

You asked for a note on the following two recently-delivered judgments. I hope that these observations may be of some use to the Committee.

RANN V OLSEN

The full Supreme Court of South Australia, constituted by five justices, gave a judgment on 12 April 2000 in the long-running defamation case brought by Mr Rann against Mr Olsen.

Mr Olsen claimed that he cannot adequately defend himself against the suit brought by Mr Rann because the remarks which are the subject of the suit were in response to remarks made by Mr Rann before a federal parliamentary committee which are therefore protected by parliamentary privilege and cannot be impeached or questioned in the course of the court proceedings. On this basis Mr Olsen applied for a stay of the proceedings. Mr Rann, in response to this application, submitted that the *Parliamentary Privileges Act 1987* did not have the effect claimed and is invalid if it purports to have that effect.

The most significant aspect of the judgment is that the Court unanimously rejected the submission that the Parliamentary Privileges Act is invalid. There were two bases for this submission: that the Act unconstitutionally trespasses on the judicial power by restricting the evidence which could be placed before a court, and that the Act is contrary to the implied freedom of political communication found in the Constitution by the High Court in that it restricts questioning of words uttered in Parliament. These arguments have been mooted in academic discussion in recent times. The Court found no merit in these arguments. It was found that, even if the Act, contrary to the expressed parliamentary intention at the time of its passage, extended the protection of parliamentary privilege beyond the law as it was under section 49 of the Constitution before the passage of the Act, the Constitution does not prevent such an extension of parliamentary privilege. In limiting the evidence which may be placed before a court, the Act is not different in principle from other laws which have the same effect in pursuit of an overriding public interest. In restricting the impeachment of parliamentary proceedings in the courts, the Act does not infringe the implied freedom of political communication. The fact that the Court was unanimous on this point gives a strong indication that the Act would be found to be constitutional if challenged in the High Court.

The Court was not unanimous on the question of whether a stay of the defamation suit should be granted, but by a majority declined to grant a stay. All of the justices found that the Parliamentary Privileges Act would prevent the questioning in the court proceedings of Mr Rann's contribution to parliamentary proceedings, but differed on the extent to which this limitation would inhibit Mr Olsen's defences. In effect, they decided that the defamation action should be allowed to run its course and the trial judge should then be able to determine the actual effect of parliamentary privilege on Mr Olsen's case. The trial judge will be bound by the determinations of the Full Court.

ROWLEY V ARMSTRONG

A judgment was delivered, also on 12 April 2000, by a single judge of the Supreme Court of Queensland in the defamation suit of Mr Rowley against Mr Armstrong. This action was the subject of the 67th Report of the Privileges Committee in 1997. The Committee found that a contempt had been committed by the taking of the legal action against Mr Armstrong, because the action was taken primarily to punish him for giving information to a senator for the purpose of Senate proceedings. The Committee refrained from expressing any view on whether the provision of information to a senator is also protected against legal action so that a court would dismiss such an action, and recommended that the Senate allow the legal proceedings to take their course. The Senate adopted the report on 22 September 1997.

The occasion of the judgment was an application by Mr Armstrong that the suit should be struck out because of unreasonable delay in pursuing it and because of the finding of the Committee.

This application did not provide an appropriate vehicle for deciding whether the defamation action is prevented by parliamentary privilege in that the provision of information to a senator by Mr Armstrong was, in the words of the Parliamentary Privileges Act, “for purposes of or incidental to, the transacting of the business of a House or of a committee”. It was not necessary for the judge to determine this question in deciding whether to strike out the defamation suit. The judge had to consider only whether the stated grounds provided sufficient basis for terminating the suit at this stage.

The judge, however, in declining to grant the application to strike out the suit, delivered his opinion that the provision of information to a senator is not protected by parliamentary privilege.

In coming to this conclusion, the judgment does not consider all of the relevant arguments. There is no consideration of whether the provision of information to a senator may be for the purposes of or incidental to parliamentary proceedings. The judge relied on only two authorities. The first is the statement in Erskine May’s Parliamentary Practice that the provision of information to members is not protected. As was pointed out to the Committee, this sweeping statement has no basis except two inconclusive cases in the House of Commons which do not provide any grounds for such a general conclusion. The second authority cited by the judge is the judgment in *R. v Grassby* which, as was also pointed out to the Committee, relied largely on the statement in Erskine May, and which dealt with a case in which the communication with the member had no connection with any parliamentary proceedings whatsoever. The judge also quotes out of context a statement in *Hamilton v Al Fayed* without considering the full implications of that case.

The judgment is therefore an inadequate treatment of the subject.

The effect of the judgment is merely that Mr Rowley may pursue his action against Mr Armstrong, and, as the judge says, it will be “for the Court to determine the question of liability in circumstances of any claim of privilege which the defendant is entitled to raise”. The judgment, therefore, does not finally determine the issue of whether Mr Armstrong was protected in his communication with the senator.

The difficulty is that this judgment may be taken to be authoritative unless and until another court gives adequate consideration to the question.

Please let me know if the Committee would like any further information about these matters.