

Parliamentary Paper
No. 282/1986

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES
COMMITTEE OF PRIVILEGES

Disruption caused to the work
of the electorate office of
the honourable Member for
Wentworth made in response to
false advertisements in the
Sydney Morning Herald of
20 September 1986

Report together with Minutes
of Proceedings of the
Committee

The Commonwealth Government Printer
Canberra 1986

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ISBN 0 644 05610 X

Printed by Authority by the Commonwealth Government Printer

MEMBERSHIP OF THE COMMITTEE

Mr G. Gear, MP, Chairman

Mr G. Campbell, MP
Mr P.R. Cleeland, MP
Hon. W.M. Hodgman, QC, MP
Mr E.J. Lindsay, RFD, MP₁
Mr P.C. Millar, MP

Mr P.K. Reith, MP
Mr D.W. Simmons, MP
Mr W.L. Smith, MP₂
Mr J.M. Spender, QC, MP
Mr R.E. Tickner, MP

Secretary - Mr B. Wright

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

MEMORANDUM FOR THE RECORD

DATE: 10/10/54

TO: SAC, NEW YORK (100-100000)

FROM: SAC, NEW YORK (100-100000)

SUBJECT: [Illegible]

RE: [Illegible]

Enclosed for the New York Office are two copies of a letterhead memorandum dated and captioned as above.

Very truly yours,
[Illegible Signature]

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EXTRACTS FROM VOTES AND PROCEEDINGS

1. No.118 of Monday, 22 September 1986:

PRIVILEGE - COMPLAINT OF BREACH: Mr Coleman raised, as a matter of privilege, the inclusion by persons not known to him of his electorate office telephone number in certain classified advertisements published in The Sydney Morning Herald of 20 September 1986. Mr Coleman stated that the volume of inquiries in response to the advertisements was obstructing the work of his electorate office. Mr Coleman produced copies of the advertisements. The Deputy Speaker stated that he would bring the matter to the attention of Madam Speaker.

2. No.119 of Tuesday, 23 September 1986:

PRIVILEGE - ADVERTISEMENTS IN "SYDNEY MORNING HERALD" - REFERENCE TO COMMITTEE OF PRIVILEGES: Madam Speaker referred to the matter of privilege raised yesterday by Mr Coleman concerning advertisements placed in The Sydney Morning Herald in which his electorate office telephone number had been listed without his permission and stated that she was prepared to accord precedence to a motion in connection with the matter.

Mr Coleman then moved - That the matter of the disruption caused to the work of the electorate office of the honourable Member for Wentworth by telephone calls made in response to false advertisements in The Sydney Morning Herald of 20 September 1986 be referred to the Committee of Privileges.
Question - put and passed.

3. No.121 of Thursday 25 September 1986

COMMITTEE OF PRIVILEGES: The House was informed that the Deputy Leader of the Opposition had nominated Mr Smith to be a member of the Committee of Privileges in its consideration of the matter referred to it on 23 September 1986.

1.

REPORT

1. The Committee of Privileges, to which was referred the matter of the complaint made in the House of Representatives on 22 September 1986 relating to the disruption of the work of the electorate office of Mr W.P. Coleman, MP as a result of false advertisements published in The Sydney Morning Herald of 20 September 1986, has agreed to the following report:

Complaint

2. On 22 September 1986 Mr Coleman raised, as a matter of privilege, the inclusion by persons not known to him of his electorate office telephone number in certain classified advertisements in The Sydney Morning Herald of 20 September 1986. Mr Coleman stated that the volume of inquiries in response to the advertisements was obstructing the work of his electorate office, and he produced copies of the advertisements. The matter was referred for Madam Speaker's consideration, in accordance with established practice.

3. On 23 September Madam Speaker referred to the matter and stated that she was prepared to accord precedence to a motion in connection with it. Mr Coleman then moved that the matter of the disruption caused to the work of his electorate office by telephone calls made in response to the advertisements be referred to the Committee of Privileges, and this motion was passed unanimously and without debate.

4. The terms of the advertisements are reproduced at Appendix 1 and the relevant extracts from Hansard at Attachments A and B of the memorandum from the Clerk of the House of Representatives, annexed to this report at Appendix 2.

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

5. Section 49 of the Commonwealth 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."

6. The Parliament has not specifically declared its powers, privileges and immunities although specific legislation has been enacted to deal with particular matters, for example, the Parliamentary Papers Act and the Parliamentary Proceedings Broadcasting Act. The Parliament is, therefore, at this time strictly limited to the powers, privileges and immunities of the United Kingdom House of Commons as at 1 January 1901, the date of establishment of the Commonwealth.

Contempt

7. The Houses of the Commonwealth Parliament possess the undoubted power to take action to protect themselves, their committees and Members against actions which whilst they might not breach any specific right or immunity, are considered to obstruct or impede, or to threaten to do so. Such actions are described as contempts. May defines 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 a contempt even though there is no precedent of the offence."

The inquiry

8. The committee first considered the general law of privilege and contempt relevant to the complaint. In particular, it noted the definition of contempt and the ability of the House to regard a matter as a contempt even if there is no precedent for such a matter to be so regarded. Mr Coleman was then contacted and invited to provide a statement to the committee, together with a statement from any member of his staff who may have been able to help. Letters were subsequently received from Mr Coleman and from Mrs Isobel Lees, his Electorate Secretary. Copies of these letters are at appendixes 3 and 4, respectively.

Assessment of the complaint

9. The committee is not aware of any exact precedent for the present set of circumstances, although it is aware of 2 precedents of some relevance (refer to memorandum from the Clerk of the House of Representatives at Appendix 2). The lack of an existing precedent is not of any conclusive effect.

10. In assessing this matter, the committee was aware of the widely held view that Parliament should exercise its penal jurisdiction as sparingly as possible, and only when satisfied

that to do so is essential to provide reasonable protection for the House, its Members or 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. This is not merely a widely held view, but one which has been formally adopted by the UK House of Commons as a guiding principle and one which guides the Speaker, the Committee of Privileges, and Members of the House. This principle has not formally been adopted in the Commonwealth Parliament. Despite this, the committee acknowledges that it is supported by many, and it is a principle which commends itself to this committee. It was also recommended by the Joint Select Committee on Parliamentary Privilege for adoption by the Parliament.

Conclusion

11. The realities of political and public life are such that Members from time to time are subjected to various forms of inconvenience or irritation as a consequence of being Members of Parliament. The difficulty is to distinguish between what may be regarded as reasonable or acceptable forms of expression and protest on matters of public interest, and actions which go beyond this and constitute harassment or obstruction of a Member in the discharge of his or her duties. Those who would interfere with the work of a Member, or a Member's office, should remember that it is not only the Member and the Member's staff who may suffer but more importantly constituents and other citizens who

may need to contact the Member and who may in fact suffer serious disadvantage if they are prevented from, or experience delays in, communicating with the Member, or if the Member or the Member's staff are obstructed in attending to the concerns or needs in question. The committee is mindful of the effect of the unwanted telephone calls on the work of Mr. Coleman's electorate office and has an appreciation of the disruption suffered. The actions which gave rise to these calls are to be deprecated. Although it does not believe that in all the circumstances any further action should be taken on this particular complaint, the committee wishes to make it clear that harassment of a Member in the performance of his or her work as a Member by means of repeated, or nuisance or orchestrated telephone calls could be judged a contempt. Members must be able to seek the protection of the House in such matters.

12. Bearing in mind the general reluctance to extend the ambit of Parliament's penal jurisdiction, the committee concludes that in all the circumstances further action would be inconsistent with the dignity of the House. The committee accordingly does not recommend that any further action be taken by the House on the matter.

Privilege matters generally

13. The committee draws attention to the fact that it is now over 2 years since the final report of the Joint Select Committee on Parliamentary Privilege was presented. It is the view of this

committee that a high priority should be accorded to consideration of the joint committee's recommendations, and decisions made which will serve to guide the House itself, committees and Members, and others involved in the work of Parliament, in these important matters.

G. GEAR
Chairman

22 October 1986

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Thursday, 25 September 1986

(34th Parliament - 1st meeting)

PRESENT:

Mr Campbell	Mr Simmons
Mr Gear	Mr Smith
Mr Hodgman	Mr Spender
Mr Reith	Mr Tickner
Mr Millar	

The Committee met at 8.20 p.m.

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

- (1) No.6 - 28 February 1985 - appointing members of the Committee.
- (2) No.78 - 14 March 1986 - appointing Mr Spender to the Committee.

The Secretary advised that a letter had been received by Madam Speaker from Mr N.A. Brown nominating Mr Smith to serve in his place during consideration of the matter referred to the Committee on 23 September 1986.

On the motion of Mr Tickner, Mr Gear was elected Chairman.

On the motion of Mr Smith, Mr Hodgman was elected Deputy Chairman.

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

- (1) No.118 - 22 September 1986 - recording the raising by Mr Coleman, as a matter of privilege, of disruption caused to his electorate office as a result of unwanted telephone calls made in response to false advertisements.

- (2) No.119 - 23 September 1986 - recording the decision that the matter of the disruption to the work of the electorate office of the honourable Member for Wentworth by telephone calls made in response to false advertisements in the Sydney Morning Herald of 20 September be referred to the Committee of Privileges.

The following paper was received:

Copy of the Sydney Morning Herald of Saturday, 20 September 1986.

The Committee deliberated.

Resolved: On the motion of Mr Millar - That the Clerk of the House of Representatives be asked to submit a memorandum on the questions of privilege relevant to the matter referred to the Committee on 23 September 1986.

The Committee deliberated.

Resolved: On the motion of Mr Hodgman - That the Secretary write to the Sydney Morning Herald asking that relevant records be maintained.

The Committee deliberated.

The Committee adjourned until Tuesday, 7 October 1986 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Tuesday, 7 October 1986

(34th Parliament - 2nd meeting)

PRESENT:

Mr Gear (Chairman)
Mr Campbell
Mr Hodgman
Mr Lindsay
Mr Millar

Mr Reith
Mr Simmons
Mr Smith
Mr Spender
Mr Tickner

The Committee met at 8.17 p.m.

The minutes of proceedings of the meeting held on 25 September were confirmed.

An extract from Votes and Proceedings No. 121 of 25 September was presented advising of the nomination of Mr Smith to serve in place of Mr N.A. Brown during consideration of the matter referred to the committee on 23 September.

The Committee deliberated.

Resolved: On the motion of Mr Hodgman - That Mr Coleman be invited to present a written statement to the committee dealing with the extent and effect of the disruption involved and that a statement from any staff member or members able to assist also be provided.

The Committee deliberated.

The Committee adjourned until Wednesday, 15 October 1986 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Wednesday, 15 October 1986

(34th Parliament - 3rd meeting)

PRESENT:

Mr Gear (Chairman)	Mr Simmons
Mr Campbell	Mr Smith
Mr Lindsay	Mr Spender
Mr Reith	Mr Tickner

The Committee met at 8.20 p.m.

The minutes of proceedings of the meeting held on 7 October were confirmed.

The minutes of proceedings of the meeting held on 25 September were corrected.

The Chairman presented the following papers:

- (a) memorandum from the Clerk of the House relating to the matter referred to the committee on 23 September 1986;
- (b) letter dated 13 October 1986 from Mr W.P. Coleman, MP, relating to the reference, and
- (c) letter dated 13 October 1986 from Mrs I. Lees, of Mr Coleman's electorate office, relating to the reference.

The Committee deliberated.

The Committee adjourned until Tuesday, 21 October 1986 at 8.15 p.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Tuesday, 21 October 1986

(34th Parliament - 4th meeting)

PRESENT:

Mr Gear (Chairman)
Mr Campbell
Mr Cleeland
Mr Hodgman

Mr Lindsay
Mr Millar
Mr Tickner

The Committee met at 8.21 p.m.

The minutes of proceedings of the meeting held on 15 October were confirmed.

The Committee deliberated.

The Chairman presented his draft report in respect to the reference of 23 September 1986:

- Paragraphs 1 to 5 agreed to.
- Paragraph 6 - amended and agreed to.
- Paragraph 7 - amended and agreed to.
- Paragraph 8 - agreed to.
- Paragraph 9 - amended and agreed to.
- Paragraph 10 - amended and agreed to.
- Paragraph 11 - considered.

The Committee adjourned until Wednesday, 22 October 1986 at 11.30 a.m.

Confirmed.

Chairman

COMMITTEE OF PRIVILEGES

MINUTES OF PROCEEDINGS

Parliament House - Canberra

Wednesday, 22 October 1986

(34th Parliament - 5th meeting)

PRESENT:

Mr Gear (Chairman)
Mr Campbell
Mr Hodgman
Mr Lindsay
Mr Millar

Mr Reith
Mr Simmons
Mr Smith
Mr Spender

The Committee met at 5.19 p.m.

The minutes of proceedings of the meeting held on 21 October were confirmed.

The Committee deliberated.

Paragraph 11 - further considered, amended and agreed to.
Paragraph 12 - amended and agreed to.
Paragraph 13 - agreed to.

Report agreed to.

The Committee adjourned sine die.

Not confirmed.

Chairman

APPENDIX 1

TERMS OF THE CLASSIFIED ADVERTISEMENTS

'LIVERPOOL. 4 b.r. hse. gar., ph., clse trans. \$135 p.w.

Ph. owner 329838'

'BRICKS. Commons. \$90 per 1000 32 9838'.

APPENDIX 2

COMMITTEE OF PRIVILEGES

INQUIRY INTO DISRUPTION OF A MEMBER'S ELECTORATE OFFICE BY
TELEPHONE CALLS IN RESPONSE TO FALSE ADVERTISEMENTS.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 the matter of the disruption caused to the work of the electorate office of the honourable Member for Wentworth, Mr Coleman, by telephone calls made in response to false advertisements in the Sydney Morning Herald of 20 September 1986.

THE REFERENCE

Extract from the Votes and Proceedings of the House of Representatives No. 118 of Monday 22 September 1986:

PRIVILEGE - COMPLAINT OF BREACH: Mr Coleman raised, as a matter of privilege, the inclusion by persons not known to him of his electorate office telephone number in certain classified advertisements published in The Sydney Morning Herald of 20 September 1986. Mr Coleman stated that the volume of inquiries in response to the advertisements was obstructing the work of his electorate office. Mr Coleman produced copies of the advertisements.

The Deputy Speaker stated that he would bring the matter to the attention of Madam Speaker.

Extract from the Votes and Proceedings of the House of Representatives No. 119 of Tuesday, 23 September 1986:

PRIVILEGE - ADVERTISEMENTS IN "SYDNEY MORNING HERALD" -
REFERENCE TO COMMITTEE OF PRIVILEGES: Madam Speaker referred to the matter of privilege raised yesterday by Mr Coleman concerning advertisements placed in The Sydney Morning Herald in which his electorate office telephone number had been listed without his permission and stated that she was prepared to accord precedence to a motion in connection with the matter.

Mr Coleman then moved - That the matter of the disruption caused to the work of the electorate office of the honourable Member for Wentworth by telephone calls made in response to false advertisements in The Sydney Morning Herald of 20 September 1986 be referred to the Committee of Privileges.

Question - put and passed.

The speech made by Mr Coleman in raising the matter on 22 September is attachment "A", and Madam Speaker's statement on 23 September is attachment "B".

The advertisements in question appeared in The Sydney Morning Herald of 20 September 1986, at pages 145 and 153 respectively, under the "To let" and "Building Materials" classifications. The advertisements read as follows:

"LIVERPOOL. 4 b.r. hse. gar., ph., clse trans. \$135 p.w. Ph. owner 329838" and
"BRICKS. Commons. \$90 per 1000 32 9838".

The telephone number listed is the electorate office number of the honourable Member for Wentworth.

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

Although there have been recommendations, for example, by the Joint Select Committee on Parliamentary Privilege, that it take action under section 49 to provide for its powers, privileges and immunities, the Parliament has not yet done so. Specific legislation has been passed to deal with particular matters, for example, the Parliamentary Papers Act and the Parliamentary

Proceedings Broadcasting Act, although these provisions have not been regarded by the High Court as displacing the operation of section 49, and may be regarded as enactments made under the provisions of section 51 (xxxix.) of the Constitution.³ The Parliament is, therefore, at this time, strictly limited to the powers, privileges and immunities of the House of Commons as at 1 January 1901, the date of establishment of the Commonwealth. These are described in detail in May's Parliamentary Practice and in House of Representatives Practice.

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 perhaps not 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 ..."⁴

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 of the offence."⁵

PARTICULAR REFERENCES IN RELATION TO MATTER BEFORE THE COMMITTEE

The following references are considered to be of some relevance to the matter being considered by the committee:

"Molestation of Members while in the execution of their duties

It is a breach of privilege to molest a Member of either House while attending such House or when coming to or going from it.

The Commons, on 12 April 1733 and the Lords on 17 May 1765, resolved, 'That the assaulting, insulting or menacing any Member of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this House, a most outrageous and dangerous violation of the rights of Parliament and an high crime and misdemeanour'; and on 6 June 1780 the Commons resolved, 'That it is a gross breach of the privilege of this House for any person to obstruct and insult the Members of this House in the coming to, or the going from, the House, and to endeavour to compel Members by force to declare themselves in favour of, or against any proposition then depending or expected to be brought before the House!'.⁶

"Acts tending indirectly to obstruct Members in the discharge of their duty

"Conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege".⁷

"Molestation of Members on account of their conduct in Parliament. It is a breach of privilege to molest any Member of either House on account of his conduct in Parliament.

The following are instances of this type of contempt:

.....

Inciting the readers of a newspaper to telephone a Member and complain of a question of which he had given notice (case of The Sunday Graphic CJ (1956-57) 31, 50; Report of the Committee of Privileges HC 27 (1956-57)).

..... "8

CONSIDERATION BY THE COMMITTEE

The committee has been charged by the House with the responsibility of advising it in relation to this matter. It must make a judgement as to whether or not a contempt has been committed. It would seem that the committee would need to consider first the basic principles involved in the matter, then whatever precedents may be relevant, then the circumstances of the disruption complained of.

Approach by the committee

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 provided that committees of the House of Commons could 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". These powers are backed by the authority of the House itself.⁹

The scope of any inquiry by the committee comprises "all matters relevant to the complaint".¹⁰ It should be noted that on at least one occasion in the past the committee has made a special report in connection with an inquiry. This was the Bankstown Observer case in 1955 when an article of 28 April 1955 had been referred to the committee. The committee presented a special report to the House seeking authority to include in its investigations articles appearing in the newspaper on 5, 12 and 19 May, and the House acceded to this request.¹¹ The following extracts from May (dealing with committees generally) are relevant to this point:

"Special reports. Besides the report properly so called relating to the subject-matter referred to the committee, it is sometimes 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. Such reports are similar in point of form to, and are proceeded upon in the same manner as, the principal reports 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."¹²

Although it has very great powers of its own, the committee may feel that it is not suited to conduct the sort of detailed or forensic investigations conducted by police authorities. In this case, the committee is able to seek the assistance of police authorities in dealing with references, and there are precedents for this.¹³

BASIC PRINCIPLES

The matters complained of by Mr Coleman would not, if established, constitute a breach of any specific right or immunity enjoyed by the Houses, their committees or Members. Rather, if established, a question of contempt would arise. The accepted definition of contempt has been quoted above. In advising the House of her decision to accord precedence to a motion in respect of this matter, Madam Speaker stated:

"The House may regard as a contempt any act or omission which obstructs or impedes a Member in the discharge of his or her duty, or which has a tendency, directly or indirectly, to produce such results",

and later,

"I am not aware of any exact precedents for this set of circumstances. Nevertheless, there is a flexibility in the accepted definition of contempt which permits the House to protect itself and its members from new or novel threats or obstructions".¹⁴

PRECEDENTS

We know of no exact precedent for the matter now before before the committee, but there has been one case in the United Kingdom, and one in the Australian Senate of some relevance.

Case of Mr A. Lewis, MP

In 1956, a Member of the UK House of Commons, Mr A. Lewis, gave notice of a question dealing with some aspect of foreign policy. Notice of the question was subsequently published, and two days later the Sunday Graphic published an article which referred to the substance of the notice and which ended with the comment -

"Which the 'Graphic' thinks is just about the most crazy, mixed-up question of the year. If you agree with us, please don't write and tell us so. Ring up Mr Lewis and tell HIM. His number is Edmonton 6113."

The number was that of Mr Lewis' private house and a large number of telephone calls were made to it as a result of the article. They continued apparently for some three days, until his number was changed. Some of the calls were apparently abusive and in one case it appeared that a caller phoned from a public phone box, left the receiver off and so disconnected Mr Lewis' own telephone. It also appears that a constituent had tried to get in touch with Mr Lewis on a matter of urgency but was unable to do so.

The matter was referred to the Committee of Privileges and the committee was satisfied that the treatment to which Mr Lewis was subjected was a direct result of the paragraph published in the Sunday Graphic. The committee was further satisfied, that when the invitation to telephone Mr Lewis was published, it was with the objective that a large number of people should telephone him.

The committee stated:

"To molest a Member of Parliament on account of his conduct in Parliament is, it is well established, a breach of privilege. Mr Lewis was entitled to table the parliamentary question referred to in paragraph 1. It was because he had done so that he was subjected to this series of telephone calls. In our opinion this conduct clearly amounted to molestation and in our opinion the Editor of the Sunday Graphic has been guilty of a breach of privilege in inciting it".

The report went on to observe:

"We have not been able to discover in the past a similar case of molestation to that now under consideration, but, as we have said, the principle that to molest a Member of Parliament on account of his conduct in Parliament is a breach of privilege is well established. Lord Simon said in Harris v. Director of Public Prosecutions, 1952 Appeal Cases, at p.705, in another connection:

'It is, I think, an error to attempt to draw up a closed list of the sort of cases in which the principle operates: such a list only provides instances of its general application, whereas what really matters is the principle itself and its proper application to the particular circumstances of the charge that is being tried. It is the application that may sometimes be difficult, and the particular case now before the House illustrates that difficulty.'

The principle with regard to molestation being well established, it is its proper application to the particular circumstances of a case that may sometimes be difficult. In our view the principle clearly applies to the circumstances of this case and in our opinion the Editor of the "Sunday Graphic" was guilty of a breach of privilege in that he instigated the molestation to which Mr Lewis was subjected".

The committee received a written statement from the Editor of the Sunday Graphic setting out certain matters and saying that the paragraph had been allowed because the Editor thought that telephoning Mr Lewis was a more direct and simpler method of bringing the views of people to his attention but that the Editor "neither intended nor foresaw the consequences which resulted from the publication of the paragraph". The committee expressed the view that it was the Editor's intention to subject Mr Lewis to molestation on account of his conduct in tabling the question but was assured that the Editor did not anticipate the degree of molestation which Mr Lewis suffered.

The committee report concluded -

"Having reached the conclusion that Mr McKenzie is guilty of a breach of privilege, your Committee considered what course they should recommend to the House. They regard the breach as serious, yet it is to be borne in mind that molestation has not before taken a similar form and also that Mr McKenzie has not sought to justify his conduct, but has humbly apologised to Mr Speaker, to the House of Commons and to Mr Lewis, an apology he reiterated in his evidence before us. In view of this and of the fact that now that it is made known that such conduct constitutes a serious breach of privilege it is unlikely to be repeated, your Committee are of opinion that on this occasion no further action by the House is necessary".¹⁵

No specific action was taken by the House on this report, the situation having being described as one of "tacit acceptance".¹⁶

Case of Senator Harradine

On 26 May 1981 the Senate referred to its Committee of Privileges -

"The matter of repeated nuisance and personally abusive telephone calls made to a Member of the Senate at his Parliament House office on 8 and 10 April 1981".

The referral followed a complaint from Senator Harradine who, after notifying the relevant authorities that he intended to do so, had slept in his Parliament House office on 5 nights for personal reasons which the committee accepted as valid. Whilst in his office, Senator Harradine had received a number of offensive telephone calls.

Senator Harradine had asked Telecom to inquire as to the origin of the calls. Senator Harradine also explained to the committee that the Australian Federal Police had approached him concerning the calls but that he asked the police to take no action as in his opinion it was a matter for Parliament.

Senator Harradine informed the committee that one of the calls had been traced to a telephone located at an address in Kingston and the name of the holder of the service.

The person in whose name the telephone service was recorded appeared before the committee, indicated that she was prepared to accept the statement that the call had been traced to her address, said that she had no knowledge of the calls which were made on one morning but said that on the night of 9 April and the morning of 10 April there had been a party at the address and that it was possible that the call traced was made by her or by some other person on the premises.

The committee agreed that the telephone calls were highly offensive.

The committee concluded -

"The Committee considers that it is a contempt of Parliament for any person to harass a Senator by repeated offensive telephone calls, and that the course of conduct involved in the series of telephone calls made to Senator Harradine constitutes contempt.

"In the light of the evidence the Committee does not recommend that the Senate take any action on this occasion other than to adopt this report so as to indicate its agreement with the Committee's findings".¹⁷

On 22 October 1981 the Senate resolved "That the Report be adopted".¹⁸

APPLICATION OF PRECEDENTS

The similarities between the two cases described and the situation complained of, accepting for present purposes that the facts are as alleged, are obvious. There are, however, some differences.

In the case of Mr Lewis, the molestation to which he was subjected was accepted as being "on account of his conduct in Parliament". From the information provided by Mr Coleman in raising the matter, it does not appear that there is any direct relationship between the unwanted telephone calls made to his office and any action he had taken or intended to take in Parliament.

It would appear, however, that, in principle, the fact that the harassment complained of does not have a direct relationship with 'conduct in Parliament' does not, of itself, preclude the possibility of the matter being regarded as a contempt. This is not to say that anything done by a Member may attract the protection of the Parliament - it will not. This sort of distinction is frequently made in respect of the traditional, and somewhat controversial, category of contempt consisting of reflections on Members. The statement of May on this matter is often quoted:

"... to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity" (emphasis added).¹⁹

The committee may well take the view that Mr Coleman's actions in respect to the arrangements for the (then) forthcoming visit of naval vessels does not entitle him to any different consideration or greater protection than might be enjoyed by any other citizen. It may consider, however, that actions which interfered with the operation of his electorate office were different because of the connection with his work as a Member, and that in this area a Member may claim the protection of the House. If this view is adopted, it is not a matter of a Member being protected from obstruction or harassment "on account of his conduct in Parliament" but rather protected in his work as a Member of Parliament, whether it be in his electorate office or in Parliament House. In the case of Senator Harradine there was no claim that there was any connection between the phone calls complained of and his conduct in Parliament.

Another factor in relation to the Harradine case is that the phone calls complained of were made to the Senator's office in Parliament House. It is accepted that the law of privilege and contempt is not a law founded in geography; it is rather a functional matter. Although there are special provisions applying to the precincts of Parliament, for example, it may be regarded as a contempt to serve a subpoena on a Member in Parliament House when the House is sitting, the fact that a parliamentary activity or proceeding may occur outside the precincts does not remove the matter from the protection of Parliament. In 1969, the UK Committee of Privileges considered a complaint arising from the disruption of a meeting of a parliamentary committee by students at the University of Essex, and it concluded that a contempt had

been committed (although it noted that disciplinary action had been taken by the university and it concluded that no further action by the House was called for).²⁰

MATTERS FOR DETERMINATION BY THE COMMITTEE

The complaint

It would seem that, if the facts are as stated, Mr Coleman has been subject to a form of harassment or obstruction in connection with the operation of his electorate office. The important factors of the extent, detail and effects of the harassment or obstruction are, however, not clear from the information available.

Accepting that the definition of contempt enables the House to protect itself, its committees and its Members from new or novel forms of obstruction, it would be open to the committee to find that, even if there is no precedent for this particular offence, a contempt has been committed. The words of Lord Simon in the case quoted above are particularly relevant here:

"... What really matters is the principle itself and its proper application to the particular circumstances of the charge that is being tried. It is the application that may sometimes be difficult, and the particular case now before the House illustrates that difficulty".²¹

General approach

On 6 February 1978 the House of Commons, in a significant decision to do with the general policy to be adopted in dealing with complaints of breach of privilege and contempt, agreed with a recommendation of its Committee of Privileges, which had reviewed the recommendations of a 1966-67 Select Committee on Parliamentary Privilege which had recommended major changes. In particular, the House agreed with a 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."²²

No decision has been made to adopt such a policy in the Commonwealth Parliament although it was recommended by the Joint Select Committee on Parliamentary Privilege.

Conclusions

The committee, in advising on this matter, must presumably seek to measure and assess the various considerations - the nature, extent and impact of the disruption, the rights of Members to protection insofar as the work of their electorate offices are concerned, and perhaps the general question of the circumstances in which the House should seek to invoke its privilege and contempt powers. The committee may also consider the question of alternative remedies or actions, although the existence of alternative avenues does not appear to have been a decisive factor in previous cases, for example, reflections on Members which may be regarded as actionable, and has not prevented Members seeking the protection of Parliament. Members may feel that they should bring problems to do with their work as Members to the Parliament for attention.

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 have included -

- . 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 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.

ENDNOTES

1. House of Representatives Practice, Pettifer, J.A. (ed), A.G.P.S., Canberra, 1981, p.640.
2. House of Representatives Practice, p.640.
3. R. v. Richards, ex parte Fitzpatrick and Browne (1955) 92 CLR, 168.
4. Halsbury's Laws of England, 4th edn, vol. 34, para. 1500.
5. Erskine May Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 20th edition, ed Sir C. Gordon, Butterworths 1983, p.143.
6. May, p.156.
7. May, p.158.
8. May, pp. 158-9.
9. Standing order 26.
10. House of Representatives Practice, p.672, May, p.728.
11. House of Representatives Practice, p.672.
12. May, p.715.
13. House of Representatives Committee of Privileges Report relating to a letter to the editor published in The Australian, 13 September 1971, PP 182 (1971), p.5.
House of Representatives Committee of Privileges Report relating to a letter fraudulently written in the name of the Honourable Member for Casey published in The Sun - News Pictorial on 6 December 1973, PP 65(1974), p.7.
14. H.R. Deb. (23.9.86) p.1195.
15. Report of the House of Commons Committee of Privileges, HC 27(1956-57).
16. Report of the House of Commons Committee of Privileges, HC 417(1976-77), p.xxxvi.
17. Senate Committee of Privileges, Sixth Report, June 1981, PP 137 (1981).
18. J 1980-83/591.
19. May, p.159.
20. Report of the House of Commons Committee of Privileges, HC 308(1968-69).
21. Report of the House of Commons Committee of Privileges, HC 27(1956-57), p.iv.
22. Report of the House of Commons Committee of Privileges, HC 417(1976-77), pp.iii-iv.

Privilege

22 September 1986 REPRESENTATIVES 1145

had handled its policy in this area with more sensitivity.

In my electorate and in the adjacent areas of Mount Barker and the Franklin River are well over 70 producing wineries. The emphasis is on the production of premium quality wines. Generally, the wineries have been financed and then subsequently supported by non-farm income. The area has been rapidly developing since the late 1960s and many wineries, in strict economic terms, have been overcapitalised and, hence, the return on capital is very low. The wineries have not had time to consolidate. These areas produce about 5,500 tonnes of grapes, and that is about one per cent of total Australian production. But that one per cent represents some of the highest quality wines produced in Australia. The Forrest region alone would employ some 350 people directly in making wine but many more would be employed in the related industries of service—retailing and tourism. One can multiply that figure to appreciate the number of people who would be so employed throughout the nation.

It has been the premium quality wines from overseas that have made the inroads on the Australian market. Overall it is only about 5 per cent of our production but it is about 17 per cent of bottled premium wine. What the Government is doing with this 20 per cent wine tax is to threaten the viability of the most susceptible end of the wine market, that is, the premium wines of Australia. Many will argue about which end of the market this tax will hurt the most. Those in the greatest difficulty would probably be in the Riverland and other parts of what may be called the lower end of the market.

Mr Tim Fischer—Sunraysia.

Mr DRUMMOND—Sunraysia and the irrigation areas which are more concerned with bulk production and which were in extreme difficulties before this tax was considered. It is irrelevant that the 20 per cent sales tax is not paid on exports. If our wineries cannot survive on the domestic market with this new cost imposition, there would be no one left to do the exporting. While the combined Federal and State taxes act like an engorged parasite on the back of the wine industry, it will never be able to reverse our wine trade imbalance; it will be financially too weak. Currently, through State liquor taxes and the Federal Government's wholesale tax, combined governments will take \$217m out of gross liquor sales of some \$550m, leaving company profits—honourable members should listen to this—of \$20m to \$30m. That is a tax-profit ratio for the wine industry of some

8:1, yet we are trying to compare the wine industry with the beer industry. There are 400 different wineries, 6,000-odd different producers and thousands of people who are involved in this industry on a regional basis, yet the overall profit of wineries is some \$25m to \$30m. That must be compared with that of the beer industry.

Recently we heard about one beer baron who intends spending \$10m on advertising—equivalent to one third of the profit of the whole wine industry. The industries just do not relate. This is a regional industry. As I said, 6,000-odd people are directly employed, there are 400-odd wineries, and there are massive problems with over-supply. There is no justification for this measure.

I have extended my time a little and I apologise to my colleagues. I wind up by saying that this level of taxation is primarily responsible for our wine trade demise and imbalance. It is a disgustingly high level of taxation. It is a further tax on Australia's productive sector. After the money has gone through the Government's administrative mangle we can be sure that it will be redistributed to the totally non-productive and non-job producing sector. I appeal to this Government, as I have to previous Labor governments, to repeal this tax before it does any more damage.

Debate (on motion by Mr Peter Fisher) adjourned.

PRIVILEGE

Mr COLEMAN (Wentworth)—Mr Deputy Speaker I wish to speak on a matter of privilege.

Mr DEPUTY SPEAKER (Mr Mildren)—The honourable member may proceed.

Mr COLEMAN—In a nutshell the facts are these: In the last couple of weeks I have been distributing all over Sydney a dodger inviting people to assemble at Mrs Macquarie's Chair, on Sydney Harbour, on the morning of 29 September to welcome the large group of naval vessels from the United States, the United Kingdom and other countries which will be arriving to join in the Royal Australian Navy's celebration of 75 years of service. This dodger says that I should be contacted for further information, and it gives my office phone number. It also says that there will be a welcoming flotilla organised and for information on that people should phone Michael Yabsley, my State colleague from the seat of Bligh. It gives his office phone number.

Last Saturday there appeared in the 'For Sale' column of the *Sydney Morning Herald*, at page

153, an advertisement for common bricks at \$90 per thousand—which is half price, I understand—and it gives my office phone number. In the 'To Rent' column on page 145 there appears an advertisement for a four-bedroom house in Liverpool with garage and phone, close to transport, for \$135 a week. That is also a very keen price, and it also gives my office phone number. In another newspaper there are similar advertisements giving Michael Yabsley's phone number, as it appears in this dodger. The result is that today, all day, every five minutes, the phone has been ringing—I know there is an element of a practical joke in this, Mr Deputy Speaker, but I can assure you it is not a joke—and no constituency work has been able to be done. This has affected my constituents' problems regarding immigration, taxation, health, social service or whatever. The House will, of course, be familiar with the work of a member's office. The phone has been going all day with people asking about renting this house in Liverpool or about buying these bricks at the bargain basement price.

Mr Robert Brown—How many bricks have you got?

Mr COLEMAN—If the honourable member thinks it is funny, it indicates his attitude to constituency work. I can assure the House that that is not my attitude.

Mr DEPUTY SPEAKER—Order! I ask the honourable member for Wentworth to ignore the interjections.

Mr COLEMAN—Yes, that is best, Mr Deputy Speaker. No constituency work has been done and my office has been disrupted. The same applies to Mr Yabsley and his office. The matter is also a police matter—and it has been referred to them. But it has disrupted my office and continues to do, so my constituents are not being served as they should be and expect to be. I ask that you, Mr Deputy Speaker, refer this matter to the Committee of Privileges. I present the advertisements with the pages and dates circled.

Mr DEPUTY SPEAKER—I will refer the matter raised by the honourable member to Madam Speaker for her consideration and report to the House.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL
1986

[COGNATE BILLS:

SALES TAX LAWS AMENDMENT BILL
1986
SALES TAX ACTS AMENDMENT BILL
1986]

Second Readings

Debate resumed.

Mr PETER FISHER (Mallee) (4.55)—The Sales Tax (Exemptions and Classifications) Amendment Bill, the Sales Tax Laws Amendment Bill and the Sales Tax Acts Amendment Bill increase sales taxes on a broad range of household appliances, gardening and industrial tools, computers, sound recordings and videos, wine and cider. A number of new items never before taxed will have sales tax levied on them by this Government. As my coalition colleagues participating in this debate will discuss the full impact of this legislation, I intend to contain my remarks to the tax on wine, fruit juice and flavoured milk. I should emphasise that this debate is being conducted not in an atmosphere of major tax reform—that is, broadly based indirect taxation with low personal tax rates—but at a time when overall government taxes are the highest ever.

In our economic climate, which demands tax relief and incentive but which is getting from this Government an insatiable demand for revenue to reduce the size of the deficit, the Budget deficit should be cut by public expenditure restraint. It is inconceivable that the rural industries of dairying, viticulture and citrus growing should be further penalised at a time when domestic cost burdens are intolerable, interest rates are rising and the debt structure of these three industries is at its highest ever. This legislation does just this. The rate of sales tax on alcoholic wine and cider and other similar fermented alcoholic beverages is being increased from 10 per cent to 20 per cent. Certain presently exempt non-alcoholic beverages are to be taxed at the 10 per cent rate. These include flavoured milk, non-alcoholic wine and cider and similar beverages and, broadly, all non-carbonated fruit juice products containing not less than 25 per cent by volume of Australian fruit juice.

The Australian wine industry comprises almost 7,000 growers and numerous diverse and competent wine makers. Our wine industry is part of our national culture and way of life, and should be supported. Two successive Australian Labor Party government imposes—first, a 10 per cent tax and now an increase of that tax to 20 per cent—are putting this industry at risk. Many grape growers and a number of wine makers will

Privilege

23 September 1986 REPRESENTATIVES 1195

Tuesday, 23 September 1986

Madam SPEAKER (Hon. Joan Child) took the chair at 2 p.m., and read prayers.

FILMING OF PROCEEDINGS

Madam SPEAKER—Honourable members will be aware of the presence in the chamber this afternoon of television cameras and lights. The purpose of the filming today is twofold. Sequences to be filmed with sound throughout the afternoon will form part of a video on the operations of the Parliament. That film will be part of an education kit for schools which is being produced by the Parliament for distribution to all schools in Australia during 1987.

In addition, the television networks will film the proceedings during Question Time for the purpose of updating the footage used in illustrating news items. Recognising the discomfort caused by the increased lighting, I have asked that the film crews ensure that the lights remain on only for the minimum time necessary to film the footage they require. At the same time, I ask that honourable members bear with the discomfort which they may experience because of the increased lighting.

PRIVILEGE

Madam SPEAKER—Yesterday the honourable member for Wentworth (Mr Coleman), rising on a matter of privilege, referred to advertisements that had been placed in the *Sydney Morning Herald* on Saturday 20 September in which his electorate office telephone number had been listed without his permission, and which had caused numerous unwanted calls to his office yesterday. In order to accord precedence to a motion, as Speaker I must be satisfied that a matter has been raised at the earliest opportunity, and that a prima facie case has been made out. I am satisfied that, in the circumstances, I should regard the matter as having been raised in time.

The House may regard as a contempt any act or omission which obstructs or impedes a member in the discharge of his or her duty, or which has a tendency, directly or indirectly, to produce such results. As I understand the honourable member's complaint, he believes the problem has a relationship with activities in which he has been engaged in connection with visiting naval vessels. The honourable member has found that the work of his electorate office has been disrupted; it is not a matter of the honourable member being harassed or obstructed on account

of his participation in proceedings in Parliament. The honourable member also advised that the matter had been referred to the police. I am not aware of any exact precedents for this set of circumstances. Nevertheless, there is a flexibility in the accepted definition of contempt which permits the House to protect itself and its members from new or novel threats or obstructions.

It needs to be stated that Parliament should provide reasonable protection to the House, its committees and members from substantial interference with the performance of their functions. Having given this matter careful consideration, I am prepared to accord precedence to a motion in connection with it.

Motion (by Mr Coleman) agreed to:

That the matter of the disruption caused to the work of the electorate office of the honourable member for Wentworth by telephone calls made in response to false advertisements in the *Sydney Morning Herald* of 20 September 1986 be referred to the Committee of Privileges.

QUESTIONS WITHOUT NOTICE**TREASURER: TRAVEL ALLOWANCE**

Mr HOWARD—My question is addressed to the Prime Minister. The Prime Minister will be aware that his Treasurer lives in Canberra but claims travel allowances as though he lives in Sydney and that within an 11-month period he obtained over \$17,000 in tax-free allowances. I ask the Prime Minister: Why did six days go by before he answered my request for him to disclose the secret changes to the rules which it is now said enable the Treasurer to manipulate the system? Why in his reply is there no date recording the secret Cabinet decision? Is it not true that even though the Government has tried to fiddle the system to protect the Treasurer, the Treasurer is still breaching the travel allowance rules? How does the Prime Minister explain to Australians, who are being taxed to the eyeballs by this Treasurer, that they have to play by the rules but the Treasurer does not?

Mr HAWKE—In regard to the first part of the question, it is very difficult to take the Leader of the Opposition or the Opposition seriously in their conduct in this place. I replied to the Opposition Leader's request in due time. The correspondence from him was not the most important matter I had before me. It has been replied to. I should set out the facts in regard to the way in which this Government has significantly improved the situation in terms of imposing limitations upon Ministers as to the circumstances in which they claim travelling al-



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

APPENDIX 3

15 CROSS STREET
(P.O. BOX 702)
DOUBLE BAY, NSW 2028
TEL (02) 32 8838

PETER COLEMAN, M.P.
MEMBER FOR WENTWORTH

13 October 1986

Dear Mr. Wright,

Since Parliament was sitting from September 22 to 25, I was in Canberra and not in my local office during the days on which the work of the office was disrupted by people ringing in answer to the bogus advertisements placed in The Sydney Morning Herald of Saturday 20 September.

For details of the disruption I must refer you to the letter sent to you by my Electorate Secretary, Mrs. Isobel Lees. I can certainly confirm that every point she makes in the letter she made to me at the time.

If you require any further information I would be happy to provide it.

Yours sincerely,

Peter Coleman

Mr. B. Wright,
Secretary,
Committee of Privileges,
Parliament of Australia,
Parliament House,
CANBERRA ACT 2600





PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

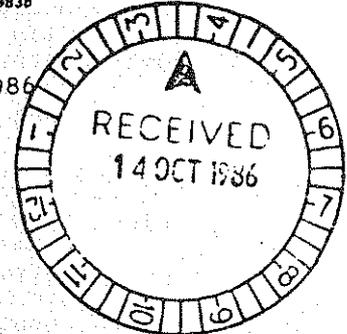
15 CROSS STREET
(P.O. BOX 702)
DOUBLE BAY N.S.W. 2028
TEL. (02) 32 9838

OFFICE OF

PETER COLEMAN, M.P.
MEMBER FOR WENTWORTH

13 October 1986

Mr. B. Wright,
Secretary,
Committee of Privileges,
Parliament House,
CANBERRA ACT 2600



Dear Mr. Wright,

I am writing in response to your letter addressed to Mr. Coleman dated 7 October 1986 concerning the disruption caused to the efficient operation of this office due to the bogus advertisements placed in The Sydney Morning Herald of Saturday 20 September.

When I opened the office on Monday morning at 0830 (22 September), both telephone lines were ringing - the second line being a "follow-on" line if 32 9838 is engaged. Both callers enquired about the sale of bricks advertised in the Saturday Herald. I told the callers that as the number which appeared was most definitely the number for the office the newspaper must have contained a misprint. Within the next 45 minutes, I answered at least 15 more calls all requesting information about the sale of bricks. I spoke to Mr. Coleman about the high incidence of the call rate and he informed me that when he had been in the office on the Saturday, he had taken a call from someone enquiring about a house to rent in Liverpool. I then spoke to our Electorate Assistant, Mr. Ian Farrow, who was in Canberra at the time and he said he had been in the office on Sunday and had also taken a call. In the meantime, the calls - both for bricks and the house to rent - were coming in at the rate of perhaps one every five or ten minutes, but this tailed off towards lunchtime.

After speaking to our local Telecom office about the possibility of having an "intercept" put on the telephone, it was suggested that before doing so, that we check with the newspaper regarding the lodgement of the advertisements. I rang the Customer Relations section at The Sydney Morning Herald and was advised that the computer showed that the same person had lodged both advertisements and it therefore seemed highly unlikely that a typographical error had been made. Although the girl I spoke to was unable to give me any details as to who had placed the advertisements, she did tell me that they had only been placed for one day - i.e., Saturday 20 September.

During the lunchtime period - 1.00 pm to 2.00 pm another six calls were received. By that time, every time the phone rang my colleague in the office, Miss Jenny Stearn, and I would look at one another and ask "what will it be this time - bricks or the house?".

As you would appreciate, it was not only the frequency of the calls which disrupted the office. As the caller genuinely thought they had a correct number time had to be spent explaining to them that the advertisement was a bogus one - we could not just say to the caller that they had a wrong number as they would have phoned again. After enquiries to Mr. Paul Oates at the Department of Local Government and Administrative Services in Sydney I was advised that the matter should be reported to the Police. I then reported the "nuisance" calls to Constable Kairies at Rose Bay Police Station.

As well as the inconvenience caused by the frequency of the calls, it was very frustrating when interviewing constituents in the office to be interrupted every few minutes to answer these calls. Fortunately, the constituents were very patient and very sympathetic to our plight. One interview in particular which could have taken 15 minutes took almost 40 minutes because of the interruptions.

On Tuesday 23 September, the calls were still coming in, but not as frequently. About a dozen calls were recorded for the morning of the 23rd and only perhaps half a dozen in the afternoon.

However, on the afternoon of the 23rd I answered another call, this time it was someone asking for the Inner City Massage Centre. I thought perhaps another advertisement had been placed and asked the caller where he got the number from. He did not answer, but only asked me if the number he had called was 32 9838. When I answered yes, he rang off.

On Wednesday 24 September, at least another six calls came in, either for the bricks or the house to rent.

During this period I also had contact with Detective Dalton of Rose Bay Police Station who advised me that they had obtained from The Sydney Morning Herald the name, address and telephone number of the person they had recorded as placing the advertisements. I understand that when the Police contacted the person they disclaimed all knowledge of the advertisements.

I trust the above information is helpful to the Committee.

Yours sincerely,

Isobel Lees

Isobel Lees (Mrs.)

DISSENTING REPORT BY HON. MICHAEL HODGMAN, QC, MP

Whilst I support the decision of the committee not to recommend that any further action be taken by the House with regard to the matter referred to the committee on 23 September 1986, I dissent from the conclusions of the committee.

It is my judgment that in the instant case the actions of persons in placing false advertisements which led to unwanted and vexatious telephone calls to, and the consequent disruption of, the electorate office of the Honourable Member for Wentworth did constitute a contempt. The relationship between a Member and his or her constituents is a very special one. I am of the opinion that communications between Members and constituents are of such great importance that they must be protected. I therefore take a very firm view that any deliberate action to disrupt or obstruct these communications may constitute a contempt, and in my opinion, in the instant case did constitute a contempt.

HON. MICHAEL HODGMAN QC

23 October 1986

Dissenting Report by R E Tickner, MP

Whilst I support the recommendations of the committee that the House should not be advised to take any further action with regard to the matter referred to the committee on 23rd September I dissent from the conclusions of the committee.

I first wish to emphasise my respect for Mr Coleman's action in bringing the matter to the attention of the House.

I note with approval the final recommendation of the committee which draws attention to the fact that it is now over two years since the final report of the Joint Select Committee on Parliamentary Privilege was presented and the call by the committee for a high priority to be accorded to a consideration of the joint committee's recommendations. I further note that as long ago as 1908 another Joint Committee of the parliament recommended sweeping reform of the law of privilege but that parliament has to this day failed to act on these recommendations. Until parliament debates the 1984 report however it is my view that because of changed circumstances there is no reason why the Privileges Committee should in its recommendations consider itself bound by the views of past committees in the field of contempt of parliament. To do so would be to defend the indefensible when there is no reason to do so. In my view the law is quite clear and it is parliament itself which decides what is or is not a breach of privilege or contempt and the courts are powerless to intervene.

In 1842 the Privy Council in Kielley v Carson (1842 4 Moo. P.C. 63 (13 E.R. 225)) had to consider inter alia whether the parliamentary contempt process was a necessary incidence of legislative power of a colonial legislature and was absolutely indispensable for the effective performance of legislative functions. The Privy Council did not question that colonial legislatures ought to be protected against inter alia disturbance of their proceedings etc or disobedience to their orders but it felt that the law administered by the ordinary courts provided an adequate remedy and therefore there was no overriding necessity for the application of penal sanctions by the legislature itself.

The enactment of Section 49 of the Commonwealth Constitution overrides the direct applicability of Kielley v Carson, however the legal reasoning which lay behind the decision of the court remains valid today.

To quote the words of the learned authors Campbell and Whitmore in their legal text Freedom in Australia : "Undoubtedly, what was uppermost in the minds of the members of the committee was the susceptibility of the contempt power to abuse. Its applications were infinite and indefinite. An assembly which had power to commit for contempt was answerable to no one; it acted simultaneously as prosecutor judge and gaoler and its decisions were unreviewable by the ordinary courts of the land." Subject to what I have to say subsequently I adopt these views as my own.

There is no doubt that there is a need to confer on Members of Parliament certain special rights and immunities in order to allow the public expectations of a modern parliamentary democracy to be fulfilled. The absolute privilege conferred on Members of Parliament to freedom of speech in the parliament unrestrained by defamation laws is one such obvious example. There is of course also a need to confer on parliament and its committees powers to ensure the effective operation of the Parliament in a modern democracy of which the power of parliamentary committees to summon witnesses in the course of inquiries is but one example. The circumstances of this case do not require me to further specify these matters.

I respectfully suggest that to go beyond this and to invoke the law of contempt to confer on parliament the power to punish individuals for improper conduct which is able to be adequately dealt with by the ordinary laws of the land is in my view to assert an unacceptable power. To exercise such powers is in my view likely to lower the standing of the institution of parliament and that of individual members of Parliament. As a result the institution of parliamentary democracy is, in my respectful view, diminished.

Having set out my views on the principles involved I turn now to the particular circumstances of the case at hand. An improper and unreasonable interference in the work of a member of parliament would be deplored by the community. There are however laws which are in my view adequate to be able to deal with the perpetrators of such conduct should they be found, as they would be should a similar interference be made in the work of public authorities or emergency services where life and death issues may arise.

For this reason I am unable to accept that harassment of a member in the performance of his or her work as a member by means of repeated or nuisance or orchestrated telephone calls could be judged a contempt in circumstances where other remedies or processes of law could be available.

R.E. TICKNER

23 October 1986

