



House of Representatives

COMMITTEE OF PRIVILEGES

**REPORT RELATING TO
A LETTER TO THE EDITOR
PUBLISHED IN *THE AUSTRALIAN*,
13 SEPTEMBER 1971**

together with

**MINUTES OF PROCEEDINGS OF
THE COMMITTEE**

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

1971—Parliamentary Paper No. 182

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MEMBERSHIP OF THE COMMITTEE

Mr E. N. Drury, M.P., *Chairman*

Mr N. A. Brown, M.P.

Hon. J. E. McLeay, M.P.¹

Mr D. M. Cameron, M.P.

Mr H. J. McIvor, O.B.E., M.P.

Mr F. Crean, M.P.

Mr W. G. Turnbull, C.B.E., M.P.

Mr A. D. Fraser, M.P.

Mr E. G. Whitlam, Q.C., M.P.

Mr A. W. Jarman, M.P.²

Clerk to the Committee

Mr L. M. Barlin,
Senior Parliamentary Officer,
House of Representatives

¹ Discharged from Committee, 14 September 1971.

² Appointed to Committee, 14 September 1971.

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EXTRACTS FROM VOTES AND PROCEEDINGS

No. 117 dated 13 September 1971

2 PRIVILEGE—LETTER IN “THE AUSTRALIAN”—REFERENCE TO COMMITTEE OF PRIVILEGES: Mr Cohen raised a matter of privilege based upon a letter to the editor published in *The Australian* on Monday, 13 September 1971. Mr Cohen produced a copy of *The Australian* containing the letter and gave the names of the printer and the publisher of that newspaper.

Mr Cohen then moved—That the matter of the letter to the editor signed by P. Wintle, published in *The Australian* of Monday, 13 September 1971, be referred to the Committee of Privileges.

Debate ensued.

Question—put and passed.

No. 118 dated 14 September 1971

5 COMMITTEE OF PRIVILEGES: Mr Swartz (Leader of the House) moved, by leave—That Mr McLeay be discharged from attendance on the Committee of Privileges and that, in his place, Mr Jarman be appointed a member of the committee.

Question—put and passed.

7 COMMITTEE OF PRIVILEGES: Mr Holten (Minister for Repatriation) moved, by leave—That the Committee of Privileges, when considering the matters referred to it on 7 and 13 September, have power to send for persons, papers and records.

Question—put and passed.

REPORT

1. The Committee of Privileges to which was referred the matter of the complaint made in the House of Representatives on 13 September 1971 relating to publication in *The Australian* on 13 September 1971 of a letter to the editor signed by P. Wintle of Mundingburra, Queensland, has agreed to the following Report:

Complaint

2. The complaint placed before the House is set out in Appendix I hereto. The text of the letter to the editor which was the subject of the Committee's inquiry is included in that Appendix.

Powers, Privileges and Immunities of the House of Representatives, and of its Members

3. Section 49 of the *Commonwealth of Australia Constitution Act* provides that:

'The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the 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 establishment of the Commonwealth.'

4. The powers, privileges and immunities of the House of Representatives not having been declared by the Parliament, they remain those of the House of Commons as at 1 January 1901.

5. In considering the matter referred to it, the Committee had recourse to the practice and precedents of the House of Commons. Relevant cases and precedents are included in the Memorandum of the Acting Clerk of the House attached as Appendix II to this Report.

Inquiries made by the Committee

6. In the first instance, the Committee sought advice on the matter from the Acting Clerk of the House of Representatives (Mr J. A. Pettifer) whose Memorandum prepared for the Committee is reproduced as Appendix II to this Report

7. The Committee called and took evidence from the editor of *The Australian* (Mr O. M. Thomson). At the request of the Committee the editor presented to the Committee the original of the letter to the editor published in that newspaper.

8. Extensive inquiries conducted on behalf of the Committee failed to locate the author of the letter either at the address given or elsewhere in Australia. Inquiries made by the newspaper concerned were similarly unsuccessful and the Committee reached the conclusion that the name and address given on the letter were not authentic.

General

9. Publication of the letter to the editor followed and referred to a series of articles which had been written in *The Australian* on lobbying in the Commonwealth Parliament. Despite the generality of the allegations made in the letter, the Committee is satisfied that whilst they may have referred to parliamentarians generally, the allegations were primarily directed at Members of the Commonwealth Parliament and

therefore to Members of the House of Representatives. The Committee is satisfied also that the allegations related to Members of the House in their capacity as such, that is, incidentally to and as part of their service to the Parliament.

10. The Committee's intention of seeking evidence from the author of the letter to substantiate the allegations of such a serious nature could not be realised when its efforts to locate that person were unsuccessful.

11. The editor of *The Australian* stated in evidence to the Committee that he knew of nothing to substantiate the allegations made in the letter. He further stated that he did not believe them to be true.

12. The editor accepted responsibility for publication of the letter. However, he stated to the Committee that he believed the letter should not have been published by the newspaper and admitted that he had been neglectful in not reading it prior to its publication.

Findings

13. The findings of the Committee are as follows:

- (i) That publication of the letter to the editor signed by P. Wintle of Mundingburra, Queensland, and published in *The Australian* of Monday, 13 September 1971, constitutes a contempt of the Parliament.
- (ii) That the author of the letter and the editor of *The Australian* are both guilty of a breach of Parliamentary Privilege.
- (iii) That the letter was published by *The Australian* without malice towards the House or any Member of the House.
- (iv) That there is no evidence to substantiate the allegations contained in the letter.

Recommendations

14. The Committee recommends to the House:

- (i) That no further action be taken against the editor of *The Australian* provided that, within such time as the House may require, he publishes in a prominent position in his newspaper an apology to the following effect, namely:—
 - (a) That a diligent search had failed to reveal the alleged author of the letter;
 - (b) That publication of the letter signed by P. Wintle constituted a contempt of the Parliament and that it should not have been published;
 - (c) That the editor dissociates himself from the allegations contained in the letter;
 - (d) That the editor believes the allegations are without foundation, and
 - (e) That the editor apologises to the House of Representatives therefor.
- (ii) That it consider publication of an apology by the editor of *The Australian* does not absolve the author of the letter of his guilt in the matter.

E. NIGEL DRURY
Chairman

27 October 1971

MINUTES OF PROCEEDINGS

PARLIAMENT HOUSE, CANBERRA

TUESDAY, 14 SEPTEMBER 1971

(27th Parliament—Eighth Meeting)

Present:

Mr Drury (*Chairman*)

Mr Brown

Mr McIvor

Mr D. M. Cameron

Mr Turnbull

Mr Crean

Mr Whitlam

Mr Jarman

The Chairman informed the Committee that the House of Representatives had that day agreed to the discharge of Mr McLeay from the Committee and the appointment of Mr Jarman in his place.

The Minutes of Proceedings of the meeting held on 6 May 1971 were confirmed.

The following extracts from the Votes and Proceedings of the House of Representatives containing resolutions agreed to by the House on the dates indicated, were reported:

7 September 1971—That the matter of the article in the *Daily Telegraph* of Friday, 27 August 1971 be referred to the Committee of Privileges.

13 September 1971—That the matter of the letter to the editor signed by P. Wintle, published in *The Australian* of Monday, 13 September 1971, be referred to the Committee of Privileges.

* * * *

Resolved: That the House of Representatives be asked to approve that the Committee of Privileges, when considering the matters referred to it on 7 and 13 September 1971, have power to send for persons, papers and records.

Resolved: That the Acting Clerk of the House be asked to prepare a Memorandum in relation to the letter to the editor published in *The Australian* of Monday, 13 September 1971.

Resolved: That the Clerk to the Committee be authorised to conduct a thorough search of electoral and municipal rolls and other available records to determine whether there is a person by the name of P. Wintle of Mundingburra, Qld.

Resolved: That the editor of *The Australian* be requested to retain the original of the letter to the editor signed by P. Wintle and published in *The Australian* of Monday, 13 September 1971.

Resolved: That in respect of the two inquiries currently being undertaken by the Committee, any statements to the Press shall be made by the Chairman after being authorised by the Committee.

The Committee adjourned until Tuesday, 28 September 1971 at 8.30 p.m.

* * * * Items which have been omitted from these Minutes of Proceedings relate to an inquiry being conducted by the Committee into an article published in the *Daily Telegraph* of 27 August 1971 and may be found in the Committee's Report on that matter.

TUESDAY, 28 SEPTEMBER 1971
(27th Parliament—Ninth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown
Mr Crean
Mr Jarman

Mr Turnbull
Mr Whitlam

The Minutes of Proceedings of the meeting held on 14 September 1971 were confirmed.

* * * *

The Chairman advised the Committee that he had received an extract from the Votes and Proceedings recording a resolution of the House of Representatives that the Committee of Privileges, when considering the two matters referred to it on 7 and 13 September 1971, have power to send for persons, papers and records.

The Chairman advised that he had received from the Acting Clerk of the House of Representatives, a Memorandum prepared for the assistance of the Committee in its inquiry into the letter to the editor published in *The Australian* of 13 September 1971 and that copies had been distributed to all members of the Committee.

The Chairman advised that the Clerk to the Committee had been unable to determine from electoral or municipal rolls and other available records that there was a person by the name of P. Wintle of Mundingburra, Qld.

* * * *

Resolved: That the Commissioner of the Commonwealth Police Force be requested to determine and advise the Committee as soon as possible whether there is a person with the name of, or known as, 'P. Wintle' at Mundingburra, Queensland or at any other Australian address.

Resolved: That Mr H. B. Rothwell, Editor-in-chief, *The Australian* be requested to appear before the Committee and produce the original of the letter to the editor signed by P. Wintle and published in *The Australian* of Monday, 13 September 1971.

The Committee adjourned until Thursday, 30 September 1971 at 8.30 p.m.

THURSDAY, 30 SEPTEMBER 1971
(27th Parliament—Tenth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown
Mr D. M. Cameron
Mr Crean

Mr Jarman
Mr Turnbull
Mr Whitlam

The Minutes of Proceedings of the meeting held on 28 September 1971 were confirmed.

The Chairman advised the Committee of the results of inquiries made by the Commissioner, Commonwealth Police Force, on behalf of the Committee and in particular that no trace could be found of a person named, or known as, 'P. Wintle' at Mundingburra, Qld.

* * * *

The Committee adjourned until Wednesday, 6 October 1971 at 4 p.m.

WEDNESDAY, 6 OCTOBER 1971
(27th Parliament—Eleventh Meeting)

Present:

Mr Drury (Chairman)

Mr Brown

Mr Jarman

Mr D. M. Cameron

Mr McIvor

Mr Crean

Mr Turnbull

Mr A. D. Fraser

Mr Whitlam

The Minutes of Proceedings of the meeting held on 30 September 1971 were confirmed.

* * * *

Resolved: That Mr O. M. Thomson, Editor, *The Australian* be asked to appear before the Committee in place of the Editor-in-chief, Mr H. B. Rothwell.

Mr Owen Mackay Thomson, Editor, *The Australian* was called, sworn and examined.

Mr Thomson laid before the Committee, the following paper:

The original of the letter to the editor signed by P. Wintle of Mundingburra, Qld and published in *The Australian* of 13 September 1971.

The witness withdrew.

The Committee deliberated.

Mr McIvor moved—That the Committee require Mr Thomson to disclose the name of the person who approved of the publication in *The Australian* of 13 September 1971, of the letter to the editor signed by P. Wintle of Mundingburra, Queensland.

Debate ensued.

Question—put.

The Committee divided—

Ayes, 2

Noes, 6

Mr McIvor

Mr Brown

Mr Jarman

Mr D. M. Cameron

Mr Crean

Mr A. D. Fraser

Mr Turnbull

Mr Whitlam

And so it was negatived.

The Committee deliberated.

Resolved: That Mr Thomson be informed of the Committee's decision not requiring him to disclose the name of the person who approved of the publication of the letter to the editor signed by P. Wintle.

Mr Thomson was recalled.

The witness withdrew.

The Committee adjourned until to-morrow at 8.30 p.m.

THURSDAY, 7 OCTOBER 1971
(27th Parliament—Twelfth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown

Mr McIvor

Mr D. M. Cameron

Mr Turnbull

Mr Crean

Mr Whitlam

Mr Jarman

The Minutes of Proceedings of the meeting held on 6 October 1971 were confirmed.

* * * *

The Committee deliberated.

The Committee adjourned until Tuesday, 12 October 1971 at 4 p.m.

TUESDAY, 12 OCTOBER 1971
(27th Parliament—Thirteenth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown

Mr Jarman

Mr D. M. Cameron

Mr Turnbull

Mr Crean

Mr Whitlam

Mr A. D. Fraser

The Minutes of Proceedings of the meeting held on 7 October 1971 were confirmed.

* * * *

The Committee deliberated in respect of *The Australian* inquiry.

Mr Brown moved—That this Committee finds that publication of the letter to the editor signed by P. Wintle of Mundingburra, Queensland and published in *The Australian* of Monday, 13 September 1971, constitutes a contempt of the Parliament.

Question—put.

The Committee divided—

Ayes, 6

Noes, 1

Mr Brown

Mr A. D. Fraser

Mr D. M. Cameron

Mr Crean

Mr Jarman

Mr Turnbull

Mr Whitlam

And so it was resolved in the affirmative.

Mr Brown moved—That this Committee recommends to the House of Representatives that no further action be taken in relation to the matter provided that, within such time as the House may require, the editor publishes in a prominent position in his newspaper an apology to the following effect, namely:

- (1) That a diligent search had failed to reveal the alleged author of the letter;
- (2) That publication of the letter signed by P. Wintle constituted a contempt of the Parliament and that it should not have been published;
- (3) That the editor dissociates himself from the allegations contained in the letter;
- (4) That the editor believes the allegations are without foundation, and
- (5) That the editor apologises to the House of Representatives therefor.

Mr A. D. Fraser moved, as an amendment—That all words after 'That' (first occurring) be omitted with a view to inserting the following words in place thereof: 'this Committee recommends to the House of Representatives that it would best consult its own dignity by taking no further action in respect of the publication of the letter to the editor, signed by P. Wintle of Mundingburra, Queensland.'

Question—That the words proposed to be omitted stand part of the question—put.

The Committee divided—

Ayes, 6

Noes, 1

Mr Brown

Mr A. D. Fraser

Mr D. M. Cameron

Mr Crean

Mr Jarman

Mr Turnbull

Mr Whitlam

And so it was resolved in the affirmative.

Question—That the motion be agreed to—put.

The Committee divided—

Ayes, 6

Mr Brown

Mr D. M. Cameron

Mr Crean

Mr Jarman

Mr Turnbull

Mr Whitlam

Noes, 1

Mr A. D. Fraser

And so it was resolved in the affirmative

The Committee adjourned until Tuesday, 26 October 1971 at 4 p.m.

TUESDAY, 26 OCTOBER 1971
(27th Parliament—Fourteenth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown

Mr D. M. Cameron

Mr Crean

Mr Turnbull

The Minutes of Proceedings of the meeting held on 12 October 1971 were confirmed.

* * * *

The Committee adjourned.

WEDNESDAY, 27 OCTOBER 1971
(27th Parliament—Fifteenth Meeting)

Present:

Mr Drury (Chairman)

Mr Brown

Mr D. M. Cameron

Mr A. D. Fraser

Mr McIvor

Mr Turnbull

The Minutes of Proceedings of the meeting held on 26 October 1971 were confirmed.

* * * *

The Chairman submitted his Draft Report in respect of *The Australian* inquiry. Paragraphs 1 to 14 agreed to.

Resolved: That the Draft Report be the Report of the Committee to the House.

The Committee adjourned until Wednesday, 3 November 1971, at 4 p.m.

APPENDIX I

(Hansard extract)

THE PARLIAMENT: PRIVILEGE

Mr COHEN (Robertson)—Mr Speaker, I raise a matter of privilege that is based on a letter to the editor published in the 'Australian' of today's date. I produce a copy of the 'Australian', which is printed and published in New South Wales by Mirror Newspapers Ltd at 20-24 Holt Street, Surry Hills for the proprietors, Nationwide News Pty Ltd of 31-33 London Circuit, Canberra, Australian Capital Territory. If I may, I will read the letter because it is brief. The letter is signed by P. Wintle of Mundingburra, Queensland. It reads:

While congratulating you on the fine series of articles on parliamentary lobbying by Kenneth Randall, I am wondering when Mr Randall will get around to the question of bribes.

It is common knowledge that many parliamentarians look for some monetary reward for the favours they do. In fact you won't get much done without it. It is called 'the sling'. I am assured by a friend who earned his living as a lobbyist that it is essential to offer sufficient financial inducement to the right person if you want something done—\$10,000 is considered 'pin money' in this field.

My friend laughed at the idea that lobbyists 'persuade' members of Parliament by the force and persistency of their arguments.

Sir, I regard that as being a very serious allegation against all members of Parliament. I think it is about time that all members, no matter on what side of the Parliament they sit, took these sorts of letters and allegations in the newspapers seriously. I for one do not believe a word of this letter but I think it should be referred to the Committee of Privileges and that appropriate action should be taken to defend every single member of this Parliament against the charges made. Therefore, I move:

That the matter of the letter to the editor signed by P. Wintle, published in the 'Australian' of Monday, 13th September 1971, be referred to the Committee of Privileges.

Mr SWARTZ (Darling Downs—Minister for National Development and Leader of the House)—Mr Speaker, this is certainly a serious matter which reflects on the integrity of all members of this Parliament. I am sure that every honourable member will support the motion before the House. I support the motion.

Question resolved in the affirmative.

APPENDIX II

HOUSE OF REPRESENTATIVES COMMITTEE OF PRIVILEGES

LETTER TO THE EDITOR PUBLISHED IN *THE AUSTRALIAN*
13 SEPTEMBER 1971

(Matter referred to Committee of Privileges 13 September 1971)

NOTES PREPARED BY THE ACTING CLERK
OF THE HOUSE (MR J. A. PETTIFER)

20 September 1971

HOUSE OF REPRESENTATIVES COMMITTEE OF PRIVILEGES

Notes Prepared by the Acting Clerk of the House

The following notes have been prepared at the request of the House of Representatives Committee of Privileges in relation to a letter to the editor published in *The Australian* of Monday, 13 September 1971.

Extract from the Votes and Proceedings of the House of Representatives
13 September 1971

‘PRIVILEGE—LETTER IN “THE AUSTRALIAN”—REFERENCE TO COMMITTEE OF PRIVILEGES:

Mr Cohen raised a matter of privilege based upon a letter to the editor published in *The Australian* on Monday, 13 September 1971. Mr Cohen produced a copy of *The Australian* containing the letter and gave the names of the printer and the publisher of that newspaper.

Mr Cohen then moved—That the matter of the letter to the editor signed by P. Wintle, published in *The Australian* of Monday, 13 September 1971, be referred to the Committee of Privileges.

Debate ensued.

Question—put and passed.’

Extract from House of Representatives Hansard, 13 September 1971

‘Mr Cohen (Robertson)—Mr Speaker, I raise a matter of privilege that is based on a letter to the editor published in *The Australian* of to-day’s date. I produce a copy of *The Australian*, which is printed and published in New South Wales by Mirror Newspapers Ltd at 20–24 Holt Street, Surry Hills for the proprietors, Nationwide News Pty Ltd of 31–33 London Circuit, Canberra, Australian Capital Territory. If I may, I will read the letter because it is brief. The letter is signed by P. Wintle of Mundingburra, Queensland. It reads:

While congratulating you on the fine series of articles on parliamentary lobbying by Kenneth Randall, I am wondering when Mr Randall will get around to the question of bribes.

It is common knowledge that many parliamentarians look for some monetary reward for the favours they do. In fact you won’t get much done without it. It is called ‘the sling’. I am assured by a friend who earned his living as a lobbyist that it is essential to offer sufficient financial inducement to the right person if you want something done—\$10,000 is considered ‘pin money’ in this field.

My friend laughed at the idea that lobbyists ‘persuade’ members of Parliament by the force and persistency of their arguments.

Sir, I regard that as being a very serious allegation against all members of Parliament. I think it is about time that all members, no matter on what side of the Parliament they sit, took these sorts of letters and allegations in the newspapers seriously. I for one do not believe a word of this letter but I think it should be referred to the Committee of Privileges and that appropriate action should be taken to defend every single member of this Parliament against the charges made. Therefore, I move:

That the matter of the letter to the editor signed by P. Wintle, published in ‘The Australian’ of Monday, 13th September 1971, be referred to the Committee of Privileges.

Mr Swartz (Darling Downs—Minister for National Development and Leader of the House)—Mr Speaker, this is certainly a serious matter which reflects on the integrity of all members of this Parliament. I am sure that every honourable member will support the motion before the House. I support the motion.

Question resolved in the affirmative.’

CONSTITUTIONAL PROVISION—GENERAL CHARACTER OF PRIVILEGE *Constitution—*

Section 49 of the Constitution states that:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the Committees of each House, shall be such as are declared by the 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 establishment of the Commonwealth.

The Parliament has not so declared the privileges, etc., except in relation to a few minor powers, viz., Parliamentary Papers Act (protection of Printer), Broadcasting of Parliamentary Proceedings Act (protection of Australian Broadcasting Commission) and Public Accounts Committee Act and Public Works Committee Act (provisions respecting witnesses before these committees).

To ascertain the law, it is necessary therefore for recourse to be had to the practice and precedents of the House of Commons. These are dealt with at length in May’s *Parliamentary Practice*.

What constitutes ‘Privilege’

‘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. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.’ (*May*, 18th ed. p. 64)

‘The particular privileges of the Commons have been defined as: “The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords”.’ (*May*, 18th ed. p. 64)

Breach of Privilege and ‘Contempt’

‘When any of these rights and immunities, both of the Members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to

its legitimate commands or libels upon itself, its officers or its Members. Such actions, though often called 'breaches of privilege' are more properly distinguished as contempts'. The powers and procedure of each House in dealing with cases of contempt are treated in Chapters IX and X.' (*May*, 18th ed., p. 65)

'The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.' (*May*, 18th ed., p. 64)

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

The matter before the Committee would appear to come within the category of what *May* describes as constructive contempts—speeches or writings reflecting on either House and reflections upon Members.

The relevant extracts from *May* are set out below:

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.' (*May*, 18th ed., p. 140-1)

On 26 February 1701, the House of Commons resolved that to print or publish any libels reflecting upon any member of the House for or relating to his service therein, was a high violation of the rights and privileges of the House.

Written imputations, as affecting a Member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law', but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity. (*May*, 18th ed., p. 148)

Examples of speeches and writings which have been held to constitute breaches of privilege or contempts include imputations against Members of corruption in the execution of their duties. (*May*, 18th ed., p. 148-9)

The view which the House of Commons has taken in regard to the offer of money to, and the acceptance of money by, Members for services rendered is shown in the following extracts:—

On 2 May 1695 the Commons resolved, "That the offer of money, or other advantage, to any member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanour and tends to the subversion of the English constitution". (*May*, 18th ed., p. 145)

The acceptance by any Member of either House of a bribe to influence him in his conduct as such Member or of any fee, compensation or reward in connection with the promotion of, or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof is a breach of privilege. (*May*, 18th ed., p. 138)

Having in mind the established precedents it is for the Committee to decide whether it should advise the House that the publication of the letter constitutes such an affront to the dignity of the House or its Members in that capacity as amounts to a contempt of Parliament.

To assist the Committee in considering the privilege aspect of the letter to the Editor of *The Australian* the following Commons' cases are cited.

Two old examples of offences relating to offers of money to Members are:

1. *Noble's Case* (1733).—On 19th February, 1733, a complaint was made that William Noble had asserted in a Coffee-House that Sir William Milner, M.P., received a pension from the Court. On a motion that the said assertion was false and scandalous, and a breach of privilege, Noble was committed to the custody of the Serjeant; he was recalled to the Bar of the House on 28th February, admonished and discharged. (C.J. (1732-37) 245)
2. *Cundy's Case* (1836).—On 13th July, 1836, a complaint was made that N. W. Cundy had told a Member that various Members of a Committee of the House had received money for their votes. Cundy was called to the Bar of the House and examined, but no further action was taken, since he denied the charge, and it was not possible to substantiate it. (C.J. (1836) 658, 676; Parl Deb. (1836) 35, cc. 167, 255)

More modern cases are:

1. *Case of Mr. Sandham* (1930).—On 28th July, 1930, a complaint was made that Mr. Sandham, in a speech reported in the *Manchester Guardian*, had said: "Labour Members can receive bribes to help to pass doubtful bills in the interests of private individuals; Labour Members can get stupidly drunk in this place; but none of these things are against the sacred traditions of the House, in fact they are in keeping with them. It is known that Labour Members have accepted money from money-lenders and other interests, and it is known that Labour M.P.s get drunk in the House. Our leaders can see nothing wrong in that, or, at any rate, such conduct is not bad enough to create a demand for their expulsion." Mr. Sandham was admonished in his place by the Speaker; no action was taken against the *Manchester Guardian*. (C. J. (1929-30) 477, 489, 503; Parl Deb. 1929-30, 242, cc. 42, 309, 742)
2. *The Allighan Case* (1947)

On 3 April 1947 an article appeared in the *World's Press News* by the member for Gravesend (Mr G. Allighan) in which he wrote, inter alia:

Every newspaper in the Street has anything up to half a dozen M.P.s on its "Contacts" list. They always have had—what's the Contacts file for, otherwise.

Some of the "contacts" are on a retainer, some get paid for what they produce, some are content to accept "payment in kind"—personal publicity. I, as news editor of the *Daily Mirror*, used to O.K. payments to several regular M.P. contacts, both for stories, "info" and tip-offs. At least two of them were prominent Labour M.P.s—one is a Cabinet Minister of such prominence as to be in the first four of potential Premiers.

That is one way any enterprising newspaper gets what the Party calls "leaks". Another way more accurately justifies that description. M.P.s "leak" around the bar. Being no less human than subs., some M.P.s "knock 'em back" at the bar and, being less absorptive than reporters, become lubricated into loquacity.

In moving that the matter be referred to the Committee of Privileges, the Member responsible stated that his sole object was to vindicate the good name of the House of Commons.

The following extracts from the memorandum by the Clerk of the House of Commons and the Privileges Committee itself in relation to the Allighan case are relevant to the Committee's present inquiry:

The House has long regarded speeches or writings which reflect upon it as among the acts which constitute a breach of privilege or contempt. In 1701 the House resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House, and indignities by words spoken or writings published reflecting on the character or proceedings of the House have been constantly punished upon the principle that such acts tend to obstruct the House in the performance of its functions by diminishing the respect due to it. The House of Lords has also observed the same principle in punishing spoken or written reflections as a contempt.

Reflections upon Members, even where individuals are not named, may be so framed as to bring into disrepute the body to which they belong, and such reflections have therefore been treated as equivalent to reflections on the House itself. (H. of C. Paper 1947, No. 138, p. 123)

Your Committee are very mindful of the fact that Parliament has no right to extend its privileges beyond those to which recognition has already been accorded, and they believe that it would be contrary to the interest both of Parliament and of the public so to do. On the other hand, the absence of an exact precedent does not in itself show that a particular matter does not come within some recognized principle of Parliamentary privilege.

Moreover, it is to be remembered that the right to punish for contempt is by no means restricted to the case where some actual privilege has been infringed. The two matters are distinct.

Whether or not the matter has by analogy some relation to the privilege that Members are entitled to be free from molestation, it has long been recognised that the publication of imputations reflecting on the dignity of the House or of any Member in his capacity as such is punishable as a contempt of Parliament. It is true that the imputation upon a Member to come within this principle must relate to something which he has done as such, that is to say incidentally to and as part of his service to Parliament. Thus in an extreme case concerning *The Times* in 1887, an allegation that certain Members "draw their living" from the steady perpetration of crimes for which civilization demands the gallows" was held not to constitute a contempt in that it did not refer to the action of the Members concerned in the discharge of their duties as such. Reflections upon Members, however, even where individuals are not named, may be so framed as to bring into disrepute the body to which they belong, and such reflections have therefore been treated as equivalent to reflections on the House itself. It is for the House to decide whether any particular publication constitutes such an affront to the dignity of the House or its Members in that capacity as amounts to a contempt of Parliament. (H. of C. Paper 1947, No. 138, pp. IX—X)

Another aspect of the matter before the Committee which could be raised is that relating to justification as a defence. In this regard the following extract from the memorandum submitted by the Clerk of the House of Commons to a recent Privileges Committee inquiry is stated:

It has been held that where the contempt alleged is the making of such a charge against Members, proof that the charge was true would not of necessity provide a defence: it has been argued that since offences against privilege are quasicriminal in character, justification cannot be pleaded, because wrongdoing can never be justified in law. There has been no clear decision of the House on the issue of justification: it has not been accepted as a defence in cases coming before the Committee of Privileges. A Committee of Privileges has expressed the view, however, that if the publication were intended to bring to light matters which were true so that an end might be put to them, then, however discreditable the facts, such a publication, for such a high purpose, would constitute a defence. (H. of C. Paper 197 of 1968–69, p. 5–6)

Matters for determination by the Committee

As stated in the foregoing extracts, an imputation reflecting on the dignity of the House or of any Member in his capacity as such is punishable as a contempt. But to come within this principle it must relate to something which he has done *as such*, that is incidentally to and as part of his service to Parliament. It would seem that the Committee should establish this beyond doubt.

The generality of the letter may make certain difficulties for the Committee. It would seem that the letter relates to the *Commonwealth* Parliament as the articles referred to were related to lobbying in the Commonwealth Parliament. Then the writer makes no distinction between Ministers and Members. Both, of course, are 'parliamentarians' and 'Members of Parliament' but the writer makes no reference as to whether the 'favours they do' relate to Ministerial or administrative actions or decisions or the promotion or support of matters in the House.

Despite the vagueness of the assertions, the overwhelming impression and imputation gained from the letter is that Members of the Commonwealth Parliament are open to bribery and corruption when confronted with lobbyists desiring action in one field or another.

If the Committee decides that a contempt of the House has occurred it may deem it desirable to summon as a witness the Editor of *The Australian* who bears a responsibility for publishing the letter and also the writer of the letter in order that he may give evidence relating to his allegations.

THE COMMITTEE OF PRIVILEGES: FUNCTIONS, PROCEEDINGS, ETC.

Standing Order

House of Representatives Standing Order No. 26 is as follows:

A Committee of Privileges to consist of nine Members, shall be appointed at the commencement of each Parliament to *inquire into and report upon* complaints of breach of privilege which may be referred to it by the House.

Witnesses—Summoning of and administration of oath

House of Representatives Standing Orders Nos. 354 to 368 deal with the calling of witnesses, etc.

May, 18th ed., pp. 629–30 deal with the general powers of a Select Committee regarding the attendance of witnesses.

In 1941, the Chairman of the Commonwealth Parliament War Expenditure Committee asked the Solicitor-General for advice on certain questions. In dealing with the following question:

Has a Select Committee or Joint Committee power to summon persons to give evidence and to administer oaths to witnesses,

the Solicitor-General (Opinion 53 of 1941) said that if a Select Committee is empowered to send for persons, papers and records, it may, in his opinion, summon witnesses to give evidence.

By virtue of Section 49 of the Constitution, the power contained in the Parliamentary Witnesses' Oaths Act, 1871, of Great Britain for any Committee of the House of Commons to administer an oath to a witness is conferred on each House of the Commonwealth Parliament and on the Committees of each such House. This power, however, does not extend to a Joint Committee.

The Solicitor-General briefly answered the question by stating:

A Select Committee or a Joint Committee authorised to send for persons, papers and records has power to summon witnesses. A Select Committee also has power to administer oaths to witnesses. It is doubtful whether a Joint Committee has that power.

Scope of Inquiry

'A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee *must be confined* within the limits of the order of reference . . . interpretation of the order of reference of a select committee is a matter for the committee If it is thought desirable that a committee should extend its inquiries beyond the limits laid down in the order of reference, the House may give the committee authority for that purpose by means of an instruction.' (*May*, 18th ed., p. 620)

'Besides the report properly so called relating to the subject matter referred to the committee, it is frequently necessary for a committee to make what is termed a special report in reference to some matter incidentally arising relating to the powers, functions or proceedings of the committee . . .

A report from a committee desiring the instructions of the House as to the authority of the committee or the proper course for it to pursue; or a report that a witness has failed to obey a summons to attend or has refused to answer questions addressed to him by the committee, are examples of such special reports.' (*May*, 18th ed., p. 645)

A House of Representatives case of a special report relates to the Committee of Privileges inquiring into articles in the Bankstown 'Observer' (1955). An article dated 28 April 1955 had been referred to the Committee. Subsequently, the Committee presented a special report to the House seeking authority to include in its investigations articles appearing in the Bankstown 'Observer' of the 5th, 12th and 19th May. The House agreed to a motion that the Committee's request be acceded to. (V. & P. 1954-55, pp. 225, 239)

' . . . The scope of any inquiry (of the Committee of Privileges) comprises all matters relevant to the complaint.' (*May*, 18th ed., p. 652)

The foregoing reference in *May* results from a resolution of the House of Commons in 1947-48:

That when a matter of complaint of breach of privilege is referred to a Committee, such Committee has and always has had power to inquire not only into the matter of the particular complaint but also into facts surrounding and reasonably connected with the *matter of the particular complaint* and into the principles of the law and custom of privilege that are concerned. (House of Commons Journals 1947-48, p. 23.)

Counsel: Lack of judicial form:

'Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel; but in a few cases incriminated persons have been allowed to be heard by counsel, the hearing being sometimes limited to 'such points as do not controvert the privileges of the House'. Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge; and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed, *by leave of the House*, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein.' (The last cases recorded in *May* were in the 18th Century.) (*May*, 18th ed., pp. 163-4)

Details of the Commons Practice in relation to counsel appearing before Select Committees are given in *May*, 18th ed., pp. 630-1.

During the course of the sittings of the House of Representatives Committee of Privileges in the Bankstown 'Observer' case, Mr R. E. Fitzpatrick, who had been called by the Committee, requested that he be represented by counsel. By resolution, the Committee decided to hear counsel on the following two points:

- (a) as to his right to appear generally for Mr Fitzpatrick, and
- (b) as to the power of this Committee to administer an oath to the witness.

The Committee heard counsel on these points but did not agree to counsel's application to appear. (Report of Committee tabled 8 June 1955, pp. 9-10)

‘Little attempt is made in the Committee of Privileges to observe judicial forms. Persons accused of contempt of the House are not as a rule allowed to be defended by Counsel, though in a few cases the House has given leave for an exception to be made. The Committee of Privileges usually hears only the parties concerned and the Clerk of the House, and the House decides the appropriate penalty on the tenor of the debate on the Committee’s report.’ (Extract from Paper prepared by the Clerk of the House of Commons for the Association of Secretaries-General of Parliaments—March 1965.)

Protest or Dissent may not be added to the Report:

Standing Order 343 reads as follows:

The chairman shall read to the committee, at a meeting convened for the purpose, the whole of his draft report, which may at once be considered, but, if desired by any Member it shall be printed and circulated amongst the committee and a subsequent day fixed for its consideration. In considering the report, the chairman shall read it paragraph by paragraph, proposing the question to the committee at the end of each paragraph—“That it do stand part of the report”. A Member objecting to any portion of the report shall move his amendment at the time the paragraph he wishes to amend is under consideration, but no protest or dissent may be added to the report.