

Parliamentary Paper
No. 297/1981

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Report relating to an advertisement
published in the Melbourne *Herald* of
Friday, 16 October 1981

together with minutes of proceedings of the
Committee

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MEMBERSHIP OF THE COMMITTEE

Mr D. M. Cameron, M.P. *Chairman*

Mr R. J. Birney, M.P.

Mr M. J. Duffy, M.P.¹

Hon. W. M. Hodgman, M.P.²

Mr A. C. Holding, M.P.

Mr R. Jacobi, M.P.

Mr A. W. Jarman, M.P.

Mr B. O. Jones, M.P.

Mr P. C. Millar, M.P.

Mr J. R. Porter, M.P.

Mr G. G. D. Scholes, M.P.

Mr L. M. Barlin *Secretary*

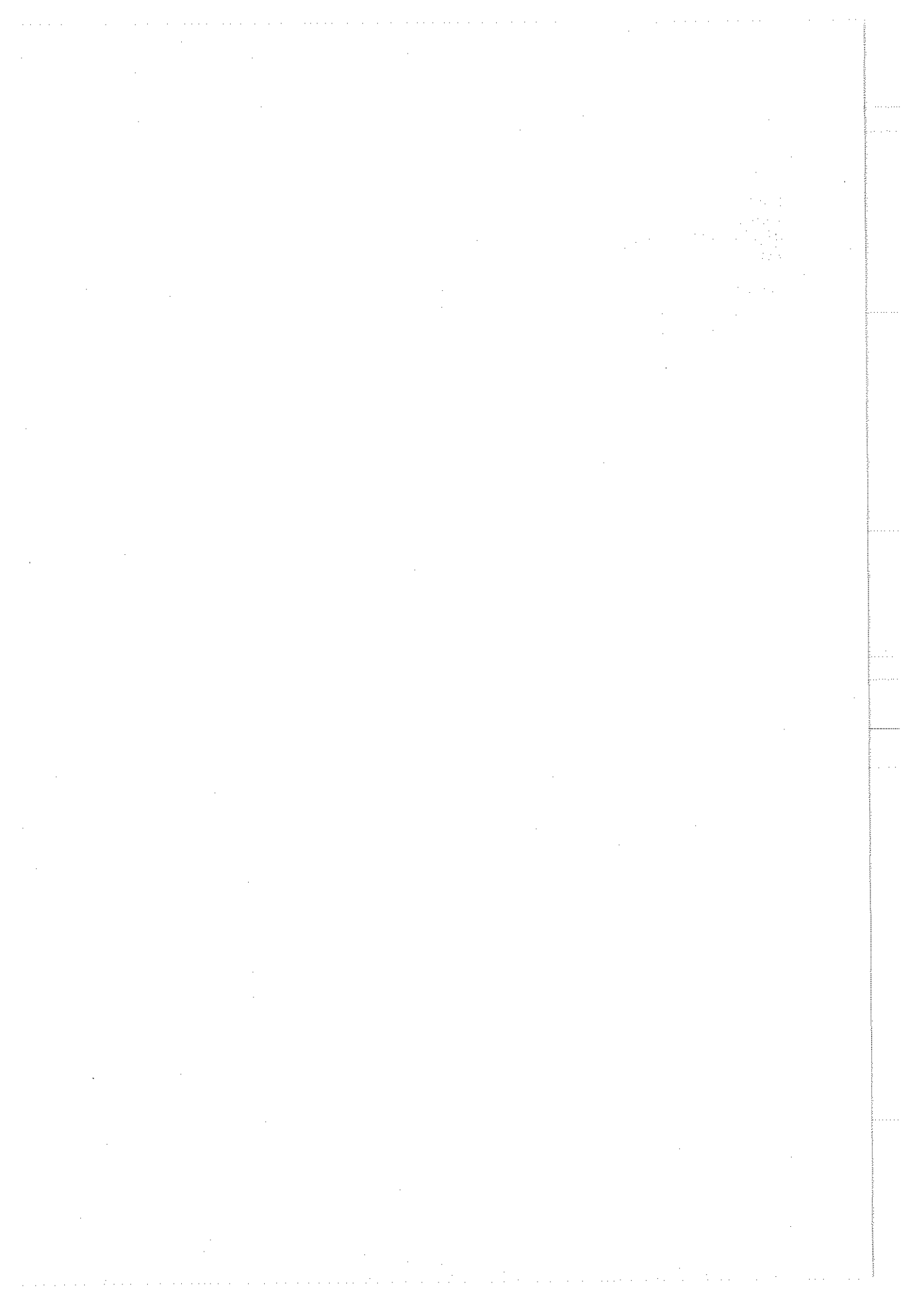
¹ Nominated by the Deputy Leader of the Opposition to serve in his place during this inquiry.

² Nominated by the Leader of the House to serve in his place during this inquiry.



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EXTRACTS FROM VOTES AND PROCEEDINGS

No. 61 of Tuesday, 20 October 1981

- 3 **PRIVILEGE:** Mr Fraser (Prime Minister) drew the attention of the House to an advertisement on the front page of the Melbourne *Herald* of 16 October 1981, under the heading "P.M. VOTES SIGMA NO. 1", which could amount to a breach of privilege.

Mr Speaker stated that he would consider the matter and report later.

- 13 **PRIVILEGE—ADVERTISEMENT IN MELBOURNE 'HERALD'—REFERENCE TO COMMITTEE OF PRIVILEGES:** Mr Speaker referred to the matter of privilege raised by Mr Fraser (Prime Minister) earlier this day (See entry No. 3) and stated that he was prepared to allow precedence to a motion to refer the matter to the Committee of Privileges.

Mr Fraser produced a copy of the Melbourne *Herald* of Friday, 16 October 1981.

Mr Fraser then moved—That the advertisement published in the Melbourne *Herald* of 16 October 1981 under the heading "P.M. VOTES SIGMA NO. 1", be referred to the Committee of Privileges.

Debate ensued.

Question—put and passed.

No. 64 of Tuesday, 27 October 1981

- 8 **COMMITTEE OF PRIVILEGES:** Mr Speaker informed the House that, during consideration of the matter referred to the Committee of Privileges on 20 October 1981, the Leader of the House and the Deputy Leader of the Opposition had nominated Mr Hodgman (Minister for the Capital Territory) and Mr Duffy, respectively, to serve in their places as members of the Committee.

- 9 **COMMITTEE OF PRIVILEGES:** Mr Sinclair (Leader of the House), by leave, moved—That the Committee of Privileges, when considering the matter referred to it on 20 October 1981, 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 20 October 1981 relating to an advertisement published in the Melbourne *Herald* of Friday, 16 October 1981 has agreed to the following report.

Complaint

2. On 20 October 1981 the Rt Hon. J. M. Fraser, C.H., M.P. (Prime Minister) raised in the House the matter of an advertisement for Preston Motors published on the front page of the Melbourne *Herald* of Friday, 16 October 1981, under the heading 'P.M. VOTES SIGMA NO. 1'. Although no Member was named in the advertisement the Prime Minister said he thought—and other people had thought—that the advertisement was referring to other than 'Preston Motors'. He also drew attention to the words used later in the advertisement 'so join the P.M. and drive Sigma—it's a real vote catcher'. He said that the whole thrust of the advertisement seemed to refer to him as Prime Minister.

3. Later the same day Mr Speaker said he would allow precedence to a motion to refer the matter to the Committee of Privileges. In doing so Mr Speaker said:

To any person reading the advertisement, the first impression would be that the reference was to the Prime Minister and that he endorsed that particular make of motor car.

Later, referring to this type of advertisement, Mr Speaker went on to say:

Unless the Privileges Committee considers the matter, then by leaving a vacuum it will encourage people to use Members of this House, unwittingly and unknowingly to the member of the House, to endorse a product. That is a matter which I wish the Privileges Committee to examine and report to the House on.

(The relevant extracts from *Hansard* are reproduced in Appendix B of the Memorandum of the Clerk of the House of Representatives annexed to this Report.)

After some debate the motion to refer the matter to the Committee of Privileges was agreed to by the House.

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

4. 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.

5. The Parliament has not declared its powers, privileges and immunities except in relation to a few relatively minor powers, viz.:

Parliamentary Papers Act—protection of Government Printer and others,

Parliamentary Proceedings Broadcasting Act—protection of Australian Broadcasting Commission,

Public Accounts Committee Act and Public Works Committee Act—privileges of, and protection of, witnesses who appear before these Committees, and

Jury Exemption Act—exemption from jury service of members and certain officers.

The Parliament is, therefore, strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, being the date of establishment of the Commonwealth.

The Inquiry

6. The Committee sought a memorandum from the Clerk of the House of Representatives on the questions of Parliamentary privilege that may be involved in the matter referred to the Committee. His memorandum is attached as an appendix to this report.

7. Having considered the Clerk's memorandum, and remarks made in the House of Representatives by Mr Speaker in allowing precedence to the motion, and also related remarks made by Mr Speaker in dealing with a further similar matter raised in the House on 27 October 1981, the Committee is of the opinion that this type of advertising could constitute a contempt.

8. Concern was expressed at this type of advertising which purports to show Members of the House supporting a particular product. However, the Committee does not believe that this reference should be further inquired into by the Committee of Privileges. It further invites attention to its report on an article published in the *Sydney Daily Mirror* of 2 September 1981 presented to the House on 27 October 1981 wherein it strongly recommended that a Joint Select Committee be established to inquire into all aspects of Parliamentary privilege. It is the Committee's view that this type of advertising should be considered in the broader context of the inquiry to be conducted by the proposed joint select committee and recommends accordingly.

D. M. CAMERON

Chairman

28 October 1981

**MINUTES OF PROCEEDINGS
OF
THE COMMITTEE OF PRIVILEGES**

Note: A section of the Minutes of Proceedings relating to an inquiry previously undertaken by the Committee has been omitted.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

PARLIAMENT HOUSE—CANBERRA

THURSDAY, 22 OCTOBER 1981

(32nd Parliament—Ninth Meeting)

Present:

	Mr D. M. Cameron (<i>Chairman</i>)
Mr Birney	Mr Jacobi
Mr Duffy	Mr B. O. Jones
Mr Holding	Mr Porter

The following extract from the Votes and Proceedings was reported by the Chairman—

No. 61—20 October 1981—That the advertisement published in the Melbourne *Herald* of 16 October 1981 under the heading 'PM VOTES SIGMA NO. 1', be referred to the Committee of Privileges.

Resolved:—On the motion of Mr Porter—

That the Clerk of the House of Representatives be asked to submit a Memorandum on the questions of privilege involved in the matter referred to the Committee on 20 October 1981.

Resolved:—On the motion of Mr Birney—

That approval of the House of Representatives be sought for the Committee, when inquiring into the matter referred to it on 20 October 1981, to have power to send for persons, papers and records.

The Committee deliberated.

The Committee adjourned until Wednesday, 28 October 1981 at 8.30 a.m.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

PARLIAMENT HOUSE—CANBERRA

WEDNESDAY, 28 OCTOBER 1981 (8.30 a.m.)

(32nd Parliament—Tenth Meeting)

Present:

Mr D. M. Cameron (*Chairman*)

Mr Birney

Mr Millar

Mr Duffy

Mr B. O. Jones

Mr Holding

Mr Porter

Mr Jacobi

Mr Scholes

The Minutes of Proceedings of the meeting held on 22 October 1981 were confirmed.

The Chairman advised that letters had been received by Mr Speaker from the Leader of the House and the Deputy Leader of the Opposition nominating Mr Hodgman and Mr Duffy, respectively, to serve in their places during consideration of the matter referred to the Committee on 20 October 1981.

The Chairman reported that on 27 October 1981, the House had granted the Committee power to send for persons, papers and records during its inquiry into the matter referred to the Committee on 20 October 1981.

The Chairman brought up a Memorandum prepared by the Clerk of the House of Representatives in relation to the matter referred to the Committee on 20 October 1981.

The Committee deliberated.

Mr Holding moved:

That having regard to the Committee's most recent report on the *Daily Mirror* inquiry, and its view expressed in that report for the need for a Joint Select Committee to inquire into the general question of Parliamentary privilege, the Committee believes that the matter referred to it on 20 October 1981 should be dealt with by the proposed Joint Select Committee, and accordingly returns this matter to the House.

Debate ensued.

Question: put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes—7

Noes—1

Mr Duffy

Mr Birney

Mr Holding

Mr Jacobi

Mr B. O. Jones

Mr Millar

Mr Porter

Mr Scholes

And so it was resolved in the affirmative.

The Committee deliberated.

Ordered: That the Chairman prepare a Draft Report for consideration by the Committee at the earliest opportunity.

The Committee adjourned until a day and hour to be fixed by the Chairman and notified to all members of the Committee.

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

PARLIAMENT HOUSE—CANBERRA

WEDNESDAY 28 OCTOBER 1981 (5 p.m.)

(32nd Parliament—Eleventh Meeting)

Present:

	Mr D. M. Cameron (<i>Chairman</i>)	
Mr Birney		Mr Millar
Mr Hodgman		Mr B. O. Jones
Mr Holding		Mr Porter
Mr Jacobi		Mr Scholes

The Minutes of Proceedings of the meeting held earlier this day were confirmed.

The Chairman submitted his draft report in respect of the advertisement in the Melbourne *Herald* of 16 October 1981.

Paragraphs 1 and 2 agreed to.

Paragraph 3 amended and agreed to.

Paragraphs 4 to 6 agreed to.

Paragraph 7 amended and agreed to.

Paragraph 8:

Ordered—That the paragraph be considered in 2 parts, firstly, the first sentence and secondly, the remainder of the paragraph.

Question—That the first sentence of the paragraph be agreed to—put.

The Committee divided (the Chairman, Mr D. M. Cameron, in the Chair)—

Ayes—5

Noes—2

Mr Birney

Mr Holding

Mr Hodgman

Mr B. O. Jones

Mr Jacobi

Mr Millar

Mr Porter

And so it was resolved in the affirmative.

Remainder of paragraph amended and agreed to.

Resolved: On the motion of Mr Millar—That the draft Report, as amended, be the Report of the Committee to the House.

The Committee adjourned *sine die*.

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

MEMORANDUM BY THE CLERK OF THE HOUSE OF
REPRESENTATIVES

This memorandum has been prepared at the request of the House of Representatives Committee of Privileges in connection with its inquiry into an advertisement published in the Melbourne *Herald* of Friday, 16 October 1981.

Extracts from the Votes and Proceedings of the House of Representatives, No. 61, of Tuesday, 20 October 1981.

- 3 **PRIVILEGE:** Mr Fraser (Prime Minister) drew the attention of the House to an advertisement on the front page of the Melbourne *Herald* of 16 October 1981, under the heading "P.M. VOTES SIGMA NO. 1", which could amount to a breach of privilege.

Mr Speaker stated that he would consider the matter and report later.

- 13 **PRIVILEGE—ADVERTISEMENT IN MELBOURNE 'HERALD'—REFERENCE TO COMMITTEE OF PRIVILEGES:** Mr Speaker referred to the matter of privilege raised by Mr Fraser (Prime Minister) earlier this day (*see* entry No. 3) and stated that he was prepared to allow precedence to a motion to refer the matter to the Committee of Privileges.

Mr Fraser produced a copy of the Melbourne *Herald* of Friday, 16 October 1981.

Mr Fraser then moved—That the advertisement published in the Melbourne *Herald* of 16 October 1981 under the heading "P.M. VOTES SIGMA NO. 1", be referred to the Committee of Privileges.

Debate ensued.

Question—put and passed.

The advertisement in the Melbourne *Herald*, of 16 October 1981.

A reproduction of the advertisement published on the front page of the Melbourne *Herald* of Friday, 16 October 1981 is attached as Appendix A to this memorandum.

Speeches made in the House of Representatives in relation to this matter

The speeches made in the House of Representatives on 20 October 1981 (a) when the complaint was raised by the Rt. Hon. J. M. Fraser, C.H., M.P., and (b) when the House resolved to refer the matter to the Committee of Privileges, are attached as Appendix B to this memorandum.

CONSTITUTIONAL PROVISION—GENERAL CHARACTER OF PRIVILEGE

Constitution

Section 49 of the Constitution 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.

The Parliament has not declared its powers, privileges and immunities except in relation to a few relatively minor powers, viz:

Parliamentary Papers Act—protection of Government Printer and others;

Parliamentary Proceedings Broadcasting Act—protection of Australian Broadcasting Commission;

Public Accounts Committee Act and Public Works Committee Act—privileges of, and protection of, witnesses who appear before these committees, and

Jury Exemption Act—exemption from jury service of Members and certain officers.

The Parliament is, therefore, strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, being the date of establishment of the Commonwealth. To ascertain the law, it is necessary for recourse to be had to the practice and precedents of the House of Commons. These are dealt with at length in Erskine May's *Parliamentary Practice* (19th edition).

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 19*, p. 67)

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 19*, p. 67)

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 19*, p. 67)

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'. (*May 19*, p. 68)

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

The following references in *May* are considered to be the most relevant to the matter being considered by the Committee:

Contempt in general

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. Certain principles may, however, be collected from the Journals which will serve as general declarations of the law of Parliament. It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. (*May* 19, p. 136)

Constructive contempts

Speeches or writings reflecting on either House

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* 19, pp. 144-5)

Reflections upon Members

Analogous to molestation of Members on account of their behaviour in Parliament are speeches and writings reflecting upon their conduct as Members. 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* 19, p. 152)

MATTERS FOR DETERMINATION BY THE COMMITTEE

The Committee is called upon to make a judgment as to whether the matter referred to it constitutes a reflection on, or imputation against, the Prime Minister in his capacity as a Member of the House of Representatives. If the Committee does so judge, publication of the advertisement may possibly then be regarded as constituting a contempt of the House of Representatives.

The following references in *May* are to be found in that section dealing with 'constructive contempts' the specific paragraphs being 'Speeches or writings reflecting on either House' and 'Acts tending indirectly to obstruct Members in the discharge of their duty'. The significant words in relation thereto are 'words spoken or writings published reflecting on its character or proceedings . . . (which tend to obstruct the Houses in the performance of their functions by *diminishing the respect due to them*' (emphasis added). Again, 'reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House' and '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'.

No Member is named in the advertisement in question. However, the Prime Minister in raising the matter stated that he thought—and other people had thought—that the advertisement was referring to other than 'Preston Motors'. Later he drew attention to the words 'So join the P.M. and drive Sigma—its a real vote catcher'. From this the whole thrust of the advertisement seemed to refer to him as Prime Minister. The view was supported by the Speaker when he allowed the matter to have precedence. In doing so Mr Speaker said: 'to any person reading the advertisement, the first impression would be that the reference was to the Prime Minister and that he endorsed that particular make of motor car'.

If this view is correct, it may be claimed that the advertisement was an imputation against the Prime Minister in that it falsely represented him as using his parliamentary position to advertise a commercial product. Such an imputation, if it exists, may constitute a contempt of the House of Representatives as well as being defamatory of the Prime Minister.

The Speaker also had the following words to say in respect of the matter:

Unless the Privileges Committee considers the matter, then by leaving a vacuum it will encourage people to use members of this House, unwittingly and unknowingly to the member of the House, to endorse a product. That is a matter which I wish the Privileges Committee to examine and report to the House on.

The only similar case which appears to have any relevance to this inquiry is that involving the publication of an advertisement in what is known as the 'BMC/Calwell' case of 1965. A summary of that case is set out later in this memorandum. No relevant precedent has been found in the United Kingdom House of Commons from which the House of Representatives often seeks guidance.

In considering the complaint the Committee of Privileges may wish to have regard to the following extract from the report of the House of Commons Select Committee on Parliamentary Privilege (Paper No. 34 of Session 1966–67):

48. Your Committee accordingly propose the following rules for the guidance of the House in dealing hereafter with complaints of contemptuous conduct:

- (i) The House should exercise its penal jurisdiction (a) in any event as sparingly as possible, and (b) only when it is satisfied that to do so is essential in order to provide

reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions.

- (ii) It follows from sub-paragraph (i) of this paragraph that the penal jurisdiction should never be exercised in respect of complaints which appear to be of a trivial character or unworthy of the attention of the House; such complaints should be summarily dismissed without the benefit of investigation by the House or its Committee.

Again, in considering whether or not to impose a penalty, it is of interest to note the considerable weight which the House of Commons Committee gives to the attitude of the privilege offender. If the offender conducts himself in a proper manner in response to actions of the Committee and is prepared to tender an adequate apology for his contempt action the Committee has almost invariably recommended no further action.

A range of recommendations is open to the Committee in summing up and making its report to the House. Some examples are:

That the dignity of the House is best maintained by taking no action;

that the matter could constitute a contempt but it is inconsistent with the dignity of the House to take action;

that a technical contempt had been committed but further action would give added publicity and be inconsistent with the dignity of the House;

that a contempt of the House had been committed but in view of the humble apology tendered, no further action is recommended;

that a contempt of the House had been committed but the matter was not worthy of occupying the further time of the House;

that the company concerned, the advertising agency and the editor of the newspaper in which the advertisement was published are guilty of a (serious) contempt and should be (severely) reprimanded.

House of Representatives case—BMC/Calwell Case 1965

On the day following the presentation of the 1965–66 Budget, an advertisement featuring a photograph of the House of Representatives in session was published in the *Canberra Times* and seven other major newspapers. The photograph in the advertisement was copied from an official photograph of the House which had been purchased from the then News and Information Bureau. By a fine screening process the photograph was slightly blurred and the face of Mr Calwell, then Leader of the Opposition, was retouched to make it more difficult to identify. A 'balloon' purporting to show Mr Calwell using words to advertise a particular make of motor car was added to the photograph.

On 18 August 1965 the advertisement was raised as a complaint of breach of privilege by Mr Calwell and supported by the Prime Minister (Mr Menzies) and referred to the Committee of Privileges. A reproduction of the advertisement is attached.

In its report presented to the House of Representatives on 16 September 1965 (pp. No. 1964–65–66/210) the Committee concluded:

17. Your Committee is of opinion that although no precise precedent can be found for this case, publication of the photograph comes within the scope of the law of privilege as stated in May's *Parliamentary Practice*, 17th Ed. pp. 117–126.

'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's *Parliamentary Practice*, 17th Ed. pp. 117.)

'Analogous to the publication of libels upon either House is the publication of false or perverted, or of partial and injurious reports of debates or proceedings of either House or Committees of either House or misrepresentations of the speeches of particular Members.' (May's *Parliamentary Practice*, 17th Ed. p. 118.)

'Publishing scandalous misrepresentation of what had passed in either House or what had been said in debate' and 'Publishing gross or wilful misrepresentations or particular Members' speeches' are instances of breaches cited in May's *Parliamentary Practice*, 17th Ed. p. 119.

'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 odium, contempt or ridicule or by lowering its authority may constitute contempts.' (May's *Parliamentary Practice*, 17th Ed. p. 120.)

'Wilful misrepresentation of the proceedings of Members is an offence of the same character as a libel.' (May's *Parliamentary Practice*, 17th Ed. p. 126.)

The findings of the Committee were as follows:

18. That the matter referred to the Committee on the 18th August, 1965, reveals that the photograph as published represents a breach of Parliamentary Privilege.

19. That the ultimate responsibility for publication of the advertisement lies with each of the following:

(The names of the 10 persons held responsible were listed)

20. That publication of the advertisement was done without malice towards the House or any Member, or intent to libel any Member, and appeared through negligence and a lack of appreciation of what was involved.

On 23 September 1965 (V & P 1964-65-66/386) the House of Representatives resolved:

That the House agrees with the Committee that the advertisement in question involved a breach of Parliamentary Privilege.

That in the opinion of the House the said advertisement was also defamatory of the Honourable Leader of the Opposition, in that it falsely represented him as using his parliamentary position to advertise a commercial product.

That while the House accepts the Committee's finding that the advertisement was published without malice, and recognises that most of those concerned with its publication have made suitable apologies, it is of opinion that it should record its censure of the advertisement and its reprimand to those concerned in its publication, namely:

(The names of the 10 persons held responsible were listed)

That in the opinion of the House, those newspapers who published the advertisement should publish this resolution in full.

It is to be noted that in the BMC/Calwell case the matter was related directly to proceedings in the Parliament, the advertisement depicting an actual scene in the House of Representatives Chamber. This brought the matter within the ambit of privilege because of its connection with the functioning of the House and the performance of Members in their capacity as Members. The element of contempt was able to be seen clearly in the false representation of proceedings and misrepresentation of a Member's speech. The present case lacks these clear connections with the House.



1965 budget news

You won't find better after-the-budget value than a BMC Mini. Value that comes exclusively from the Mini world. Because the Mini world offers you this: Miraculous *Hydrolastic suspension that floats on fluid to ease away bumps, smooth away rough surfaces. Incredible road-holding that leaves more expensive cars behind. Because the Mini

has front-wheel drive and unique rubber-coned suspension. Astonishing manoeuvrability that makes even city driving a joy. (A Mini is just over 10 feet long!) All the power you'll ever need, and up to 50 miles-to-the-gallon economy. Value? Well, there's more to come. BMC's unique Rotodip Process that gives every Mini a life-long

protection against rust. Add years more motoring, pounds more value. It makes sense doesn't it? Nothing compares with the Mini world of value. It starts at your BMC dealer for the best deal in town.

- ★ BMC MORRIS MINI
- ★ BMC MORRIS MINI DELUXE
- ★ BMC MORRIS MINI COOPER



BMC—MANUFACTURERS IN AUSTRALIA OF BMC MORRIS MINI, BMC MORRIS MINI DE LUXX, BMC MORRIS COOPER, BMC MORRIS 1100, BMC FREEMAN MK. II, BMC MULSLEY MK. II, BMC AUSTIN HEALEY SPRTZ, BMC MOR, BMC MORRIS LIGHT COMMERCIALS AND BMC AUSTIN HEAVY COMMERCIALS

ADELAIDE MOTORS SALES LIMITED, 77 PIRIE ST., PHONE 23 2266

BLACKWOOD, Darwin's Garage 78 2355
 GOODWOOD, E. A. Bennet & Son Ltd. 71 1131
 GLENELG, Groene Motors 95 8323
 KESWICK, Keswick Motors 53 2287
 NORWOOD, Borgell's Motors Pty. Ltd. 63 3661

HENDON, Newport Motors Pty. Ltd. 4 3773
 MEDINDIE GARDENS, J. W. Taylor & Sons
 Pty. Ltd. 65 6921
 OAKLANDS PARK, Bonnelly's Motor Centre
 Pty. Ltd. 96 4311

SALISBURY, Edinburgh Motors 76
 UNLEY, Cremorne Motors Pty. Ltd. 71 7996
 VIMY RIDGE, Vimy Ridge Serv. 39 2009



THE COMMITTEE OF PRIVILEGES: FUNCTIONS, PROCEEDINGS ETC.

Standing Order

House of Representatives Standing Order No. 26 as amended by sessional order on 4 December 1980, is as follows:

26. A Committee of Privileges, to consist of the Leader of the House or his nominee, the Deputy Leader of the Opposition or his nominee and 9 other 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 19th edn, pp. 644–5 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* 19, p. 635)

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* 19, pp. 661-2)

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 5, 12 and 19 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. The committee does not sit in public. (*May* 19, p. 675)

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 hearings 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.)

Details of the Commons practice in relation to counsel appearing before Select Committees are given in *May*, 19th edn, pp. 644-6.

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. (Parliamentary Paper 1954-55/H.R 2 tabled 8 June 1955.)

Again during the 1981 inquiry into the printed reference and an article published in the *Daily Mirror* of 2 September 1981, the Committee of Privileges heard counsel for the editor of the *Daily Mirror* on his right to appear generally for the editor. After hearing argument the Committee resolved—

That applying section 49 of the Constitution and standing order 1 of the House of Representatives, this Committee determines that this application for counsel to appear generally on behalf of Mr Wylie is not granted. The Committee's reports and its accompanying dissenting reports were presented to the House of Representatives today and deal at length with the question of legal representation before the Committee of Privileges. At the time of preparation of this memorandum the House has not considered the Committee's report.

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 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. A protest or dissent may be added to the report.

J. A. PETTIFER
*Clerk of the House of
Representatives*

27 October 1981

10-767

P.M. VOTES SIGMA No.1

You can drive Australia's No. 1 car for as little as \$6,863.
Finance available to approved purchasers. So join the P.M.
and drive Sigma — it's a real vote catcher.

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HANSARD EXTRACTS

Tuesday, 20 October 1981, p. 2168

Mr MALCOLM FRASER (Wannon—Prime Minister)—I refer to a matter which might need to be examined as one of privilege. I do not want to raise it in a definitive way at the moment, but I want to bring it to the attention of the House. I refer to an advertisement which appeared in the *Melbourne Herald* of 16 October at the bottom right hand corner of the front page. The advertisement was inserted by Preston Motors, advertising Mitsubishi products, under the heading 'P.M. VOTES SIGMA NO. 1'. The 'PM' could be construed as an abbreviation for Preston Motors, but I have not seen that company advertise the use of its initials in those terms. When I saw the advertisement I thought—other people who saw it thought likewise—that it was referring to something else when it used the initials 'PM'.

Mr YOUNG—I didn't because you wouldn't fit in it.

Mr MALCOLM FRASER—If the honourable member wishes to give the car an adverse report, that is his business.

Mr Young—It is a very good car.

Mr MALCOLM FRASER—I know it is.

Mr SPEAKER—The honourable member for Port Adelaide will remain silent. The House is dealing with a matter of privilege.

Mr MALCOLM FRASER—I want to make it quite plain, firstly, that I do not vote any motor car No. 1 and, secondly, that I think the question of this kind of advertising ought to be examined.

Mr SPEAKER—I did see the advertisement. Although the honourable gentleman did not indicate to me that he would be raising the matter, I am not surprised that it has been raised. In the past there have been advertisements containing similar characteristics. I will take the matter under advisement and report later.

Tuesday, 20 October 1981, pp. 2212-4

PRIVILEGE

Mr SPEAKER—Earlier today the Prime Minister (Mr Malcolm Fraser) raised an issue of privilege. He drew the attention of the House to an advertisement which appeared on page 1 of the *Melbourne Herald* of 16 October 1981. The advertisement stated in bold lettering: 'PM VOTES SIGMA NO. 1'. The text continued with the words: 'So join the PM'. To any person reading the advertisement, the first impression would be that the reference was to the Prime Minister and that he endorsed that particular make of motor car.

To some extent the advertisement is similar to one which appeared in newspapers in 1965 wherein the then Leader of the Opposition, Mr Arthur Calwell, was purported to be advertising BMC products. It is obvious to me that unless some action is taken to examine the whole issue we would be inviting advertisers to attribute to any member of this House the support of any product. Accordingly, although the present case raises some complex matters relating to the application of privilege, I believe it is fitting that it should be carefully considered by the Privileges Committee. I am prepared to allow a motion to be moved forthwith to refer the matter to the Committee of Privileges.

Mr MALCOLM FRASER (Wannon—Prime Minister) (5.40)—Mr Speaker, I support what you have said. Anyone seeing this advertisement would have to come to one conclusion. Not only does it say: 'PM VOTES SIGMA NO. 1', but also further down it says: 'So join the PM and drive Sigma—it's a real vote catcher'. The whole

thrust of the advertisement is that the initials 'PM' refer to me. I think it is therefore appropriate for the matter to be examined, as you have so ruled, Mr Speaker. I therefore move:

That the advertisement published in the Melbourne *Herald* of 16 October 1981 under the heading 'PM VOTES SIGMA NO. 1' be referred to the Committee of Privileges.

Mr STEELE HALL (Boothby) (5.41)—Recently another matter was referred to the Privileges Committee which caused some controversy in public and in the House. I would have thought that before we as a House referred another motion to the Committee we should understand what the issue is about. I do not know how many honourable members have seen the advertisement to which the Prime Minister (Mr Malcolm Fraser) referred. I have not. I would have thought that members of the House ought to be afforded the privilege of seeing the advertisement which is contentious before we make a decision.

Mr SPEAKER—The practice is for the Speaker to examine the matter and draw a conclusion as to whether it should go to the Privileges Committee. I have so concluded, as I have said.

Mr HAYDEN (Oxley—Leader of the Opposition) (5.42)—I support the matter being referred to the Privileges Committee as a matter of formality, but on the basis of what the Prime Minister (Mr Malcolm Fraser) has outlined, I do not think it is a terribly serious infringement. I am almost certain that it was not conducted with some sort of wilful desire to affront the Parliament or its standards. I noted in one newspaper this morning a very large advertisement by a television channel. The caption, as well as I can recall it, stated: 'What does the man in the street think about Channel 7?'. I think that was the channel involved. The advertisement showed a very unlikely man in the street. Indeed, the photograph showed a member of this Parliament who was suitably suntanned and decked out. I would have thought on the basis of a matter of privilege which was taken up in this Parliament many years ago by the late Arthur Calwell, that that was probably a breach of privilege. If these things are correct, it is a responsibility for us to declare fairly clearly and concisely what is a breach of privilege so that people do not innocently transgress these standards. I am absolutely sure that it is not done intentionally, and with that understanding I support the matter being referred to the Privileges Committee as a formality.

Mr SPEAKER—What the Leader of the Opposition has said has some merit. I point out by way of repetition that there have been two recent similar cases, if one takes the Calwell case in, I think, 1965, and another one earlier this year. Unless the Privileges Committee considers the matter, then by leaving a vacuum it will encourage people to use members of this House, unwittingly and unknowingly to the member of the House, to endorse a product. That is a matter which I wish the Privileges Committee to examine and report to the House on.

Mr MALCOLM FRASER (Wannon—Prime Minister) (5.44)—In my recollection there have been half a dozen cases over the last five or six years in which firms or advertising agencies have come to me or to my office, wanting to use either my name or that of the office in some kind of advertising campaign. Obviously, they have always been discouraged from doing so. I am not quite so sure that the use of something like this is necessarily as innocent as the Leader of the Opposition (Mr Hayden) claims. It seems that there is a definite thrust in the advertisement and in its purpose. That ought to be discouraged, not as a matter of formality but as a matter of practice by this Parliament.

Mr YOUNG (Port Adelaide) (5.45)—I also saw the advertisement on the date it appeared—I think it was last Friday. I had the same reaction as the Prime Minister (Mr Malcolm Fraser). I thought it was a bit of slick advertising to make it appear that the

Prime Minister was gratified by the benefits of a Sigma. But I did not think we would be debating here the question of it going to the Privileges Committee. This gives me the opportunity of saying that whilst I was representing you, Mr Speaker, overseas at the Inter-Parliamentary Union in Cuba, the House debated another matter which, had I been here, I would have voted against going to the Privileges Committee.

Mr SPEAKER—The honourable gentleman is not to refer to that earlier debate.

Mr YOUNG—It seems to me, Mr Speaker, that we have to make a very fine judgment here about what is happening to the Parliament and the Privileges Committee. I am not so alarmed about the advertisement that appeared on Friday as to think that we should turn the Parliament upside down and send everything off to the Privileges Committee to see how we are all being affected by it. If the Prime Minister objects to the advertisement he can ring up the manager of Preston Motors Pty Ltd, who is probably in the Liberal Party, and tell him to cut it out. I do not think that this requires a vote of the Parliament. We have just been talking about spending \$3 billion on F18 aircraft and other matters of great importance. Now we are talking about what car the Prime Minister likes. This matter does not seem to me to rate the importance of referring it to the Privileges Committee; nor did the other matter which was raised during my absence.

Dr KLUGMAN (Prospect) (5.46)—The Calwell episode was before my time in this House. As I seem to remember it, there was a court case and damages were awarded to the Mr Calwell. Was that a different case?

Mr HAYDEN—They were very large.

Dr KLUGMAN—They were very large damages. I think this may be a case where individuals can take legal action if they feel that they have been misrepresented rather than a case of parliamentary privilege. Let us say that it was not the Prime Minister (Mr Malcolm Fraser) who was referred to but that somebody was foolish enough to say that the honourable member for Werriwa (Mr Kerin) endorses Sigma cars. Would we consider that to be a question of privilege or would we leave it up to the honourable member for Werriwa to take appropriate legal action? I do not see any difference between it being the Prime Minister and it being any other member. I think basically it is up to the individual members to take action if they feel that they are affronted.

Mr SPEAKER—I point out to the honourable member for Prospect that there would be no difference whether it was the honourable member for Werriwa (Mr Kerin) or the Prime Minister (Mr Malcolm Fraser). I want the House to understand that this is not a case of the House now determining any set of rules or making a judgment as to the innocence or otherwise or the propriety or otherwise of the advertisement. The House has established a Privileges Committee so that it can examine such matters and report back to the House. The vote is merely on whether to refer a matter to the Privileges Committee for the purpose of that examination.

Question resolved in the affirmative.

