

House of Representatives
Committee of Privileges

Report on possible intimidation
of Mr W. Willis in respect of
his involvement with an inquiry by the
Standing Committee on Legal and
Constitutional Affairs

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HOUSE OF REPRESENTATIVES

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Australian Government Publishing Service
Canberra

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ISBN 0 644 24253 1

Printed in Australia by P. J. GRILLS, Commonwealth Government Printer, Canberra

MEMBERS OF THE COMMITTEE

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MR P H COSTELLO, MP (DEPUTY CHAIRMAN)

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HON J D M DOBIE, MP

DR H R EDWARDS, MP

*** HON C R HOLDING, MP**

MR G T JOHNS, MP

MR P J McGAURAN, MP

MR P K REITH, MP

MR J H SNOW, MP

HON W E SNOWDON, MP

***(Nominee of the Leader of the House)**

1. On 17 April 1991, Mr Smith, Deputy Chairman of the Standing Committee on Legal and Constitutional Affairs, raised, as a matter of privilege, allegations that Mr Winston Willis, a person who had had a submission made on his behalf to the Committee's inquiry into corporate practices had been subject to intimidatory threats in relation to the submission to the committee. A copy of the Hansard record of Mr Smith's statement in raising the matter is at Attachment A, and at Attachments B, C and D are copies of papers tabled by Mr Smith on 17 April.
2. Mr Speaker considered Mr Smith's complaint and reported to the House on it on 18 April. Mr Speaker stated, that having examined the papers, he was satisfied that a *prima facie* case existed such as would warrant precedence being granted to a motion in respect of the matter. Mr Lavarch, Chairman of the Committee, moved the following motion, which was agreed to by the House:

That the question of the possible intimidation of Mr W. Willis in respect of his involvement with the inquiry by the Standing Committee on Legal and Constitutional Affairs into corporate practices and the rights of shareholders be referred to the Committee of Privileges for consideration.

A copy of the Hansard record of the Speaker's statement is at Attachment E.

Conduct of inquiry

3. The committee sought and received a memorandum from the Clerk of the House on the matter - a copy is at Attachment F. It sets out the basic constitutional, legal and procedural matters involved and summarises precedents from the House of Representatives, the Senate, and the UK House of Commons.

4. The Committee invited written submissions on the reference from Mr Willis, from Mr P.W. O'Brien, Chairman of Defiance Holdings Limited, and from Mr M.K. Hoey, Secretary of Defiance Holdings Limited. A written submission was received from Mr Willis on 24 May, and Mr P. Brazil, AO, lodged a written submission on 10 May on behalf of Messrs O'Brien and Hoey. The Committee also received written advice from the Chairman of the Legal and Constitutional Affairs Committee, Mr Lavarch.
5. Having considered the written material before it, the Committee resolved that Messrs Willis, Hoey and O'Brien be invited to appear before it. The committee later agreed to a request that Mrs Mary Willis, Mr Willis' wife, be permitted to give evidence
6. Pursuant to the committee's invitations, oral evidence was taken on 20 June. Witnesses were permitted to have the assistance of an adviser or counsel on the conditions previously followed by the committee - that is, the persons assisting were not permitted to make submissions themselves, or to examine or cross-examine the witnesses, their role was to assist and advise the witnesses.
7. Evidence was taken from Mr Willis and his wife, Mrs Mary Willis (advised by Mr Robert Gardini), from Mr Hoey (advised by Mr P. Brazil, AO) and from Mr O'Brien (also advised by Mr Brazil).
8. Each witness was questioned at some length by committee Members, and, as expected, this process was of considerable assistance in enabling the committee to gain a full understanding of the matter before it.

The substance of the complaint

9. The committee considered that the substance of the complaint was whether Mr Willis had been intimidated in respect of his involvement with the inquiry by the Standing

Committee on Legal and Constitutional Affairs, or whether an attempt had been made to intimidate him or interfere improperly with his involvement with the committee inquiry.

10. In its consideration of this matter, the committee had particular regard to the basic principle....

Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt.On the same principle, molestation of or threats against those who have previously given evidence before either House or a committee will be treated by the House concerned as a contempt....Such actions have included assault or a threat of assault on witnesses, insulting or abusive behaviour, misuse (by a gaoler) or censure by an employer. (May, 21st ed., p 131)

Section 12 of the *Parliamentary Privileges Act 1987* is also relevant. It states....

12. (1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty: (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
(b) in the case of a corporation, \$25,000.

(2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of-

- (a) the giving or proposed giving of any evidence; or
- (b) any evidence given or to be given,

before a House or a committee.

Penalty: (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
(b) in the case of a corporation, \$25,000.

(3) This section does not prevent the imposition of a penalty by a House in respect of an offence against a House or by a court in respect of an offence against an Act establishing a committee.

The committee also noted the provisions of standing order 362:

All witnesses examined before the House, or any committee thereof, are entitled to the protection of the House in respect of anything that may be said by them in their evidence.

11. The committee cannot emphasise too strongly the importance it attaches to the protection of witnesses. The House's committees depend very substantially on their ability to receive evidence from persons and organisations. As well as being prepared to protect particular witnesses, the House must be cognisant of the wider impact on the committee system of any improper interference with or intimidation of witnesses. These are matters upon which the Speaker has expressed views recently, and in light of these considerations the reference of 18 April was indeed an important one. No organisation, whether private or public, should be in any doubt as to the resolve that the House would be expected to display in ensuring that witnesses can participate in committee inquiries free of intimidation or improper interference.

12. In addition to the submissions received in response to its invitation, and in addition to the oral evidence, the committee gave particular attention to two items:
 - . a letter sent by Mr O'Brien to shareholders on 30 November 1990;

 - . a letter dated 7 March 1991 from Mr Hoey to Mr Willis.

Issues for determination

13. As the committee saw it, the particular issues for its determination were:

Did the action of Mr O'Brien in writing in the terms in which he did to shareholders on 30 November constitute a contempt?

Did the action of Mr Hoey in writing in the terms in

which he did to Mr Willis on 7 March constitute a contempt?

14. The committee had particular regard to the following paragraph from Mr O'Brien's letter:

One Shareholder recently advised having lodged a complaint with the Commonwealth Parliamentary Committee on Legal and Commercial Practice, the National Companies and Securities Commission and the Business Council of Australia about the conduct of this Company, but has not supplied us with a copy of same. I certainly hope that this action will not have a detrimental effect on the future of this Company or Defiance Mills Limited. Until this matter is settled, it is most unlikely that I will support any proposal involving the change of status of Defiance Holdings Limited shares.

15. The committee also gave careful attention to the wording of Mr Hoey's letter:

Your advice to me that you have lodged a complaint to three bodies in relation to the affairs of this company is a very serious matter.

The Chairman has already advised that it is most unlikely he will support any proposal involving a change of status of Defiance Holdings Limited whilst this matter remains unresolved.

I have been instructed by the Board of this company to write to you requesting that you provide to the company copies of those complaints and that you advise The Commonwealth Parliamentary Committee on Legal and Commercial Practices, The National Companies and Securities Commission and, The Business Council of Australia, that you withdraw those complaints.

16. The committee considered this matter from the point of view of the Standing Committee, and the importance of the protection of its work, as well as from the point of view of Mr Willis as a witness. The committee received detailed evidence from Mr and Mrs Willis which revealed their perceptions of the matter. The committee accepts that Mr Willis felt intimidated as a consequence of his involvement with the committee inquiry. This perception, although

recognised as genuinely held, is not, in the opinion of the committee, evidence that intimidation or improper interference was intended or attempted. The claim of intimidation has been denied strenuously by Messrs O'Brien and Hoey in their written and oral evidence. The committee notes that evidence given to it revealed that, at the time they took the actions complained of, Messrs O'Brien and Hoey were not aware of the legal and procedural provisions which apply to the operations of parliamentary committees and their witnesses.

17. The committee notes that it received no proof of any adverse effect or perception as a result of the actions complained of in so far as the Standing Committee's inquiry, or the wider committee system, was concerned.

Finding

18. The committee has noted the importance of the protection of witnesses for the operations of committees of the House and that the matter referred was indeed an important issue. Nevertheless, on the evidence available to it, the committee finds that no contempt has been committed.

Recommendation

19. In view of its finding, the committee recommends that the House takes no further action on this matter.

GEORGE GEAR
Chairman

21 June 1991

PRIVILEGE

Mr SMITH (Bass)-Mr Speaker, I wish to raise with you a matter of privilege under standing order 95. I raise this matter on behalf of the Standing Committee on Legal and Constitutional Affairs, of which I am the deputy chairman. The Committee has received a complaint that a person who had a submission made on his behalf to the Committee in connection with its corporate practices inquiry has received intimidatory threats, including a request that he withdraw his submission. The person allegedly intimidated is a minority shareholder in Defiance Holdings Ltd. The Committee has been presented with copies of correspondence relating to the affairs of Defiance Holdings Ltd.

Mr Speaker, the Committee has resolved this morning that this matter be raised with you as a matter of privilege for your consideration as to whether a prima facie case exists such as would warrant precedence being given to a motion to refer the matter to the Committee of Privileges. I present copies of relevant letters and will also provide further confidential information to you.

Mr SPEAKER-I shall give careful consideration to the matter raised by the honourable member for Bass and look at the material that he has provided me and the House with. I will report to the House as soon as possible on the matter.



ATTACHMENT B

DEFIANCE HOLDINGS LIMITED

279 RUTHVEN STREET
TOOWOOMBA, Q'LD. 4350

P.O. BOX 6
TELEPHONE 32 1788

TELEGRAMS
"DEFIANCE"

30 November 1990

Dear Fellow Shareholder,

I am happy to enclose this personal note with your final Dividend cheque in respect to the year ending 30/11/90. You will note that it is an increase of 32% on the dividend at this time last year. Provided Defiance Mills Limited continues to prosper it is envisaged that this rate of Dividend will be maintained or increased in future years.

As you are aware, there have been suggestions from some shareholders that this company should be wound up and its Defiance Mills Limited shares distributed to the Holdings Shareholders.

I do not agree with this view because this Company, when it sold its business to Defiance Mills Limited, deliberately retained control of Defiance Mills Limited for the protection of Defiance Mills Limited and its independence and the benefits conferred on all associated with it. In my judgment Defiance Mills Limited would have disappeared from the scene many years ago if Defiance Holdings Limited had not been in existence. I also believe that Defiance Mills Limited has been an excellent investment to those Holdings Shareholders who retained their Shareholding in that Company. The necessity for that control is as critical today as then.

However, I would like to assure you that a great amount of study and investigation both internally and externally by highly qualified and experienced consultants is being carried out to endeavour to satisfy those Shareholders who wish to improve the negotiability of their share in this Company.

These have generated a proposal which accommodates the widely divergent goals of certain shareholders. This proposal for restructuring has been accepted by the Board of Defiance Holdings Limited. It involves as one of its central features external negotiations which prevent any fuller disclosure at present. If these negotiations are successful you will be advised.

One Shareholder recently advised having lodged a complaint with the Commonwealth Parliamentary Committee on Legal and Commercial Practice, the National Companies and Securities Commission and the Business Council of Australia about the conduct of this Company, but has not supplied us with a copy of same. I certainly hope that this action will not have a detrimental effect on the future of this Company or Defiance Mills Limited. Until this matter is settled, it is most unlikely that I will support any proposal involving the change of status of Defiance Holdings Limited shares.

I take the opportunity to wish everyone a Happy and a Holy Christmas.

Yours sincerely

Pat. O'Brien

P.W. O'BRIEN
Chairman
DEFIANCE HOLDINGS LIMITED

ATTACHMENT C



DEFIANCE HOLDINGS LIMITED

P.O. BOX 8
TELEPHONE 32 1788

279 RUTHVEN STREET
TOOWOOMBA, Q.L.D. 4350

TELEGRAMS
"DEFIANCE"

7 March 1991

Mr W Willis
75 Sugars Road
MOGGILL QLD 4070

Dear Sir

Your advice to me that you have lodged a complaint to three bodies in relation to the affairs of this company is a very serious matter.

The Chairman has already advised that it is most unlikely he will support any proposal involving a change of status of Defiance Holdings Limited whilst this matter remains unresolved.

I have been instructed by the Board of this company to write to you requesting that you provide to the company copies of those complaints and that you advise The Commonwealth Parliamentary Committee on Legal and Commercial Practices, The National Companies and Securities Commission and, The Business Council of Australia, that you withdraw those complaints.

Yours faithfully
DEFIANCE HOLDINGS LIMITED


M.K. HOEY
SECRETARY

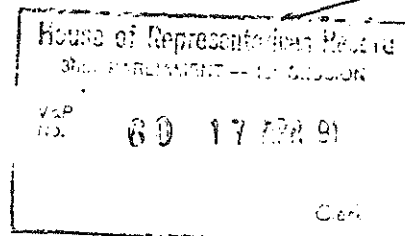
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GARDINI & CO
SOLICITORS & ATTORNEYS

ATTACHMENT D

Robert Gardini
17/4/91

Allison Gardini
Robert Gardini



20 March 1991

Mr Michael Lavarch MP
Chairman
Standing Committee on Legal and
Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Mr Lavarch

Corporate Practices Inquiry

Last year I made representations to the inquiry into Corporate Practices concerning allegations of oppression by Defiance Holdings Limited against certain minority shareholders of that company.

On 30 November 1990 following those representations Mr P W O'Brien, chairman of Defiance Holdings Limited wrote to all shareholders of the company (copy enclosed) indicating that the company would implement a plan to improve the "negotiability of their share in this company" once the complaint made to the Corporate Practices inquiry had been settled. Further, on 7 March 1991 the company secretary of Defiance Holdings Limited wrote to my client, Mr W. Willis (copy enclosed) requesting him to provide the company with a copy of the submission made to your inquiry and requesting that my client withdraw his submission.

My client takes great exception to intimidatory threats made to his right to make representations to your Committee. In addition, my client considers that the threat made by the board of Defiance Holdings Limited to the effect that they will not consider a change of status of the company unless my client withdraws his submission to your Committee to be a matter of great concern and one which may constitute a breach of Parliamentary privilege.

I draw the above matters to the attention of the Committee for any action it may deem appropriate.

Yours sincerely

Robert Gardini

ROBERT GARDINI

PRIVILEGE

Mr SPEAKER-Order! Yesterday the honourable member for Bass as Deputy Chairman of the Standing Committee on Legal and Constitutional Affairs, and on behalf of the Committee, raised a matter of privilege. The essence of the complaint was an allegation that a person, Mr W. Willis, who had had a submission made on his behalf to the Committee's inquiry into corporate practices, had been subject to intimidatory threats in relation to the submission to the Committee.

It is alleged that Mr Willis, a shareholder in a company, has been asked to withdraw his submission and that a statement has been made to the effect that, unless Mr Willis withdraws the submission, proposed changes in a company structure may not be supported by the Chairman of the company.

I have examined the papers presented by the honourable member and, whilst I can make no judgment on the substance of the matter, I am satisfied that a prima facie case exists such as would warrant proceedings being granted to a motion in respect of this matter. I therefore call the Chairman of the Committee, the honourable member for Fisher.

PRIVILEGE

Mr LAVARCH (Fisher) (5.23)-Mr Speaker, in light of your ruling on this matter, I move:

That the question of the possible intimidation of Mr W. Willis in respect of his involvement with the inquiry by the Standing Committee on Legal and Constitutional Affairs into corporate practices and the rights of shareholders be referred to the Committee of Privileges for consideration.

Question resolved in the affirmative.

ATTACHMENT F

INQUIRY INTO REFERENCE BY THE HOUSE
TO THE COMMITTEE OF PRIVILEGES
CONCERNING THE POSSIBLE INTIMIDATION OF A PERSON WHO HAD HAD A
SUBMISSION MADE TO THE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

Memorandum by the Clerk of the House of Representatives.

This memorandum has been prepared for the use of the House of Representatives Committee of Privileges in connection with the reference to it concerning the possible intimidation of a person who had had a submission made to the Standing Committee on Legal and Constitutional Affairs.

THE REFERENCE

On 17 April Mr Smith, Deputy Chairman of the Standing Committee on Legal and Constitutional Affairs raised, as a matter of privilege, and following a decision of the committee that the matter should be raised in the House, allegations of intimidation of a person, Mr W. Willis, who had had a submission made on his behalf to the committee in connection with its inquiry into corporate practices and the rights of shareholders. A copy of the Hansard record of Mr Smith's statement to the House is at 'A'. I understand that the papers tabled by Mr Smith have been provided to the Committee.

On 18 April Mr Speaker gave his decision on the matter, and priority was given to a motion to refer the question to the Committee of Privileges. A copy of the Hansard record of Mr Speaker's statement is at 'B', and following the statement of the Chairman of the Legal and Constitutional Affairs Committee, Mr Lavarch, moved the following motion, which was agreed to without debate:

That the question of the possible intimidation of Mr W. Willis in respect of his involvement with the inquiry by the Standing Committee on Legal and Constitutional Affairs into corporate practices and the rights of shareholders be referred to the Committee of Privileges for consideration.

CONSTITUTIONAL PROVISIONS - GENERAL CHARACTER OF

PRIVILEGE AND CONTEMPT

House of Representatives Practice quotes May's definition of parliamentary privilege as:

"... 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."¹

It goes on to explain the source of the privilege powers of the Houses of the Commonwealth Parliament:

"The Commonwealth Parliament derives its privilege powers from section 49 of the Constitution which 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.

In addition, section 50 of the Constitution provides that:

Each House of the Parliament may make rules and orders with respect to -

- (i) The mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) The order and conduct of its business and proceedings either separately or jointly with the other House.²

Statutory provisions

In 1987 the Parliament enacted comprehensive legislation under the head of power constituted by section 49 of the Constitution. The *Parliamentary Privileges Act 1987* provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the Members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of the Act, continue in force.

BREACH OF PRIVILEGE AND CONTEMPT

The privileges of the Houses, their committees and Members are rights and immunities that are part of the law of the land. An infraction or attempt or threat of infraction of one of these rights or immunities may be described as a breach of privilege.

The Houses also possess the power to take action to protect themselves, their committees and members from actions which, whilst not necessarily breaching any specific right or immunity, obstruct or impede, or threaten to obstruct or impede. A good example is disobedience of an order of a House.

Halsbury's Laws of England states -

"The power of both Houses to punish for contempt is a general power similar to that possessed by the superior courts of law and is not restricted to the punishment of breaches of their acknowledged privileges..."³

May describes contempt as follows:

"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 contempt even though there is no precedent or the offence."⁴

Save for the changes made by the *Parliamentary Privileges Act 1987*, the Houses of the Commonwealth Parliament have the powers, privileges and immunities of the House of Commons as at 1901. Amongst those powers is the power to hold various actions or omissions as contempts. This is not to say that a recurrence now, or in the future, of any act or omission which is the same or very similar to acts or omissions held by the House of Commons to be contempts in the years before 1901 must be determined in the same way. It is the power to punish contempts which is inherited, the application of the power is for the judgment of the House, usually in light of advice from the Committee of Privileges.

One particularly important qualification on the power to punish for contempts was introduced by the *Parliamentary Privileges Act 1987*. Section 4 provides that:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended

or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

This important provision should be taken into account at all stages in the consideration of possible contempts, although its application has not, to date, been established in practice. It is also important to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts.

PARTICULAR REFERENCES RELEVANT TO

THE MATTER REFERRED TO THE COMMITTEE

Protection of witnesses

The success of committee inquiries is influenced greatly by the ability to obtain information from witnesses. Witnesses participating in 'proceedings in Parliament' enjoy absolute privilege in respect of this participation - for example they may not be sued or prosecuted for what they say. But more generally, the importance of the protection of witnesses has long been recognised. In 1892, and following a case in which a person had been dismissed by his employer after giving evidence to a Select Committee, the British Parliament enacted a Witnesses (Public Inquiries) Protection Act, which provided for fines or imprisonment of those who punished or injured witnesses. It also provided for the payment of compensation.

Standing Order 362 provides as follows:

All witnesses examined before the House, or any committee thereof, are entitled to the protection of the House in respect of anything that may be said by them in their evidence.

May states:

"Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt ... On the same principle, molestation of or threats against those who have previously given evidence before either House or a committee will be treated by the House concerned as a contempt ... Such actions have included assault or a threat of assault on witnesses, insulting or abusive behaviour, misuse (by a gaoler) or censure by an employer."⁵

Section 12 of the *Parliamentary Privileges Act 1987* provides for the protection of witnesses. It provides that a person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person

to refrain from giving any such evidence. Further, under the Act a person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of the giving or proposed giving of any evidence or any evidence given or to be given, before a House or a committee. The penalties are \$5,000 for natural persons and \$25,000 for corporations.

It is also provided (by subsection 12(3)) that the section does not prevent the imposition of a penalty by a House in respect of an offence against a House - in other words the statutory provision does not preclude proceedings for contempt from being pursued.

Intent

In such cases the Committee of Privileges is always likely to want to have regard to the intentions of any persons involved in a possible contempt. I point out, however, that the matter of intent is not itself conclusive in determining whether a contempt has been committed. Section 4 of the Parliamentary Privileges Act, dealing with contempts, refers to conduct that:

".... amounts, or is intended or likely to amount to an improper interference".

This confirms that it is not necessary to establish an intent to cause improper interference, it would be sufficient to establish that certain conduct amounted or was likely to amount to improper interference.

Improper interference

I also note that it is possible that otherwise legal acts may still be held to amount to a contempt. In the *National Coal Board* case in 1976⁷ the House of Commons Committee of Privileges dealt with a case where an employee of the National Coal Board, who had given evidence to a select committee, had been declared redundant by the Board. In the event the Committee of Privileges found that there was no evidence indicating that the person's treatment was adversely affected by his having been a witness, but I note that, even though the act of declaring the person redundant may itself have been lawful and proper, this would not mean that a contempt could not have been found. Similarly in the 1989 'Drugs in Sport' case⁸, the Senate Committee of Privileges looked at a request by a person that another person (who had been a witness to a Senate committee) should leave his house. Again, there was no suggestion that the request to leave was itself improper, the real question was whether the conduct amounted to a penalty or punishment on account of the other person's involvement with the Senate committee (and see below).

The words "improper interference" in section 4 of the Parliamentary Privileges Act may be seen as a reflection that Members and others involved in modern parliamentary life are, quite properly, subjected to many representations from persons

or organisations seeking to influence their thinking or action, but also as a recognition that there is a point beyond which conduct seeking to influence persons etc becomes improper interference. The point that needs to be borne in mind is that such conduct could, in all other ways, be quite proper.

PRECEDENTS

As far as I am aware there are no exact precedents for the circumstances now before the committee either in the House, the Senate or the House of Commons. The cases which are in various ways most relevant are as follows.

House of Representatives

In 1980 the Committee of Privileges reported on a reference concerning the alleged discrimination against and intimidation of a witness, Mr D E Berthelsen, who had given evidence to a subcommittee of the Joint Committee on Foreign Affairs and Defence. On the evidence before it, the Committee of Privileges was not satisfied that a breach of privilege had been proved against any person but found that Mr Berthelsen had been disadvantaged in his career prospects in the public service. The Public Service Board was asked by the House, on the recommendation of the Committee, to do all within its power to restore the career prospects of Mr Berthelsen and to ensure that no further disadvantage was suffered by him.

Senate

Three precedents in the Senate are worthy of mention.

Drugs in Sport Inquiry

In June 1989 the Senate Committee of Privileges reported on a reference following receipt by Ms S. Howland, a witness to the inquiry into Drugs in Sport, of a note from Mr G Blood, the owner/occupier of the house in which Ms Howland lived. The note was to the effect that she should look for alternative accommodation, and it was received by Ms Howland the day after she had given evidence to the Committee.

The Committee took evidence from Mr Blood and from Ms Howland and found that Mr Blood had not committed a contempt and concluded that he had had no intention either to interfere with Ms Howland in the giving of evidence or to penalise her for the giving of evidence. The committee heard evidence to the effect that Mr Blood had been concerned about the effect that the publicity and attention associated with the drugs in sport issue had had on his right to privacy and that he had not wanted the situation to escalate beyond his control.¹⁰

Select Committee on the Administration of Aboriginal Affairs

Two matters were referred to the Senate's Committee of Privileges in relation to this inquiry.

In June 1989 the Committee of Privileges reported on a reference from the Senate which followed reported resolutions of the Aboriginal Development Commission relating to the presentation of papers and submissions to parliamentary committees and to public statements by members or officers of the Commission. The ADC had also passed a resolution of no confidence in Mrs S McPherson (Chairman of the ADC) and a senior officer, Mr M. O'Brien, was transferred from a position he held. The concern was that these actions followed and were connected with the giving of evidence to the Select Committee. ¹¹

The reference was reported on in separate parts. The Committee found that one of the resolutions of the ADC had not been passed with the intention of interfering with witnesses and therefore no contempt had been committed. On another ADC resolution the Committee found that as the members of the ADC were not sufficiently aware of the implications and ramifications of the resolution, no contempt of the Senate had been committed and that an explanation and apology, contained in a further resolution of the Commission and tabled by the President of the Senate on 20 October 1988, should be accepted.

In relation to the resolution of no confidence in Mrs McPherson, the committee concluded that a finding that a contempt had been committed should not be made and, in relation to the proposed transfer of Mr O'Brien, the committee found that no contempt had been committed in that any penalty or injury caused to Mr O'Brien was not inflicted in consequence of his giving evidence to the Select Committee. ¹²

In December 1989 the committee reported on the treatment of Mr M. Pope, a witness to the Select Committee and a former employee of the ADC, who was forbidden from visiting ADC offices without prior approval, and this action was said to be "in the light of the allegations [he had] made to the Senate Select Committee". The Committee of Privileges found that there was adverse treatment of Mr Pope, although to a minor degree, that this was partially in consequence of his having given evidence to the select committee and that therefore a contempt had been committed, although it did not constitute a serious contempt. In the light of apologies to the committee and the Senate, the Committee of Privileges recommended that no further action should be taken. ¹³

THE TASK BEFORE THE COMMITTEE

As I see it, the Committee of Privileges would need to seek to establish the facts in this matter, and then to reach whatever conclusions it may in light of the facts. The facts that would be relevant would include confirmation that a submission was lodged with the Standing Committee on Legal and Constitutional Affairs on behalf of Mr Willis, the facts as to receipt and treatment of the submission by the committee, and facts in connection with the letters tabled in the House on 17 April and attributed to Messrs P.W. O'Brien and M.K. Hoey.

Actions of Messrs O'Brien and Hoey

The committee would need to give very careful consideration to certain words used in the letters attributed to Messrs O'Brien and Hoey, for example:

"One shareholder recently advised having lodged a complaint with the Commonwealth Parliamentary Committee on Legal and Commercial Practice, the National Companies and Securities Commission and the Business Council of Australia about the conduct of this Company, but has not supplied us with a copy of same. I certainly hope that this action will not have a detrimental effect on the future of this Company or Defiance Mills Limited. Until this matter is settled, it is most unlikely that I will support any proposal involving the change of status of Defiance Holdings Limited shares."
(Mr O'Brien)

"I have been instructed by the Board of this company to write to you requesting that you provide to the company copies of those complaints and that you advise the Commonwealth Parliamentary Committee on Legal and Commercial Practices, the National Companies and Securities Commission and, the Business Council of Australia, that you withdraw those complaints."
(Mr Hoey)

Further, the committee might then consider that it ought to consider the intent of Messrs O'Brien and Hoey in making the particular statements noted (if indeed they did) (and see above). Another point would be to consider the knowledge Messrs O'Brien and Hoey may have had in so far as the relevant law is concerned. Then there is the question of the effect of the actions complained of, whether in relation to the committee, the House or Mr Willis.

Mr Willis' submission and position

The committee may also feel that it should give Mr Willis an opportunity to make a submission on the matter and that it should consider his position and perceptions in the matter.

It is noted that, according to Mr Smith's statement to the House on 17 April, Mr Willis did not personally make a submission to the committee inquiry in question, but rather that he had a submission lodged on his behalf.

Section 12 of the *Parliamentary Privileges Act 1987* creates offences in respect of certain actions against "... another person in respect of any evidence given or to be given before a committee". Subsection 3(2) provides that, for the purposes of the Act, "... the submission of a written statement by a person to a committee shall, if so ordered by the committee, be deemed to be the giving of evidence in accordance with that statement by that person before that committee".

The committee may wish to consider the application of this provision to the present case. It may be considered that the relationship between solicitor and client is such that, in a matter such as this, the client should be considered to be "the person" who had lodged the submission for the purposes of the Act.

May refers to the practice of the House of Commons in respect of committees, stating, inter alia:

".... parties whose conduct forms the subject, or one of the subjects, of an investigation by a select committee, or whose rights and interests, as distinct from those of the general public, are directly affected ... are sometimes allowed to be heard in person or by counsel before the committee."¹⁴

This seems to imply that the words or submissions of counsel would, technically, have the same standing as those of witnesses or parties themselves.

It is emphasised, however, that even if the committee sees some question as to the applicability of the provisions of section 12 of the 1987 Act to the present circumstances, this only touches on the question of a possible criminal offence under the statute. Under the law of contempt, it would still be open to the committee to find that intimidation, or attempted intimidation of a person on account of his involvement with a committee inquiry was a contempt, if it was so minded: see definition of contempt above.¹⁵

CONSIDERATION BY THE COMMITTEE

The committee has been charged by the House with the responsibility of advising it in relation to this matter. It would seem that the committee would need to consider the basic law involved, whatever principles and precedents it may consider relevant, and the circumstances and details of the particular matter complained of.

The committee must have regard to the provisions of section 4 of the *Parliamentary Privileges Act 1987*, but it may also wish to have regard to the general approach, in recent times, to matters of privilege and contempt in the House of Commons.

On 6 February 1978 the House of Commons, in a significant decision, agreed with a recommendation of its Committee of Privileges, which had reviewed the major changes recommended by the 1966-67 Select Committee on Parliamentary Privilege. In particular, the House agreed with the recommendation that it -

.....should follow the general rule that its penal jurisdiction should be exercised (a) in any event as sparingly as possible and (b) only when the House is satisfied that to exercise it 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.¹⁶

No decision has been made to adopt such a policy in the House of Representatives although it was recommended in the 1984 report of the Joint Select Committee on Parliamentary Privilege.¹⁷ This approach has however been cited in the House by successive Speakers¹⁸, and it has been adopted by resolution in the Senate.¹⁹

In discharging its responsibilities, the committee has substantial powers. In the first place, by virtue of section 49 of the Constitution, the UK Parliamentary Witnesses' Oaths Act 1871 applies. That Act enabled committees of the House of Commons to administer oaths to witnesses and that power is enjoyed by the Committee of Privileges.

Secondly, the committee has power to "send for persons, papers and records" - that is, it has the power to compel the attendance of witnesses and the production of documents. These powers are backed by the authority of the House itself.

Committees of Privileges both in the UK and Australia have, as well as making findings on particular complaints, made recommendations to the House as to what action it might take.

Examples of findings and recommendations have included -

- . that no contempt or breach is involved;
- . 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, in the circumstances, a finding that a contempt had been committed should not be made;
- . that a contempt of the House had been committed but, in view of the (humble) apology tendered, no further action is recommended;
- . that although it would be open to find that a contempt had been committed, in the circumstances and having regard to such a finding should not be made;
- . that a contempt of the House had been committed but the matter was not worthy of occupying the further

time of the House;

- . that no further action be taken against the editor 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
- . 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;
- . that a serious contempt (breach) has been committed and the House should

There is nothing binding about this list, and the committee may express its findings and any recommendations as it chooses.



(L M BARLIN)
Clerk of the House

16 May 1991

Attachments not included in printed report.

NOTES

1. House of Representatives Practice, A R Browning (ed) AGPS, Canberra, 1989, p. 682
 2. Op cit, p. 682
 3. Halsbury's Laws of England, 4th edn, vol 34, para 1500
 4. May, 21st edn, p. 115
 5. May, p. 131
 6. House of Representatives Practice, pp 673, 708
 7. HC 274 (1975-76)
 8. PP 461 (1989)
 9. PP 158 (1980)
 10. PP 461 (1989)
 11. PP 461 (1989)
 12. PP 461 (1989)
 13. PP 461 (1989)
 14. May, p 631
 15. May, p 115; House of Representatives Practice, p 686; Parliamentary Privileges Act 1987, s. 4
 16. HC 417 (1976-77) iii-iv
 17. PP 219 (1984)
 18. H.R.Deb. (9.11.83) 2461; H.R.Deb. (29.4.86) 2698; H.R.Deb. (16.9.86) 759
 19. J. 1987-89/520,536
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COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Wednesday, 8 May 1991

PRESENT:

Mr Gear (Chairman)	Dr Edwards
Mr Costello	Mr Snow
Mr Dobie	Mr Snowdon

The committee met at 8.08pm.

The minutes of the meeting held on 15 November 1990 were confirmed.

The Chairman reported the resignation of the Hon. N A Brown, QC from the House.

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

No. 52 - 12 March - appointment of Dr Edwards to the committee.

On the motion of Mr Dobie, Mr Costello was elected as Deputy Chairman of the Committee.

The Chairman reported receipt of advice from Hon. K E Beazley nominating Mr Holding to serve on the committee in his place.

The following extracts from the Votes and Proceedings were reported by the Chairman -

No. 60 - 17 April - Raising of complaint concerning witness to Legal and Constitutional Affairs Committee.

No. 61 - 18 April - Reference of complaint to Committee of Privileges.

The committee deliberated.

Resolved (on the motion of Mr Snowdon) - That the committee -

- (a) write to the Chairman of the Standing Committee on Legal and Constitutional Affairs seeking a copy of the submission lodged on behalf of Mr Willis and asking for confirmation that this document was formally received by the Committee as a submission;

- (b) write to Mr O'Brien -
- (i) advising him of the terms of the reference given to the committee by the House;
 - (ii) providing him with a copy of the papers tabled and the statements made in the House;
 - (iii) inviting any submission he may wish to make to the Committee on the matter;
- (c) write to Mr Hoey -
- (i) advising him of the terms of the reference given to the committee by the House;
 - (ii) providing him with a copy of the papers tabled and the statements made in the House;
 - (iii) inviting any submission he may wish to make to the Committee on the matter;
- (d) write to Mr Willis -
- (i) advising him of the terms of the reference given to the committee by the House;
 - (ii) providing him with a copy of the papers tabled and the statements made in the House;
 - (iii) inviting any submission he may wish to make to the Committee on the matter.

The committee deliberated.

Resolved (on the motion of Mr Dobie) - That a submission be sought from the Clerk of the House on the matter referred on 18 April.

The committee deliberated.

The committee adjourned at 8.23 pm until 8.00 pm on Thursday, 16 May 1991.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 16 May 1991

PRESENT:

Mr Gear (Chairman)	Dr Edwards
Mr Snow	Mr Dobie
Mr Snowdon	

The committee met at 8.03pm.

The minutes of the meeting held on 8 May 1991 were confirmed.

The Chairman presented the following papers:

- (a) submission dated 10 May from Mr P. Brazil, AO, on behalf of Mr P.W. O'Brien and Mr M. K. Hoey;
- (b) letter dated 16 May from Mr Lavarch, Chairman, House of Representatives Standing Committee on Legal and Constitutional Affairs, to which was attached a copy of a submission lodged with the Legal and Constitutional Affairs committee on behalf of Mr W. Willis.

Resolved (on the motion of Dr Edwards) - That the submission from Mr Brazil and the letter from Mr Lavarch be received as evidence.

Resolved (on the motion of Mr Dobie) - That the Chairman write to Mr Lavarch inviting information on the effect the actions complained of have had in so far as the Legal and Constitutional Affairs committee was concerned.

The committee adjourned at 8.08 pm until 8.00 pm on Thursday, 30 May 1991.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 6 June 1991

PRESENT:

Mr Gear (Chairman)	Mr Johns
Mrs Crosio	Mr McGauran
Mr Dobie	Mr Reith
Dr Edwards	Mr Snow
Mr Holding	Mr Snowdon

The committee met at 8.15pm.

The minutes of the meeting held on 16 May 1991 were confirmed.

The Chairman presented the following paper: submission dated 20 May from Mr W. Willis of 75 Sugars Road, Bellbowrie, QLD, 4070.

Resolved (on the motion of Mr Snowdon) - That the submission from Mr Willis be received as evidence.

The committee deliberated.

Resolved (on the motion of Mr Snowdon) - That Messrs W. Willis, M. Hoey and P. O'Brien be invited to appear before the committee on Thursday 20 June (10.00 am).

The committee deliberated.

Mr Snow moved - That the evidence of Messrs Willis, Hoey and O'Brien be taken in camera and that witnesses appearing be permitted to have counsel present on the same basis as permitted during the 1987 hearings of the committee.

Question - put

The committee divided (the Chairman, Mr Gear, in the Chair) -

Ayes , 3

Noes , 3

Mrs Crosio
Dr Edwards
Mr Snow

Mr Holding
Mr Reith
Mr Snowdon

The numbers for the "Ayes" and the "Noes" being equal, the Chairman stated that he would give his casting vote for the "Ayes", and so it was resolved in the affirmative.

The committee deliberated.

Resolved (on the motion of Mr Snow) - That, pursuant to subsection 2(2) of the Parliamentary Papers Act, the committee authorises publication-

- (a) of the submission from Mr Brazil on behalf of Messrs O'Brien and Hoey to Mr Willis; and
- (b) of the submission from Mr Willis to Messrs O'Brien and Hoey.

The committee adjourned at 8.55 pm until 10.00 am on Thursday, 20 June 1991.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES
MINUTES OF PROCEEDINGS

Parliament House - Canberra
Thursday, 20 June 1991

PRESENT:

Mr Gear (Chairman)	Mr McGauran
Mr Dobie	Mr Snow
Dr Edwards	Mr Snowdon
Mr Holding	

The committee met at 10.03am.

The minutes of the meeting held on 6 June 1991 were confirmed.

The Chairman presented the following papers:

- (a) additional submission dated 18 June from Mr R. Gardini, on behalf of Mr W. Willis;
- (b) additional submission dated 19 June from Mr P. Brazil, AO, on behalf of Messrs P.W. O'Brien and M.K. Hoey.

Resolved (on the motion of Mr Dobie) - That the additional submissions be received as evidence.

Mr Winston Willis and Mrs Mary Willis of 75 Sugars Road, Moggill, Qld (advised by Mr Robert Gardini) were called, sworn and examined.

The witnesses withdrew.

Mr Malcolm Kingsley Hoey of 1 Glencoe Court, Toowoomba, Qld, Secretary and a Director of Defiance Holdings Ltd (advised by Mr Patrick Brazil, AO), was called, sworn and examined.

The witness withdrew.

Mr Patrick William O'Brien of 29 Ruthren Street, Toowoomba, Qld, Chairman of Defiance Holdings Ltd (also advised by Mr Brazil), was called, sworn and examined.

The witness withdrew.

Resolved (on the motion of Mr Dobie) - That the oral submissions received this day be received as evidence.

The committee deliberated.

At 12.22 pm the committee adjourned until 8.15pm this day.

Confirmed.

(George Gear)
CHAIRMAN