with a view to influencing his conduct in that capacity as it is for the consideration to be accepted. For a detailed treatment of contempts of this character, see pp 254-256.

A committee of the Commons concluded that 'pressure' involved a positive and conscious effort to shift an existing opinion in one direction or another; and premeditation was not an essential precondition. Thus, the committee concluded that the chairman of a select committee (on Members' Interests) had exceeded the bounds of propriety in participating in a conversation with a government whip about matters within that committee's remit, and the whip ought not to have raised with the chairman a matter critical to the deliberations of the committee.\textsuperscript{115}

Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties but having a tendency to impair their independence in the future performance of their duties may be treated as a contempt. An example of such a case is the Speaker's ruling that a letter sent by a parliamentary agent to a Member informing him that the promoters of a private bill would agree to certain amendments provided that he and other Members refrained from further opposition to the bill constituted (under the procedure then in force) a prima facie breach of privilege.\textsuperscript{116}

Influence by private solicitation in certain circumstances has also been found objectionable. The Lords have resolved that the private solicitation of Members on matters of claims to honours or other judicial proceedings was a breach of privilege.\textsuperscript{117} Upon the same principle, it would be a contempt, when Members are acting in a judicial or quasi-judicial capacity, eg when serving on committees on private bills, to attempt, by letters, anonymous or other, to influence them in the discharge of their duties.\textsuperscript{118}

Misrepresenting Members

A select committee has commented on an allegation that a third party sent a letter purporting to be from a Member;\textsuperscript{119} and a Member has made a personal statement to the House, apologising for having tabled amendments to a bill in the name of another Member but without his knowledge or consent.\textsuperscript{120}

\textsuperscript{115} Select Committee on Standards and Privileges, First Report, HC 88 (1996-97).

\textsuperscript{116} CJ (1862-63) 231, The Member concerned, having received an apology, did not submit a complaint to the House.

\textsuperscript{117} C (1810-11) 93, 32; CJ (1847) 64, 9; Parl Deb (1847) 247, cc 11; and HC Deb (1921) 145, cc 831. See also Select Committee on Standards and Privileges, First Report, HC 88 (1996-97).

\textsuperscript{118} Committee of Privileges, Report HC 221 (1969-70).

\textsuperscript{119} HC Deb (1994-95) 260, cc 852.
16. Complaints of breach of privilege or contempt

Committee's report, it will then go on to consider the punishment appropriate to the offence
(see pp 191, 196-200). Any further discussion or findings of the committee may be ordered
(sometimes in the custody of the Serjeant) to attend the House in order to be heard in extenuation or mitigation.

Where, after the House had made an order for the attendance of the parties
offenders, acknowledging their offence and expressing their contrition and
entering the House to dispose of their attendance on the House and accept their submission and apology, the House resolved that in consideration
of the petitioners having acknowledged their offence and expressed their contrition, the House was content to proceed no further in the matter, and the order for their attendance was discharged.

In one case, after the House had considered a special report from a select
committee and had resolved that the offence reported constituted a contempt
of the House, a motion was made for the attendance of the incriminated party.

Debate on this motion was adjourned until the next day. On the day of the
motion being read for resuming the adjourned debate, the Speaker announced that
he had received a letter of apology from the offender, which he read, and
the motion for attendance was not proceeded with.

The House has not always agreed with the committee that a breach of privilege
has been committed, and in one case where a penalty was recommended for refusal to answer questions put by the committee, the House decided that no action needed to be taken (see pp 252-253).

PROCEEDINGS AGAINST MEMBERS

In modern practice, most privilege complaints against Members of the
Commons are proceeded with on motions made on consideration of or following
reports from the Committee on Standards and Privileges, or such other

21 For instance, cases where the House, in taking the report of the committee into consideration, has adjudged
the persons incriminated guilty of a contempt or a breach of the privileges of the House (1826-28) 561, ibid (1845) 593, (1878-79) 306, (1879-80) 221. But it is more regular
that in view of his apology the House would proceed no further in the matter.

22 (1837-39) 29, (1850-51).

23 (1832-34) 445, 453, ibid (1834-35) 58, 57. The House has also ordered the person in question to be brought to
the Bar, and that the Speaker's letter be printed. It is noted that in view of his apology the House would not proceed
further in the matter.

24 (1837-39) 29, (1850-51).

25 HC Deb 1889-90 168, e 899 (when the Member spoke after the motion that the report be not considered had been agreed to), ibid (1898-99) 335, e 22, 26; (1899-1900) 573, e 884-85.

26 (1894-95) 53, e 150; ibid (1900-01) 415, e 428; ibid (1901-02) 373, e 388-89.

27 During the course of the debate on the motion for the adjournment, the Speaker took the Chair and ordered the
Member, who had interfered, to withdraw and be seated.

28 CJ 1855-56 145, e 435, ibid (1856-57) 118, e 157. It is noted that in view of his apology the House would not proceed
further in the matter.

29 CJ 1855-56 145, e 435, ibid (1856-57) 118, e 157. It is noted that in view of his apology the House would not proceed
further in the matter.

30 For example, CJ 1897-98 260.

31 (1897-98) 64.

32 For example, CJ 1897-98 260.

33 (1897-98) 64.
16. Complaints of breach of privilege or contempt

COMPLAINTS AGAINST MEMBERS OR OFFICERS OF THE OTHER HOUSE

Since the two Houses are wholly independent of each other, neither House can punish any breach of privilege or contempt offered to it by a Member or officer of the other. If a complaint is made against a Member or officer of the other House, the appropriate course of action is to examine the facts and then lay a statement of the evidence before the House of which the person complained of is a Member or officer.37

In one instance, after a complaint had been made in the Commons of a speech delivered (outside the House) by a Member of the House of Lords, a motion was made to refer the matter to the Committee of Privileges, but was withdrawn after the Speaker had announced that he had received a letter of apology from the Lord concerned, which he read to the House.38 When a Member, officer, or servant of either House has been guilty of any offence either against the other House or against its Members, which would be punishable by the latter if committed by one of its own Members, officers, or servants, it is the duty of the House to which such offender belongs, upon being apprised of the facts, to take appropriate measures to inquire into and punish the offence in a proper manner.

COMPLAINTS REPORTED BY COMMITTEES

In both Houses complaints from committees are normally made in the form of special reports.39 Matters complained of in such special reports have included disorderly conduct in the committee; or some conduct of the committee’s authority, for example a person summoned as a witness refusing to attend or to answer questions, or prevaricating or giving false evidence; as well as presumptions on the part of the committee that a breach of privilege or other contempt of the House has been committed, such as a libel upon the chairman of the committee, or interference in or failure to co-operate with the committee’s inquiry. A complaint of an alleged contempt from a joint committee has been considered by both the Committee on Standards and Privileges in the Commons and the Committee for Privileges and Conduct in the Lords.40

According to present usage in the Commons, such reports when presented are ordered as of course to lie upon the Table.41 Therefore, the procedure upon them is the same as that upon reports from the Committee on Standards and Privileges (see pp. 87-88, 275). Any Member may bring a report of this

40 See 3rd Earl of Shrewsbury (1831) 133-4, Lords Deb. 361-2; also ibid (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
41 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
42 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
43 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
44 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
45 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
46 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
47 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
48 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
49 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
50 See also H. (1832) 323; J.C. (1833) 144; ibid (1874) 152; ibid (1897) 135; ibid (1896-7) 317; ibid (1898) 312.
16. Complaints of breach of privilege or contempt

Report to the Speaker, the person complained of was called in or ordered to be brought to the Bar forthwith or ordered to attend the House on a future day to answer the matter of the complaint. Other action considered appropriate has also been taken.

In one instance, the Speaker acquainted the House that he had received a report from the Serjeant at Arms relating to the conduct of certain Members. The report stated that the messenger of the House acting under his orders had been forcibly obstructed in the execution of their duty by certain Members of the House. No immediate action was taken by the House, but it was indicated that appropriate action be taken. At the next sitting of the House, the Members concerned expressed their profound regret and unreservedly apologized for their conduct, and the House accepted their apologies. The proceedings were ordered to be entered in the Journal.

DISCLOSURE FOLLOWING SECRET SESSION

Aning from an alleged report of proceedings in the Commons in secret session, criminal proceedings were taken which led to the trial of a private individual on a charge of contravening the Defence (General Regulations) 1939, reg 3(2). This regulation made it an offence to report or purport to report the proceedings of a secret session. As it was necessary for the leave of the House to be given to a clerk to attend the court.

On 5 May 1942, a complaint was made in the Commons of breach of privilege by an alleged disclosure by a Member of proceedings in secret session. The matter of the complaint was then debated in secret session. A report of the proceedings issued by the Speaker showed that the matter of the complaint was referred to the Committee of Privileges on a division. Later the Committee made a secret report thereon (see p. 333, n. 212), which was not published until the end of the Second World War.

Later the same month, another complaint was made by a Member that a breach of privilege had been committed by a Member by disclosing proceedings in secret session, and this matter was also referred to the Committee of Privileges, after being considered in open session.

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18. Alternatively, the Speaker must acquaint the House that the Serjeant has a communication to make: whereupon the Serjeant comes to the Bar and makes his communication briefly to the House (HC (1946-47) 14). The subject matter of the communication may be taken into consideration forthwith (ibid (1849-50) 144) or reported for consideration upon a future day (ibid (1892) 183; ibid (1893) 141). Where no communication was made, the complaint was referred to the Committee of Privileges (ibid (1893) 141). In this instance the complaint was made by the Deputy Speaker (ibid (1893) 141).

36. The Committee finally stated that the charge made against the Member had not been proved (HC (1946-47) 14). Report of Committee, HC 93 (1946-47). The Committee recommended the Member concerned of any relevance to amon the House, and recommended no further action.
THE COURTS AND PARLIAMENTARY PRIVILEGE

THE OPPOSING VIEWS

For some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of either House in matters of privilege has been disputed. A degree of concord has been achieved and some recognition of respective areas of jurisdiction has been arrived at pragmatically over the generations through a series of cases described in this chapter. The courts have recognized the need for an exclusive parliamentary jurisdiction, as a necessary bulwark of the dignity and efficiency of either House. Neither House by itself maintains the earlier claim to supremacy over the courts of law enjoyed by the undivided High Court of Parliament of medieval England.

The earliest conflicts between Parliament and the courts were about the relationship between the lex parliamenti and the common law of England. Both Houses argued that under the former, they alone were the judges of the extent and application of their own privileges, not examinable by any court or subject to any appeal. The courts initially professed judicial ignorance of the lex parliamenti, but after a time came to regard it not as a particular law but as part of the law of England, and therefore wholly within their judicial notice. There might be areas of the application of privilege within which it was proper for either House exclusively to make decisions, but particularly—though not solely—where the rights of third parties were concerned, the courts considered that it was for them to form their own view of the law of Parliament and to apply it (see pp 285–287).

By the middle of the nineteenth century, this aspect of contention over the lex parliamenti and the common law had largely been resolved. Parliamentary claims to determine both whether a privilege existed and whether it had been breached were abridged; the Houses yielded the first to the courts. Attention turned to the determination of the proper limits of the proceedings of Parliament, distinguishing what was a proper matter for the House, and what was not, on which the courts might be expected to rule. A number of important cases laid down guidelines for the relationship between Parliament and the courts (see pp 287–291). Speaking over a century ago of the possibilities of future conflict, Lord Coleridge, the Lord Chief Justice, was

1 For example, in Hardett v Abbot (1811) 104 ER 539, 561; Stockdale v Howard (1839) 112 ER 1312 at 1356; and Bradlaugh v Great (1883–84) 12 QBD 271.

It was, however, admitted that the simple assertion of either House could not create a new privilege any more than either could by simple declaration alter the general law (Cl 1762–64) 536, 560; 24 Parl Hist 517.)
The courts and parliamentary privilege

In the early part of the twentieth century, there were relatively few cases which raised fundamental issues of jurisdiction between Parliament and the courts. Since then, the development of judicial attitudes to parliamentary privilege has proceeded against a background in which two important elements are discernible. The first is the expansion of the role of the courts which has led them into broader areas of public life than was the case half a century ago. The second, which prefaces the first, is judicial reliance on the statutory expressio of the right to freedom of speech in Parliament, contained in Article IX of the Bill of Rights, when judicial decisions bearing on privilege are taken. None of the great nineteenth century cases did more than glace at article IX, if that; decisions then were based on constitutional first principles (see pp. 285-288). More specifically, recent decades have seen decisions in a number of cases concerning privilege, in the course of which a new emphasis has emerged: the desire of the courts to uphold what they see as the rights of individuals, sometimes within explicit statutory guarantees (see pp. 295-305). This has been complicated by the emergence of the law of the various parts of the United Kingdom with that of the European Union and the opportunity for petitions to the European Court of Human Rights of a character which, at least prior to the enactment of the Human Rights Act 1998, would not be customarily entertained by UK courts. Nevertheless, even in jurisdictions where individual rights enjoy significant constitutional enfranchisement, judges attempt to balance such rights against the traditional claims of Parliament. On the other side of the fence, in 1999 Parliament itself conducted a thoroughgoing review of its privileges; which concluded in a recommendation that a modern presentation of parliamentary privilege should be enshrined in legislation, thus confirming the existence of the right of Parliament to control parliamentary affairs. This recommendation, however, has not yet been implemented and the lack of a Parliamentary Privileges Act has been cited in a number of recent parliamentary inquiries.

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The First Phase of the Conflict

The earlier views of the proper spheres of court and Commons were much influenced by political events and the constitutional changes to which they gave rise. Coke in the early seventeenth century regarded the law of Parliament as a public law, distinct from the common law. For that reason, 'judges could not give any opinion of a matter of Parliament, because it is not to be judged by the common laws but by the Statutes of Parliament made thereon.' This line of argument was able to rely on the view taken by Prynne CJ and his colleagues in the case of Mr Speaker Thorpe in 1452 (see p. 210) that the 'determination and knowledge of that privilege [of the High Court of Parliament] belongeth to the Lords of the Parliament, and not to the judges.'

A number of decisions in the latter part of the seventeenth century gave further support to the parliamentary claims.

In Barnardiston v. Soame in 1674 a parliamentary candidate brought an action against a sheriff for a double return. The initial judgment favoured Barnardiston, the candidate, but the decision was reversed on appeal. North CJ observing that the trial of elections and the functions of the sheriff were matters of privilege outside the exclusive jurisdiction of the Commons. North also included in his judgment a remarkable statement that officers maliciously making doubtful returns could be sued 'in any of His Majesty's courts of record at Westminster', but that it was also illegal for a returning officer to make any return which conflicted with 'the last determination in the House of Commons of the right of election'. The Commons thus attempted to have the best of both worlds—to retain the exclusive right to determine the qualifications of electors, but to provide individual Members with a remedy at law against returning officers.

In 1677 an attempt was made to release the Earl of Shaftesbury on a writ of habeas corpus from the imprisonment to which the Lords had sentenced him for 'high contempt', it was argued for his Lordship that such a general allegation was too uncertain for the court to come to an opinion; the jurisdiction of the Lords was limited by common law and exisable in the courts. The unanimous decision of the Court of King's Bench, however, was that they could not question the judgment of the Lords, as a superior court, on a committal order for contempt.

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2 1 B R.C.P. 239-40; 3 Hlam. 23-34. For judicial observations on this case, see bednall on Abbott v. Addy (1810) 104 ER 311, 133 ER 257, 914. It should be noted, however, that the judges were not trying the case but acting as assistants to the Lords so that the trial had the colour of a commission to decide any such point as should arise in their own courts. Nevertheless, they did give their opinion on what would hold in such a case, and the Lords adopted and acted on it.  
4 1761 (1695-96) 1657 L.J. 215.  
5 Parliament Electes: Election of Members of Parliament (1695) Act 1695 (17 & 8 Will. 3 c. 7), made permanent by 3 Anne, c. 13, now repealed.  
6 (1677) 66 ER 792, 799-800.
Arguments in such terms were remarkably long-lived. Dr Grey CJ in 1771 observed that "we cannot judge of the laws and privileges of the House [of Commons] because we have no knowledge of these laws and privileges." 14 Judicially of what takes place in Parliament all that is done there became an Act of the legislature. 15 In 1836-37, the Attorney-General argued that the law of Parliament was distinct from the common law as that administered by the equity jurisdictions or ecclesiastical courts. 16

Elements of the opposing view—that decisions of Parliament on matters of privilege can be called in question in other courts, that the law is part of the common law and known to the courts, and that resolutions of the House of Commons do not bind the courts—are found in almost as early a date, and they gained impetus at that time. In 1644, a ground that he was entitled to the benefit of the Liminum Act 1623 (2 James 1, 16) notwithstanding that in the intervening period he had been accused of bribery by his colleague in the House. Though it was suggested that the court would not be able to make any direct inquiry into the questions of privilege involved, 53 Judges made some observations on the duties of the Senate to decide such questions. The House of Commons regarding the decision in re as regards the claim of the House to exclusive jurisdiction over matters of privilege arising sub in re, and by implication those in which persons outside were concerned. 19

Two decades later, Sir William Williams was sentenced to be fined for his action some years previously, in signing a printed and published resolution of the House, a paper which was said to have been libelled James II (then Duke of York). His defence that the court lacked jurisdiction over the action on which the charge was founded was unavailing. The process of law, however, was obviously in inception that after the Revolution of 1688 the House declared the judgment to be "illegal and unconstitutional." 18 The principle was that the Bill of Rights condemned the proceeding for having been taken in King's Bench when the matter was cognizable only in Parliament, as its judgment was not felt to have been used by counsel on one occasion. 20

Perhaps more significant in the development of the courts' case against Parliament's exclusive jurisdiction is the case of Jay v. Topham (1682-83), in which (after a default judgment) judgment was given in King's Bench against the Serjeant at Arms of the Commons for having brought the plaintiff into custody and brought him to the Bar for an offence committed in breach of privilege. The House, in the course of the verdict, instructed the Serjeant to appear, and, having examined him, committed him to the Serjeant. The House claimed that they had not questioned the legality of the orders of the House. They emphasized that if there had been a plea in bar of the court's jurisdiction, the defendant would have been entitled to judgment, and they admitted that if the entire matter had been transacted in the House (as they argued it had not been) it would have been proper to plead such a matter to be outside the jurisdiction of the court. They did, however, reassert the right of the courts to examine privilege incidentally arising.

Subsequent observations in the courts have been critical of the Commons' action towards the judges in Jay v. Topham. It has been pointed out that the House was not acting in a judicial capacity, and that the House's action was not in the interests of the people, but rather in the interests of the House itself. In 1694, a defendant indicted for murder was a commoner pleaded nonassizes, on the ground that he was the legitimate holder of a peerage. The Crown argued that the defendant had petitioned the Lords to be tried by his peers, but that the House of Commons had dismissed the petition, disallowed the peerage claim, and ordered him to be tried at common law. The court held for the defendant on the ground (among others) that the decision of the Lords was not conclusive against the peerage claim. The House had disallowed the claim neither as a court of appeal (this was an original case) nor on reference from the Crown. 21 So their dismissal of the petition was not a judgment against the defendant's title or properly a judgment at all. Perhaps even more significantly, the court held that the law of Parliament (which according to the Attorney-General justified the proceedings of the House of Lords) was to be regarded as the "law of the realm," but even if it were a "particular law," this would not prevent the King's Bench deciding a matter which was properly within their jurisdiction (in even if it involved a question determinable by law of Parliament).

In the early years of the eighteenth century there was a series of cases in which initially dissenting judges took on a growing significance. The first such case was that of Ashby v. White (1703-4). Three judges (with Holt CJ dissenting) found in favour of a plaintiff who had complained that the
The second phase: the nineteenth century

In the nineteenth century, a series of cases forced upon the Commons and the courts a comprehensive review of the issues which divided them, from which it became clear that some of the earlier claims to jurisdiction made in the name of privilege by the House of Commons were untenable in a court of law: that the law of Parliament was part of the general law, that its principles were not beyond the judicial knowledge of the judges, and that the duty of the common law to define its limits could no longer be disputed. At the same time, it was established that there was a sphere in which the jurisdiction of the House of Commons was absolute and exclusive.

The facts in the case of Bardet v. Abbott (1810) were that the plaintiff, a Member of the House of Commons, had been judged guilty of a contempt, arising from the publication of a libellous and scandalous pamphlet. The House ordered his commitment and in the course of the execution of Mr. Speaker Abbott's warrant, the plaintiff's house was entered by force. He then brought an action of trespass against the Speaker. The significance of the outcome is profound. In the first place, the House of Commons did not resort to the use of action for which earlier years provided ample precedent—committing for contempt counsel and others concerned in the prosecution of the Speaker for obeying an order of the House. The House preferred voluntarily to submit one of its privileges to the jurisdiction of the courts. Secondly, following further dispute on the old battleground of whether the law of Parliament was a particular law or part of the law of the land, and whether the courts were entitled (or indeed bound) to decide questions of privilege coming incidentally before them, the Speaker's action was wholly vindicated.

Thus, about a century after the case of the Aylesbury Men, and commenting on it, Lord Ellenborough CJ held in Bardet v. Abbott, that the House had acted within its powers, and that the powers to commit were no more than those enjoyed by all superior courts. The court emphasized that the possession of

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\[\text{The text continues with further detailed legal analysis and case law references.} \]
such powers was essential for the maintenance of the dignity of both Houses, and that without them they would "sink into utter contempt and inefficacy."

At the same time, however, Lord Ellenborough contemplated the possibility of cases in which the courts would have to decide on the validity of a collateral for contempt when the fact displayed could by no reasonable interpretation be construed as such (see p 194, n 67).

Events in the next case, Stockdale v H Nassard (1836-37), proved to be more complex. Messrs Nassard, the printers of the House of Commons, had printed by order of the House a report laid on the Table by an inspector of prisons against which a Mr Stockdale brought an action for libel. The court did not consider Nassard's proof of the House's order to print a sufficient defence. Lord Denman CJ observed that the House's direction to publish parliamentary reports was no justification for Nassard or anyone else. Though Nassard succeeded in a plea of justification, the Commons felt it necessary in 1837 to appoint a committee to ascertain the law and practice of Parliament in reference to the publication of papers printed by order of the House.

The result of these inquiries was the passing of resolutions by the House, declaring that the publication of parliamentary reports, votes and proceedings was an essential incident to the constitutional functions of Parliament; that the House had sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceedings was a breach of privilege; and that for any court to presume to decide upon matters of privilege inconsistent with the determination of either House was contrary to the law of Parliament. Despite the course of action implicit in those strong resolutions, when Stockdale commenced his action against Nassard, the House did not proceed against him for contempt, but directed the first to plead and the Attorney-General to defend them, arguing on the basis of the privilege of the House and its recent resolutions. Messrs Nassard in this case relied entirely upon the privileges of the House and its order to print. The defence was unsuccessful. The Attorney-General argued the case for regarding the High Court of Parliament as a superior court of exclusive jurisdiction binding on other courts, and its law a separate law. Each House separately, it was contended, possessed the whole power of the medieval English High Court of Parliament, and so subordinate were the courts of law to each that a writ of error ran from them to Parliament. Furthermore, were the privileges of the Commons subject to review by the courts, the Lords would be the arbiters not only of their own privileges but also of those of the Commons. For probably the last time, as appeal was made to the principle that the constitution supposed that the laws of Parliament, like the law administered in equity, ecclesiastical and admiralty courts, was a system different from the common law, the judges of which had no means of arriving at knowledge of its. In such circumstances the courts must respect the general rule that they should follow the law of the court of original jurisdiction. Finally, the Attorney-General cited instances of

The court retracted nearly all these contentions. It was accepted that over their own internal proceedings the jurisdiction of the House was exclusive; but it was (in Lord Denman's view) for the courts to determine whether or not a particular claim of privilege fell within that category. Though the Commons had claimed that the publication of certain types of papers was essential to its constitutional functions, the Attorney-General argued that the court was bound to accept such a declaration as evidence of the law. Lord Denman held that the court had a duty to inquire further. There was, in his opinion, no difference between a right to sanction all things under the name of privilege and the same right to sanction them by merely ordering them to be done. This would amount to "an arbitrary and irresponsible superintending of the law, in itself the most monstrous and intolerable of all abuses." The court could find no reason to believe that either House had 'either actually or virtually' claimed to authorize by resolution and relying on its privileges the publication of papers injurious to the character of an individual.

As regards the difference between those matters of privilege arising directly in a cause before a court and those of indirect significance, on which a select committee had recently pressed inability to discern a real distinction (which had led them to deny jurisdiction to the courts in either case), the judges expressed reservations. Lord Coleridge observed that "whether directly arising or not, a court of law I conceive must take notice of the distinction between privilege and power, and where the act has not been done within the House (for no act there done can any tribunal in my opinion take cognizance but the House itself) and is clearly of a nature transcending the legal limits of privilege, it will proceed against the doer as a transgressor of the law."

Lord Denman denied further that the lex parliamenti was a separate law, unknown to the judges of the common law courts. Either House, he said, was not the successor of the High Court of Parliament, and could bring an issue within its exclusive jurisdiction simply by declaring it to be a matter of privilege. Any other proposition was "abhorrent to the first principles of the constitution". The resolutions of the House based on the conclusions of the select committee (see above) were not the action of a court of law, legislative, judicial or inquisitorial, so that the supremacy of the House of Commons over other courts had nothing to do with the question. In any case, it was, he added, to the judges, no basis for regarding the courts of law as in principle incapable of reviewing any decision of the House of Commons. Conversely, there was no parliamentary revision of court judgments for error. The Commons was not a court of law in the sense recognized in

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44 Stockdale v H Nassard (1839) 112 ER 1111 at 1118 ff, esp. pp. 1120-22, 1123-25, 1129-30, 32 (Coler.)
45 104 ER 339 and esp. the observations of Bayley at 562. The judgment was later affirmed in Exchequer Chamber and in the House of Lords (1844-45) 11 AL ER Rep 301.
46 1836-37 173 ER 102.
47 1837 419; 112 ER 1120-22, 1157 ff, 1167, 1168.
48 1837 532; House Committee on Publication of Printed Papers, HC 286 (1837) paras 59, 60, 69.
49 It was urged, for example, that the courts would feel themselves in an impossible situation if the two Houses fell into dispute over the exercise of a privilege—as they had in Stockdale's claiming a privilege as yet unextincted by either House (Stockdale v H Nassard (1839) 112 ER 1111 at 1168).
50 1839 112 ER 1197.
having received an unfavourable verdict, the House of Commons, again
despite their strong view expressed in the resolutions referred to above,
ordered to be paid the damages and costs for which Messrs Hansard were
decided liable. It was, however, agreed that, in case of future actions, the firm
should not plead and that the parties should suffer for their contempt of the
resolutions and defiance of the House's authority.

When, therefore, a third action was commenced for another publication of the
original report, judgment was given against Messrs Hansard by default. 
Damages were assessed and the sheriffs of Middlesex levied for the amount,
though they delayed paying the money to Stockdale for as long as possible. In 1840, the Commons committed first Stockdale and then the sheriffs, who had
declined to repay the money to Messrs Hansard. Proceedings for the sheriffs'
release on a writ of habeas corpus proved unsuccessful.39 Howard, Stockdale's solicitor, was also proceeded against, but escaped with a reprimand.

While in prison, the persistent Stockdale commenced a fourth action, for his
part in which Howard was committed. Messrs Hansard were again ordered
not to plead, and judgment was entered against them. At this point, the
situation was in part resolved by the introduction of what became the Parliametary Papers Act 1840, affording statutory protection to papers published by order of either House (see p. 225).

The case of Howard v. Gostel (1845) may be viewed, however, as a continuation of the conflict in some of its aspects. Howard brought an action
against the Serjeant at Arms and others for having taken him into custody and
committed him to prison in obedience of the House's order and the Speaker's
warrant.40 Leave to appear was given to the defendants and the Attorney-
General was directed to defend them.41 The court favoured the plaintiff on
the grounds of the technical irregularity of the warrant. The defendants argued that the warrant might be examined under the statutes as
if it had issued from an inferior court (see p. 193), while at the same time
concluding that they might adjudicate it to be bad in form "without impeaching
the authority of the House or in any way disputing its privileges'.

A select committee eventually condemned this doctrine, but advised the House
'that every legitimate mode of asserting and defending its privileges should
be exhausted before it be prevented by its own authority. the further progress
of the action.42 The House accepted the advice and an appeal was lodged.43 In order,
however, to avoid submission to any adverse judgment on appeal, the Serjeant
was not authorized to give bail and execution was levied on his goods.44 In the

Early and Mid-Twentieth Century

Many subsequent cases had their origin in the desire to determine the precise
limits of the statutory phrase 'proceedings in Parliament', some of them with
a particular concern for what is internal to Parliament in the context of its
claim to exclusive cognizance (pp. 237-239). In general, the judges
have taken the view that when a matter is a proceeding of the House,
beginning and terminating within its own walls, it is obviously outside the
jurisdiction of the courts,45 unless criminal acts are involved. Equally clearly,
if a proceeding of the House results in action affecting the rights of persons
exercisable outside the House, the person who published the proceedings of
the servant who executed the order, or the House, is justified in the action
of the courts, who may inquire whether the act complained of is only
covered by the order, and whether the privilege claimed by the House does, as
pleaded, justify the act of the person who executed the order.

The boundary lines were not so clear in practice. In Bradlaugh v. Gostel it was
decided that if the House of Commons is-as for certain purposes and in
relation to certain persons it certainly is-the absolute judge of its own
privileges, it is obvious that it can for these purposes and in relation to these
persons practically change or practically supersede the law.46 Stephen J. went on
to say that even if the House had wrongly interpreted a statute prescribing

39 (1839) 1 El. 1 113-14. 1182, 316.
39 Sheriff of Middlesex (1840) 112 ER 439. The sheriff paid the money to Stockdale under an
attachment (Stockdale v. Hansard (1839) 112 ER 1127).
39 C.J. (1845) 59, (1845) 116 ER 151 and see also Howard v. Gostel (1842) 174 ER 553. The
House ordered Howard to appear at the Bar when he was brought up in the House of
Stockdale's fourth action against Hansard. He asked the order of the court and the House
instead of the serjeant in contempt, followed a proceeding of 1751 (1757-58) 707 and
served him to appear for contempt. The order of the House was the
Serjeant on which Howard v. Gostel (1845) 116 ER 139 was founded.
39 C.J. (1845) 518 and Parl Deb (1845) 57, p. 23. 967.
40 Select Committee on Irritated Papers. Second Report, HC 297 (1845) 51 vi.
41 (1845) 542; Parl Deb (1845) 80, p. 107, and ibid (1845) 81, p. 1228.
41 C.J. (1845) 563.
THE LATER TWENTIETH CENTURY

The Strauss case and the reference to the Judicial Committee

In the first of the important cases in the later twentieth century the House of Commons came to a significant conclusion about the limits of the phrase (and the protection afforded) 'proceedings in Parliament'. The Attorney-

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41 1183-1411 SE QM 371
42 1 Williams & Norris [1899] 1 QB 715.
44 [1935] KBD 594 at 594 ff, ep 602, 603 In R v Chetwynd [2010] UKSC 52 (para 78) Lord Phillips thought that a presumption that without express provision statutes did not apply to proceedings in Parliament within the Palace of Westminster was one which was 'wides to question'.
45 HC 101 (1938-39).
46 CJ 1938-39 489.
48 CJ 1937-58 260.
49 CJ 1937-58 42.
50 Case 431, 1958. A dissenting judgment, which would have permitted votes for defenition in respect of speeches in Parliament to be issued, but that struck as unconst itute the right that defenition was in respect of a proceeding in Parliament is set out in (1964) Public Law 59-62. The dissenting judge avered:
51 The Bill of Rights is directed to the courts of law. It directs them not to question proceedings in Parliament. The Parliamentary Privilege Act 1770 is directed to the two Houses . . . . . It direct at them not to seek to impeach or call in questions the acts of these two . . . . . obey their mandates, there will be no conflict. The right of every Englishman to seek redress in the courts of law is preserved under the aegis of the House of Commons.
52 the right of Members of Parliament to freedom of speech is preserved intact because the courts will refuse to entertain an action which questions it.
Dingle v Associated Newspapers

It was held in 1960 that to impugn the validity of a report of a select committee of the House of Commons is contrary to article IX of the Bill of Rights. In an action for libel raised against a newspaper, it was decided that those who published such a report bona fide and without malice were entitled to the protection of the Parliamentary Papers Act 1840 (see p 225) and that it was not relevant to the action for the plaintiff to comment on the select committee's report or on the proceedings leading to its publication.

Stourton v Stourton

In 1962, a judicial decision re-opened the long-standing tensions in the relative authority of the Houses and the courts. In arriving at the conclusion that parliamentary privilege protected a peer from arrest on a writ of attachment, the purpose of which was to compel performance of acts required by civil process rather than to punish for contempt of a criminal court, Scaman J said that while Parliament would consider the nature of the process and all the circumstances of the case before deciding whether to regard the arrest of a Member of either House as an invasion of privilege, he, sitting in the High Court of Justice, need not take the law to be applied only from the practice of the House of Lords: "I think that I have to look not only to the practice of the House but also to the common law as declared in judicial decisions in order to determine in this particular case whether privilege arises, and if so, its scope and effect."[7]

Church of Scientology v Johnson-Smith

In 1972, in an action for damages, in which the plaintiff sought to prove malice and rebuke the defendant's plea of fair comment by reading extracts from the Official Report of the Commons, the court held that the scope of parliamentary privilege was not limited to the exclusion of any case of action in respect of what was said or done in the House, but extended to the examination of proceedings in the House for the purpose of supporting a cause of action. This was not even though the cause of action itself arose out of something done outside the House.[7] Some 20 years later, however, the House of Lords in its judicial capacity considered further the breadth of certain aspects of this judgment.[7]

British Railways Board v Pickin

The 1973-74 case of Pickin (see p 228) demonstrated that, though the courts continued to be careful not to act so as to cause conflict with Parliament, there were two views in the judiciary about where the boundary between the courts' and Parliament's jurisdiction lay. The Court of Appeal held that the question whether a court was competent to go behind a private Act to investigate whether it had been properly obtained was a triable issue. If an investigation an abuse was shown to have occurred, the court might be under a duty to report the matter to Parliament. Lord Denning MR stated that it is the function of the court to see that the procedure of Parliament itself is not abused, and that undue advantage is not taken of it. In so doing the court is not trespassing on the jurisdiction of Parliament itself. It is acting in aid of Parliament and, if I may add, in aid of justice.

The House of Lords in its judicial capacity took an entirely opposite view. The function of the court was to consider and apply the enactments of Parliament. Accordingly it was not lawful to impugn the validity of the statute by seeking to establish that Parliament, in passing it, was misled by fraud or otherwise. Any investigation into the manner in which Parliament had exercised its function would or might result in a conflict. The Lords upheld clear authorities from the nineteenth century onwards that (for example):

all that a court of justice can look to is the parliamentary roll. You see that an Act has passed both Houses of Parliament and that it has received the Royal Assent, and no court of justice can inquire into the manner in which it was introduced into Parliament, what was done previously to its being introduced, or what passed in Parliament during the various stages of its progress.[7]

Lord Reid concluded that, for a century or more, both Parliament and the courts had been careful not to act so as to cause conflict between them. He would support the action moved for by the respondent only if compelled to do so by clear authority, but "it appears ... that the whole trend of authority over a century is clearly against permitting any such investigation." One of the reasons given by Lord Simon of Glaisdale for concerning the judgment was that any other conclusion would impinge upon proceedings in Parliament, contrary to the Bill of Rights,[7] and he intimated the subs judicata rule as a

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[7] Dingle v Associated Newspapers [1960] 2 QB 460. See Stourton v Stourton [1963] 1 All ER 406 at 409. Scaman J in Stourton v Stourton [1963] 1 All ER 406 at 409. Lord Denning MR in Stourton v Stourton [1963] 1 All ER 406 at 409. In Pickin v Hart [1973] 1 All ER 406 Lord Browne-Wilkinson, commenting on the earlier judgment, observed that it was right that the court should consider whether evidence of what the defendant said in the House of Commons would be contrary to article IX of the Bill of Rights. However, "to suggest that in no circumstance could the speech be looked at other than for the purpose of seeing what was said on a particular date [would be] to have to understand the context of the issues which arose in that case." Since these issues included a charge that the defendant acted improperly in Parliament, article IX was infringed.

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[7] British Railways Board v Pickin [1974] 1 All ER 601. See Pickin v British Railways Board [1974] 1 QB 219 at 230. It was said that the case in which the Court of Appeal had in large part founded its decision [MacKinnon v Stourton (1772) 29 1 Mont 745 (1811) 1 PLA 217] 7 (1772) 1 PLA 217 was insufficient to support its conclusion, being more probably a decision on the construction of an Act. Lord Wilberforce expressed the familiar view that even if the construction of an Act had been clearly intended, it would be difficult to sustain the Act against the chain of explicit later decisions [1974] 1 All ER 601 at 622-3. In Pickin v Hart [1973] 1 All ER 406 Lord Browne-Wilkinson, commenting on the earlier judgment, observed that it was right that the court should consider whether evidence of what the defendant said in the House of Commons would be contrary to article IX of the Bill of Rights. However, "to suggest that in no circumstance could the speech be looked at other than for the purpose of seeing what was said on a particular date [would be] to have to understand the context of the issues which arose in that case." Since these issues included a charge that the defendant acted improperly in Parliament, article IX was infringed.
parliamentary means of avoiding conflict, just as the courts had been careful to exclude evidence which might amount to infringement of parliamentary privilege.60


cite

Anderson Strathclyde

In the case of R v Secretary of State for Trade, ex p Anderson Strathclyde plc, in 1983,61 it was held that a report in the Official Report of the House of Commons of what had been said and done in Parliament could not be used to support a ground for relief in proceedings for judicial review in respect of otherwise, 'the court would have to do more than take note of the fact that a certain statement was made in the House on a certain date. It would have to consider the statement - with a view to determining what was [its] true meaning... and what were the proper inferences to be drawn from [it]. This... would be contrary to article IX of the Bill of Rights. It would be doing what Blackstone62 said was not to be done... Moreover, it would be speed in the House. In 1983 the House of Lords found Anderson Strathclyde wrongly decided so far as the court in that instance refused to look at parliamentary materials to prove a fact (set p 229, n 44).63


Zircon

When, in 1987, the Attorney-General sought an injunction against a number of Members of the House of Commons with the intention of preventing them from showing a film in the House until the House had had an opportunity of

co-operate as far as possible with the parliamentary authorities in matters where there may be some reasonable ground on which a conflict might arise; and see p 239, n 90.

cite

see, eg, Dreyfus v Associated Newspapers Ltd [1960] 2 KB 402; see also an Australian case, Shevchenko v Commonwealth of Australia [1983] 2 ACTR 1 at 3 and (1986) 64 ACTR 1 at 48, where it was held that an order made in the courts could not be set aside unless there was something in the record which showed that the order was not arrived at in accordance with the principles of natural justice; and in Shevchenko v Commonwealth of Australia [1986] 64 ACTR 1 at 48, where it was held that an order made in the courts could not be set aside unless there was something in the record which showed that the order was not arrived at in accordance with the principles of natural justice.

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[1980] 2 All ER 133, esp at 139c.

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See, eg, Dreyfus v Associated Newspapers Ltd [1960] 2 KB 402, per Lord Atkin: 'the report of proceedings in Parliament is not evidence, and even in the case of a report which is not evidence, the courts will not accept the report of proceedings in Parliament as evidence of the truth of the matters reported.

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[1980] 2 All ER 133, esp at 139c.

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See, eg, Dreyfus v Associated Newspapers Ltd [1960] 2 KB 402, per Lord Atkin: 'the report of proceedings in Parliament is not evidence, and even in the case of a report which is not evidence, the courts will not accept the report of proceedings in Parliament as evidence of the truth of the matters reported.

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[1990] 1 W & M 114, 1499 (1674-12). 63; whatever matters arise concerning either House of Parliament ought to be considered, discussed and adjusted by the House to

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Pepper v Hart [1993] 2 QB 487, 498, 503-4, 507, 516. The Lords decision was unanimous, and the judgment was given by Lord Justice Jacob, and the case raised issues of

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17. The courts and parliamentary privilege

The twenty-first century

A v The United Kingdom

In 2002 the European Court of Human Rights considered a case which related to a central purpose of article 9 of the Bill of Rights, namely to prevent Members' speeches being subject to actions for defamation. A Member referred to a critical remark in a speech in the House of Commons, saying that the protections of parliamentary privilege were inadequate. The European Court of Human Rights held that the protections were sufficient, and ruled that the Member had acted in a way that would not constitute an interference with the right to freedom of expression.

Jackson v Attorney-General

The applicant in this case sought to argue that the Hunting Act 2004 was an Act of Parliament and therefore had no legal effect because it had been passed under the provisions of the Parliament Act 1949 which itself was not an Act of Parliament passed by both Houses. The European Court of Human Rights held that the Act was not an Act of Parliament because it was passed under the provisions of the Parliament Act 1911 but was not an Act to which the provisions of that Act applied. The latter argument rested on a different interpretation of the Parliament Act 1949 which would have been appropriate for a court to consider.

Note:


Ex p Rees-Mogg

In the following year, an application came before Queen's Bench Division in which the applicant sought review of the Foreign and Commonwealth Secretary's decision to ratify the Treaty of European Union signed in Maastricht in February 1992. There had been much debate in both Houses on the European Communities (Amendment) Bill 1992, which made amendments to United Kingdom law consequent on the Treaty, and the Speaker had publicly indicated that the Commons was 'entitled to expect ... that the Bill of Rights [would] be required to be fully respected by all those appearing before the court.' In the event, both the court and the parties were conscious of the need to confine judicial review within its proper area, the legality of government action and interpolation. The issues in the present case arose clearly within the proper sphere of judicial review, as questions of policy are within the sphere of Parliament.'

Prebbe v TV New Zealand

Two cases in the 1990s raised the hitherto unexplored situation where Members wished to demonstrate in actions in the courts that what they were alleged to have said or done in the House was true and honourable. The first such case, Preece v Television New Zealand Ltd (see also pp 205, 233, 244, n 68), arose in New Zealand, where, as in the United Kingdom, article IX of the Bill of Rights is part of domestic law. Among the allegations in the case were statements that had been made in the New Zealand Parliament relating to the manufacture of illegal software, and that Members had procured the passing of a bill through that House as part of the implementation of a conspiracy. The lower court in New Zealand struck out these allegations, because they could not be judicially required into the Bill of Rights. The New Zealand Court of Appeal agreed, but ordered a stay under the privilege involved was not waived by the House of Representatives. That House then allowed any power to effect such a waiver (see p 205). When the matter came before the Privy Council, Lord Denning MR held that the Lords operated different principles in their ruling (see p 205).

The case before the court was not sensitive to the parameters of the present case, and the court agreed to rule on a narrow construction of article IX, and could lead to

rules excluding parliamentary material did not apply where the action in question was brought by a Member of Parliament. It is to be noted that the Judicial Committee that the privilege protected by article IX was that of Parliament itself, which could not be determined by an individual Member. The Committee therefore concluded that parties to litigation, by whatever means, cannot bring into question anything said or done in the House by suggesting (whether by direct evidence, cross-examination, inference or submission) that the action or words were inspired by improper motives or were untrue or misleading. Such matters are entirely within the jurisdiction of the House, subject to any statutory exception. However, the Committee also asserted that this principle did not exclude all references in court proceedings to what had been done in Parliament, and concluded that 'if the defendant wishes ... to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning there is no objection to that course.'

Defamation Act 1996

Just such a statutory exception as was referred to by the Judicial Committee was shortly afterwards made in the United Kingdom, following a case in which the plaintiff, a Member, claimed that a newspaper article was defamatory, in that it alleged corruption by him in the discharge of his parliamentary responsibilities, and had led to his resignation as a Minister. It was claimed that the defences the courts could not be brought in without infringing the privileges of Parliament, and he asked for the action to be stayed. After hearing arguments, the judge, Mr. Justice Bright, dismissed the case on the grounds of the authority, the case of Prebble v TV New Zealand Ltd, 1996, p 13. The scope of the section is expressly limited to defamation proceedings, and applies to both Houses. It is a case where the conduct of a person in or in relation to proceedings in Parliament in issue, may raise, for the purposes of these proceedings and so far as concerns him, the exactly the conflict between Parliament and the courts which both had long been at pains to avoid (1994) 3 ER 416-17).
Reliance on parliamentary proceedings

The principles set out in Pepper v Hart and in Pemble have received further judicial examination in several recent cases. The first and perhaps most important of these was the judgment of the Judicial Committee of the Privy Council in the case of Trussart v A-G of Saint Vincent and the Grenadines. In this case the Judicial Committee allowed the appellant to rely on statements made by the Prime Minister in the House of Assembly as evidence of unlawful motivation in a case of compulsory purchase. The Judicial Committee's decision was founded on two arguments. The first was that the House of Lords had on a number of occasions stated that use could be made of ministerial statements in Parliament in judicial review proceedings to explain conduct occurring outside Parliament. This approach was endorsed by the Joint Committee on Parliamentary Privilege. The second was that the Prime Minister's statement was relied on simply for its explanation of the motivation of the executive's action outside the House. It was not being questioned as challenged.

The Speaker intervened in three cases in the High Court in 2007 and 2008. In the first case (R (on the application of Bradley) v Secretary of State for Work and Pensions) the judge distinguished between reliance on evidence given to a select committee and reliance on a report of a select committee. In refusing to take either into account, he stated that the evidence was inadmissible because reliance on it would inhibit freedom of speech in Parliament and thus contravene article IX. The report itself was inadmissible on the grounds that the courts and Parliament were both able to recognize their respective roles and it was therefore for the courts, not the select committee, to decide questions of law. In the second and third cases (R (Federation of Tour Operators) v Her Majesty's Treasury and Office of Government Commerce v Information Commissioner) the court expanded on the second point to state that in general the opinion of a parliamentary committee will be irrelevant to the issues before a court because of the nature of the judicial process, the independence of the judiciary and of its decisions and the respect that the legislative and judicial branches of government owe to each other.

Wheeler

Reliance on passages from reports of select committees was also addressed in Wheeler. The Office of the Prime Minister and the Secretary of State for Foreign and Commonwealth Affairs, in terms of parliamentary privilege, the principal point determined was that, even if a case of a breach of the administrative law principle of legitimate expectation could be made out, the court could not make any order or declaration which might imply a duty or obligation on any Member of Parliament to take any action in his capacity as a Member of Parliament.

Role of the Courts and the House of Commons: the Attorney-General's view

In April 2009 the Attorney-General laid a memorandum in the House of Commons Library on the relationship between the courts and the House of Commons and, in particular, on the question of the admissibility in criminal proceedings of material which might be used to impeach or question proceedings in Parliament. The principal conclusion of the memorandum was that the determination of whether material was inadmissible as evidence in a criminal trial by virtue of article IX was a question of law for the court. While it was open to the House to intervene in court proceedings to argue (for example) that reliance on particular material would contravene article IX, the court is not bound by the views of the House and in some cases the courts have not accepted the submissions of the House (or have not accepted them in their entirety), e.g. Pepper v Hart. The Attorney-General's memorandum concluded that "the respective roles of the courts and Parliament in relation to matters of privilege are now well settled. In particular, it is settled that it is the role of the courts to determine any questions of law relating to parliamentary privilege (especially in relation to article IX). There is a risk that the principle of comity would be undermined by a purported attempt by the House to determine such questions and thus usurp the determinative role of the courts."

A new Privilege Act?

Increased numbers of interventions by the House in cases before the courts where reliance on select committee evidence used by parties has revived discussion, following the recommendation of the Joint Committee on Parliamentary Privilege in 1999 (see p 218), about the need for a comprehensive Parliamentary Privileges Act.

On 23 June 2009 the Government introduced a bill to establish an independent authority (the Independent Parliamentary Standards Authority) to regulate Members' allowances following revelations about claims made by Member...
bers under the existing scheme. Provisions affecting privilege featured throughout the bill but in particular the bill laid aside the application of provisions of the bill in a very broad way. The Justice Committee took the seriously restrictive effects that these provisions would have on freedom of speech and debate. The Committee reported that there was freedom of speech and debate to the Second Reading of the bill. One relevant provision was removed by agreement from the bill in Committee of the whole House, a second clause was negatively divided on. Further provisions in the bill relating to privilege were amended in the House of Lords.

At much the same time the draft Bribery Bill brought forward by the Government included a provision which sought to permit evidence of parliamentary proceedings to be adduced in the prosecution of Members of either House of Parliament, notwithstanding the provisions of article IX. The joint committee considering the draft bill concluded that, while the draft bill was not intended to be a serious offence and Members ought to be subject to the same criminal laws as everyone else, that did not justify piecemeal and inconsistent encroachments on the protection of article IX. In its report, the Joint Committee stated,

[...]

The Committee added that the most appropriate place to address potential evidential problems would be in the context of a Parliamentary Privileges Act. In the event, the proposal to abridge the protection of article IX was not included in the Bribery Bill introduced by the Government in the Session 2009–10.

The wider implications of reform have been remarked upon by three other select committees. First, the Joint Committee on Human Rights in its report on the Parliamentary Standards Bill drew attention to the implications of how privilege and how the requirements of fairness under the Convention might be met in relation to parliamentary privilege in legislation on privilege. Second, in its report on Constitutional Reform and Renewal, the Justice Committee warned of the dangers of piecemeal reform and the need for a "proper understanding of the position and role of Parliament is relation to the institutions of the State". Finally, the Committee on the Issue of Privilege (see pp 239, 240-241) without concluding on the merits of a statute on parliamentary

privilege, nevertheless recommended that a new Joint Committee of both Houses should undertake a comprehensive review "setting out to define and limit parliamentary privilege in statute".

In 2011 the Government announced its intention to bring forward a draft Parliamentary Privilege Bill. This is expected to be preceded by an examination of the recent judgment of the House of Lords Privilege in favour of codification and to reflect any recent changes in the law.

111 See HC Deb (2010-11) 328, col 639.
CHAPTER 47

CONTEMPT

At common law a legislature such as the House enjoyed no power to punish for contempt, though it could take direct action to coerce persons into obeying its orders (such as to leave its presence or to attend a sitting). It was doubt about the House's ability to take action itself to enforce or vindicate a breach of its privileges or to punish any other contempt that was the motivating factor behind a general legislative statement of the House's powers early in its life. With the enactment of the Parliamentary Privileges Act 1865, the House was empowered to take action against persons who breached its privileges or showed contempt to it in any other way, and to punish those persons itself rather than being forced to rely exclusively or mainly on the courts for protection. The power to punish for contempt is the power to take direct action that is sanctioned by law. (The types of punishment which the House may inflict are considered in Chapter 48.)

APPLICATION OF THE POWER TO PUNISH FOR CONTEMPT

The power to punish applies in respect of breaches of privilege. Any breach of one of the privileges of the House can be punished by the House. However, by the very nature of these privileges it is unusual for the House to be involved in enforcing them (except those relating to disclosure of select committee proceedings). Breaches are more likely to be raised in the context of legal proceedings before the courts and, being part of the general law of New Zealand, are recognised and applied by the courts as necessary even if not specifically raised by the parties to the litigation. Cases of breaches of specific privileges arise before the House but they are comparatively infrequent.

But as well as the House's power to punish for contempt extending to punishing breaches of specific privileges, the power also includes the power to punish any act which the House considers to be a contempt whether or not that act violates a specific privilege. The distinction between a contempt and a breach of privilege is not always clearly drawn, there is a tendency to refer to a "breach of privilege" when what is really meant is a contempt.

There are many acts other than breaches of privilege which although they do not interfere with freedom of speech, freedom from arrest or the House's other privileges, nevertheless interfere with the work of the House or its members or are a serious affront to their dignity. Not being violations of a specific privilege of the House, the courts cannot protect the House against them unless they are also crimes or in some sense unlawful. But the power to punish for contempt held by the House extends to punishing these types of acts too. They are not breaches of privilege, but just as breaches of privilege may be treated as contempt and punished, so may any other act which "obstruct or impede [the House] in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or beliefs upon itself, its Members or its officers." These types of acts, along with breaches of privilege, may be treated as contempt and punished accordingly. "Contempt", then, is a term which may embrace all breaches of privilege as well as a great many other types of conduct that the House considers to be worthy of censure.

Definition of contempt

There is no formal legal definition of what constitutes a contempt. Ultimately, the House is the judge of whether a set of circumstances constitutes a contempt. This potentially open-ended nature of contempt has led to criticism of the lack of certainty for those indulging in conduct that might be treated as objectionable by the House. An attempt has therefore been made by the House to give greater definition to the types of conduct that it may decide constitute contempts. To this end, in 1996 a general statement defining contempt was adopted by the House together with a number of other particular statements of the types of conduct that may fall within the overall definition. It was emphasised, however, that these particular statements were not intended to be exhaustive and that new situations could arise which the House may wish to treat as contempts. Its right to do so is declared to remain unimpaired.

Using the contemporary edition of Erskine May as the model, the House has resolved that it may treat as a contempt:

(a) any act or omission which:

- obstructs or impedes the House in the performance of its functions, or
- obstructs or impedes any member or officer of the House in the discharge of the member's or officer's duty, or
- has a tendency, directly or indirectly, to produce such a result.

Although the statement refers expressly to the House, members and officers only, contempt can also embrace conduct involving other persons, such as witnesses and petitioners, where it has deleterious effects on their participation in the parliamentary process and thus obstruct or impede the House.

This general statement gives a context and background within which the House judges whether a contempt has occurred, but the specific examples of the types of conduct that may constitute a contempt stated in their right as presumed obstructions or impediments to the House or its members. There is no two-stage test for contempt against both the specific examples and the general definition.

Exercise of the power

The House may declare particular conduct to be a contempt without any antecedent inquiry into it. But, under the House's rules, a deliberative process is usually followed before arriving at such a finding. That is invariably the Speaker who decides, in the first instance, if a matter of complaint falls within the definition of contempt, as concerning a breach of a recognized privilege, or by falling within one of those areas of conduct identified by the House in Standing Orders, or as otherwise being potentially justified for treatment as a contempt even though there is no definitive precedent of that type of conduct. But, reverting to the reason why parliamentary privilege exists in the first place, it has been emphasised that the power to punish for contempt is not a power to punish for its own sake. It may justifiably be utilised only in case of need -- the need to vindicate the House's position because of an obstruction or impediment to carrying out its constitutional functions. If there is no need to exercise the power (notwithstanding that facts that would otherwise support its exercise exist), the matter will not be pursued. The fact that a matter may have been dealt with as a breach of order does not prevent that matter being punished as a contempt if the facts justify this. There is no "double jeopardy"
rule in regard to breaches of order and punishment for contempt. (See Chapter 11.)

The view has also consistently been taken that the exercise of the power to punish, being vested in the House, is of significant power and must be used with such deliberation that even the House cannot delegate it. It must be exercised by the House itself. No committee, even the Privileges Committee, has ever been delegated with the power to inflict punishment. But whatever action the House chooses to take, it must avoid acting in a disproportionate or unreasonable manner. In Australia, a Senate committee has accepted that if a public servant refuses to answer a question or produce a document at the explicit direction of a Minister, the legislature's remedy should lie against the Minister and that it would be unjust to impose a penalty on the public servant in such circumstances. If there is a personal culpability on the part of a witness, the House will proceed against the witness in a personal capacity, but the political culpability should be addressed at the political level. By making such distinctions a legislature applies proportionality and reason in its proceedings.

The House's procedures for invoking the power to punish for contempt only after preliminary examination by the Speaker, inquiry by the Privileges Committee and endorsement by the House are designed to ensure that the power is used proportionately and reasonably. However, it is of the essence of parliamentary privilege that the House ultimately makes the judgment as to whether an act of contempt is justifiable. The power to punish for contempt is a highly discretionary power and this discretion is much more commonly exercised to refrain from invoking it in circumstances where it may be justifiable, than the contrary.

**Examples of Contempt**

The House, in its Standing Orders, has given examples of the types of conduct that it may decide to treat as contempt. These examples do not form a code of contempt, though it would be exceptional for a case not falling within them to be treated as a contempt. It is always possible that a situation will arise that is not explicitly contemplated in these examples but which the House will wish to treat as a contempt. Some miscellaneous examples of conduct already identified as potential contempts, even though not falling within the specified examples of contempt, are described below. But to constitute a contempt such conduct must fall within the House's overall definition of an act or omission obstructing or impeding the House or those executing the House's business. If conduct does not have this quality, it cannot be a contempt.

The types of contempt recognised by the House are discussed below under several broad headings—

- breach of privilege
- attendance of members
- pecuniary contempts
- records and reports
- disobedience to the rules or orders of the House
- interference or obstruction
- misconduct
- punishing parliamentary contributions
- reflections
- other contempts.

**Breaches of Privilege**

The House may punish as a contempt a breach of one of the privileges of the House. Because the privileges of the House (freedom of speech, freedom from arrest, exemption from legal process etc.) are a part of New Zealand law, they should be observed in applying the law. The House may wish to be represented in legal proceedings in order to ensure that a point of parliamentary privilege is not overlooked and a court, in determining what the law is, may not agree with the House's view of the extent of its privileges. But, given those inevitable tensions, a breach of privilege should be corrected or prevented in the same way as any other breach of law, by the parties concerned obeying the law, and, in the absence of them doing so, a court declaring and enforcing the law.

While the power to punish for contempt will not normally be invoked in such circumstances, it has been specifically affirmed by the House as remaining available to it, and the House has, on occasion, reminded litigants that it remains an option, notwithstanding that the matter has also been dealt with in legal proceedings.

**Attendance of Members**

The House's Standing Orders imposing an obligation on members to attend the House and providing machinery for granting leave of absence were revived in 1999. However, the House has still open to it to resolve how a member who has absented himself or herself from parliamentary duties attend the House. Failure to do so in response to such an order would be a contempt. (See Chapter 3 for attendance of members generally)

**Pecuniary Contempts**

**Disclosing Financial Interests**

Members are under an obligation to disclose any financial interest that they have in the outcome of the House's consideration of any business before participating in consideration of that business. (See Chapter 3) Failure to disclose such an interest is a contempt. In all cases it is the Speaker who determines whether or not the member actually has a financial interest. The Speaker's decision on this point is final and is not subject to review or reversal by the Privileges Committee if an allegation that a contempt has been committed is referred to that committee.

**Registration of Pecuniary Interests**

Members are required to make initial and annual returns of pecuniary interests that they hold. (See Chapter 3) Knowingly failing to make a return by the due date specified for a return is a contempt. It is also a contempt for any member knowingly to provide false or misleading information in a return of pecuniary interests. While the Auditor-General has a review and inquiry role in respect of returns of members' pecuniary interests and may inquire into whether a member has compiled with his or her obligations to make a return, a report from the Auditor-General is not an essential prerequisite to alleging a contempt in regard to the registration of pecuniary interests. However, it would be difficult to establish grounds for an allegation of contempt without invoking or attempting to invoke the Auditor-General's involvement first.
Bribery

Any member who receives or solicits a bribe to influence the member's conduct in respect of proceedings in the House or at a committee commits a contempt. Because of the serious nature of such allegations, members are not permitted to bring them up incidentally in debate but must raise them in the proper way as matters of privilege. Also, given the seriousness of an allegation of bribery, the standard of proof needed to make it out is of a very high order. This is reflected in the Speaker's consideration of any matter of privilege that is raised.

Such allegations are rare. In 1872 it was alleged that a member had been offered money to use his parliamentary position to advance the interests of a railway manufacturer. Though the allegation was not proven, it was made that a member had been paid to support Sir Joseph Ward's Government in a crucial vote in the House. Though this allegation was referred to a committee for investigation, no evidence to support it could be found and the matter was dropped. In 1979, an allegation that a member had solicited funds for herself or for other persons close to her, such as her children, in return for her vote, was dismissed by the Speaker for lack of evidence.

It is a contempt to offer or attempt to offer a bribe to a member as an inducement to act in a certain way in the House or in a committee. Though allegations of attempted bribery have been made on several occasions, there has never been a case where the payment and receipt of a bribe has been disclosed as a breach of privilege in New Zealand. The Speaker has warned that a contempt would be committed if a member was offered payment to resign his or her seat.

To constitute a contempt, any bribe offered or received must relate to the member's conduct in respect of business before the House or a committee or business to be submitted to the House or a committee. But attempting to bribe a member in any capacity at all, whether in relation to parliamentary business or not, is also a crime.

Professional services connected with proceedings

A contempt is a contempt for a member to accept professional services rendered by the member in connection with proceedings in the House or at a committee. This contempt will be committed whether or not the member concerned participates in parliamentary proceedings on the matter for which the member has received fees. Nor need there be any suggestion of corruption on the part of the member. The House is concerned to ensure that a member's judgment may not be influenced by a professional interest (other than an interest as a member of Parliament) which may be in conflict with the member's public duties. Whether there is a conflict or not, the House will not tolerate the appearance of one. For this reason members should be careful to keep their official and private capacities quite separate in their business dealings.

Where a newly elected member, who was also a practising solicitor, received payment for two local bills he had drafted (even though he had done the work before he entered Parliament), the House found him to have acted improperly and fined him $500. In another case, a comment (later withdrawn) that a member had been paid for things that a trust wished him to achieve in Parliament appeared to raise a serious question of contempt. Acceptance of a payment for parliamentary services to be rendered would be a potential contempt. However, on inquiry it was found that there was no evidence in that case that the payment in question was made, other than in recognition of past services to the trust rendered before the member was elected to Parliament.

Advocacy by members of matters in which they have been concerned professionally

Closely akin to receiving fees for professional services is advocacy in respect of business with which the member has been professionally concerned. This type of contempt is based on a House of Commons resolution of 1859 that "it is contrary to the usage and decorum of the House that any of its members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward." It is not taken to preclude members taking part in debates or matters (such as law suits) in which they have been professionally engaged. A member was held to have acted contrary to its terms, even though the parliamentary action he took (presenting a petition) occurred five years after he had acted professionally in respect of the petition.

Records and reports

The custody of the journals and of all petitions and papers presented to the House and other records belonging to the House is vested in the Clerk of the House. Such documents may not be taken from the House or its offices without an order of the House or permission of the Speaker. To remove, without authority, any papers or records belonging to the House is a contempt. Similarly, to falsify or alter any such paper or record will be treated as a contempt.

It is also a contempt to publish a false or misleading account of proceedings before the House or a committee.

A newspaper headline misrepresenting the purport of evidence given before a select committee was considered to be of such a "startling and inaccurate nature" that it would tend to lower the esteem in which the House was held and, therefore, amounted to a contempt. It stated that a witness had made a statistical claim that four members of Parliament were probably homosexuals, although this did not accurately convey the essence of the witness's evidence even as reported in the newspaper article. In another case, a member complained that a newspaper article falsely accused him of attacking the integrity of the Speaker in a speech he had made in the House (which, if true, could in itself be treated as a contempt), but a motion to treat the article as a question of privilege was not proceeded with.

But merely stating one's opinion of the effect of a committee's decision cannot amount to a contempt under this rule (though if it was a serious reflection on the character of members of the committee it might constitute a contempt for that reason). Only a statement that purports to be a factual description of parliamentary proceedings falls within this example of contempt.

Disobedience to the rules or orders of the House

Any person who disobeys an order of the House directed to that person commits a contempt of the House. Such an order would normally be a direction to attend the House
or a committee to give evidence, or to produce to the House or a committee documents thought to be in that person's possession. The power to treat disobedience to such an order as a contempt directly supports the House's power of inquiry.

Orders to attend or produce documents
It is unusual for the House itself to make an order to attend or produce documents. If a committee has the power to send for persons, papers and records it may itself direct that a person attend before it to give evidence or that the person produce papers and records in that person's possession that are relevant to a matter before it. Only the Privileges Committee inherently has this power. In respect of other committees the power must be specifically conferred on the committee by the House. The current practice is not to confer the power. In such cases the Speaker may order any person to attend or produce papers in lieu of an order of the committee. (See Chapter 30.)

Any failure to comply with the order of a committee having power to send for persons, papers and records or with the order of the Speaker may be treated as a contempt.

Refusing to answer a question
A witness who refuses to answer a question as ordered to do so by the House or a committee may be held to have committed a contempt. Witnesses have been held in contempt for refusing to answer a question in the House and before a select committee. Where a witness before a select committee does object to answering a question, the committee must, in private, consider the ground of objection and the importance of the question to its proceedings before deciding to insist on a reply.

Premature publication of select committee proceedings or report
It is a contempt to divulge the proceedings or report (including a draft report) of a select committee or a subcommittee contrary to the Standing Orders. In general, the proceedings of a select committee or a subcommittee, other than during the hearing of evidence, are confidential until the committee reports to the House. This rule is designed to promote the better functioning of the committee process and to affirm that the House is entitled to first advice of the conclusions of its committees. Speakers have warned members and journalists from time to time about the need to respect this rule. (See Chapters 23 and 24 for the rules on disclosure of select committee proceedings and reports.)

Strictly speaking, only members, officials, advisers and witnesses are in a position to divulge a committee's proceedings, for it is only they who are privy to those proceedings. However, other persons or organisations who disseminate information which has been improperly disclosed to them are also considered to have committed contempt if they do so, and have been punished by the House accordingly.

In principle, all evidence heard by select committees is heard at public meetings and all written evidence received is made available to the public. Only if the committee takes special steps to protect evidence it has received from public disclosure can any question of contempt arise. Members have been found to have committed contempt by divulging select committee proceedings when they informed other persons who then gave the proceedings further publicity by writing a newspaper article disclosing evidence.

Members and officers
Interferences or obstructions of members or officers may be overt or covert: consisting of an assault, threat or other form of intimidation or otherwise of an obstructing or molesting of a member or officer. In any case, if the action occurs in the discharge of the member's or officer's duties, it may be treated as a contempt. One early complaint of a molestation of members was the sealing of a spurious telegram to two Dunedin members which caused them to return south and needlessly absent themselves from the House. The House took no action.

A ministerial adviser was found to have committed a contempt by molesting a member in the execution of his duty when he made an insulting remark to the member as the member was passing him in the Chamber on the way into a division lobby. In another case a jocular remark directed by one member to another in the division lobby at which the latter took offence was held not to be a contempt. The Speaker has warned members not to allow banter in the Chamber to get out of hand. If it tended towards verbal intimidation of members, it could ultimately constitute a contempt. This is particularly
the case when a vote is in progress. Members of the Parliamentary Press Gallery have been reminded not to impede the free access of members to the Chamber, and a protocol regulating approaches to members on their way to the Chamber has been drawn up as a result of complaints. A distinction must be drawn, however, between members or outside persons properly seeking to influence other members, and attempts to influence members' actions which are intimidatory and may be held to be contempt. All members, when they speak in debate, try to influence their fellow members; so do all lobbyists when they are advancing their interests. Such conduct is perfectly proper. There is no contempt in respect of attempts to influence members, even by bringing pressure to bear on them (such as to withdraw support from them at the next election), unless there is a threat to do something which is improper in itself or which is of such an extraordinary or exaggerated nature that it goes beyond an attempt to influence the member and becomes an attempt to intimidate. So where a Bible-in-schools league accused a member of a breach of faith in failing to give total support to Bible reading in schools, and announced that a letter of his explaining his stance would be read at every league meeting held in Canterbury and equal prominence given to his vote against a bill then before the House or Bible reading, this was held to be a contempt as attempting to intimidate the member in his parliamentary conduct. If an article could have the effect of intimidating members in their parliamentary conduct, that is sufficient for a contempt to be made out. There does not need to have been any specific intention to threaten.

Instituting legal proceedings against members or officers seeking to restrain them from carrying out their official duties could also constitute a contempt on this ground, provided that such proceedings related to actions that members had taken or intended to take as part of parliamentary proceedings (for example, seeking an injunction to prevent a member raising a matter in the House). But in respect of their actions outside the House members are in the same position as any other citizen.

Witnesses and others

A similar principle of protection from harassment operates in regard to witnesses. Any attempt to intimidate, prevent or hinder a witness from giving evidence in full to the House or a committee may be held to be a contempt. Such intimidation or hindrance may take the same overt form as that relating to a member. It could also take a less overt form, such as the offering of a bribe to give false testimony, or the taking of legal action to prevent a witness from giving evidence at all or from producing all the evidence in the witness's possession.

Witnesses and counsel appearing before the House or a select committee are also entitled to be protected by the House from molestation or obstruction while discharging their duties. Such molestation or obstruction may be treated as contempt.

Serving legal process in the precincts of Parliament

Persons come to Parliament buildings on sitting days to take part in or observe the transaction of parliamentary business. The House will hold the service or attempted service of legal process within the parliamentary precincts to be a contempt if this is done on any day on which the House or any committee of the House sits. (The House or committee need not be actually sitting at the time service is effected; if such a sitting is held at any time on that day, a contempt is committed.) No contempt will be committed if the authority of the House or the Speaker to service of legal process is obtained beforehand. In practice, if a member is willing to accept service at Parliament House, the Speaker will give authority for process to be served. Service on a member in the Parliament buildings, even with the member's agreement, will be a contempt if the Speaker's authority is not obtained.

The parliamentary precincts are those areas which are legislatively held for parliamentary purposes. They include, as well as the Parliament buildings (the main building, library, and executive wing), the Bowen House building. Service of a subpoena on a Minister in his office in the Beehive (executive wing) has been held to be a contempt, as was effected on a sitting day. It is well established that law firms make arrangements with the Crown Law Office for executing service on Ministers.

The limitation on serving or executing legal process within the precincts does not prevent police officers on duty within the Parliament buildings or grounds arresting persons who commit or are about to commit criminal offences, but a warrant for the arrest of a person should not be executed there without first obtaining the Speaker's permission.

Misconduct

Deliberate misleading of the House

It is a contempt deliberately to attempt to mislead the House or a committee, whether by way of a statement, in evidence or in a petition. This example of contempt, while always potential, was given explicit recognition in 1963 when, following a political cause célèbre (the Profumo affair), the House of Commons resolved that a former member who had made a personal statement to the House which he subsequently acknowledged to be untrue had committed a contempt of the House. It has been submitted that there is an established constitutional convention that Ministers should always tell the truth to Parliament as far as this is possible without harming national security. Whether this type of contempt embodies a convention or not, regarding lying to the House as a serious transgression of parliamentary etiquette (quite apart from any moral considerations) has been said to be the only way for Parliament to keep a check on the executive.

The contempt can be committed by anyone taking part in parliamentary proceedings. It consists of the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate.

Members deliberately misleading the House

Most commonly allegations that there has been an attempt deliberately to mislead the House involve statements made by members in the House — whether by way of personal explanation, in the course of debate or in replying to a question. There are three elements to be established when it is alleged that a member is in contempt by reason of a statement that he has made: the statement must, in fact, have been misleading; it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and, in making it, the
member must have intended to mislead the House. The standard of proof demanded is the civil standard of proof on a balance of probabilities but, given the serious nature of the allegations, proof of a very high order. Recklessness in the use of words in debate, though reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House. The misleading of the House must not be concerned with a matter of such little or no consequence that it is too trivial to warrant the House dealing with it. A misunderstanding of this nature should be cleared up on a point of order.

For a misleading of the House to be deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters about which the member can be aware only in an official capacity. But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise. As well as a deliberate misleading of the House arising from a remark in the House, it is conceivable that members could mislead the House by their actions: for example, from a deliberate misuse of a voting proxy, by delivering to the Clerk a totally different document from that which the member obtained leave of the House to table, or by misrepresenting their authority to act on behalf of an absent member.

Witnesses and petitioners deliberately misleading
Witnesses giving evidence to committees are under an obligation to be truthful, whether they are under oath or not. As with members for a contempt to arise there must be some strong indication that there is an intention to mislead the committee. This can arise out of the nature of the evidence, if it can be presumed to be within the personal knowledge of the witness, or by the circumstances of its delivery, for example, if an answer is deferred and delivered in writing on a later occasion when it can be presumed to be a more considered reply than an immediate response.

It is a contempt to present forged, falsified or fabricated documents to the House or a committee. The main form which such a contempt has taken in the United Kingdom is the affixing of forged or fictitious signatures to petitions. Any conspiracy to deceive the House or a committee in this regard will be held to be a contempt. There are no examples of these having occurred in New Zealand.

Correcting inaccurate information
It is not a contempt to make a genuine mistake and thereby give the House or a committee incorrect information. But it is incumbent on a member or any other person who has given misleading information on a parliamentary occasion to clear the matter up as soon as the error is appreciated. This applies even though the full correct information may not be available at the time that it is realised that an error has been made. Action to alert the House or committee should still be taken at that point with a full correction to follow later.

In the case of a misleading statement in the House, for example, in reply to an oral question, a personal explanation is the invariable form that the correction takes. Misleading information given by way of a reply to a written question is corrected by the
letter and in the form of an advertisement accompanied by a strong attack on the member, breaches were held to have been committed, again unwittingly.

But in debate it is not automatically out of order, much less a breach of privilege, to invite a member to say outside the House what the member has just said in it. The cases involving a contempt are confined to the issuing of formal challenges to the freedom of speech enjoyed by members. Nevertheless, persistently challenging a member to repeat comments outside the House so as to imply that the member is not telling the truth may itself become disorderly.

A classic case of rectification of a member because of action the member had taken in the House occurred in 1872 when, because a certain person wished to make the member pay for the way the member had voted in a division, the person applied (as he was legally entitled to do) to purchase pastoral land held on licence by the member. The consequence of this application to purchase was that the land had to be offered for auction with no preference for the licensee, thus putting the member to inconvenience and potential expense. The House found the person to have committed a contempt by making the application to purchase, and induced him to withdraw it.

Two Prime Ministers have been the subject of complaint in the House in respect of remarks they made about the way members had voted. William Fox in 1869 wrote to a member who was a serving officer in the Army after the member had voted against the Government, saying that the member must either resign his seat or his command. A committee appointed to consider the matter found that no contempt had been committed and this was endorsed by the House, but the House went on to pass a resolution reiterating that every member of the House, without exception, was entitled to speak and vote in the House according to the member's conscience. In 1896 Richard Seddon made a veiled remark that he would not forget how two West Coast members had voted (they had voted against the Government on the previous day). The remark was complained of, but after some discussion the House dropped the subject.

Legal proceedings against witnesses
The House of Commons in 1818 passed a resolution declaring that witnesses were entitled to its protection in any legal proceedings brought against them in respect of testimony given by them to the House or a committee. Legal proceedings in such circumstances also constitute a breach of privilege by infringing the freedom of speech guaranteed to persons taking part in proceedings in Parliament by the Bill of Rights 1688. Legislation also provides a legal indemnity for parliamentary witnesses who incriminate themselves while giving evidence of oath.

Reflections
Speeches or writings which reflect on the character or conduct of the House, or of a member in the member's capacity as a member of the House, may be treated as contempt. It is also the case that as social mores change, the limits of acceptable comment change too. To accuse members of engaging in homosexual conduct when such conduct was not regarded as publicly acceptable (and indeed was still criminal) was regarded by the House at the time as a serious reflection on members. These days it is likely to be viewed very differently. All examples of comments reflecting on the House and members must be considered in this light; they are not indications that similar comments contemporaneously may be regarded as contempts.

Reflections on the House
Speeches or writings which reflect on the character or proceedings of the House may be treated as contempt. The fact that the prohibition on publication of reports of its debates formerly applied by the House of Commons has never operated in New Zealand does not authorise reflections on members in their parliamentary capacity or on the propriety of the House's procedures.

An article criticising the practice of pairing in the House was held to be a contempt as containing incorrect statements which falsely represented the proceedings of the House. Reflections on members of the House in their capacity as members which do not identify the particular member or members who are the subject of attack may also be treated as contempt. Thus, where unamed members of Parliament were accused of homosexuality and bisexuality, the person making the allegation (which she admitted was baseless) was found to have committed a contempt by tendering to lessen the esteem in which the House was then held.

Reflections on members
Speeches or writings reflecting upon the character or conduct of individual members in their parliamentary roles have been punished as contempts. To establish that a contempt has been committed on this ground, however, the words complained of must reflect on the member in the discharge of his or her duties in respect of some proceeding in the House or in a committee, and must not merely arise out of the member's status as a public figure. It is not a contempt, for instance, if a member is attacked in respect of the discharge of his or her constituency duties, for although this is an integral part of being a member of Parliament, it is not an aspect of a member's work that is directly concerned with proceedings in the House. Similarly, most functions performed by Ministers are not performed as members of Parliament (other than introducing a bill and answering a question, for example) and do not involve any question of parliamentary privilege. A reflection on the Speaker in his capacity as chairperson of the Parliamentary Service Commission was found to relate to his capacity as a member of Parliament because this is an ex officio position held by the person who is Speaker.

To constitute a reflection on a member, it is not necessary that the words used against the member should amount to defamation as a matter of law. Nor does the fact that a member may have good grounds for taking legal action for defamation preclude the member raising the reflection as a matter of privilege.

A member is not bound to seek redress in the House only. If the remarks are defamatory, the member may bring an action for damages in the courts instead of or in addition to pursuing the matter of privilege (though the fact that a member has taken action in the courts will be relevant for the House in considering what penalty to
Any member may raise a reflection on a member as a matter of privilege, even though the reflection is on another member. Reflections on members in their parliamentary roles have been found where a member was accused of prevarication in an election petition case, where a report which was submitted to the House accused a member of not having told the truth in some statements he had made to the House, and where a member was accused of being in the pocket of the tobacco industry. The House also found that the Attorney-General had been libelled in his house in Parliament and a contempt was committed when a newspaper editorial accused him of bringing forward a bill to further his claims to certain property. No contempt was found where two members were accused of hypocrisy over atomic bomb tests, because the reflections did not concern the conduct of the members as members but related to statements made by them outside the House.

Reflections on the Speaker and other presiding officers

Some of the most serious reflections on members that can be made concern those against the character of the Speaker or any other presiding officer — in particular, accusations that presiding officers have shown partiality in discharging their duties. Reporting on a question of privilege concerning a reflection on the Speaker, the Privileges Committee has said, “[The Speaker] is in a special position. Being the embodiment of Parliament, reflections upon the character of the Speaker or similar conduct by the Speaker, who has been elected, is a reflection upon Parliament itself, and is entitled to protection from disciplinary action in Parliament.”

Reflections upon the Speaker have been censured on six occasions, five of which members attacked the character or conduct of the Speaker, and one on which newspapers did so: in 1967, when the Speaker was accused in a newspaper article of racial prejudice; in 1975, when a member wrote a newspaper article criticising the matter in which the Speaker was presiding over the House; in the following year, when a member in a radio interview advocated the replacement of the Speaker and accused the Speaker of weakness; in 1982, when a member in a press statement criticised the Deputy Speaker’s failure to call him to speak in a debate and stated that it was difficult to believe that the Deputy Speaker was not affected by his politics in the line he had taken; in 1987, when a member in a press statement made reflections on the way in which the Speaker was presiding over the House; and in 1998, when a member accused the Speaker (as chairperson of the Parliamentary Service Commission) of selectively releasing personal information to disadvantage a political party.

Other contempes

The examples of contempes set out in the Standing Orders are not exhaustive. A number of other circumstances have arisen which have been acknowledged could amount to a contempt even though these do not fit clearly into the listed examples. But in all cases the conduct could only amount to a contempt if it obstructed or impeded the House or members in the course of their functions and duties or if it had a tendency to do so.

Abuse of the right of petition

In the United Kingdom, the submitting of a petition containing false or scandalous allegations against a person, the inducing of signatures to a petition by false representations and threatening to submit a petition against a member have been treated as contempes. There are no examples of abuses connected with the right to petition occurring in New Zealand and being treated as a contempt by the House of Representatives.

Advice to the House

There is no convention that the House will be advised of important policy announcements by Ministers. But the circumstances in which prior publication outside the House of a matter to be submitted to the House can constitute a contempt have been considered on a few occasions.

If a document or statement (such as a departmental report intended for first promulgation in the House is improperly obtained or intercepted and then published before its promulgation in the House, that may be regarded as a contempt. But the Privileges Committee has recommended that the House not treat as a contempt the premature release of parliamentary papers presented to the House under statute.

Where a Minister prematurely released the contents of a message to the House from the Governor-General containing the text of a bill His Excellency was transmitting to the House for introduction, it was held that a breach of privilege (contempt) had been committed. (This method of introducing bills has been abolished.) On the other hand, it is no contempt for the Government to disclose in advance of any formal parliamentary steps the terms of a bill about to be introduced into the House. This may be a matter for criticism from members of the House who learn of a bill from the news media in advance of its introduction, but it is not a matter of privilege. But while formal parliamentary steps have been taken in respect of a bill, such as notification to the Clerk that a bill is about to be introduced (or notice of intention to introduce having been given in respect of a member’s or a local bill), to disclose or improperly abstract copies of such a bill after that time could be treated as a contempt.

Miscellaneous

Other examples of acts that may have a tendency to obstruct or impede the House in carrying out its functions are: unauthorised use of the name of the House or its crest on an unofficial publication; the placing of material in the ballot boxes reserved for members in Parliament House without the Speaker’s permission, and improperly attempting to induce a member to resign from the House.

LEGAL SIGNIFICANCE OF CONTEMPT

The power to punish for a contempt of the House is a power that inheres in the House. The power is exercisable only by the House itself. The courts do not punish for contempt of the House, nor do they enforce punishments meted out by the House. The fact that a contempt may have been or may be about to be committed does not give rise to a cause of action for which relief can be obtained from a court. Contempt is an extra-judicial
proceeding, though, as it is a power possessed by the House pursuant to law, its lawful exercise by the House will be recognised and, if need be, vindicated by the courts (for example, as a defence against legal liability that would otherwise arise).

But apart from the fact that the power to punish for contempt is of legal significance as justifying actions that might otherwise be unlawful, the power can be legally significant in some other ways.

The fact that compliance with a request for official information or personal information held about an individual, if satisfied, would constitute a contempt of the House is a good ground for refusing to provide that information. One obvious circumstance in which these provisions would be important, the House's privileges in respect of confidential select committee information which in the hands of a Minister or a government department and which otherwise might be obtained as official information. Indeed, as far as official information is concerned, the legislature goes further than making the commission of a contempt a good ground for refusal to produce such information. It recognises that a positive obligation to avoid committing contempt can arise, by also providing that nothing in the legislation authorises or permits the making available of official information that would constitute a contempt of the House. In reviewing decisions to withhold official information, the grounds of contempt, the Ombudsman and the Privacy Commissioner may be required to make judgments in accordance with the legislation as to whether a contempt would be committed were the information to be made available.

Similar provisions apply to protect the House against contempt arising in the course of meetings of local authorities and committees of districts health boards. In such cases it is a ground for the exclusion of the public from their meetings that admission would be likely to result in disclosure of information which would constitute a contempt of the House. From these, the fact that, as otherwise lawful or uncontroversial decision or action may constitute a contempt can, it is submitted, itself that decision or action with legal significance and may be a governing factor in whether the action can legally be taken or what decision should actually be made. Thus the Human Rights Commission has accepted advice that it should not make public an inquiry where to do so would inevitably lead it into committing a contempt of the House (such an inquiry may also have been unlawful in other grounds too). It may also be the case that the fact that a contempt will result will be recognised by the courts as legally justifying other legal positions that are taken, for example, ensuring impounding of documents in the course of legal proceedings where they are subject to parliamentary confidentiality, unless the permission of the House or the relevant committee is obtained.

In such ways (an aspect of comity between the legislative and judicial branches of government) the fact that a contempt of the House has been or may be committed can be significant in determining legal outcomes, without contempt giving rise to a cause of action itself.
MATTERS OF PRIVILEGE RAISED WITHOUT NOTICE

In one circumstance where a matter of privilege occurs in the House, it can be raised without notice. This is where the conduct of strangers present gives rise to a matter of privilege, for example, as a result of misconduct on their part. In these circumstances, the Speaker has discretion to deal with the matter in such a way as the Speaker determines and any debate in progress may be interrupted for this purpose.

MATTERS OF PRIVILEGE RAISED BY MEANS OF PETITIONS

A petition was the recognised means of seeking authority to use extracts from debates or other reports or proceedings of the House in court. (See Chapter 46.) This form of petition is now obsolete as the House has granted a general authority to refer to its proceedings before a court.

A petition alleging that a contempt has been committed has been received and allocated to the Privileges Committee.

PRIVILEGES COMMITTEE

The select committee at the centre of determining matters relating to the privileges of the House is known as the Privileges Committee.

The Privileges Committee is established by the House at the commencement of each Parliament. Its brief is to consider and report to the House on any matters referred to it relating to or concerning parliamentary privilege. The committee does not have the power to initiate inquiries itself; it works solely on the basis of issues referred to it by the House.

The committee’s membership often includes senior members such as the Prime Minister, the Leader of the Opposition and the Leader of the House. The member who raised a matter of privilege with the Speaker alleging a breach of privilege or contempt may not serve on the committee while it is considering that complaint. This does not serve on the committee while it is considering that complaint.

The committee has the power to require witnesses to appear before it, and it may take evidence in public. However, the nature of the task it has to perform inevitably results in its proceeding in a manner somewhat different from that of other committees. The committee is exempt from the prohibition applying to other committees that they may not enquire into, and make findings in respect of, the private conduct of members. Indeed, the nature of its task often calls upon it to do just that. The committee is often concerned with allegations made against members and other persons that they have been accused of breaching privilege or committing a contempt of, or false allegation is not specifically directed against an individual or individuals, that a breach of privilege or contempt has occurred and that, by implication, the perpetrator ought to be identified and punished. In these circumstances, the committee is called upon to conduct an inquiry and to make findings, often adverse findings, against members and others. Therefore, it endeavours to act in accordance with its standing orders in proceedings in accordance with normal judicial principles, including relying on the standard of proof required to establish whether a contempt has been committed.

Persons appearing before the Privileges Committee have long been permitted to have the assistance of their own counsel if they wish. This was a requirement of the Standing Orders. It is, indeed, the practice of the committee to ask witnesses appearing before it whether they wish to be assisted by counsel, so that the matter is raised by the committee and the witness does not, by default, forego the opportunity to be so assisted. Counsel has been permitted to cross-examine other witnesses appearing before the committee.

Scope of inquiry

The nature of an inquiry by the Privileges Committee has been described as sui generis. Its proceedings do not fall into any general category of inquiries.

Once a matter of privilege has been referred to it, it is for the Privileges Committee to decide how deeply to investigate the matter and how widely to pursue potentially relevant information. In particular, once it is seized of a question of privilege, it does not regard itself as being confined to considering only issues referred to by the Speaker in making the ruling. The committee is charged with investigating the facts and reporting to the House if, in its opinion, a breach of privilege or contempt has been committed or if some other matter referred to it affects the privileges of the House. In this regard it is not limited by the precise formulation of any allegation of breach of privilege or contempt made by the Speaker in making the ruling. However, before broadening an investigation into a question of privilege beyond the scope initially suggested in the Speaker’s ruling, the committee must give notice to any member thereby affected.

Findings

In making a finding as to whether a breach of privilege or contempt has occurred, the committee is bound by the same rules of natural justice as any other committee making findings with a potential to reflect on reputation, and must acquaint any person whose reputation may be seriously damaged with its provisional findings and give that person an opportunity to comment. The Privileges Committee, in addition, has found it necessary to establish the standard of proof necessary for an adverse finding on a question of privilege. In general, the committee has accepted that the civil law standard of proof on a balance of probabilities is appropriate when making decisions on matters of fact or drawing inferences from matters of fact. But in making findings of breach of privilege or contempt, the committee must consider the totality of the evidence and then ask itself if it is satisfied on the basis of compelling evidence that a breach of privilege or contempt has occurred. Only if it should it make such a finding.

Report

The committee presents reports on the questions of privilege referred to it.
The committee has not shown itself averse to commenting on aspects of procedure in the House and the administrative arrangements for providing services to members where these subjects have arisen during the course of inquiry.22 Although it is the House that finally decides if a breach of privilege or contempt has been committed and, if so, whether any punishment should be inflicted, the most important determinant of the final outcome of a complaint is the breach of privilege or contempt is the finding of the Privileges Committee. For this reason the committee becomes actively involved in working out the ultimate solution to the complaint—e.g., by corresponding with and discussing a suitable apology with persons it considers to be in contempt and recommending punishments to the House where necessary.

The committee does not confine itself to a factual report to the House on the subject of the complaint, which it then up to the House to decide means of carrying it out. It aims to present comprehensive findings and recommendations that the House can deal with in one bite.

Consideration of report
A report from the Privileges Committee is set down for consideration as a general business.23 This ensures that it has priority for consideration by the House that is not accorded to any other type of select committee report. Consideration of a report from the Privileges Committee is taken on the sitting day following its presentation, after questions and any urgent or general debate.24

The debate on the committee's report takes place on a motion moved by the chairperson of the Privileges Committee. This may be a motion to take note of the report (the normal motion on the consideration of any select committee report) but, if the report contains recommendations (as it often will), the chairperson's motion may instead reflect those recommendations.25 The debate is not subject to any overall time limit prescribed by the Standing Orders. Each member may speak for up to 10 minutes.

OUTCOME OF QUESTION OF PRIVILEGE
There are a number of potential outcomes from a question of privilege without the matter necessarily involving a finding that a contempt of the House has been committed and that the House will punish the contempt. The House's privileges relate to its legal position generally and the House may need to consider these in other contexts than just contempt.

Thus the outcome of a question of privilege may be that the House decides to become involved in legal proceedings so as to protect its view of its privileges or in consideration of the effect of its privileges on a matter before a court that is not overlooked.26 On the other hand, consideration of a question of privilege may be a means for the House to form a view about the status of a member of Parliament or of proceedings before Parliament. Thus, on a question of privilege, the House has decided whether a person has been duly returned as a member of Parliament and whether a member's seat has been vacated by resignation or by disqualification.

Most questions of privilege, however, do relate to allegations of contempt by members or by persons outside the House. Consequently, a finding that a contempt has been committed raises the question of what the House should do in response—whether it should invoke its powers to punish for contempt.

PUNISHMENTS
If it finds that a contempt has occurred, the House must decide whether to take any action to punish individuals who have been identified as having transgressed against it or whether the offence is not worth further notice. If the House does decide to take the matter further, there are a number of options open to it regarding the types of punishment it may inflict or the means it may employ to express its displeasure. As well as using these means to "punish" an offender for contempt, the House may also use them to enforce its privileges by compelling someone to do something it wishes to be done—such as committing that person into the custody of the Sergeant-at-Arms so that he or she may be brought to give evidence before a committee. When the House uses its powers in this way, it is not "punishing" anyone for past transgressions, it is merely ensuring that no transgression—such as a failure to testify after being required to do so by the House—can occur. If the person concerned escapes from the Sergeant's custody in these circumstances, then a contempt would have been committed and the person concerned would be liable to be punished for contempt. However, the House may use its powers to secure compliance with its orders before there has been any disobedience to them, as well as inflict punishment for a contempt that has already occurred. Distinguishing between punishing for disobedience and taking action to induce compliance can be difficult.27 But it is not necessarily relevant to make this distinction for a House enjoying by statute the privileges possessed by the House of Commons in 1665.

The punishments which the House may decide to infringe must be seen against the background of the human rights and fundamental freedoms conferred by the New Zealand Bill of Rights Act 1990. Those civil rights that would seem to be particularly relevant in respect of punishment for contempt are: protection against unreasonable search or seizure,28 protection against arbitrary arrest or detention,29 and minimum standards of conduct to be observed in respect of a person under arrest or in detention.30 In seeking to project its will beyond the internal proceedings of the House, the House must ensure that if acts in a way that is consistent with those rights.

Imprisonment
The ultimate power possessed by the House to enforce or vindicate its privileges is the power to imprison. This power has been used by the House of Commons on literally hundreds of occasions. It has been claimed that there were "a little less than a thousand" commitments between 1547 and 1810.31 Imprisonment has never been resorted to by the House of Representatives (or by the Legislative Council, which also possessed the power to imprison) although a proposal was made and debated in the House in 1856 that the President of the Bank of New Zealand, who had refused to answer certain questions put to him by a select committee, be imprisoned. The proposal was defeated and a fine imposed on the president instead.32 A further proposal—that he be committed into the custody of the Sergeant-at-Arms until the fine was paid—was dropped.33 The power of the House of Commons to imprison persons by committing them into the custody of the Sergeant-at-Arms or any other person was well recognised by 1 January 1865, the date on which the House of Representatives acquired privileges similar to those enjoyed by the Commons in the United Kingdom.34 In 1893, when all common law
crimes were abolished in New Zealand, it was specifically enacted that such abolition did not limit or affect the House's power to punish for contempt.69

The authority of the House to punish for contempt by imprisonment is not limited or affected by the courts' jurisdiction to grant a writ of habeas corpus in the case of an unlawful detention of any person.70

When Parliament is prorogued or dissolved, bringing the session to an end, any person then held in custody is automatically discharged.71 The House cannot imprison a person beyond the session in which the committal was ordered.72 This does not, however, prevent the House ordering that person's restraints in the following session if with such no inclination.73

Speaker's warrant

The commitment of any person into custody by order of the House is made under a warrant issued by the Speaker. There is no arrest without warrant in New Zealand except with express statutory authority.74 As there is no express statutory authority to arrest without warrant for breach of privilege or contempt, the Speaker's warrant is essential for a person to be taken into custody by order of the House.75

There is no particular form that the Speaker's warrant must take. Warrants issued in other jurisdictions have merely stated that the person named in it has been found guilty of a contempt and is committed into custody for that reason, without stating the fact on which the finding of contempt is based.76 On the other hand, the warrant may go on to set out, with some particularity, why the person is being arrested. The extent to which the courts are able to review warrants on the ground that they do not disclose any breach of a known privilege or that they are otherwise irregular has been judicially considered in a number of cases.77

In the leading case on the commitment by order of a legislature, the Australian High Court said that a court may examine the warrant if it specifies a ground of commitment in order to determine whether that ground is sufficient in law to amount to a breach of privilege, but if the ground appears to be consistent with a breach of an acknowledged privilege, that is conclusive. The court would not go behind the warrant even if it was stated in general terms.78 On the other hand, the Indian Supreme Court (by majority) has advised that a general warrant of the New Zealand Constitution Act 1852 (UK) that required the House to draw up standing rules and orders, but that enjoined it not to subject any person who was not a member of Parliament to any "pain, penalty or forfeiture,"79 words that could clearly encompass fines. The words of the New Zealand Constitution Act suggest that the House either had, or in drafting the 1852 Act believed that it had, power to fine its own members, and would, but for the express provision to the contrary, have had power to fine other persons acting on this bill the House, by its Standing Orders, midterm in order for fines to be imposed on members for breaches of discipline. These remained in force until 1852 and were used to fine members on two occasions.80

This provision of the New Zealand Constitution Act was repealed in 1865 when the House acquired the wider powers of the House of Commons, and from that time on the House regarded itself as being free to fine strangers as well as members as a punishment for contempt. Strangers have been fined on four occasions: the President of the Board of Trade in New Zealand was fined in 1896 for refusing to answer questions before a select committee relating to customers' accounts;81 a member of the Parliamentary Press Gallery was fined in 1901 for publishing evidence given to a select committee before the committee had reported to the House;82 a newspaper was fined in 1903 for publishing rerun committee papers before the committee had reported to the House; and its representative in the Press Gallery was fined for refusing to reveal the person from whom he had obtained the papers.83

In view of the conflicting opinions held on the existence of the power, it is doubtful whether the House today would ever seek to impose a fine.84 A few years after the last of
these fine cases, it was said by a Speaker that the House still had the power to fine, but by 1929 a Standing Orders Committee was recommending that the power of the House to inflict fines and otherwise safeguard its privileges be supplemented by statute, thus suggesting that some doubt on this score had been expressed by that time. Such a proposal has been repeated by later Standing Orders Committees. In Australia an express power to fine has been included in legislation.16

Censure
The House may consider that the conduct of a member or other person is deserving of its formal censure or rebuke, and may express its views accordingly. In the House of Commons the practice is for a formal reprimand or admonition to be made personally by the Speaker on behalf of the House, with the member standing in his or her place in the Chamber, and the Speaker has admonished a person at the bar of the House on a question of privilege, but it has not generally been the practice for a rebuke to be administered in such a formal manner. The House, where it has felt that a member's conduct should be censured, has continued with coming to a formal resolution to that effect and leaving the matter at that. On at least two occasions members have been censured (in both cases for criticizing the Speaker) by the House adopting recommendations to censure them contained in Privileges Committee reports. The House has also resolved to censure a member for remarks that he made without referring the matter first to the Privileges Committee.17

Procurement in law
Certain breaches of privilege or contempts may have wider significance than as breaches of parliamentary law; they may also be criminal offenses. In fact, the House has quite often dealt with actions that it could have treated as contempts to be dealt with by the courts in prosecutions for an offense. This has been the case with most disturbances in the public galleries that have resulted in arrests and charges of trespass or breach of the peace. The fact that a member has been charged with a criminal offense in respect of such an incident does not preclude the House taking appropriate proceedings on the ground that the incident also constitutes a contempt, but usually the House has left matters of a criminal nature to be dealt with solely in the forum of a court. Where a matter is raised as a question of privilege and, after considering it, the House concludes that a criminal offense may have been committed, it may (in addition, if it wishes, to punishing any contempt) direct that the offender be prosecuted in the courts for the offense. Such a prosecution is undertaken by the Attorney-General. In the only case in which such action was taken in New Zealand, the Attorney-General (who was the member who had been accused of improper conduct, so leading to the matter being raised in the first place) was directed by the House to prosecute according to law for a libel on a member of the House in his place in Parliament.18 The prosecution failed.

Impeachment
One of the powers possessed by the House of Commons in 1865 (though it had not been exercised since 1806) was the power to impeach. Impeachment was a proceeding by the

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House of Commons of a person (often a Minister who had fallen from favour) for "high crimes and misdemeanours". The trial took place before the House of Lords.

There is nothing in the New Zealand Constitution Act 1852 (UK) to suggest that this power had ever devolved on the House of Representatives. Nor did the acquisition of the House of Commons' powers and privileges in 1865 alter this. The House of Commons' power was to accuse a person of high crimes and misdemeanours before the upper House, the House of Lords. It was not a power to convict a person. The Legislative Council in New Zealand did not enjoy any powers or privileges equivalent to those of the House of Lords; in fact, its privileges were also expanded to those of the House of Commons. In these circumstances there was no legislative chamber in New Zealand empowered to conduct a trial on impeachment. The proceeding could have no application in New Zealand. The abolition of all common law crimes in 189319 confirms the non-applicability of impeachment in New Zealand.

Suspension from the House
By its nature this is a punishment applicable only to members of the House. The Standing Orders prescribe procedures whereby members may be suspended from the service of the House for breaches of order.120 But the House may also suspend a member for contempt as a quite distinct exercise of its power of suspension from the summary procedure employed to deal with breaches of order.121 The fact that the House utilizes its procedure concerned with breaches of order does not mean that a member may not also be proceeded against for contempt if the member's conduct justifies it. But in those circumstances any earlier punishment inflicted by the House will be taken into account when considering what action to take over the contempt.

These members have been suspended from the service of the House for contempt after being found to have made remarks reflecting gravely on the conduct of Speakers in their capacity as Speaker. The Privileges Committee recommended that the members be suspended for varying periods, and those recommendations were adopted by the House.122

The rights forfeited by a member suspended under the disciplinary procedures of the Standing Orders are set out in the Standing Orders themselves. (See Chapter 11.) These Standing Orders provisions do not apply in respect of a member suspended for contempt, but they may be taken to indicate, by analogy, the disabilities suffered by a suspended member. Such a member cannot enter the Chamber or voting lobbies, or any other part of the building from which the House specifically excludes the member. Nor can the member serve on or attend a meeting of a select committee or lodge questions or notices of motion.

Expulsion
One of the powers the House of Commons may employ in relation to its members is to expel them from membership of the House, with the result that the member's seat thereby becomes vacant. (Expulsion does not disqualify a member from being re-elected at the ensuing by-election.) There is no instance of expulsion occurring in New Zealand before the Parliamentary Privileges Act 1865 was passed, the House, on one occasion, refused from proceeding with a motion to expel a member on the ground that it was...
doubtful if the House possessed the power to expel. With the acquisition of the House of Commons' privileges as at 1 January 1865, the legal situation changed. Even so, in 1877 the Speaker denied that the House had power to declare the seat of a member to be vacant. "The utmost extent to which the House can go, and it is very widely different from declaring a seat to be vacant, is to expel the member from its presence", that is, to suspend the member. The list set out in the Electoral Act 1993 of the events that cause a seat to become vacant does not include expulsion from the House. However, this does not in itself constitute the denial of any privilege. The power to expel as a self-policing power rather than a disqualification.

In other jurisdictions, where a link to the House of Commons' privileges is to be accepted that the power to expel a member still exists by virtue of that link. Thus, in New South Wales, it has been held that the legislature has inherent power to expel a member, being seen as a self-policing power rather than a punishment. The Australian House of Representatives has also expelled a member, though this power has not been expressly abrogated by legislation. The Canadian House of Commons still possesses the power to expel in reliance on an equivalent statutory basis with the United Kingdom House of Commons' privileges. It may expel for any conduct it deems unbecoming for the character of a member. It has used the power on four occasions. It has been held in Canada that the power to expel a member (both on a motion of censure and as a means to remove an unfit member from the legislature) is an undoubted privilege of the House. Furthermore, the power of expulsion does not conflict with the electoral rights guaranteed under the Canadian equivalent of the New Zealand Bill of Rights Act since those are concerned with the qualification to be a member of Parliament rather than the imposition of a restriction on a sitting member. In India, expulsion in reliance on a similar link with the privileges of the House of Commons has been upheld as in the nature of a disciplinary control over members. The power could be used to expel for misconduct outside as well as inside the House.

The Standing Orders Committee has recommended that any power to expel be abolished in New Zealand.

Exclusion from the precincts

The Crown, as legal owner, permits the House to exercise control over Parliament buildings and grounds. This control is vested in the Speaker. But the House may, if it wishes, make orders relating to the presence of strangers in the galleries of the Chamber or anywhere else within the Parliament buildings. The power of the House to exclude strangers at any time from its presence (that is, from the galleries) is an aspect of its freedom of speech, and it has been held that control over access to the premises that it occupies is a necessary adjunct to the proper functioning of a legislature.

In 1981, following an incident in the galleries at the beginning of a sitting, the House adopted a report from the Privileges Committee recommending that everyone who could be identified as having participated in the incident should be excluded from the precincts of the House for 12 months. The Speaker, in enforcing his order on behalf of the House, decided that the areas of Parliament buildings from which the persons concerned were to be excluded were the public areas of the buildings and the areas used by members generally. The exclusion did not apply to rooms or suites allocated for the personal use of members or Ministers, or to the use of otherwise protected areas for transit in order to visit a member as an invited guest.

In another case, involving the director of a courier company refusing to answer questions before the Privileges Committee, the House ordered that courier companies with which he was associated be banned from making deliveries to the parliamentary complex. The Speaker implemented this order by issuing instructions to that effect.

Exclusion from the Parliamentary Press Gallery

Membership of the Parliamentary Press Gallery carries with it special responsibilities. Journalists who commit a contempt of the House are liable to have their memberships terminated or suspended. One journalist had his status as a full member reduced to that of an associate member and has privilege of seeing Bellamy's withdrawn for disclosing confidential select committee materials.

Apology

Most findings of contempt end with the offender tendering an apology, which the House accepts. In many cases the apology or expression of regret is tendered to the Privileges Committee during its investigation of the question of privilege. The absence of an expression of regret by an offender is a factor taken into account by the Privileges Committee in determining what action to recommend to the House. In its report the committee awards the House with any apology or expression of regret and, if it finds fit, recommends that the House accept the apology. If the House does so, the matter is then at an end.

In other cases there may have been no apology delivered to the Privileges Committee during its consideration of the matter. If the committee considers that an apology is called for, this view is included in the report for adoption by the House. The apology is then tendered by letter, usually to the Speaker, some time after the report has been received by the House. Failure to tender an apology when required to do so by the House could itself be treated as a contempt. This has been the case where the letter of apology to the House, or any part of it, is not sent to the Speaker or to the Committee chair.

which provides that Members of Parliament are not liable, and may not be summoned to  
serve as jurors in any Federal, State or Territory court.119  

Certain employees of the Parliament are also exempted from attendance as jurors in  
Federal, State and Territory courts by regulations made under the Act.120  

Exemption from attendance as a witness  

Section 14 of the Parliamentary Privileges Act provides that Members shall not be  
required to attend before a court or tribunal on any day on which the House of which  
the Member is a member meets, or on any day on which the Committee of which he or she  
is a member meets or on any day within five days before or after such days. The exemption  
also extends to employees of the House required to attend upon the House or a Committee  
and applies on days on which the House or the Committee upon which the officer is  
required to attend meets, or on days within five days before or after such days. Witnessing  
that is, persons required to attend before a House or its committee on a day, shall not be  
required to attend before a court or tribunal on that day.  

The Parliament claims the right of the service of its Members and employees in priority  
to a subpoena to attend as a witness in court.121  

The paramount right of Parliament to the attendance and service of its Members.121  

In the House of Representatives, when a Member has received a subpoena requiring his  
or her attendance in court on a day on which a Member could not be compelled to attend,  
it has been common for the Speaker to write to the court authorities asking the Member be  
excused.  

In 1965 the Treasurer was served with a subpoena requiring his attendance before the  
Supreme Court of Victoria. The Speaker wrote to the court drawing attention to the claims  
of the House concerning the attendance of Members. The judge ruled in accordance with  
the Speaker’s representations, and excused the Treasurer from attendance.121  

Subsection 15(2) of the Evidence Act 1955 provides that a Member of a House of an  
Australian Parliament is not compelled to give evidence if this would prevent the Member  
from attending a sitting of his or her House, or a joint sitting, or a meeting of a  
committee of which he or she is a member.  

ACTS CONSTITUTING BREACHES OF PRIVILEGE AND CONTEMPTS  

By virtue of section 49 of the Constitution, the House has the ability to treat as a  
contempt:  

...any act or omission which obstructs or impedes ... (e) ... in the performance of its functions,  
or tendency, directly or indirectly, to produce such results ... even though there is no precedent  
of the offence.121  

A breach of privilege and contempt contains none of the elements of a criminal  
offence.121  

Whilst the House thus has a degree of flexibility in this area, section 4 of the  
Parliamentary Privileges Act imposes a significant qualification:

119 See Exemption Act 1967, s. 4.  
120 See Privileges Regulations, 38-38 of 1907.  

Case (including the use of words that does not constitute an offence against a House unless it  
carries, or is intended to carry, an improper inference with the free exercise by a  
House or committee of its authority or functions, or with the free performance by a member  
of the member’s duties as a member.  

This provision should be taken into account at all stages in the consideration of possible  
contempts. It is important also to recognise that the Act does not codify or enumerate acts  
or omissions that may be held to constitute contempts.121  

Section 6 of the Act provides that words or acts shall not be taken to be an offence  
against a House by reason only that those words or acts are defamatory or critical of the  
Parliament, a House, a committee or a Member, thus abolishing a previous category of  
contempt. This provision does not apply to words spoken or acts done in the presence of  
a House or a committee. The Act also contains specific provisions dealing with the protection  
of witnesses (see p. 734) and the unauthorized disclosure of evidence (see p. 735).  

In 1984 the Joint Select Committee on Parliamentary Privilege recommended the  
 adoption, by resolution, of detailed guidelines which, whilst they would not prevent the  
House from pursuing a matter not covered by their provisions, would indicate matters that  
may be treated as contempts. Whilst draft guidelines were presented in the House in 1987,121  
action was not taken to adopt them. The committee also recommended the adoption of a  
policy of restraint in the exercise of the power of contempt, proposing that each House  
should exercise its powers in this area only when satisfied that to do so was essential  
in order to provide reasonable protection for the House, its Members, its committees or  
its officers from such improper obstruction, or attempt at or threat of obstruction such as  
was amounting or likely to cause, substantial interference with their respective functions.  
Although no explicit action was taken by the House to implement this recommendation,  
successive Speakers, in giving decision on complaints raised, have had regard to the policy  
of restraint and have indicated support for it.121  

The following paragraphs are confined mainly to a note of matters highlighted in Mey  
and a record of some matters which the House of Representatives has determined to be acts  
or conduct constituting breaches of privilege or contempt, some occurring before enactment  
of the Parliamentary Privileges Act. The experience of the House is limited and for  
guidance as to precedents of other acts found to constitute contempt by the House of  
Commons, reference is made to the experience of that House as recorded in Mey.121  
In assessing the relevance to future cases of the precedents which do exist in the  
Commonwealth Parliament (and in the House of Commons), regard must be had to the provisions of  
the Parliamentary Privileges Act and, in particular, to section 4, which appears above.  
Appendix 25 contains a full listing of complaints raised in the House.

114 R v Commonwealth ex parte Kongsberg (1889) VSCA 66; see also Campbell, Parliamentary Privilege (2004),  
pp. 57-58, 211-2.  
122 R v H.R. Deb. (3.5.31): 2661; H.R. Deb. (29.8.66): 934; H.R. Deb. (17.9.86): 750; The Speaker has adopted resolutions on the  
matters 1937-74 78-79, 126.  
123 Mey, 2nd edn., p. 129.  
124 It is noted at p. 128 this is in accordance with itsevery act which might be considered to  

treat as a contempt.
Misconduct

In the presence of the House or a committee

May state:

Any disorderly conduct or disrespectful conduct in the presence of either House or committee will constitute a contempt, which may be committed by strangers, parties or witnesses.

The most frequent example of disorderly conduct on the part of strangers is an interruption or disturbance of the proceedings of the House by visitors in the gallery, generally seeking to publicise some political cause. In practice, disorderly conduct of this nature would not normally be pursued as a possible contempt but rather dealt with by other means (see Chapter on Parliament House and access to proceedings).

It should also be noted that section 15 of the Parliamentary Privileges Act provides:

For the avoidance of doubt, that, subject to the provisions of section 49 of the Constitution Act, 1901, a law in force in the Australian Capital Territory applies according to its tenor (except otherwise provided by this Act or any other law) to:

(a) any building in which a House meets; and
(b) any part of the precincts as defined by section 3 of the Parliamentary Precincts Act 1980.

Section 12 of the Parliamentary Precincts Act 1980 provides that the Public Order Act (Protection of Persons and Property) Act 1971 applies to the precincts as if they were Commonwealth premises within the meaning of that Act.

Disobedience to the rules or orders of the House

Examples of this type of contempt include the refusal of a witness or other person to attend the House or a committee after having been summoned to attend and refusing to leave the House or a committee when directed to do so. “To prevent, delay, obstruct or interfere with the execution of the orders of either House or its committees is also a contempt.”

Curtin Case (1953): On 17 March 1953 the House resolved that contempt of its ruling and authority had been taken by a Member who had refused to leave the House building during his suspension from the House for using unparliamentary language. Following the resolution the Member made an apology to the House which the House resolved to accept and no further action was taken.

Abuse of the right of petition

May state: “Any abuse of the right of petition may be treated as a contempt by the Speaker of the House.”

129. Precedents in this area include:

- frivolously, vexatiously, or maliciously submitting a petition containing false, scandalous or groundless allegations against any person, whether a Member of such House or not, or compelling, prevailing and compelling such a petition;
- inducing persons to sign petitions by false representations.

Forged or falsified documents

The presenting of a forged, falsified, or fabricated document to either House or to a committee, with intent to deceive, has been treated as a contempt. In 1907 a committee of the House of Representatives reported that signatures to a petition were found to be forgeries and the House requested the Crown law authorities to take action with a view to criminal prosecution. The House was later advised, however, that prosecution for forgery would be unsuccessful. In 1974 a letter published in a newspaper in the name of a Member was found by the Committee of Privileges to be a forgery and therefore appeared to constitute a criminal offence. As the author of the letter was unknown, no legal action could be taken.

Conspiracy to defraud

To conspire to deceive either House or a committee of either House could be punished as a contempt. The abuse of the right of petition and forging or falsifying documents could be examples of this type of contempt.

Deliberately misleading the House

May state:

The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that “in making a personal statement which contained both true and false statements, a person who has made such a statement would be guilty of a grave contempt.”

The circumstances surrounding the decision of the House of Commons in Prefumo’s Case were of importance because of the guidance provided in cases of alleged misrepresentation by Members. Mr. Prefumo had sought the opportunity of making a personal statement to the House of Commons to deny the truth of allegations currently being made against him. Later he was forced to admit that in making his personal statement to the House, he had deliberately misled the House. As a consequence of his actions, he resigned from the House which subsequently agreed to a resolution declaring him guilty of a grave contempt.

While claims that Members have deliberately misled the House have been raised as matters of privilege or contempt, the Speaker has not, to date, accepted such a claim.

On 16 September 1986 Speaker Child advised the House that she had apprised a statement to the House on 22 August by a Member, following her reference to remarks critical of her attributed to the Member. The Speaker, having examined the transcripts of the remarks in question, and comparing them to the Member’s statement to the House, claimed that he had misled the House and this action, in her opinion, constituted a contempt of the House. The Member then addressed the House on the matter. The Chairman of Committees then moved a motion to the effect, inter alia, that the Member’s statement to the House on 22 August “being clearly at odds with his original comments, misled the House, and thus constitutes a contempt of the House.” After debate, the Member having again withdrawn the remarks to which attention had been drawn, and having again
apologised, the motion was withdrawn, by leave 130 (and see Chapters on "The Speaker, Deputy Speakers and officers" and "Motions").

Corruption in the execution of their office as Members

Section 141.1 of the Criminal Code deals with the offences of bribery of Commonwealth public officials. It provides for penalties of 10 years imprisonment for both giving or receiving bribes, and Members of Parliament are encompassed by the Commonwealth public officials 131.

As well as being a crime, corruption in connection with the performance of a Member's duties as a Member could also be punished as a contempt.

Map states:
The acceptance by a Member of either house of a house to influence him in the conduct of Members, or of any other, compromise or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or an officer of his committee is a contempt. 132

Section 45 of the Constitution also applies—see "Qualifications and disqualifications" Chapter on "Members"

Advocacy by Members

May records that in 1995 the House of Commons, in addition to a 1947 resolution, resolved that

no Member . . . shall, in consideration of any remuneration, fee, payment, reward or benefit, direct or indirect, . . . advocate or assist in any cause or matter on behalf of any outside body or individual; or urge any Member of either House of Parliament, including Ministers, to the acceptance of any speech, petition, introduction of a Bill, or amendment to a Bill.

In Australia section 45 of the Constitution also applies—see "Qualifications and disqualifications" Chapter on "Members".

Obstructing Members and House employees in the discharge of their duties

To cause or effect the arrest of a Member in a civil cause during periods when immunity conferred by the Parliamentary Privileges Act applies could be prosecuted as a contempt (see p. 724); so too could molestation of a Member while attending, coming or going from the House.

In 1896 the Committee of Privileges considered a case in which the work of a Member's electorate office had been disrupted as a result of a considerable number of telephone calls received in response to false advertisements in a newspaper. The Committee's report stated that the actions in question were to be deprecated; in all the circumstances it did not believe that further action should be taken, but that harassment of a Member in the performance of his or her work by means of repeated or harassing or colocated telephone calls could be judged a contempt. 133

128 VP 1932-1933, 190131, 130.
129 Formerly covered by s. 714 of the Crimes Act 1914. In June 2002 a person was charged and imprisoned for a number of bribes: 130, 131, 132, 133.
131 H.R. 130-th, p. 130.
132 H.R. 130-th, p. 130.

The Committee of Privileges has also considered the effect of industrial action which involved bans on the delivery of mail to, and the despatch of mail from, Members' electorate offices. It found that the actions had disrupted the work of electorate offices, and impeded the ability of constituents to communicate with Members, but that as the actions were not taken with any specific intention to infringe the law concerning the protection of Parliament and an adverse finding should not be made. 134

In 1995 the committee reported on a complaint following the execution, by officers of the Australian Federal Police, of a search warrant on the electorate office of a Member. The committee concluded that, although the work of the Member's electorate office had undoubtedly been disrupted, and that although the actions complained of amounted to interference in the free performance by the Member of his duties as a Member, the interference could not be regarded as improper interference as required by section 4 of the Act and so no contempt had been committed. 135

The Parliamentary Privileges Act also confers, by section 14, immunity from arrest in civil causes of officer required to attend on a House or a committee for certain periods (see p. 725). The obstruction of House employees in the execution of their duty, or other people entrusted with the execution of the order, or the molestation of those people on account of their having carried out their duties, could be found to be a contempt. To prevent proceedings against such people for their conduct in obedience to the orders of the House could be pursued as a possible contempt.

Attempts by improper means to influence Members in the performance of their duties

The offer of a benefit or bribe

As well as being a criminal offense 136 punishable by 10 years imprisonment, the offer of bribes to Members to influence them in their parliamentary conduct is equally a contempt.

Intimidation etc. of Members

To attempt to influence a Member in his or her conduct as a Member by threats, or to molest any Member on account of his or her conduct in the Parliament, is a contempt. So too is any conduct having a tendency to impair a Member's independence in the future performance of his or her duty, subject, since 1987, to the proviso of the Parliamentary Privileges Act.

135 PP 258 (1995), and see p. 721 for the status of Members' records.
making such statements in the future, and stated that if assurances sought were not forthcoming, the solicitor would advise his client to initiate proceedings. Mr Scholz argued that the threat would inhibit him in carrying out his duties as a Member, but the committee found that there was not sufficient evidence to lead it to a conclusion that the statement should be found to constitute an attempt by improper means to influence Mr Scholz in respect of his participation in proceedings in Parliament. 146

CASES INVOLVING LETTERS WRITTEN BY MEMBERS

In the Nugent case (1992) and the Sciacca case (1994) the Committee of Privileges considered complaints about actions of threatened actions to sue Members on account of statements made in letters to Ministers. The substance of the Members' complaints was that they had been subject to improper interference in the performance of their duties as Members. In the case of Mr Nugent, the committee found that the terms of the letter containing the threat and the circumstances of its receipt had a tendency to impair Mr Nugent's independence in the performance of his duties, although it did not find that a contempt had been committed. 147 The House subsequently resolved that the person responsible should be required to apologise 148 and they did so. 149 In the case of Mr Sciacca, the committee found that although Mr Sciacca had felt constrained, there was no evidence of an attempt to interfere improperly in the performance of his duties and a finding of contempt should not be made. 150

CASE INVOLVING MR. CARTER, MP

In this case the committee was required to consider a complaint that action to sue a person who had sworn a statutory declaration and given it to a Member (who had used it in the course of proceedings in the House) amounted to improper interference in the performance of the Member's duties. The committee concluded that no evidence had been produced which would establish that the actions complained of amounted to or were intended or likely to amount to improper interference in the free performance by Mr Carter of his duties as a Member. Accordingly, it found that a contempt had not been committed. 150

BROWN CASE (U.K.)

In 1967 the House of Commons Committee of Privileges inquired into a complaint that certain actions of the Executive Committee of a union were calculated, improperly, to influence a Member (Mr Brown) in the exercise of his parliamentary duties. The Member had for many years been employed by the union. Upon his decision to Parliament, the union entered into a contractual relationship with him. While remaining a Member, he would hold an appointment with the union and would continue to receive a salary and other benefits, although his contract entitled him to 'engage in his political activities with complete freedom'. The Member complained that the effect of a sequence of events was such as to bring pressure on him to alter his conduct as a Member and to change the free expression of his views under the threat that, if he did not so, his position as an official of the union would be summarised or rendered intolerable. The Committee of Privileges found that, in the particular circumstances, the action of the union did not in fact
affect the Member in the discharge of his parliamentary duties. However, in levying the
committee stated:

Your Committee think that the true nature of the privilege involved in the present case was
as follows:

It is a breach of privilege to take or threaten action which is not merely calculated to
injure Member’s course of action in Parliament, but is of a kind against which it is absolutely
wrong that Members should be protected if they are to discharge their duties as such independent
members without fear of punishment or hope of reward. 116

CHAIRMAN OF THE SYDNEY STOCK EXCHANGE CASE (1939)

The House resolved on 28 March 1939 that a letter written by the Chairman of
Sydney Stock Exchange, alleging that a Member did not amount to a breach of privilege but was, in effect, an
involution of the right of an individual to defend himself. The House considered, however, that the
Chairman was in error in addressing a letter to the Speaker instead of direct to the Member
concerned. 117

Offences against witnesses:

Standing order 236 states that:

Any witness giving evidence to the House or one of its committees is entitled to protection
against either House in relation to his or her evidence.

As well as being able to be punished as a statutory offence (see below), intentional
punishment, harassment, or discrimination against witnesses or prospective witnesses
may be punished as a contempt and, technically, there is no prohibition on a person being
punished for such a contempt as well as being prosecuted under the Parliamentary
Privileges Act. May states:

I am not aware of any other instances of witnesses giving evidence before either House
committee in a contempt. 118

Both Houses will bring to the attention of legal proceedings against anyone on account of
committees as a contempt. 119

Section 122 of the Parliamentary Privileges Act provides that a person shall not, by force
or threat, by the offer or promise of any inducement or benefit, or by any improper means, influence another person in respect of any evidence given or to be
given before a House or a committee, or induce another person to refrain from giving any
evidence. Further, under the Act a person shall not, by any means, influence another person in respect of any evidence given or to be
given before a House or a committee, or induce another person to refrain from giving any
evidence. The provisions do not prevent the imposition of a penalty in respect of an offence
against the Parliamentary Privileges Act. 120

Following a recommendation of the Joint Select Committee on Parliamentary Privileges,
the Commonwealth Parliament, in 1987 with the enactment of the Parliamentary
Privileges Act, abolished the previous category of contempt as constituted by resolutions of Parliament,
and substituted for the amendment of 6 of the Act providing:

Words or acts shall not be taken to be an offence against a House by reason only that those words
or acts are defamatory or critical of the Parliament, a House, a committee, or a member.

However, this provision does not apply to words spoken or acts done in the presence of
a House or a committee. The qualifications would enable a House or a committee to take
action if, for example, a member made insulting or offensive remarks during a
sitting. Under the Act words or acts could also be pursued if, for example, they were
defamatory or critical by reason only that they were defamatory or critical.

Prejudice publication or disclosure of committee proceedings, evidence and
reports

Standing order 242 provides in part that:

117. VP 1349, 3709, n. 95.
118. Ibid. 2529, n. 315.
119. Ibid. 2529, n. 315.
120. Parliamentary Privileges Act 1987, s. 122(7).

154. Ibid. 2529, n. 315.
155. Ibid. 2529, n. 315.
A person shall not, without the authority of a House or a committee, publish or disclose—

(a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee, or been directed by a House or a committee to be treated as evidence taken in camera;

(b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence unless a House or committee has published, or authorised the publication of, that document or that oral evidence.

Penalties under the section are $5,000 in the case of a natural person and $25,000 in the case of a corporation. Technically, a breach could be pursued both as a contempt and a statutory offence, but this is unlikely in most circumstances.

See also Chapter on 'Parliamentary committees'.

Other offences

May states:

Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into disrepute, contempt or ridicule or by lowering its authority may constitute contempt. 85

An instance of this type of contempt is disorderly conduct within the precincts of either House while such House is sitting or during committee proceedings, although, as indicated earlier in this chapter, such conduct is usually dealt with by other means. In the assessment of any complaint in this area, regard would need to be had to the provisions of section 4 of the Parliamentary Privileges Act.

May also cites in this category of contempt serving or executing civil or criminal process within the precincts of either House while the House is sitting without obtaining the leave of the House, 86 Parliament House is not considered to be an appropriate place in which to serve such documents, and, for example, service, or attempted service, on a Member on a sitting day, or on a day on which a Member was to participate in a committee meeting, could be complained of as a contempt.

On 6 October 1929 a complaint was made in the House of Representatives that a summons had been served upon a Member, Mr Blayney, in the precincts of the House while the House was sitting. 87 The Attorney-General expressed the opinion that it was not desirable to proceed further in the case but that those entrusted with the service of process of the Court should take steps to have summons served in the ordinary way, as it is not a desirable practice that service should, under any circumstances, be made within the precincts of this House while the House is sitting.

Interference with the administration of the Parliament

On 24 October 1919 the Speaker drew to the attention of the House a matter concerning the Economies Royal Commission 'as it affected the privileges of Parliament'. The Royal Commission proposed to investigate expenditure in connection with parliamentary services and the Speaker said that as it had no authority from the Parliament to interfere in any way with the various services of Parliament, it was his duty to call attention to the proposed serious encroachment on the rights and privileges of Parliament by a tribunal to inquire into
FENAL JURISDICTION OF THE HOUSE

Power and source

By section 49 of the Constitution the House of Representatives acquired the power and privileges and immunities of the House of Commons as at 1 January 1901, until it acquired those of the Parliament otherwise declared. In the absence of such a declaration of the power Act, they remained those of the House of Commons as at 1 January 1901.

The High Court judgment in the case of Browne and Fitzpatrick (see p. 731) left no doubt that the House of Representatives possessed all of the power, privileges, and immunities of the Commons, and the Parliamentary Privileges Act provides that, except in the case of the House, the committees and Members of each House, as in force under section 49 before the commencement of the Act, continue.

The power of the House to punish by means of imposing a fine on persons found to have committed a breach of privilege or a contempt was problematic, but the issue was resolved by the provisions of section 7 of the Parliamentary Privileges Act (see p. 740).

The means by which the House may enforce the observance of their privileges and immunities, and punish persons found guilty of contempt, include:

- commitment to prison (see p. 739);
- imposition of a fine (see p. 740);
- (public) reprimand or admonishment (see p. 740);
- exclusion from the precincts (see p. 741); or
- requirement for an apology—publicly, if appropriate (see p. 742).

In a case in which an offence is alleged to have been committed, the House may choose to hold an inquiry into the matter and consider the facts.

Commitment

Section 7 of the Parliamentary Privileges Act provides that the House may impose a penalty of imprisonment for a period not exceeding six months for an offence against it. Such a penalty is not affected by any provision in the Constitution.

The commitment to imprisonment is subject to the provisions of that section, and the House may not impose a penalty exceeding six months for an offence against it. The House may commit a person to prison for a term not exceeding six months for an offence against it.

The power of the House to commit a person to prison for a period exceeding six months for an offence against it is subject to the provisions of that section, and the House may not impose a penalty exceeding six months for an offence against it.

The power of the House to impose a penalty for an offence against it is subject to the provisions of that section, and the House may not impose a penalty exceeding six months for an offence against it.

Form of warrants

Section 9 of the Parliamentary Privileges Act states:

Where a person is charged with an offence against the House, the resolution of the House imposing the penalty and the warrant committing the person to prison shall set out particulars of the persons determined by the House to constitute that offence.

In the House of Commons warrants for commitment issued by the Speaker on the order of the House have sometimes been expressed in general terms with a reference to the person or persons for whom the warrant is issued. This is because the House, in general, has been held that it is not competent for the courts to inquire further into the matter. In the House of Commons, warrants for commitment have generally been issued on the order of the House.

The High Court decision in the Browne/Fitzpatrick Case (1955) stated:

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If the warrant specifies the ground of the commitment the court may it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant

appears to have been connected with a breach of an acknowledged privilege it is conclusive and in
goof to the effect that the breach of privilege is stated in general terms. This statement of law applies

in accordance with cases by which it was finally established, namely, the Case of the Sheriff

Middleton. 112

Because particulars of the matters determined to constitute the offence must, by section 9 of the Parliamentary Privileges Act, be set out in the resolution imposing a penalty and the warrant committing the person, the effect of the case law that has been

established is therefore that a court may review a decision to impose a penalty or to determine whether the conduct or action in question was capable of constituting an offence.113

Subsection 74(4) of the Act enables the House to delegate to the Speaker the authority to

have a person released from prison when the House is not sitting. Such authority could, for example, be used if a person was committed following a refusal to give information to a committee but then, after being committed, agreed to provide the information sought.114

Imposition of a fine

The House, under section 7 of the Parliamentary Privileges Act, may impose a fine not

exceeding $5,000 in the case of a natural person, and not exceeding $25,000 in the case of a corporation. Subsection 7(4) provides that such fines are debts due to the Commonwealth

and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by the House for that purpose. A fine and imprisonment may

be imposed for the same offence.

For many years there had been substantial doubt as to whether the House had power to impose fines, the issue turning, because of the provisions of section 49 of the

Constitution, on whether the House of Commons had such power in 1808. This case because the House of Commons had not imposed fines on persons found guilty of breach of privilege or contempt since 1866. The matter was finally resolved by the insertion of a provision conferring the power to fine in the Parliamentary Privileges Act. At the time of publication neither House had exercised this power.

Reprind or admonishment

Another acknowledged form of penalty available to the Houses is that of public

reprind or admonishment at the Bar of the House or Senate by the Speaker or President

as the case may be. Any reprind or admonishment is in the name and with the authority of

the House concerned. The House has not used the procedure of requiring the attendance of

a privilege offender at the Bar of the House to receive a reprind by the Speaker.

In the BNC Case (1963) the Committee of Privileges found that an advertisement, which appeared in the Canberra Times and other newspapers on 18 August 1963, represented a breach of privilege. The committee also found that the ultimate responsibility for publication of the advertisement lay with named individuals, and that the publication

was done without malice towards the House or any Member, or intent to libel any Member, and appeared through negligence and lack of appreciation of what was involved.115

The committee made no recommendation to the House as to what action it might take in

respect of the offenders. A number of apologies by those involved were received or printed

prior to the presentation of the committee's report to the House. 116

On 23 September 1965, on the motion of the Prime Minister, the House agreed that the

advertisement involved a breach of privilege, that it was defamatory of the Leader of the

Opposition, and, while it accepted that it was published without malice and apologies had

been made, the House recorded its 'censure of the advertisement and its reprimand to those

concerned in its publication'. The House further resolved that 'those newspapers who

published the advertisement should publish this resolution in full'. The resolution was

transmitted to the named offenders.117

In 1971 two people found guilty of a breach of privilege were called to the Bar of the

Senate and were reprimanded by the Deputy President. The background to this case was

that on 4 May 1971 articles published in the Sunday Australian and the Sunday Review

newspapers allegedly contained certain findings and recommendations of a Senate select

committee which had not been reported to the Senate.118

The committee reported to the Senate that the publication constituted a breach of the

privileges of the Senate and that the editor and publisher of each of the newspapers were

the people responsible and culpable in the breach of privilege. On the recommendation of

the committee, the two editors were required to attend before the Senate, where they were

reprimanded by the Deputy President.119

Exclusion of persons from precincts

In respect of persons working in or using the facilities of the Parliament, including those

of the parliamentary press gallery, a person's pass may be withdrawn, thereby depriving

the person or the person's organisation of access to the Parliament building. Control of access
to such facilities is under the authority of the Presiding Officers (and see Chapter on 'The

Speaker, Deputy Speakers and officers').

In 1912 a notice of motion proposing the exclusion of representatives of the Age

newspaper from the press gallery for statements concerning a Member was withdrawn

following an apology.120 Later that year the House agreed, without debate, to a motion

concerning misrepresentation of Members in newspapers. The motion proposed that if

the House accepted a statement by a Member to the effect that an article was erroneous, misleading or injurious, representatives of the newspaper concerned should be excluded from the premises until the newspaper published the Member's explanation.121

In June 1942 the President as 'custodian of the rights and privileges of the Senate'

demanded an apology from certain newspaper representatives for the publication of an

article reflecting on the Senate. When no apology was forthcoming, action was taken to

PP 210 (1942–43) 140.


exclud the persons from the precincts of the Senate, after which similar action was permitted by the Speaker in respect of the precincts of the House. 997

Apology
Before the current provisions concerning delinquent contempt were enacted, Member's proceedings in the House of Representatives for the publication of a suitable apology or retraction or denial of that speech, action or writing being considered an acceptable action. While not immediate, the House considered this course sufficient vindication of that authority. 993

On a number of occasions under the previous provisions comments published in newspapers or other publications have been permitted by the House as reflections of the actions and its Members and those responsible have been adjudged guilty of contempt. Such an apology may also be considered appropriate in relation to other categories of contempt.

In 1992 the Committee of Privileges reported that the terms of a letter threatening action against a Member (following a letter the Member had written to a Minister) and the circumstances of its receipt had had a tendency to impair the Member's performance of duties. Although the committee did not make a finding that a contempt had been committed by the House resolved that the person responsible should be required to apologize, and it did so, a letter of apology being received and reported by the Speaker. 100

PUNISHMENT OF MEMBERS
In respect of Members when the House determines has committed contempt, the House's power to pass includes commitment or reprimand but has a further dimension, namely, suspension for a period from the service of the House. In some cases an apology by the Member concerned may forestall further action. Action taken by the House to discipline its Members for offensive actions or words may be regarded as based on the concept of privilege, but in practice the House has dealt with matters of order (offences and penalties under the standing orders) rather than as matters of privilege or contempt. 100

Apology
A Member has apologized for remarks reflecting on the Chairman of Committees which were published in a newspaper, and in view of the apology a motion that he be suspended from the service of the House was withdrawn. 101

100. See, for example, the 1992 and 1993 editions of the Committee of Privileges Report.
102. For details see the 1992 and 1993 editions of the Committee of Privileges Report.
103. See also the 1992 and 1993 editions of the Committee of Privileges Report.
104. See also the 1992 and 1993 editions of the Committee of Privileges Report.
105. See also the 1992 and 1993 editions of the Committee of Privileges Report.
106. See also the 1992 and 1993 editions of the Committee of Privileges Report.
107. See also the 1992 and 1993 editions of the Committee of Privileges Report.
108. See also the 1992 and 1993 editions of the Committee of Privileges Report.
110. See also the 1992 and 1993 editions of the Committee of Privileges Report.
111. See also the 1992 and 1993 editions of the Committee of Privileges Report.
112. See also the 1992 and 1993 editions of the Committee of Privileges Report.
113. See also the 1992 and 1993 editions of the Committee of Privileges Report.
114. See also the 1992 and 1993 editions of the Committee of Privileges Report.