

FOR LEADER OF GOVERNMENT BUSINESS

SECOND AND THIRD REPORTS  
OF THE STANDING ORDERS COMMITTEE

---

(WHEN NO OTHER BUSINESS IS BEFORE THE CHAIR)

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**MR COULTER**

MR SPEAKER, I LAY ON THE TABLE THE SECOND AND THIRD REPORTS OF THE STANDING ORDERS COMMITTEE.

MR SPEAKER, I MOVE - THAT THE REPORTS BE PRINTED.

(WHEN MOTION AGREED TO)

**MR COULTER**

MR SPEAKER, I MOVE - THAT THE ASSEMBLY TAKE NOTE OF THE REPORTS AND SEEK LEAVE TO CONTINUE MY REMARKS AT A LATER HOUR.

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ORIGINAL PAPER  
No. 2331.....  
*Laid upon the Table*  
29/2/96

**Second Report of the  
Standing Orders Committee  
for the Seventh Assembly**

**RAISING MATTERS OF PRIVILEGE**

February 1996

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**Second Report of the  
Standing Orders Committee  
for the Seventh Assembly**

**RAISING MATTERS OF PRIVILEGE**

The Standing Orders Committee has the honour to present its Report to the Legislative Assembly.

**Membership:**

On 27 June 1994, the Assembly appointed the following Members to be the Committee of Privileges:

Mr N R Bell, MLA;  
Mrs M A Hickey, MLA;  
The Honourable T R McCarthy, MLA;  
The Honourable D W Manzie, MLA and  
Mr R A Setter, MLA.

At the meeting of the Committee, 1 September 1994, the Honourable T R McCarthy, MLA, was elected as Chairman of the Committee.

On 15 August 1995, the Assembly discharged the Honourable D W Manzie, MLA, and Mr N R Bell, MLA, from further attendance upon the Committee and appointed in their stead as members of the Committee, the Honourable B F Coulter, MLA, and Ms C M Martin, MLA.

**Raising Matters of Privilege:**

At its meeting of 1 September 1994, the Committee resolved to review the procedure and Standing Orders for raising a matter of privilege in the Legislative Assembly. This resolution followed events during the sittings of the Assembly in August 1994, when two matters of

privilege were raised, upon which the Speaker was bound to make a decision for proposed reference to the Committee of Privileges pursuant to Standing Orders 83 and 84.

At that time it became apparent that since the promulgation of the *Legislative Assembly (Powers and Privileges) Act* in 1992, an anomaly existed between the Standing Orders of the Legislative Assembly and Standing Orders and practice in other relevant Commonwealth Parliaments.

In particular, at that time, Mr Speaker McCarthy expressed concern at the pivotal and "magisterial" role that the Speaker was bound to play under the existing Standing Orders of the Legislative Assembly.

In the course of its inquiry, the Committee prepared background notes on the comparative practice in other Commonwealth Parliaments (Appendix A) and a summary table of the processes involved in raising a complaint in Australian Parliaments and in the House of Commons (Appendix B).

The prevailing inconsistency between the practice the Northern Territory Legislative Assembly and other Parliaments in the role of the Presiding Officer in dealing with the matters of privilege was raised in the report of the Committee of Privileges in March 1995.

In its report that Committee noted:

"that the current procedure for referring matters to the Committee of Privileges in the Northern Territory Legislative Assembly differs significantly from current practice in the Commonwealth Parliament and the House of Commons.

The Committee is of the opinion that the Standing Orders Committee should consider whether it would be appropriate for the Northern Territory Legislative Assembly to adopt Standing Orders and practice similar to that introduced to the House of Commons in 1978 and now in place in the Commonwealth Parliament."

In moving "that the Report be noted", the Chairman (the Honourable Shane L Stone, MLA), stated:

"In passing the current powers and privileges legislation, the Assembly was vested with serious powers to penalise anyone committing an offence under the Act. The Act also puts in place section 5 which provides that an essential element for an offence against the Assembly is:

*That it amounts to, or is intended or likely to amount to, an improper interference with the free exercise by the Assembly or a Committee of its authority or functions or with the free performance by a Member of the Member's duties as a Member.*

That section sets a threshold and provides the ultimate standard by which the facts found and all other considerations need to be judged by the Committee and the Assembly. The Committee is of the opinion that, due to the serious nature of the penalties imposed by the legislation, the procedures for both the referral of matters to the Committee of Privileges and their consideration by that Committee should mirror the practice in place in the Commonwealth Parliament and the House of Commons."

Since the report of the Privileges Committee in March 1995, further matters have been raised as matters of privilege in the Assembly which have involved the Speaker in having to make a decision pursuant to Standing Order 83. Dealing with one such matter on Wednesday 16 August 1995, Mr Speaker McCarthy referred to the above observation of the Committee of Privileges and added the following comment:

"As I have previously advised the Assembly, it is a matter of concern to me that no action has been taken to date in the matter of addressing the prevailing inconsistency of the practice of this Assembly with other Parliaments in the role of Presiding Officer in Matters of Privilege.

In all other relevant Parliaments the common thread is that it is not for the Presiding Officer to determine whether a breach of privilege or a contempt has occurred, or whether a matter should be referred to the Committee of Privileges.

In other Houses, the Presiding Officer's function is limited to him satisfying himself, whether it is a matter that should have priority over other business of the House.

I trust that this matter will be resolved by the Standing Orders Committee and this Assembly as soon as possible.

In the interim I give notice to the Assembly that I intend to administer my responsibility in determining whether a matter should be referred to the Committee of Privileges, pursuant to Standing Order 84 by having regard to only the following criterion:

‘The principle that the Assembly possesses power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly, its Committees and members against any improper acts which would substantially obstruct with or interfere with them in the exercise of their authority or performance of their functions.’”.

### **Historical Background:**

The history of the procedures for raising Matters of Privilege is of some relevance. Most Parliaments in Australia have inherited from the House of Commons the system whereby the Presiding Officer determines whether a complaint of an alleged Contempt or Matter of Privilege, and a motion in relation to that matter, should be given precedence over any other business.

This measure also provides a means of ensuring that trivial matters and matters not worthy of consideration by the House, are no longer pursued.

However, the measure of power given to the Speaker of the Legislative Assembly, pursuant to Standing Orders 83 and 84, appears to create an anomaly when compared with practice in other Parliaments.

The House of Representatives Standing Orders provide the criteria that should be taken into account by the Speaker in determining whether a motion should be given precedence to proceed forthwith. Those criteria provide:

- that the Speaker be of the opinion that a *prima facie* case of breach of Privilege is made out; and
- that the matter is raised at the earliest possible opportunity.

On the other hand, Legislative Assembly Standing Orders 83 and 84, do not accord the Speaker of the Legislative Assembly that role, but rather, confer on him/her the power to refer the complaint directly to the Committee of Privileges. Further, the Standing Orders do not contain any guidelines or criteria which the Speaker must consider when making a decision on such a reference.

Research involving the scrutiny of Legislative Assembly files and debates and discussion with the former Clerk, does not indicate any historical basis or explanation of the current provisions provided in the Standing Orders 83 and 84.

The former Clerk, Mr H G Smith, considered the above anomaly to be an unfortunate oversight of the comprehensive review of Legislative Assembly Standing Orders which was conducted in June 1985. That report largely provides the body of Standing Orders under which the Legislative Assembly now operates.

As outlined above, the provisions applying in most Commonwealth Parliaments were derived directly from practice in the House of Commons.

In 1967, the House of Commons Select Committee on Parliamentary Privilege reported that the criteria of establishing a *prima facie* case and whether or not the matter has been raised at the

earliest opportunity, were not appropriate. That Committee concluded that the Speaker should not be placed in the position of determining whether a *prima facie* case has been made out.

A memorandum attached to the 1967 report (submitted by Mr L A Abraham CB, CBE) demonstrated that the "*prima facie* case" criterion came into being in relatively recent times as a result of an error made by Mr Speaker FitzRoy in 1934 in response to a request by Mr Winston Churchill, MP. At Mr Churchill's request, Mr Speaker FitzRoy ruled that Mr Churchill had "made out a *prima facie* case of breach of privilege". Accordingly Mr Churchill then directly moved that the matter be referred to the Committee of Privileges. This practice was followed in 1935 and by other Members in 1936, and became the usual practice that prevailed until the reform suggested by the House of Commons Select Committee in 1967. The major concern at this practice, is that in so ruling, the Speaker blurred the distinction between questions of order and questions of privilege.

A relevant extract from evidence given to the Select Committee on Parliamentary Privilege relating to the above matters in the House of Commons is attached (Appendix C).

In 1978 the House of Commons determined new criteria to guide the Chair in determining whether a complaint should be given precedence. The Speaker was empowered to take into account the general rule that: the penal jurisdiction should be used as sparingly as possible, and only when the House was satisfied that to exercise it was essential in order to provide reasonable protection from improper obstruction causing, or likely to cause, substantial interference to the performance of its functions.

The Speaker was also empowered to take into account the existence of other remedies for the act which is the subject of the complaint, and the mode and the extent of any publication of an alleged contempt.

In 1984, a report by the Joint Select Committee on Parliamentary Privilege of the Australian Parliament, recommended that similar reforms be made to procedures. Since then the Senate has adopted a new Standing Order which reflects the reforms in the House of Commons and also complements the *Parliamentary Privileges Act 1987*.

Initially the Senate passed two resolutions in 1988 which provide procedures for raising matters of Privilege. (These are numbers 4 and 7 at Appendix D). Under those rules, now contained in Senate Standing Order 81, a Senator raises a matter in writing addressed to the President. The President considers that matter and rules whether a motion relating to the matter should have precedence. In so ruling, the President is required to have regard to the principle that the Senate's powers to deal with contempt should only be used in cases of improper acts tending substantially to obstruct the Senate, its Committees, or its members, and the availability of another remedy.

Precedence is given to a motion relating to a matter of privilege if the matter is capable of being regarded by the Senate as meeting the first of the prescribed criteria, and if there are not other remedies readily available.

A motion arising from a matter of Privilege is simply to enable the Privileges Committee to investigate the matter. The Committee then investigates the matter and reports to the Senate. The basis of this procedure is that a Committee is better suited than the whole House to undertake an inquiry. The Committee itself has no power to act, it can only make recommendations to the House. This system provides, in effect, an appeal procedure, in that the House is not bound to accept the findings or recommendations of the Committee.

The criteria adopted by the Senate for determining matters relating to contempt are attached (Item No 3 - Appendix D).

In its report to the Legislative Assembly in 1992 the Privileges Committee recommended that:

“However (your Committee) is of the opinion that if the Parliament is to assume the right to adjudicate matters of Parliamentary Privilege and, if necessary, penalise persons who breach privileges or commit actions which constitute contempts of Parliament, the Assembly must not only protect the rights of witnesses especially those who are accused of such acts, but it must also be seen to protect those witnesses' rights.

Your Committee therefore recommends that if the Legislative Assembly accepts the recommendations contained in this report and passes a Parliamentary Powers and Privileges Bill vesting the Legislative Assembly with the power to consider matters of Breach of Privilege or Contempt and see it necessary to penalise persons who commit such Breaches or Contempts, the Assembly should also pass the motion in similar terms regulating the operations of the Committee of Privileges when considering such matters.”.

A proposed resolution putting the above recommendations of that Committee in place is contained in the recommendations of this Committee.

#### **Conclusion:**

It is clear that the role of the Speaker of the Legislative Assembly of the Northern Territory in dealing with matters of Privilege continues to exceed the situation which the House of Commons saw necessary to redress in 1967, and which that House considered involved the Speaker in an invidious and disagreeable task.

- If the Speaker has gone so far as to refer a complaint to the Committee of Privileges and that Committee later dismisses the complaint, the Speaker’s authority is lowered to some extent.
- If the Speaker decides not to refer a complaint to the Committee and the Assembly decides to refer the matter, the Assembly is saying, in effect, that the Speaker is wrong. In either case the Speaker is placed in a difficult position.

As stated above, a further consequence of existing Standing Orders 83 and 84 is that the practice and procedures that have developed serve to obscure the distinction between questions of order and questions of privilege.

It was this distinction which must be preserved if the House is to retain what Disraeli said it "must never give up" - the power to decide what acts are matters of privilege.

**Recommendations:**

Accordingly your Committee recommends as follows:

- (1) **That Chapter VIII of the Standing Orders be replaced with the following Standing Orders:**

**83. PRIVILEGE MOTIONS**

A matter of privilege, unless suddenly arising in relation to proceedings before the Assembly, shall not be brought before the Assembly except in accordance with the following procedures:

- (1) A Member intending to raise a matter of privilege shall notify the Speaker, in writing, of the matter.
- (2) The Speaker shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Assembly.
- (3) The Speaker's decision shall be communicated to the Member and, if the Speaker thinks it appropriate or determines that a motion relating to the matter should have precedence, to the Assembly.
- (4) A Member shall not take any action in relation to, or refer to, in the Assembly, a matter which is under consideration by the Speaker in accordance with this Standing Order.

- (5) Where the Speaker determines that a motion relating to a matter should be given precedence of other business, the Member may, at any time when there is no other business before the Assembly, give notice of a motion to refer the matter to the Committee of Privileges and that motion shall take precedence of all other business on the day for which the notice is given.
- (6) A determination by the Speaker that a motion relating to a matter should not have precedence of other business does not prevent a Member, in accordance with other procedures, taking action in relation to, or referring to, that matter in the Assembly, subject to the rules of the Assembly.
- (7) Where notice of a motion is given under paragraph (5) and the Assembly is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

#### **84. MOTIONS CONCERNING CONTEMPTS**

A motion to:

- (a) determine that a person has committed a contempt; or
- (b) impose a penalty upon a person for a contempt,

shall not be moved unless notice of the motion has been given not less than 7 days before the day for moving the motion.

## 85. PRIVILEGE IN COMMITTEE

When a matter of privilege is raised in a Committee of the Whole the Chairman shall leave the Chair and report to the Assembly.

**(2) That the following resolution be agreed to by the Assembly:**

*Criteria to be taken into account by the Speaker in determining whether a motion arising from a matter of privilege should be given precedence of other business.*

Notwithstanding anything contained in the Standing Orders, and unless otherwise ordered, in determining whether a motion arising from a matter of privilege should have precedence of other business, the Speaker shall have regard only to the following criteria:

- (a) that principle that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

**(3) That the following resolution be agreed to by the Assembly on procedures for the protection of witnesses before the Privileges Committee.**

That, in consideration of any matter referred to it which may involve, or gives rise to any allegation of, a contempt, the Committee of Privileges shall observe the procedures set out in this resolution, in addition to the procedures required by the Assembly for the protection of witnesses before committees. Where this resolution is inconsistent with the procedures

required by the Assembly for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

- (1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the Committee and relevant to the Committee's inquiry, against the person, and of the particulars of any evidence which has been given in respect of the person.
- (2) The Committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:
  - (a) making written submission to the Committee;
  - (b) giving evidence before the Committee;
  - (c) having other evidence placed before the Committee; and
  - (d) having witnesses examined before the Committee.
- (3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the Committee shall ensure as far as possible that that person is present during the hearing of that evidence, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.
- (4) A person appearing before the Committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.
- (5) A witness shall not be required to answer in public session any question where the Committee has reason to believe that the answer may incriminate the witness.
- (6) Witnesses shall be heard by the Committee on oath or affirmation.

- (7) Hearing of evidence by the Committee shall be conducted in public session, except where:
- (a) the Committee accedes to a request by a witness that the evidence of that witness be heard in private session;
  - (b) the Committee determines that the interests of a witness would best be protected by hearing evidence in private session; or
  - (c) the Committee considers that circumstances are otherwise such as to warrant the hearing of evidence in private session.
- (8) The Committee may appoint, on terms and conditions approved by the Speaker, counsel to assist it.
- (9) The Committee may authorise, subject to rules determined by the Committee, the examination by counsel of witnesses before the Committee.
- (10) As soon as practicable after the Committee has determined findings to be included in the Committee's report to the Assembly, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the Committee, in writing and orally, on those findings. The Committee shall take such submissions into account before making its report to the Assembly.
- (11) The Committee may recommend to the Speaker the reimbursement of costs of representation of witnesses before the Committee. Where the Speaker is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the Committee, the Speaker may make reimbursement of all or part of such costs as the Speaker considers reasonable.

(12) Before appearing before the Committee a witness shall be given a copy of this resolution.

TERRY McCARTHY  
Chairman

20 February 1996

## **STANDING ORDERS COMMITTEE**

### **DISSENTING REPORT FROM THE MEMBER FOR BARKLY, MRS HICKEY, AND THE MEMBER FOR FANNIE BAY, MS MARTIN**

It is our view that the current Standing Orders 83 and 84, dealing with raising a matter of privilege, should remain in force.

While practice in most other relevant Parliaments has tended to assign the Presiding Officer the role of according matters of privilege precedence over other business, it is submitted that the Legislative Assembly of the Northern Territory, during the last 20 years, has developed its own practice and procedures in this matter. In most instances, these practices and procedures have served the Assembly well.

It is our opinion that, in most cases, the Chair has dealt with these matters in an appropriate manner. In a unicameral Parliament and especially where there is a substantial Government majority, there is an inherent danger that, in some circumstances, matters of a partisan or frivolous nature could be referred to the Committee of Privileges without due reference to the appropriate criteria that should be taken into account when determining such matters. Accordingly, it is our opinion that the Speaker, in exercising his traditionally impartial role, should continue to provide a moderating force on referring such matters to the Committee of Privileges.

Rather than relieving the Speaker of any perceived "judgmental" role in deciding whether an apparent breach of privilege should be referred to the Committee of Privileges, Members of the Assembly should be continually

made aware of the seriousness of raising such matters. Further, it is submitted that, in so exercising his authority in accordance with established practice, the Speaker could apply the criteria described in the draft resolution at Attachment A.

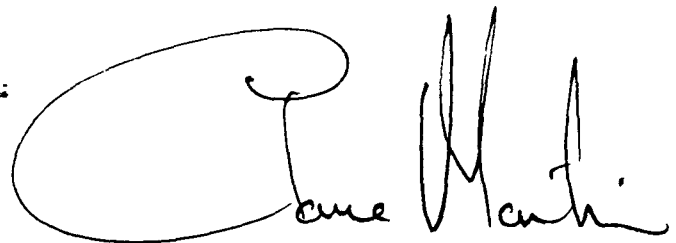
It is considered that the Speaker should not abdicate his responsibility in determining the *prima facie* nature of matters of privilege raised by Members.

It is noted that matters relating to alleged contempts of a serious nature may result in Court action after due consideration and determination by the Assembly. The ultimate adjudication of matters of privilege is not the responsibility of the Speaker.

It is our opinion that the Speaker has an important role when there is an urgent necessity to deal with alleged breaches of privilege which may occur during a recess of the Assembly. In these cases, the Speaker should be able to refer a matter, for which he considers a *prima facie* case has been made out directly to the Committee of Privileges, in similar terms to current Standing Orders 83 and 84. This facility would not be available under the proposed amendment to Standing Orders. It is our opinion that the Committee of Privileges and the Legislative Assembly should have a facility to deal with serious alleged contempts without unnecessary delay.



M A HICKEY, MLA  
Member for Barkly 19/2/96



C M MARTIN, MLA  
Member for Fannie Bay

## ATTACHMENT A

### **Criteria to be taken into account by Mr Speaker when determining matters relating to contempt**

The Assembly declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its Committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act.

**Criteria to be taken into account by the Speaker in determining whether a motion arising from a matter of privilege should be given precedence of other business**

Notwithstanding anything contained in the Standing Orders in determining whether a motion arising from a matter of privilege should have precedence of other business, the Speaker shall have regard only to the following criteria:

- (a) the principle that the Assembly's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

## MATTER FOR POSSIBLE FUTURE FURTHER CONSIDERATION

### Privilege Matters Arising During Recess

The only relatively commensurate power accorded to a Speaker is the power of the Speaker of the House of Representatives to refer a matter to the Committee of Privileges in cases of urgent necessity when the House is in recess for at least two weeks.

The relevant House of Representatives Standing Order is as follows:

“97A. During a period when the House is not sitting and is not expected to meet for a further period of at least two weeks, a Member may bring to the attention of the Speaker a matter of privilege which has arisen since the House last met and which he or she proposes should be referred to the Committee of Privileges. If the Speaker is satisfied that a *prima facie* case of breach of privilege has been made out and the matter is one upon which urgent action should be taken, the Speaker shall refer it forthwith to the Committee of Privileges:

Provided that any referral by the Speaker in accordance with the foregoing provisions of this Standing Order shall be reported to the House by the Speaker at its next sitting, whereupon the Member who raised the matter shall be required to move forthwith, without notice, that such referral be endorsed by the House; if the motion is negatived, the Committee of Privileges shall take no further action in respect of the matter.”.

The Committee submits to the Northern Territory Legislative Assembly that a similar Standing Order could be considered so that matters urgently arising during recess periods and which may tend to substantially obstruct the Assembly, its committees or Members could be addressed before the resumption of sittings.

# APPENDIX A

## **BACKGROUND NOTES ON STANDING ORDERS 83 AND 84 - COMPARATIVE PRACTICE IN OTHER PARLIAMENTS**

At its meeting on 1 September 1994, the Standing Orders Committee agreed to consider recommending the amendment of Standing Orders 83 and 84 relating to raising a matter of privilege and the decision of the Speaker to refer (or not refer) a complaint to the Committee of Privileges in the light of events that occurred during the August/September sittings in 1994.

The following background notes are provided for the information of Members of the Standing Orders Committee:

### **Current Standing Orders of the Legislative Assembly**

#### **“83. APPARENT BREACH**

A Member may rise at any time to speak upon a matter of privilege suddenly arising and may on that occasion request the Speaker to refer the breach of privilege of which he complains to the Committee of Privileges.

#### **84. SPEAKER TO DECIDE**

Before or during the next day of sitting after a Member has requested the Speaker to refer a complaint under Standing Order 83, the Speaker shall state that he has so referred the complaint or that he has not and does not propose to refer the complaint to the Committee of Privileges, and, if he reports that he has not and does not propose to refer the complaint to the Committee of Privileges, the Member who has raised the matter may thereupon move without notice a motion to refer the matter to the Committee of Privileges.”

### **Practice in the Legislative Assembly**

Two matters of privilege were raised during the August/September 1994 sittings of the Legislative Assembly upon which the Speaker was required to decide as to

whether the complaints should be referred to the Committee of Privileges in accordance with the above Standing Orders.

An investigation of current practice in place in the Commonwealth Parliament and in the House of Commons indicates that the Standing Orders and practice in the Legislative Assembly of the Northern Territory are not in accordance with practice and procedures in those Parliaments, in particular the Australian Senate and the House of Representatives where similar powers and privileges legislation to that in force in the Northern Territory is in force.

The matter at issue appears to be that, under Standing Order 84, the Speaker is obliged to make a judgment on the relative merit of a complaint in a manner analogous to the role of a magistrate in dealing with a criminal matter which would eventually be heard in a superior Court.

The current practice in other relevant jurisdictions is as follows:

#### **House of Commons Practice**

The House of Commons practice on complaints of breach of privilege follows the 1978 recommendations made by the Committee of Privileges after that Committee had examined the Report of the Select Committee on Parliamentary Privilege 1966-67. This Report suggested that the House should exercise its penal jurisdiction (i) in any event as sparingly as possible; and (ii) only when satisfied that to do so was essential in order to protect the House, its Members, or its officers, from improper obstruction or to prevent interference with the performance of their respective functions. ∴

A Member who wishes to raise a privilege complaint is required to give written notice, as soon as practicable, to the Speaker who has the discretion to decide whether or not the matter should have the precedence accorded to matters of privilege. The Speaker then advises the Member in writing of his/her decision and, if he/she allows precedence, he/she informs the Member when he/she

proposes to announce his/her decision to the House. After the announcement has been made, the Member may then table a Motion for the following day calling attention to the matter and either proposing that it be referred to the Committee of Privileges or making some other appropriate proposition.

The Speaker would normally make his/her decision about precedence within a day or two of receiving notice of the complaint and, in appropriate cases of urgency, deals with the matter immediately.

### **House of Representatives Practice**

The House of Representatives' practice is described in Standing Orders 95 and 96 as follows:

“95. Any Member may rise at any time to speak upon a matter of privilege suddenly arising, and he or she shall be prepared to move, without notice, a motion declaring that a contempt or breach of privilege has been committed, or referring the matter to the Committee of Privileges; but if a matter related to the proceedings of the main committee is raised in the main committee, the Chair shall suspend the proceedings and report to the House at the first opportunity.

96. A matter of privilege at any time arising shall, until disposed of, unless the debate on a motion thereon is adjourned, suspend the consideration and decision of every other question: Provided that precedence over other business shall not be given to any motion if, in the opinion of the Speaker, a *prima facie* case of breach of privilege has not been made out or the matter has not been raised at the earliest opportunity.”

House of Representatives' practice allows any Member, at any time, to rise and speak on a matter of privilege suddenly arising. This action suspends the consideration and decision of every other question until it is disposed of, unless the debate on any motion moved in relation to the matter raised is adjourned.

The precedence to debate on a privilege motion over the other business is dependent on two conditions:

- that the Speaker is of the opinion that a *prima facie* breach of privilege has been made out; and
- that the matter has been raised at the earliest opportunity.

A Member raising a matter of privilege may speak to the extent he/she feels necessary, but, if the matter is to be debated, the Member must move a motion, without notice, either:

- declaring that a contempt or breach has been committed; or
- referring the matter to the Committee of Privileges.

No seconder is required for either of these motions.

After a matter of privilege has been raised, the Speaker may give an immediate opinion as to whether a *prima facie* case of breach of privilege exists or advise that he/she will consider the matter and give a later opinion. This may be later in the same sitting or at a subsequent sitting of the House. The establishment of a *prima facie* case is for the purpose of giving precedence to a motion in relation to the matter, and the practice can give the House some guidance as to the nature, acceptability or substance of the complaint.

Should the Speaker determine that a *prima facie* case has not been established a Member may still lodge a notice of motion on the matter, but such a motion is not then entitled any precedence.

If the Speaker finds that a *prima facie* case has been established, the Member who raised the complaint is not compelled to move a motion if it is considered

inappropriate or inconsistent with the dignity of the House, and is either to give further consideration to a matter or refer it to the Committee of Privileges for inquiry.

The Speaker need not use the term "*prima facie*" when giving his/her opinion on a matter, but merely indicate whether or not precedence will be accorded to a motion. This decision indicates whether or not the requirements of the Standing Orders for precedence to be given have been met.

Although it is unusual for debate to ensue on the matter raised until a motion has been moved, Members may be allowed to speak by leave or indulgence to a matter raised before the Speaker's opinion has been given and without a motion being moved for the purposes of clarification.

The Speaker does not necessarily need to give reasons for establishing a *prima facie* case as that is for the House to decide after examination by the Committee of Privileges. Similarly, an opinion by the Speaker that a *prima facie* case has been established does not imply a conclusion that a breach of privilege or a contempt has occurred or that the matter should be investigated.

It is a long-standing principle that it is the House which determines whether or not a breach or contempt has been committed.

The following statement on this matter was made by the Clerk of the House of Commons:

“Although any Member may complain of breach of privilege, the issue cannot be decided either by the Speaker or by the Committee of Privileges. The House alone is competent to pronounce on the matter; and the House has to decide, by resolution, that a breach of privilege has been committed. The Committee of Privileges can express a view, but the House does not

always accept the advice of the Committee and indeed has occasionally come to a decision without referring the issue to its Committee.”

The following extract is taken from *House of Representatives Practice: Second Edition*:

“In 1979, the Standing Orders Committee considered the new House of Commons’ privilege procedure (described above), and recommended that standing orders 95, 96 and 97 be omitted and a standing order along the lines of the Commons procedure be substituted.

This recommendation was not acted upon and, in 1984, the Joint Select Committee on Parliamentary Privilege recommended the adoption of new procedures along substantially similar lines. A draft proposal to give effect to the 1984 recommendations was presented to the House on 5 May 1987, but no further action has yet been taken. The changes recommended were to the effect that:

- a complaint should be raised in writing with the Speaker, in the first instance;
- the Speaker should consider the matter and determine whether precedence should be accorded and, if necessary, the House should be informed of the Speaker’s decision;
- if precedence is to be given to a motion, notice could then be given, which notice would enjoy priority; and
- if precedence is not to be accorded, a Member could still submit a notice on the matter, but such notice would not enjoy precedence.”

## **Australian Senate Practice**

The relevant Standing Orders of the Australian Senate are as follows:

### **“81. Privilege Motions**

A matter of privilege, unless suddenly arising in relation to proceedings before the Senate, shall not be brought before the Senate except in accordance with the following procedures:

- (1) A Senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any resolution of the Senate.
- (3) The President’s decision shall be communicated to the Senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (4) A Senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (5) Where the President determines that motion relating to a matter should be given precedence of other business, the Senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges, and that motion shall take precedence of all other business on the day for which the notice is given.

- (6) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a Senator, in accordance with other procedures, taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
  
- (7) Where notice of a motion is given under paragraph (5) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved that day.”.

A resolution of the Senate, relating to the determination by the Presiding Officer whether a matter of privilege should be given precedence, is set out below:

- “4. Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business.

Notwithstanding anything contained in the Standing Orders in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

- (a) the principle that the Senate’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.”.

The new standing order and resolution were put in place after new legislation was enacted in the Senate and before the Privileges Committee undertook any references. It serves to entrench the following long standing maxim:

“It is not for the President to rule on whether any breach of privilege has been committed, that being a matter for the Senate; the President’s function is limited to satisfying himself/herself whether the matter is one which should properly be accorded precedence.”.

### **Conclusion**

In light of the above practices and procedures in other Parliaments, it is submitted that the Senate practice, by way of Standing Order and associated Resolution, would be the most suitable form on which to base any proposed change to the Standing Orders of the Legislative Assembly of the Northern Territory relating to the raising and referral of matters of privilege and contempt.

OFFICE OF THE CLERK  
October 1994

# APPENDIX B

**Matters of Parliamentary Privilege - The Processes involved in Raising a Complaint**  
**A Comparison between the Commonwealth and the States**

Legislative Assembly / House of Assembly	Method in which matter is raised	Decision	To what Committee
Northern Territory	Matter is raised in the House ASAP and the Speaker addresses the matter.	Speaker informs the House whether the matter is referred to the Committee of Privileges.	Committee of Privileges
House of Commons	Member gives written notification of complaint to the Speaker ASAP. Speaker addresses the matter.	Speaker decides whether the matter merits precedence and advises Member in writing. Motion may be moved by member and question of referral is decided by the House.	Committee of Privileges
House of Representatives	Matter is raised in the House ASAP and the Speaker addresses the matter.	Speaker rules whether a <i>prima facie</i> case exists, question of referral is decided by the House.	Committee of Privileges
Senate	Member gives written notification of complaint to the President ASAP.	President decides whether the matter merits precedence. Referral decided by the Senate.  *Note: The criteria the President takes into account.	Committee of Privileges
Australian Capital Territory	Member gives written notification of complaint to the Speaker ASAP. The Speaker addresses the matter.	Speaker decides whether matter merits precedence over other business and the question of referral is decided by the House.	Administrative and Procedures Committee
New South Wales	Matter is raised in the House ASAP and the Speaker addresses the matter.	Speaker rules whether a <i>prima facie</i> case exists, then the House debates the matter.	No Standing Committee
South Australia	Matter is raised in the House ASAP and the Speaker addresses the matter.	Speaker rules whether a <i>prima facie</i> case exists, then the House debates the matter.	The House votes for or against the establishment of a Committee.
Tasmania	Matter is raised in the House ASAP.	The House decides whether the matter should be pursued.	Committee of Privileges
Queensland	2 Methods Matters are raised. (a) SO 115 - Member may raise matter of Privilege suddenly arising.  (b) Member gives written notification of matter to Speaker.	(a) House decides whether the matter is referred to the Privileges Committee.  (b) Speaker responds within 7 days to Member advising whether a <i>prima facie</i> case exists and whether the matter is referred to the Privileges Committee.	Committee of Privileges
Victoria	Member gives written notification of complaint to the Speaker ASAP. The Speaker addresses the matter.	Speaker rules whether a <i>prima facie</i> case exists and if the matter merits precedence over other matters. Question of referral is decided by the House.	Committee of Privileges
Western Australia	Matter is raised in the House ASAP.	The House decides whether the matter should be pursued.	The House votes for or against the establishment of a Select Committee.

# APPENDIX C

3.E.

[Continued.]

20 February, 1967.]

Mr. L. A. ABRAHAM, C.B., C.B.E.

[Continued.]

of freedom from arrest and advantage does it serve? It is not the same now as it was in the past. I remember that point with Lord Somervell during the war. There are arguments. You will remember it in *Stourton v. Stourton*.

Is there any public advantage? The only question is this. It was a case for the contempt of a Member for civil contempt, non-payment of alimony, the question whether the right of the Member to his attendance is not more than that.

But surely the original freedom from arrest in civil cases was based on the person of an ordinary citizen like that of Mr. Pickwick in the book, was something which was attacked by the creditor, irrespective of the deliberate misfeasance by the debtor.

Is it not true that nowadays surely I am right in saying that any sort of contempt of a Member is more harm than good by the Member's freedom from arrest?—Yes.

Has it not been accepted, has it not been accepted that Members of Parliament as such are exempted from arrest by anything in connection with a criminal offence?—Yes.

Is the present social and economic situation such that you can envisage a set of circumstances where Parliament would be more harm than good by the Member's freedom from arrest?—I think it would do itself any harm. They would be constrained to enforce it.

Is it not so long as the law remains, is it not so?—Yes.

Is it not going to exemption from service? I take it you would think it is an advantage for Members of Parliament?—Yes, and it is not exempted from service. There are categories.

I know; barristers are one. Is there any real public advantage in retaining exemption from service for witnesses in court?—I think there have been cases in which Members have been vexatiously.

452. So they have, and members of the public?—Yes, but a Member is put to the inconvenience of applying to the judge to strike it out on the grounds of necessity. It is a question of how far you think the right of the House to have its Members attending there is worth preserving, even in that case.

453. Let me put to you a suppositious case. Supposing I was the only witness of a motor accident and that only I knew what had happened, so that justice might be done do you really see any public advantage if I were subpoenaed as a witness in one saying at the direction of the House, "No, Mr. Hogg should not go because he must sit on the front bench in Parliament"?—

Mr. Pannell.] If it were manslaughter would that not be a criminal case?

Mr. Hogg.

454. I was thinking of a civil case?—It applies to a criminal case.

455. It applies to this, too?—Yes, theoretically.

456. Is there any real public advantage in insisting on that privilege in the latter part of the twentieth century?—Only insofar as one has known in recent years of malicious persons summoning Members.

457. Yes, but am I not right in thinking in such cases the subpoena is set aside? We know Royal persons are sometimes subpoenaed maliciously?—Yes.

458. So are important public officials; so are judges. They get the subpoena set aside, which is the ordinary way one proceeds. Is there any real advantage in giving that privilege to Members of Parliament so that whether it is done vexatiously or not a Member of Parliament can merely say, "I do not propose to help justice in this case because I do not want to, because it is my privilege not to"?—No, but I have never known of a Member who has refused to go. What Members have done has been to appeal to the House or to the Speaker. Indeed, as long as the form giving legal absence was insisted on Members were constantly applying to the House to give them leave of absence to attend as witnesses, and it was always given. The House never refused.

459. But the process of giving leave of absence can in most cases be regarded as obsolescent?—Yes, it is completely.

Chairman.

460. Then in practice when an unreasonable subpoena is served on, for example, a Cabinet Minister is it ever the practice now to deal with it by means of the use of the privilege as distinct from going to the court and asking for the subpoena to be struck out as being an abuse of the process?—I think not; I cannot recall a case of its kind.

Mr. Quintin Hogg.

461. Pursuing this matter and leaving the question of attendance as witnesses aside, is there any real advantage in exempting Members of Parliament from appointments as sheriffs?—I am not very clear what the demands on their time would be but I should have thought their duties as Members would take precedence over that.

462. That goes in the same way as jurors?—As a matter of fact, I think the practice now is that if a Member is inadvertently put on the list he is never pricked.

463. It seems that as sheriffs are all appointed voluntarily in practice you are taking a sledgehammer to crack a nut in saying Members of Parliament are exempted from appointment as sheriffs?—No doubt the privilege has lost its importance. It was of course very important at one time.

464. Passing from these five privileges you have enumerated, would you on the whole be prepared to agree that apart from freedom of speech and the convenience of not serving as a juror the really live branch of this subject is the right of contempt?—Oh yes.

465. What worries me about this is that since 1945, at any rate, there have broadly speaking been too many and too widely publicised complaints to Mr. Speaker or to the House that a contempt or breach of privilege had been committed. Would you agree with that generalisation or not?—I think there probably have been a larger number, yes. I think there is always that tendency when there is a great change in the personnel of Parliament. When a

20 February, 1967.] Mr. L. A. ABRAHAM, C.B., C.B.E.

[Continued.]

great number of new Members come in there is a tendency for a little time for that to happen.

466. It is a tendency which has persisted in Parliaments of different complexions for the last 22 years?—Yes.

467. Do you not think one of the more important functions which this Committee can perform is to devise some method whereby this tendency to make unnecessary complaints of breach of privilege or contempt could be curbed?—If that were feasible, yes.

468. Let us see whether it is not feasible. Would you not agree one of the difficulties has been that the Member is compelled by the procedure the House has imposed on itself to raise his complaint at the most public moment of the day, namely immediately after questions?—Yes.

469. And that the result is that the complaint gets the maximum of publicity then?—Yes; that, no doubt, is one of the reasons why they are raised.

470. Do you not think a method of procedure might be devised whereby Members wishing to raise a question of privilege without taking up the time of the House at its busiest and most public moment would have to submit it to a more private scrutiny?—If Members were willing to submit to that, certainly.

471. And if the House imposed that?—Yes. When I said "Members" I was assuming Members as a whole would be reluctant to give up the right.

472. Would you not say, having seen the House for as long as you have, that the House has done itself a certain amount of harm by these repeated complaints about trivialities?—I think the Press has used them to build up an unfavourable image of the House.

473. But they would not be able to use them if the complaints were not made by the Members who actually raise these trivialities in a very public manner?—That is so.

474. Can you see any real objection in principle to a Member's complaint of privilege being put forward in the first place to, say, the Committee of Privileges instead of going first before Mr. Speaker and then, 24 hours later,

at the same hour of the day being ruled on by Mr. Speaker and being, perhaps, the subject of a procedural motion?—No, but it would entail regular sittings of the Committee of Privileges.

475. And it would involve a greater burden on that committee?—And they are usually rather busy Members. I can assure the Rt. Hon. Gentleman that it is frequently difficult to get them together in these emergencies.

476. Would it not be worth while exploring this possibility on the assumption which I now make, having asked you about it, that the House has been doing itself a certain amount of harm by the existing procedure?—I do not know whether the Rt. Hon. Gentleman envisages the Committee of Privileges making a report to the House?

477. Yes, it must be for the House in the last resort to declare whether a particular line of conduct has been a contempt or not. I think we would all agree about that. That must be so unless you hand it over to the courts which you do not favour, nor I. Supposing, however, the Committee reported that this complaint had been made and that it was too trivial for the House to take notice of, it would be put down on the order paper and no one would discuss it except for one or two unfavourable comments in the Press about the Member concerned?—If the House is willing to do that, yes. I proceed on the assumption, though, that the House would probably be unwilling to do it.

478. Do you not think there are considerable disadvantages attendant upon the present procedure?—I do not take as tragic a view of it as that. Undoubtedly a great many of these complaints in the past have been raised purely for purposes of obstruction. But these the House looks on rather as a joke.

479. Yes, but rather a bad joke, surely?—That may be. I would not like to say that.

480. Still on the same subject, do you not think, too, that the position of Mr. Speaker as described in your memorandum is an equivocal one? Originally his only function was to decide whether a matter should take precedence over ordinary business but now he has taken

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[Continued.]

20 February, 1967.] Mr. L. A. ABRAHAM, C.B., C.B.E.

[Continued.]

hour of the day being ruled Speaker and being, perhaps, of a procedural motion?—would entail regular sittings of the Committee of Privileges.

it would involve a greater that committee?—And usually rather busy Members. The Rt. Hon. Gentleman frequently difficult to get them in these emergencies.

is it not worth while to consider the possibility of the assumption now made, having asked that the House has been a certain amount of harmful procedure?—I do not know, the Rt. Hon. Gentleman of the Committee of Privileges report to the House?

it must be for the House to resort to declare whether a breach of conduct has been committed. I think we would all agree that. That must be so. I hand it over to the courts do not favour, nor I do not favour, nor I do not favour. However, the Committee received this complaint had been that it was too trivial for the Committee to take notice of, it would be in the order paper and no one would discuss it except for one or two remarkable comments in the Press and the Member concerned?—If the Member is willing to do that, yes. I do not think the assumption, though, that the House would probably be unwilling

do you not think there are certain advantages attendant upon the present procedure?—I do not take any view of it as that. Unfortunately many of these complaints in the past have been raised for purposes of obstruction. But the House looks on rather as a

but rather a bad joke. That may be. I would not say that.

on the same subject, do you think that the position of Mr. Abraham described in your memorandum is an unequivocal one? Originally the question was to decide whether the House should take precedence over the courts but now he has taken

it on himself as a result of Mr. Speaker FitzRoy's change of language to decide whether it is a prima facie breach of privilege or not?—Yes, I regret that. I think it has been a great mistake.

481. One of the consequences of that has been, at any rate in theory, as you point out in your memorandum that if the Speaker happens to decide it is not a prima facie breach of privilege the House is effectively denied the opportunity of ruling on it at all itself unless the Government give time for its discussion?—Yes.

482. And this must be a very great disadvantage if the Speaker is occasionally not infallible?—Yes.

483. Would it not be better to take it off the floor of the House at this public moment, have it discussed at committee level first and then reported back to the House?—Yes, that would be a way out of it.

484. It would also have the great advantage of removing rather a disagreeable and invidious task from the Speaker?—Yes, and there is a further thing which I do not refer to in my memorandum. If the Speaker has gone so far as to say he thinks there is a prima facie breach of privilege, then for the Committee of Privileges to come along and say it thinks it is not to some extent lowers the Speaker's authority.

485. I was about to put the same point to you myself. Either way the Speaker is put in a difficult position by the present procedure?—Yes.

486. If he says no he deprives the House of considering it effectively; if he says yes he gives the committee the disagreeable task of saying in effect that Mr. Speaker was wrong?—Yes.

487. Either way Mr. Speaker is put in an impossible position?—Yes, I quite agree.

Chairman.

488. In practice, Mr. Abraham, when the Speaker makes his decision under the present procedure upon whether there is a prima facie case I take it that if you have a Speaker who is not himself legally qualified, and even if he is legally qualified, he will be leaning very heavily on the advice in front of him?—Yes, undoubtedly.

489. And the decision which may be the crucial one becomes to a very large extent the decision of the officers of the House rather than the Members?—I have no personal experience of that myself. I should have thought those conversations are purely between the Clerk of the House and the Speaker. I should be very hesitant myself unless it was a clear case to advise the Speaker that it was not a breach of privilege or a contempt. My own inclination would always be in such a case to leave the matter to the House. I regret that in many cases the Speaker has not done that. Some Speakers, like Mr. Speaker Gully professed this was their object but it is difficult to reconcile what they said with the action they took.

490. Following Mr. Hogg's suggestion, that would put the onus fairly and squarely on the Members?—Yes. Until Mr. Speaker Peel came the Speakers were very much more lenient. I have had the advantage of reading Mr. Speaker Brand's diary. The classic case is the very lenient treatment he gave to Dr. Kenealy in the House when he raised what was palpably not a breach of privilege. The Speaker says in his diary that he was several times appealed to to interrupt him but that he declined to and the event convinced him he was right.

Mr. English.

491. You seemed in your earlier evidence to be against the idea that the question of whether an action had been a contempt should be decided by the courts?—Yes.

492. It is the case, is it not, that certain types of contempt of court are now dealt with in a different way. Instead of being dealt with in all cases by the court before which the contempt was committed they can now be dealt with in a different way by a different court. Is that not the case?—In some cases it is invariably done, I think.

493. You also on page 41 of your memorandum quote with some approval the comment by a United States Supreme Court Chief Justice. You quoted it as an argument against the courts coming into this matter at all.

# APPENDIX D

## PARLIAMENTARY PRIVILEGE

### RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

#### 1. Procedures to be observed by Senate committees for the protection of witnesses

That, in their dealings with witnesses, all committees of the Senate shall observe the following procedures:

- (1) A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.
- (2) Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.
- (3) A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's order of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.
- (4) A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.
- (5) Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
- (6) A witness shall be given reasonable access to any documents that the witness has produced to a committee.
- (7) A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.

- (8) Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Senate all or part of that evidence, that it is within the power of the committee to do so, and that the Senate has the authority to order the production and publication of undisclosed evidence.
- (9) A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
- (10) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.
- (11) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (12) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (13) Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence, the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.
- (14) A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. In considering such an application, a committee shall have

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regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision.

- (15) A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
- (16) An officer of a department of the Commonwealth or of a State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.
- (17) Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.
- (18) Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

## 2. Procedures for the protection of witnesses before the Privileges Committee

That, in considering any matter referred to it which may involve, or gives rise to any allegation of, a contempt, the Committee of Privileges shall observe the procedures set out in this resolution, in addition to the procedures required by the Senate for the protection of witnesses before committees. Where this resolution is inconsistent with the procedures required by the Senate for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

- (1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the Committee and relevant to the Committee's inquiry, against the person, and of the particulars of any evidence which has been given in respect of the person.
- (2) The Committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:
  - (a) making written submission to the Committee;
  - (b) giving evidence before the Committee;

- (c) having other evidence placed before the Committee; and
  - (d) having witnesses examined before the Committee.
- (3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the Committee shall ensure as far as possible that that person is present during the hearing of that evidence, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.
- (4) A person appearing before the Committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.
- (5) A witness shall not be required to answer in public session any question where the Committee has reason to believe that the answer may incriminate the witness.
- (6) Witnesses shall be heard by the Committee on oath or affirmation.
- (7) Hearing of evidence by the Committee shall be conducted in public session, except where:
- (a) the Committee accedes to a request by a witness that the evidence of that witness be heard in private session;
  - (b) the Committee determines that the interests of a witness would best be protected by hearing evidence in private session; or
  - (c) the Committee considers that circumstances are otherwise such as to warrant the hearing of evidence in private session.
- (8) The Committee may appoint, on terms and conditions approved by the President, counsel to assist it.
- (9) The Committee may authorise, subject to rules determined by the Committee, the examination by counsel of witnesses before the Committee.
- (10) As soon as practicable after the Committee has determined findings to be included in the Committee's report to the Senate, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the Committee, in writing and orally, on those findings. The Committee shall take such submissions into account before making its report to the Senate.
- (11) The Committee may recommend to the President the reimbursement of costs of representation of witnesses before the Committee. Where the President is satisfied that a person would suffer substantial

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hardship due to liability to pay the costs of representation of the person before the Committee, the President may make reimbursement of all or part of such costs as the President considers reasonable.

(12) Before appearing before the Committee a witness shall be given a copy of this resolution.

3. **Criteria to be taken into account when determining matters relating to contempt**

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
  - (i) knowingly committed that act, or
  - (ii) had any reasonable excuse for the commission of that act.

4. **Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business**

Notwithstanding anything contained in the Standing Orders, in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

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## 5. Protection of persons referred to in the Senate

- (1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate, makes a submission in writing to the President:

- (a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and

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- (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
- (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the President shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Senator who referred in the Senate to that person.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Senate.
- (6) In considering a submission under this resolution and reporting to the Senate the Committee shall not consider or judge the truth or any statements made in the Senate or of the submission.

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- (7) In its report to the Senate on a submission under this resolution, the Committee may make either of the following recommendations:
  - (a) that no further action be taken by the Senate or by the Committee in relation to the submission; or
  - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the Committee, be published by the Senate or incorporated in Hansard,  
  
and shall not make any other recommendations.
- (8) A document presented to the Senate under paragraph (5) or (7):
  - (a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
  - (b) shall not contain any matter the publication of which would have the effect of:
    - (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
    - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

6. Matters constituting contempts

That, without derogating from its power to determine that particular acts constitute contempts, the Senate declares, as a matter of general guidance, that breaches of the following prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

Interference with the Senate

- (1) A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a Senator of the Senator's duties as a Senator.

Improper influence of Senators

- (2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a Senator in the Senator's conduct as a Senator or induce a Senator to be absent from the Senate or a committee.

Senators seeking benefits etc.

- (3) A Senator shall not ask for, receive or obtain, any property or benefit for the Senator, or another person, on any understanding that the Senator will be influenced in the discharge of the Senator's duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the Senator's independence or freedom of action as a Senator, or pursuant to which the Senator is in any way to act as the representative of any outside body in the discharge of the Senator's duties.

Molestation of Senators

- (4) A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, a Senator on account of the Senator's conduct as a Senator.

Disturbance of the Senate

- (5) A person shall not wilfully disturb the Senate or a committee while it is meeting, or wilfully engage in any disorderly conduct in the precincts of the Senate or a committee tending to disturb its proceedings.

Service of writs etc.

- (6) A person shall not serve or execute any criminal or civil process in the precincts of the Senate on a day on which the Senate meets except with the consent of the Senate or of a person authorised by the Senate to give such consent.

False reports of proceedings

- (7) A person shall not wilfully publish any false or misleading report of the proceedings of the Senate or of a committee.

Disobedience of orders

- (8) A person shall not, without reasonable excuse, disobey a lawful order of the Senate or of a committee.

Obstruction of orders

- (9) A person shall not interfere with or obstruct another person who is carrying out a lawful order of the Senate or of a committee.

Interference with witnesses

- (10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any

evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

**Molestation of witnesses**

- (11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

**Offences by witnesses etc.**

- (12) A witness before the Senate or a committee shall not:

- (a) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so;
- (b) without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so; or
- (c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

- (13) A person shall not, without reasonable excuse:

- (a) refuse or fail to attend before the Senate or a committee when ordered to do so; or
- (b) refuse or fail to produce documents, or to allow the inspection of documents, in accordance with an order of the Senate or of a committee.

- (14) A person shall not wilfully avoid service of an order of the Senate or of a committee.

- (15) A person shall not destroy, damage, forge or falsify any document required to be produced by the Senate or by a committee.

**Unauthorised disclosure of evidence etc.**

- (16) A person shall not, without the authority of the Senate or a committee, publish or disclose:

- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;

- (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
- (c) any proceedings in private session of the Senate or a committee or any report of such proceedings,

unless the Senate or a committee has published, or authorised the publication of, that document, that oral evidence or a report of those proceedings.

7. Raising of matters of privilege

That, notwithstanding anything contained in the Standing Orders, a matter of privilege shall not be brought before the Senate except in accordance with the following procedures:

- (1) A Senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate. The President's decision shall be communicated to the Senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (3) A Senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (4) Where the President determines that a motion relating to a matter should be given precedence of other business, the Senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges. Such notice shall take precedence of all other business on the day for which the notice is given.
- (5) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a Senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (6) Where notice of a motion is given under paragraph (4) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

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8. Motions relating to contempts

That, notwithstanding anything contained in the Standing Orders, a motion to:

- (a) determine that a person has committed a contempt; or
- (b) impose a penalty upon a person for a contempt,

shall not be moved unless notice of the motion has been given not less than 7 days before the day for moving the motion.

9. Exercise of Freedom of Speech

(1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:

- (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
- (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
- (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
- (d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
- (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.

(2) That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

10. Reference to Senate proceedings in court proceedings

- (1) That, without derogating from the law relating to the use which may be made of proceedings in Parliament under section 49 of the Constitution, and subject to any law and any order of the Senate relating to the disclosure of proceedings of the Senate or a committee, the Senate declares that leave of the Senate is not required for the admission into evidence, or reference to, records or reports of proceedings in the Senate or in a committee of the Senate, or the admission of evidence relating to such proceedings, in proceedings before any court or tribunal.

- (2) That the practice whereby leave of the Senate is sought in relation to matters referred to in paragraph (1) be discontinued.
- (3) That the Senate should be notified of any admission of evidence or reference to proceedings of the kind referred to in paragraph (1), and the Attorneys-General of the Commonwealth and the States be requested to develop procedures whereby such notification may be given.

11. Consultation between Privileges Committees

That, in considering any matter referred to it, the Committee of Privileges may confer with the Committee of Privileges of the House of Representatives.

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