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PENALTIES FOR CONTEMPT

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PENALTIES FOR CONTEMPT

1. In its 84th report, tabled in the Senate on 7 March 2000, the Committee of Privileges advised that it had 'commissioned a paper on the range of penalties both available and imposed in other jurisdictions, within Australia and overseas.' It further advised that it intended 'to report to the Senate on the general question of penalty following receipt and consideration of that paper.'[1]

2. The committee has now received a paper, prepared by Mr David Sullivan, a senior research officer in the Procedure Office of the Department of the Senate, which in the committee's view gives a helpful comparative account of penalties for contempt in Australia and several overseas countries, in accordance with the committee's request. The paper includes as an attachment a useful chart of the legislative or other basis of each country's contempt powers, a summary of their nature and whether they apply to members and other persons, together with a bibliography of the sources consulted. The committee has decided to publish the paper in full, as an appendix to this report, for the information of senators. As usual, the report will be placed on the Internet to ensure the paper's wide availability.

3. The paper is based on information provided by a varied range of countries, through their websites, other documents or through direct responses from the clerks or secretaries-general of several legislatures. The committee places on record its appreciation of the co-operation of all who provided information.

4. As the paper indicates, it is difficult to glean information in a form which provides direct comparability of various legislatures. It is thus difficult to be sure that the process of translating not merely differences in language, but also conceptual differences, into a composite document does not lead to inadvertent misunderstandings. The committee would therefore welcome any comments, expansions, updates and corrections of the material contained in this document.

Robert Ray
Chair

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1 ibid.

Penalties for Contempt

A Survey of National, State and Territory Legislatures

Research Section
Senate Procedure Office
September 2000

Summary

This paper is a survey of the powers of national, state and territory legislatures to punish contempt. The legislatures of various English and non-English speaking countries are included in the survey. In an effort to achieve consistency, 'contempt' is used as the preferred term to describe cases involving contempt of parliament and breach of privilege, and equivalent circumstances arising in European countries which do not use 'contempt' or 'privilege' to describe powers that protect the integrity of their respective parliaments.

The information presented in the main section on 'country surveys' addresses three issues: the powers, privileges and immunities of each legislature, including some historical information; the powers of each legislature to penalise contempt (coercive and/or punitive); and cases where penalties for contempt have been recommended and enforced, including recent examples from some Australian state parliaments and the British House of Commons. The results of the survey are summarised in the table at the end of the paper.

Contents

Introduction

This paper surveys the powers of various national, state and territory legislatures to impose penalties for contempt. Legislatures for sixteen countries are surveyed and the results summarised in the main section on 'country surveys': Australia (federal and state), Austria, Belgium, Canada (provincial and territorial legislatures), Denmark, Finland, France, Germany, Italy, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom (including the Scottish Parliament) and the United States (Congress and states). Apart from Australian legislatures, more space is given to the US Congress because Congress's powers to compel testimony and punish contempts have been used extensively over a long period and are well documented.

The information collected falls within at least one of three categories:

- a brief summary of the legal basis for each legislature's powers, privileges and immunities, including some historical information where it is necessary or readily available;

- whether each legislature is entrusted with the power to penalise contempt and, if so, the precise nature of the powers (coercive and/or punitive);

- relevant examples where penalties have been recommended and enforced, including recent cases from some Australian state parliaments and the British parliament.

The paper does not review the historical evolution of parliamentary privilege or its broader constitutional and legal framework—a topic too large for present purposes and one that is the subject of several detailed published studies. Rather it sets out to describe the specific powers entrusted to each legislature to punish contempt, and to illuminate these powers using relevant contempt cases.

Terminology

To achieve some consistency across each of the countries surveyed, it is useful to cite arguably the best known definition of parliamentary privilege, which is found in Erskine May: 'Parliamentary privilege is the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law'.

The term 'parliamentary privilege' is also used to refer to two significant aspects of the law as it relates to the Australian Parliament. First, the privileges or immunities of the Houses of Parliament (the freedom of parliamentary proceedings from question and impeachment in the courts). Second, the powers of the Houses to protect the integrity of their processes (the power to compel the attendance of witnesses, the giving of evidence and the production of documents, and to adjudge and punish contempts of the Houses).

This paper also seeks to clarify two distinctions that are sometimes confused. The first distinction is between 'breach of privilege' and 'contempt of parliament'. All breaches of privilege are contempts of parliament, but not all contempts are necessarily breaches of privilege. A contempt is any conduct which obstructs either House, even though no breach of any specific privilege, i.e., immunity, is committed. This paper focuses exclusively on contempts even in circumstances where 'breach of privilege' is the term used to describe contempt.

The second distinction is between 'coercive' and 'punitive' powers to punish contempt. A house of parliament may enforce its privileges by coercing someone to comply with one of its orders (e.g., committing a person into the custody of an officer of a house so that he or she may be brought to give evidence before a committee). In using its powers this way, the house is not punishing someone for a transgression, it is ensuring that no transgression can occur. However, if the person escaped from the custody of the house then a contempt would have been committed and the person concerned would be liable to be punished for contempt.

While many parliaments have defined, or are in the process of defining, their privileges according to particular circumstances and needs, to a significant extent the immunities and rights of English-speaking parliaments surveyed derive their authority from Westminster. Article 9 of the *Bill of Rights 1689* has special significance in this regard. It provides that: 'The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. As noted in a 1990 House of Commons paper, *Privilege in the Modern Context*, the privilege of freedom of speech is secured to members not for their personal benefit 'but to enable them to discharge the functions of their office without fear of civil or criminal prosecution'. Non-Westminster based legislatures vary in their approach, from legislatures with enforceable powers, frequently used and buttressed by the courts (US), to non-enforceable 'gentlemen's agreements' between executive and legislature (Switzerland).

Sources

In addition to primary sources (court cases, Acts, Constitutions and standing orders), reference is made to published reports, papers and articles which deal with specific contempt cases. While citations within the text have been kept to a minimum a full list of works consulted is provided in the bibliography. In some instances information was obtained through communications with senior parliamentary officers in Australian state and territory legislatures by e-mail and phone. In other cases, relevant secondary literature was consulted and sufficed.

An exhaustive search of primary and secondary sources and parliamentary websites was carried out with mixed results. While privileges committee reports are routinely published on the British and Australian federal and state parliamentary websites, not one American state, Canadian provincial or European legislative website publishes information on the subject of contempt. A search of parliamentary websites for Japan, Thailand, South Africa and Botswana also failed to provide information on contempt. Information on the Austrian, Danish, Dutch, Finnish, French, German, Italian, Norwegian, Swedish and Swiss legislatures was obtained by direct correspondence with the Clerk (or equivalent) of each legislature. We were unable to obtain

information on the new National Assembly for Wales. The information on non-English speaking legislatures often leaves many questions unanswered. We are unable to clarify the information because the systems in European countries are not comparable to those in English speaking legislatures and the answers are therefore not complete. Thus we have decided not to pursue any further clarifications or expansions of information already provided.

Country Surveys

1. Australia

Federal Parliament

Section 49 of the Commonwealth Constitution provides that the powers, privileges and immunities of the Houses of Parliament (and their members and committees) 'shall be such as are declared by the Parliament, and until declared' shall be those of the House of Commons 'at the establishment of the Commonwealth'. The Parliament to some degree gave legislative backing to section 49 with the passage of the *Parliamentary Privileges Act 1987*. Basically, however, the Act was declaratory in nature, in response to two decisions of the New South Wales Supreme Court ('the Murphy Trials') which gave narrow interpretations of Article 9 of the *Bill of Rights 1689*. This statutory regime was followed by a series of eleven privilege resolutions agreed to by the Senate on 25 February 1988. A detailed history of privilege from 1901, including a summary and discussion of the 1988 Senate privilege resolutions, is provided in the 76th Report of the Senate Committee of Privileges.

Both Houses of Parliament have the power to declare an act to be a contempt and to punish such an act, even when there is no precedent for such an act being so judged and punished. The rationale of the power to punish contempt of the Houses is that the Houses should be able to protect themselves from acts which directly or indirectly impede them in the performance of their functions. This power to deal with contempts is the parliamentary equivalent of the power of the courts to punish contempts of court. The punishments for contempts which either House may apply are now set by section 7 of the 1987 Act as fines of $5,000 for individuals and $25,000 for corporations, and six months imprisonment for individuals:

> 7. (1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against that House determined by that House to have been committed by that person.
>
> (2) A penalty of imprisonment imposed in accordance with this section is not affected by a prorogation of the Parliament or the dissolution or expiration of a House.
>
> (3) A House does not have power to order the imprisonment of a person for an offence against the House otherwise than in accordance with this section.
>
> (4) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the President of the Senate or the Speaker of the House of Representatives, as the case requires, is to have power, either generally or in specified circumstances, to order the discharge of the person from imprisonment and, where a resolution so provides, the President or the Speaker has, by force of this Act, power to discharge the person accordingly.
>
> (5) A House may impose on a person a fine—

(a) not exceeding $5,000, in the case of a natural person; or
(b) not exceeding $25,000, in the case of a corporation,
for an offence against that House determined by that House to have been committed by that person.

(6) A fine imposed under sub-section (5) is a debt due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by a House for that purpose.

(7) A fine shall not be imposed on a person under sub-section (5) for an offence for which a penalty of imprisonment is imposed on that person.

(8) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

Lesser punishments, such as admonition or reprimand, or suspension of a member, are also available to both Houses, but the 1987 Act provides that a House does not have power to expel a member from membership of a House. The Senate has imposed a penalty for a contempt only once, in 1971, before the enactment of the Parliamentary Privileges Act, when the editor and publisher of certain newspapers were reprimanded before the Senate for publishing a draft committee report without authorisation. In its report on the matter, the Committee of Privileges asserted that the Senate had the power to commit to prison, to fine, to reprimand or admonish or to otherwise withdraw facilities held by courtesy of the Senate in and around its precincts. The Senate's power to fine was subsequently challenged in a 1984 case of unauthorised disclosure undertaken by the Committee of Privileges. As a result, the committee recommended that the power to fine be clarified by legislation. The power to fine and to enforce the other penalties covered in the 1971 report was codified in the Parliamentary Privileges Act.

In other cases, the Senate has found that contempts have been committed, but has taken no further action. The only case of a penalty of imprisonment being imposed in the Federal Parliament occurred in 1955, when the House of Representatives imprisoned two persons for attempting to intimidate a member (the Browne/Fitzpatrick Case). The action was examined and upheld in the High Court.

State and Territory Parliaments

New South Wales

NSW is the only Australian parliament which has not legislated to define its privileges and it is the only Australian parliament which has no general powers to deal with contempt. In its 1985 report on parliamentary privilege in NSW, a joint select committee stated that the Parliament, not having legislated generally in respect of privilege, has the following powers and privileges: as are implied by reason of necessity; those imported by the adoption of the *Bill of Rights 1689*; such privilege as is conferred by the *Defamation Act 1974*; and such privilege as is conferred by other legislation (*Parliamentary Evidence Act 1901* and *Public Works Act 1912*). In the absence of legislation the NSW Houses of Parliament rely on their inherent powers to punish contempt, which have been given judicial recognition as being necessary to the existence of the Houses and to the due exercise of their functions. Sanctions available to the Houses to discipline members and non-members include reprimand and

admonishment; apology and withdrawal of words spoken; censure; suspension, either for a stated period of time or until the submission of an apology; and expulsion.

Two important cases during the 1990s, which ended up in the courts, tested these inherent powers. In 1996, the Legislative Council found the Leader of the Government in that house (Mr Egan) guilty of contempt for failing to table certain documents, pursuant to order, and suspended him from the service of the house for the remainder of the day's sitting. Upon his refusing to leave voluntarily the Usher of the Black Rod, at the direction of the President of the Council (the Hon. Mr Willis), removed Mr Egan to the pavement of Macquarie Street, beyond the parliamentary precinct. In 1998 Mr Egan became the subject of a new set of Council resolutions calling on him to table documents relating to the contamination of Sydney's water supply. Upon refusing to table two documents, the Council found Mr Egan guilty of contempt for his failure to obey the resolutions. A second resolution imposed the sanction of suspension from the service of the House for five sitting days.

Soon after, a third resolution ordered Mr Egan to table documents relating to several public issues, and a fourth resolution again found Mr Egan guilty of contempt for failing to comply with Council resolutions on the grounds of legal professional privilege and public interest immunity. Mr Egan was subsequently suspended from the House. According to Mantziaris: 'This was the first time a Minister had been suspended from a House of an Australian Parliament for failing to produce documents by reason of a claim of privilege'.

Two court decisions in the late 1990s stemming from these historic events in the NSW Parliament—*Egan v. Willis and Cahill* (19 November 1998) and *Egan v. Chadwick and Others* (10 June 1999)—upheld the inherent powers of the NSW Parliament to compel the production of documents and punish contempts. In the first case the High Court upheld a Court of Appeal decision which found that the Legislative Council possessed an inherent power to require the production of documents, and acted within its powers in suspending the minister from the Council for failure to produce documents in compliance with an order. In the second case, the New South Wales Court of Appeal found that the Council's powers extended to the production of documents for which claims of legal professional privilege and public interest immunity had been made.

Another important contempt case arose out of a speech by Mrs Franca Arena to the Legislative Council on 17 September 1997. During that speech Mrs Arena alleged, in effect, that there was a conspiracy between the Premier, the Leader of the Opposition and the Royal Commissioner inquiring into alleged police protection of paedophilia, Justice Wood, to suppress findings against 'people in high places'. On 23 September the Parliament passed the *Special Commissions of Inquiry Amendment Act 1997* which inserted a new Part (4A) into the principal Act of 1983. The 1997 Act enabled either House to authorise the Governor to establish a 'special commission of inquiry' into such matters relating to parliamentary proceedings within the House or a committee as the House resolved. It also provided that a House could, by resolution supported by a two-thirds majority, declare that parliamentary privilege is waived in connection with a commission, but expressly preserved the right of any individual member to assert parliamentary privilege in relation to an inquiry. Under the terms of the Act, the Legislative Council authorised the Governor to establish an inquiry into the truth of Mrs Arena's statements and declared that parliamentary privilege was

waived in relation to the inquiry. The inquiry was established and Mrs Arena was required to attend and give evidence.

Subsequent attempts by Mrs Arena to challenge the validity of the 1997 Act in the Supreme Court of NSW and the Court of Appeal were unsuccessful. The commission of inquiry concluded that Mrs Arena's claims were false and that she had no evidence to support them. A motion by the government to expel Mrs Arena was amended to refer the matter to the Legislative Council's Standing Committee on Parliamentary Privilege and Ethics. In its report published in June 1998, the committee found that the conduct of Mrs Arena, in making the relevant allegations, 'fell below the standard the House is entitled to expect of a Member, and brought the House into disrepute'. The committee recommended that the House consider a resolution calling on Mrs Arena to make a written apology to the House within 5 sitting days after the passing of the resolution, and withdraw in writing the imputations of a criminal conspiracy; that in the event of Mrs Arena not submitting an apology and withdrawing the imputations in the required time, 'Mrs Arena [be] suspended from the service of the House until the submission of a formal apology and withdrawal of the imputations…'; and that the apology and withdrawal be read by Mrs Arena in the House and published in the Minutes of Proceedings.

On 1 July 1998 the Legislative Council passed a resolution substantially based on the terms of the resolution recommended by the Committee. On 16 September, Mrs Arena moved a motion that the house accept a 'statement of regret' in specified terms as a sufficient response to the resolution of 1 July requiring an apology. The substance of the statement of regret was that Mrs Arena had not intended to imply criminal conspiracy. However, if people had drawn such an inference, Mrs Arena withdrew any such implication. The motion was passed by the House with the support of opposition and cross bench members.

Victoria

Section 19 of the *Constitution Act 1975* provides that the Council and Assembly 'shall hold, enjoy and exercise such privileges, immunities and powers possessed by the House of Commons in 1855'. Section 4J(1) of the *Parliamentary Committees Act 1968* provides that a joint investigatory committee shall have the power to send for persons, papers and records. Legislative Council standing order 198 and Legislative Assembly standing order 202 provide for each House, respectively, to give a select committee power to send for persons, papers and records, 'whenever it (the House) thinks fit or necessary'. There have been very few privilege cases in the Assembly over the past two decades, and none has involved the imposition of a penalty.

The Legislative Council Privileges Committee was formed by resolution of the House in 1990, but has never met.

Queensland

While the Queensland Parliament has not comprehensively defined its powers, privileges and immunities by statute, two Acts have gone some way to defining and reinforcing the privileges of parliament. The *Parliamentary Privilege Act 1861* conferred upon the Legislative Assembly a restricted power to punish summarily for certain kinds of contempts. These provisions were transferred to the consolidated *Constitution Act 1867*. The Act of 1867 was amended in 1978 by the insertion of section 40A. That section provides that the powers, privileges and immunities of the Legislative Assembly, its members and committees are those defined by statute and until defined by statute are the same as those enjoyed by the House of Commons 'for the time being', its members and committees. According to a paper issued in 1997 by Queensland's Members' Ethics and Parliamentary Privileges Committee, 'in most cases when an issue of privilege arises in Queensland, regard must be had to the precedents of the House of Commons'.

In addition, section 45 of the 1867 Act provides that the Legislative Assembly has the power to punish some enumerated contempts summarily by way of a fine, or imprisonment until the fine is paid. Section 52 states that it is 'lawful for the Legislative Assembly to direct the Attorney-General to prosecute before the Supreme Court any such person guilty of a…contempt against the House punishable by the law'. While the Assembly cannot impose a fine in respect of contempts not enumerated in the 1867 Act (misleading the House or obstructing a committee's inquiry), it has three options for dealing with such contempts: admonition for non-members, and suspension and expulsion for members.

In Reports 26 (January 1999) and 34 (August 1999), the Members' Ethics and Parliamentary Privileges Committee expressed caution about linking privilege in Queensland to the House of Commons, apparently in response to the United Kingdom's *Defamation Act 1996* which modifies the scope of privilege. There was a concern that problems may arise if the Commons divests itself of any of its powers, or modifies those powers. In November 1999 the Constitution Amendment Bill was introduced into the Queensland Parliament. It seeks to implement a recommendation of the Members' Ethics and Parliamentary Privileges Committee and the Legal, Constitutional and Administrative Review Committee to the effect that the powers, rights and immunities of the Legislative Assembly shall be those that applied to the House of Commons as at Federation. The bill is currently before the Parliament.

Since its appointment in September 1995, the Members' Ethics and Parliamentary Privileges Committee has dealt with twenty matters of privilege. Eleven matters related to the alleged misleading of the House (six matters involved ministers, three involved members and two involved non-members). Two cases resulted in three members being found guilty of contempt and suspended from the services and the precincts of the House. In September 1999, Mr Paff was found guilty of deliberately making a misleading statement in a dissenting report. The Members' Ethics and Parliamentary Privileges Committee (Report No. 35) recommended that he be admonished by the Speaker and suspended from the services and the precincts of the House for twenty-one days. Following the Legislative Assembly's adoption of the recommendations, the member was admonished by the Speaker and suspended for twenty-one days. It is also worth noting the committee's view that, in addition to admonishment and suspension, it would have recommended that a substantial fine be

deducted from the member's salary had the contempt of deliberately misleading the House been enumerated in the 1867 *Constitution Act*.

In May 2000, Mr Shaun Nelson and Mrs Dorothy Pratt were found guilty of engaging in disorderly and disrespectful conduct within the parliamentary precincts while the House was in session and of behaving in a manner not befitting members of Parliament. The Members' Ethics and Parliamentary Privileges Committee (Report No. 41) recommended that both members be suspended from the services and the precincts of the House for twenty-eight days, that they not be permitted to take their seats in the House until they had unreservedly apologised to the Speaker, and that Mr Nelson be discharged from membership of the Members' Ethics and Parliamentary Privileges Committee. On 1 June the Legislative Assembly adopted the committee's recommendations of a twenty-eight day suspension of both members and of Mr Nelson' discharge from the committee, but it did not insist on an apology from the members.

The remaining nine cases related to other alleged contempts. Two resulted in the Members' Ethics and Parliamentary Privileges Committee finding that a contempt had been committed. In May 1999, Mr Terry Sharples was found guilty of serving a subpoena on a member within the parliamentary precincts when the House was sitting. While recommending the Assembly take no further action on the matter, the committee also recommended that 'appropriate notices advising of the general nature of parliamentary privilege and that to serve legal documents on the precincts when the House is sitting is a contempt' be placed at all entrance points to the precincts (Report No. 31). In December 1999, Mr Richard Wood was found guilty of fraudulently misrepresenting himself as the consultant to the Legal, Constitutional and Administrative Review Committee in relation to its inquiry into the consolidation of the Queensland Constitution. The committee recommended that the Speaker, on behalf of the House, forward copies of its report (No. 40) to individuals and associations involved in the case.

South Australia

The *Constitution Act 1855–56* gave Parliament the power to declare and define the powers, privileges and immunities of each House, their members and committees. In 1858 specific legislation was enacted which limited the powers of each House to punish contempts under particular circumstances. This legislation was repealed in 1872 by legislation which adopted for the Parliament all the powers, privileges and immunities of the House of Commons as of 1856. The *Constitution Act 1934* repealed both the Act of 1855–56, and the subsequent Parliamentary Privileges Acts of 1872 and 1888. Section 9 of the 1934 Act makes it clear that the Parliament cannot exceed the powers and privileges of the House of Commons as of 24 October 1856; and should the United Kingdom Parliament change its privileges it would seem there would be no effect on the South Australian Parliament.

There have been very few privilege cases in either House of the South Australian Parliament in recent decades, and none of the cases has involved the application of a penalty. But there are some interesting historical cases. In 1870, Serjeant-Major Patrick McBride was sent to prison for one week for sending a letter to a member of the Legislative Council accusing the member of having lied to the Council. In 1968 a witness to an Upper House Select Committee made false accusations against the

Chairperson of the Committee. The person was summoned to appear before the Bar of the Council and admonished.

Tasmania

Privilege in the Tasmanian Parliament is provided for by several Parliamentary Privilege Acts. The *Parliamentary Privilege Act 1858* declares the power of each House of Parliament to order the attendance of persons and papers, to issue warrants, and to punish summarily for certain contempts, including the power to imprison members and non-members during the existing session. The Act lists seven offences which constitute contempt: failure to produce papers, books and records before the House or its committees; refusing to answer lawful questions put by the House or its committees; offensive behaviour in coming to or going from the House; publishing or sending a Member an insulting or threatening letter; sending a challenge to fight a Member; offering a bribe to, or attempting to bribe, a Member; and creating a disturbance in or near the House.

The 1858 Act was amended by the *Parliamentary Privilege Act 1885*, which empowered each House of Parliament to order the Controller of Prisons to bring an imprisoned person before the House or any committee. Both the 1858 and amended 1885 Acts remained unchanged until passage of the *Parliamentary Privilege Act 1957* which, among other things, gave joint committees of both Houses all the powers of a committee of either House.

The procedures to penalise contempt are set out in the standing orders of the House of Assembly and the Legislative Council respectively. The relevant House of Assembly standing orders are 424 to 427. Standing order 424 establishes penalties including a fine not exceeding $40, and in default of 'immediate payment', the offender shall be 'committed by order of the Speaker, for a period not exceeding fourteen days, to the custody of the Serjeant at Arms…who shall detain the Member in custody for the period directed, unless sooner discharged by Order of the House, or the Fine be sooner paid…'. Any person so detained must pay to the Serjeant $4 per day for every day detained, 'including sustenance' (SO 427).

The relevant Legislative Council standing orders are 413 to 429. Standing order 415 states that any member found guilty of contempt shall be dealt with by the Council in one of four ways: admonished; reprimanded; fined at the discretion of the Council and, in default of payment, be committed for a period not exceeding fourteen days to the custody of the Usher of the Black Rod; and suspended from the Council for a period not exceeding the duration of the session.

The two most recent contempt cases involving members occurred in 1963 and 1976. On both occasions, the Privileges Committee found there was no contempt. The last time a member was fined for contempt and, upon his refusal to pay, suspended from the service of the house for the remainder of the session was in 1887. The last time the actions of a non-member were investigated by the committee was in the late 1970s, when a journalist published the secret deliberations of a committee. No action was taken when the investigation 'stalled' after the committee's first meeting to consider the matter.

In 1995 draft legislation relating to the powers and privileges of the House of Assembly was considered by Cabinet. The legislation contained, among other things, provisions for the Assembly to refer to the courts any contempts of the House. However, the legislation was never introduced into the House. As a consequence, and in an attempt to maintain a level of parliamentary discussion and debate on the issue of privilege, Assembly standing orders 413–429 were (and remain) suspended by sessional orders. They can, however, be reactivated immediately by order of the House. The Legislative Council standing orders remain fully in force.

Western Australia

Western Australia's *Constitution Act 1889* provided that both Houses may legislate to define their privileges, immunities and powers. Two years later the Parliament enacted the *Parliamentary Privileges Act 1891*, which provides that the privileges of the Parliament are to be 'the same as are, at the time of the passing of this Act, or shall hereafter for the time being be, held, enjoyed, and exercised by the Commons House of Parliament of Great Britain'.

Three cases during the 1990s involved matters of privilege, of which two resulted in the punishment of individuals found guilty of contempt. The first case concerned a petition presented to the Parliament by Mr Brian Easton (a non-member) in which he made certain allegations against his former wife and her family. The petition was referred to a Committee of Privilege in 1992 which found that the allegations in the petition were false, and that therefore Mr Easton was guilty of contempt. The committee recommended that he apologise to the House. The Legislative Council passed a motion finding Mr Easton guilty of contempt for the reasons stated in the committee report, and ordered that he 'unreservedly apologise in writing to the House' (WA Legislative Council June 1994, 2226). Mr Easton did not apologise.

A new Committee of Privilege was established in August 1994 to recommend 'what action if any the House should…take' in light of his refusal to apologise (WA Legislative Council August 1994, 2835). It found that Mr Easton had committed a more serious contempt of the House for failing to comply with one of its orders. It argued that his refusal to apologise amounted to 'an open' and 'flagrant' defiance of the House. A majority of the committee considered imprisonment to be the only appropriate penalty. Requesting a further apology was thought to be 'futile' under the circumstances, and a 'censure' inadequate. Anything less than a substantial penalty, such as imprisonment, 'would indicate that orders of the House may be ignored with virtual impunity' (WA Legislative Council December 1994, 9977–78). In December 1994 the Legislative Council passed a motion authorising the President to issue a warrant for the arrest and imprisonment of Mr Easton for a maximum of seven days, and to release him immediately upon receipt of an apology. Mr Easton was imprisoned for the full seven days.

Second, important matters of privilege emerged during the course of the WA Royal Commission into the Commercial Activities of Government and Other Matters. The Royal Commission asked the Parliament to waive privilege because it sought to examine and question some members on what they had said in Parliament. The Parliament refused the request.

The Royal Commission then recommended a review of the immunity afforded by Article 9 of the *Bill of Rights 1689*, and this became one of the specified matters to be considered by the Western Australia Commission on Government. The Commission on Government released its report on the matter in August 1995. It recommended that the *Parliamentary Privileges Act 1891* should not be amended to permit any waiver of the immunities conferred by Article 9; the *Constitution Act 1889* should be amended to repeal the proviso contained in section 36 linking the privileges of the Western Australian Parliament to those of the House of Commons; and the *Parliamentary Privileges Act 1891* should be amended to specify the privileges, powers and immunities of the Western Australian Parliament so that they can be identified separately from and operate independently of those which may apply from time to time to the House of Commons. No action to date has been taken on the report.

Third, in October 1998 a Select Committee of Privilege was appointed by the Legislative Council to consider whether the failure by a senior departmental officer of the Department of Resources Development to produce two documents under summons of the Estimates and Financial Operations Committee amounted to contempt of the House. The committee was also asked to recommend a suitable penalty if the officer was found guilty of contempt. In its report, which was tabled on 8 December, the committee found that a contempt had been committed and recommended that the officer be ordered to pay a fine of $1,500. A week later, and without Parliamentary debate on the report, the Committee of Privilege was re-established by the House (16 December), apparently amid concerns expressed to the Leader of the House by the Attorney General and the Crown Law Department about the committee's published findings on the case. The nature of these concerns is not clear from the Hansard record. The re-appointed committee was asked to take evidence from those who could express a 'legal view' on the case, and report on the appropriateness of the recommended $1,500 penalty. The committee reported in May 1999, concluding that there were reasonable grounds on which the previous committee had recommended a fine as being appropriate, and that it was 'for the House to accept, reject, or modify that recommendation'. The Legislative Council adopted the findings of the report on 24 June and ordered that the fine of $1,500 be imposed.

Northern Territory

Parliamentary privilege in the Northern Territory was formerly regulated by the *Territory Privileges Act 1977*. That Act provided that the privileges of the Northern Territory Assembly were to be the same as those enjoyed by the House of Commons. However, section 12 of the subsequent *Northern Territory (Self-Government) Act 1978* provides that the powers, privileges and immunities of the Legislative Assembly 'not exceed the powers, privileges and immunities for the time being of the House of Representatives, or of the members of the committees of that House, respectively…'.

In 1987, the Legislative Assembly ordered its Privileges Committee to inquire into the *Territory Privileges Act 1977*. The committee produced a lengthy report and draft bill which resulted in the *Legislative Assembly (Powers and Privileges) Act 1992*. This Act codifies the Legislative Assembly's immunities and powers. The Assembly has the power to punish contempt equivalent to the power of the courts to punish contempts. The punishment for contempts is set by the 1992 Act as fines of $5,000 for

individuals and $25,000 for corporations, and six months imprisonment for individuals.

Since the commencement of the Act there have been no privilege cases involving a charge of contempt sustained by the Privileges Committee or the Assembly. Beforehand, in 1991, the 'Mulholland Report' affair led to the appearance of a journalist at the Bar of the Legislative Assembly following the unauthorised publication of a document. The journalist offered an apology to the Chief Minister and the Legislative Assembly, conceding he was not familiar with the *Territory Privileges Act 1977*. No further action was taken against him.

Australian Capital Territory

Section 24 of the *Australian Capital Territory (Self-Government) Act 1998* applies the privileges of the House of Representatives to the ACT Legislative Assembly. However, the Act limits the power of the Assembly to punish a person for contempt of parliament. It provides that, unlike other parliaments, the Assembly cannot fine or imprison a person.

The ACT Legislative Assembly is currently deliberating the Legislative Assembly (Privileges) Bill 1998 which, if enacted, would declare the powers, privileges and immunities for members of the ACT Legislative Assembly. The bill was referred to the Standing Committee on Administration and Procedure for inquiry and report in December 1998. It remains before that committee. There have been no relevant privilege cases.

2. Austria

Under the Federal Law on Rules and Procedure both the National Council (lower house, section 40) and the Federal Council (upper house, section 33) are entitled to request 'the competent administrative authority' to bring before a parliamentary committee any person who fails to comply with a summons to appear before a committee. This regulation has not been used during the past two decades. Investigating committees are established by the National Council under sections 21-22 of the Rules of Procedure for Parliamentary Investigating Committees. These committees have the power to bring a person before a committee, and file a request with the District Court of Vienna to impose a penalty if that person refuses to testify without justification. Penalties are determined under section 159ff of the Code of Criminal Procedure.

Members of the public who make comments that are insulting to the National Council or Federal Council are guilty of a criminal offence under section 116 of the Penal Code. Under section 17, persons suspected of having committed such an offence are prosecuted in the courts with the consent of the National Council or Federal Council. There have been no cases involving prosecution over the last two decades.

3. Belgium

Members of the public who disrupt the activities of the legislature or its members can be punished under the criminal law. Article 275 of the Belgian Criminal Code provides that a person who inflicts an indignity on a member while performing his or her constitutional duties (using offensive language, gestures or threats) is liable to imprisonment for up to six months or two years if the abuse takes place during a session of either House of the legislature. Members can be punished for committing acts of violence or disrupting order during a session. To prosecute a member who has committed an act of violence, the chambers are required by Article 59 of the Constitution to lift his or her immunity. A member who disrupts order may be suspended for the remaining part of the session (Article 53 of the Senate's standing orders).

The power exists to coerce or punish members and non-members for failure to comply with an order to give evidence or produce documents, but only within the framework of a parliamentary committee of inquiry (as distinct from ordinary parliamentary committees). According to an 1880 law concerning parliamentary inquiries, a parliamentary committee of inquiry may take all investigative measures provided by the Code on Criminal Procedure. This means that a committee of inquiry can summon any person to testify as a witness, and impose penalties of imprisonment up to six months or a fine for failure to testify. If a committee orders a person to produce documents relevant to its inquiry, and the person refuses to comply with the order, the committee has the power to ask a magistrate to seize the documents. However, documents containing privileged information may not be seized.

An ordinary parliamentary committee does not have the broad powers of a committee of inquiry. It can request a person to testify or to produce documents, but it cannot force the person to do so.

4. Canada

Federal Parliament

Section 18 of the *Constitution Act 1867*, repeated in section 4 of the *Parliament of Canada Act* (1985), provides that the privileges, immunities and powers of the Canadian Parliament may be determined by an Act of Parliament but may not exceed those of the British House of Commons.

Both the Canadian House of Commons and the Senate have the same powers to discipline members and non-members for punitive purposes. Less serious acts of punishment include a simple declaration that an act is a breach of privilege (usually delivered to the offending member at the Bar of the House), and censure of a member. In eleven cases between 1873 and 1906, individuals were summoned to appear before the Bar of the House of Commons either to answer questions or to receive censures, admonitions or reprimands. In 1991 a member was called to the Bar to receive a reprimand from the Chair for attempting to take hold of the Mace as it was carried from the Chamber at the adjournment of the previous sitting. Accordingly, the member appeared at the Bar, was admonished by the chair and declared guilty of a breach and a gross contempt of the House. Expulsion from the House for contempt is

also available to the Commons; there have been four expulsions since confederation in 1867—in 1874, 1875, 1891, and 1947. Neither House may impose a fine.

More serious contempts might result in imprisonment until prorogation or until the House decides otherwise. However, according to *House of Commons Procedure and Practice* the House's reluctance to invoke its authority to imprison, reprimand or admonish 'appears to have become a near constant feature of the Canadian approach to privilege. Though the power of the House to imprison remains, it is difficult to foresee circumstances arising that would oblige the House to invoke it'. The constitutionality of the right of the Houses to sentence someone to incarceration since the adoption of the *Canadian Charter of Rights and Freedoms* in 1982 has been questioned.

Imprisonment has been used on one occasion, in 1913, after Mr R.C. Miller, President of the Diamond Light and Heating Company, was reported to the House for refusing to answer questions before the Public Accounts Committee. The House ordered that Mr Miller appear at the Bar to answer questions. He appeared but refused to answer questions. The House found him in contempt and ordered that he be committed to Carleton Country jail. He remained in prison for four months, until the end of the session. On two previous occasions, in 1868 and 1873, the House ordered three of its members to be taken into custody by the Serjeant At Arms. In both cases the Serjeant was unable to comply with the orders and no further action was taken.

Provincial and Territorial Legislatures

Canada's provincial legislatures have the authority (under the *Constitution Act 1867*) to legislate much the same immunity as the Canadian Commons, and all have done so. The four maritime provinces—Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland—have legislated the same privileges as those of the Canadian Commons. British Columbia and Alberta have legislated the same privileges as those of the British Commons. And three other provinces—Ontario, Manitoba, and Saskatchewan—provide saving clauses (Acts setting out a list of their privileges should not to be construed as depriving the Assembly or members of any rights or privileges that the assembly might exercise or enjoy). Quebec has spelled out in legislation a list of its privileges and what constitutes contempt.

The privileges and immunities enjoyed by members of the legislatures of the territories are not the same as those enjoyed by members of the Federal or the provincial houses. The legislatures of the Yukon Territory and the Northwest Territories are creatures of federal statute, which does not provide them with many specific immunities and powers, or with the authority to enact privileges and immunities. All territories must rely on the common law, which provides their legislatures with such privileges and immunities as are incidental and necessary to enable them to perform their legislative functions. While this excludes the power to commit for contempt, a territorial assembly may expel where jurisdiction as to disqualification of a member has been made the subject of statutory direction.

5. Denmark

The legislature of Denmark does not have powers to coerce or punish members and non-members for disobeying an order to give evidence before a committee and produce documents. The President may call a member to order for making an improper statement, and may decline to call upon that member to speak during the same sitting. The Standing Orders Committee may decide to suspend a member from the chamber for up to fourteen sitting days; however, there have been no cases involving suspension.

6. Finland

The legislature and its committees have an inherent power to obtain the information required to carry out their normal functions. The prime minister is usually responsible for supplying information. A new Constitution, which came into effect on 1 March 2000, authorises any member of the legislature to obtain information in order 'to discharge representative functions, provided the information is not secret and does not concern a State budget under preparation'. Section 31.2 of the Constitution empowers the Speaker to suspend a member from session for a maximum of two weeks for repeatedly violating the rules of order. Section 28.3 empowers the legislature to strip members of their representative functions entirely, or for a specified period, by means of a resolution supported by two-thirds of the votes cast. No information is available on powers over non-members.

7. France

The French legislature has few powers of injunction or coercion towards members and non-members. Certain avenues are available which enable the legislature to pressure people, if summoned, to appear before a parliamentary committee and penalise the giving of false evidence and the publication of confidential material. Article six of ordinance 58–11002 (1958) states that a person ordered to appear before a parliamentary committee 'must appear as called'. A person who fails to appear, or refuses to give evidence or take an oath, is liable to imprisonment for two years or a fine up to 50,000 Francs. In cases of false evidence being supplied to a committee or undue pressure being placed on a witness, the legislature may invoke clauses 434–13, 14 and 15 of the criminal code. Prosecutions are pursued in the courts at the request of the president of the committee or, if the offence has taken place after the release of the committee's report, at the request of the office of the relevant chamber. Penalties (unspecified) apply to persons who make public, within thirty years, information relating to the confidential workings of a committee of inquiry, except in circumstances where the published report has referred publicly to that information.

8. Germany

Under the Standing Orders of the German Federal Parliament the President of the lower house (Bundestag) has the power to maintain order in the chamber on sitting days, and to authorise the state police to gain access to the parliamentary precinct should the need arise. During committee hearings the chair exercises the power to maintain order. Standing orders also enable the President to enforce disciplinary measures on members who are guilty of contempt. The President can expel a member from the chamber for a maximum of thirty sitting days during which time the member

is also prohibited from participating in committee hearings. Other less serious measures include admonition and rebukes by the President. Members of the public who disrupt proceedings can be removed from the parliament. No information is available on the upper house (Bundesrat).

9. Italy

The upper house (Senate) does not have the authority to impose binding orders on its members or the public. The authority to summon people to provide written or oral evidence is vested only with committees of inquiry, which may be established by either House or jointly under Article 82 of the Constitution. This article vests in both Houses the same powers as those vested in the judiciary. If a subpoena is not complied with, a committee may request the police to enforce the order.

Under the rules of the Senate, the President has the authority to maintain order on the floor of the chamber and in the public galleries, call a senator to order, and censure or expel a senator from the chamber. A censure may entail a prohibition on attending sittings for up to ten days. In the case of contempt, the President may direct that the offender (members and non-members) be arrested. However this particular provision has not been enforced in recent times. No information is available on the lower house (Chamber of Deputies).

Under the Italian criminal code, any person who hinders, albeit temporarily or partially, the operation of the legislature may be imprisoned for no less than ten years. If the action is directed at disturbing the operation of the legislature, the penalty is imprisonment for one to five years. The penalty for slander against either chamber of the legislature is imprisonment for six months to one year, upon authorisation of the chamber in question.

10. Netherlands

According to the Rules of Procedure the Speaker of the Second Chamber (the main legislative house) may exclude a member for one sitting day for violating standing orders. The Bureau of the Second Chamber (Speaker and Vice Presidents) can propose that the chamber prevent a member from attending committee meetings for up to one month for violating the confidentiality of information. The Speaker also has the power (based on convention) to restrict the movement of members inside the parliamentary precinct, and to order the exclusion of non-members from the public gallery. No information is available on the First Chamber.

Under the Constitution committees of inquiry have the power to call witnesses (Dutch citizens only) to testify under oath, and to ask for police assistance if a witness refuses to appear before a committee.

11. New Zealand

The *Parliamentary Privileges Act 1865* conferred on the House of Representatives and the Legislative Council—since abolished—the privileges, immunities and powers enjoyed by the British House of Commons and its committees as of 1 January 1865. The Act was incorporated, with some amendment, into the *Legislature Act 1908*, which is still in force.

If the House of Representatives determines that a contempt has occurred and it decides to take the matter further, several options are open to it regarding the types of punishment it may inflict or the means it may employ to express its displeasure. These include imprisonment (which has never been resorted to by the House); fines (although much doubt exists about the power of the House to exact fines); censure (there have been two occasions relating to members' conduct, in 1975 and 1982); prosecution at law (the only case leading to prosecution failed in 1877); suspension from the House (two members have been suspended from the House for contempt, in 1976 and 1987); expulsion (there is no instance of expulsion); exclusion from the precincts; exclusion from the press gallery; and apology (most findings of contempt end with the offender tendering an apology, which the House accepts). Any course of action initiated by the House would have to comply with the provisions of the *New Zealand Bill of Rights Act 1990*.

12. Norway

The Norwegian Constitution provides that the legislature—the Storting—has the power to require any person to attend a meeting of the legislature and to make a statement, a power that has not been used since 1934. Any person who fails to comply with a resolution to attend, or who refuses to make a statement, is liable to a penalty; however, the legislature cannot compel a person to make a statement or punish a person. The ordinary prosecuting authority, at the request of the legislature, decides on a prosecution and any case is brought before the ordinary courts. In the case of a criminal offence committed by a member of the legislature or a Supreme Court Judge, the matter is brought before the Court of Impeachment (which consists of one-third of Supreme Court Judges and two-thirds of the Lagting, an assembly comprising one-fourth of the legislature). A member of the legislature who fails to comply with the Rules of Procedure may be liable to a penalty after proceedings before the Court of Impeachment (no member has been indicted before the Court). None of the legislature's committees has the authority to punish any person who fails to give evidence or produce documents.

13. Sweden

The Swedish legislature (Riksdag) has few contempt powers. The Committee on the Constitution of the Riksdag has special powers pertaining to the examination and control of government activities. While the Committee can organise hearings with government officials and members of the public, it does not enjoy the power to coerce anyone to appear at a hearing. There are also certain provisions in the Riksdag Act regarding the conduct of members and non-members in the chamber. If a member engages in improper conduct (e.g., engaging in personal insult) the Speaker may debar the member from speaking for the duration of the debate. And members of the public may be removed from the chamber for creating a disturbance.

14. Switzerland

The committees of both houses (Council of States and National Council), after consulting with the Swiss Federal Government (Federal Council), have the authority to summon civil servants and submit questions to them. Members of the Federal Council are entitled to attend hearings and supply additional information. The Parliamentary Control Committees are authorised to request from all Federal services and agencies any official documents and files, or any piece of information whether in oral or written form. A special body of the Parliamentary Control Committee (the Control Delegation) has the power to summon persons, including private individuals, to testify as witnesses. In accordance with Article 64 of the Federal Law on Swiss Parliament, a witness who gives false evidence can be punished under Article 307 of the Swiss penal code.

The right of committees to gather information is not restricted by any secrecy provisions and also applies to confidential matters at the federal level. However, the Federal Council can choose to file a special report instead of releasing official documents, provided that the purpose is to preserve official secrecy, secure the interests of individuals, and preserve the integrity of committee proceedings that are still in progress.

The Swiss legislature contains very few disciplinary measures against its members. Sanctions including reprimand, warning, suspension from the two chambers, and exclusion from debate are designed to maintain order; they apply to violations of conduct and procedures.

15. United Kingdom

British Parliament

The House of Commons and the House of Lords have the power to punish members and non-members for contempt. The sanctions available are reprimand, imprisonment for the remainder of the session and, possibly in the House of Lords but probably not in the House of Commons, a fine of unlimited amount. Where the Lords maintains the right to both imprison and impose fines for contempts, the Commons now accepts that it is without the power to commit beyond the end of a session, and has not levied fines in the modern period.

Where the House considers that a member is guilty of contempt, it can impose two additional sanctions: suspension from the service of the House (see cases below), and expulsion (the most recent case occurred in 1954). Suspension from the House is prescribed under standing order 44 for members who disregard the authority of the chair or abuse the rules of the House. Suspensions have also been enforced in respect of the terms of a letter addressed by a member to the Speaker and of the member's subsequent conduct in the House (1890–91); and the publication of a letter reflecting on the Speaker's conduct in the chair (1911).

In 1988, a member who damaged the Mace after the House had adjourned and declined to make a personal statement in a form previously agreed to by the Speaker, was suspended from the service of the House for twenty sitting days and held responsible for the damage he had caused. In another case, a report of the Select

Committee on Members' Interests (19 February 1990) found that a member, Mr John Browne, had failed to register his pecuniary interests as required by the May 1974 and June 1975 Resolutions of the House. It recommended that the House decide what action should be taken in light of the 'serious nature' of the committee's findings. On 7 March 1990, the House endorsed the findings of the report and suspended the member from the House for twenty sitting days without pay.

In April 1995, a report by the Committee of Privileges (Session 1994–95, 3 April 1995) found two members, Mr Graham Riddick and Mr Tredinnick, guilty of accepting payments for the tabling of parliamentary questions. The committee recommended the suspension of Mr Riddick from the House for ten sitting days without pay, and the suspension of Mr Tredinnick from the House for twenty sitting days without pay. On 20 April 1995 the House accepted the committee's recommendations and both members were suspended.

Between July 1997 and March 2000, the House suspended members or requested apologies on four occasions, after accepting the recommendations of the House of Commons Select Committee on Standards and Privileges. In each case, the committee considered a memorandum referred to it by the Parliamentary Commissioner for Standards which examined certain complaints against a member:

- July 1997. The committee considered a complaint against a member, Mr Robert Wareing, relating to the member's alleged failure to register his directorship and shareholdings in a company. The committee upheld the complaint, finding that the member's conduct in making a false declaration 'was wrong'. It recommended that the member apologise to the House by means of a personal statement and that he be suspended from the service of the House for one week. The House agreed to the reports on 30 October 1997. The member made a personal apology in a brief statement and was suspended from the services of the House for one week without pay.

- May 1999. The committee considered a complaint against a member, Mrs Teresa Gorman, relating to the member's alleged failure to register both her directorship of a company, and shareholdings and directorship of another company. The committee upheld the complaint, finding that the member had made a false declaration. It recommended that the member apologise to the House by means of a personal statement. The member's 'most sincere' statement of apology to the House on 20 May 1999 accepted both the way in which the complaints were investigated by the committee, and its findings and conclusions. No penalties were imposed.

- February 2000. The committee considered certain complaints, again against Mrs Teresa Gorman, relating to her alleged failure to register directorships, shareholdings and properties, providing misleading and inaccurate information, making false allegations, and improperly interfering with witnesses. In upholding eight of the ten complaints, the committee found Mrs Gorman's behaviour in breach of the code of conduct and a contempt of the House. It also expressed the view that the member's 'untruthfulness', 'false accusations', and 'failures to provide…information' were more serious than the failure to register or

declare interests, which were the subject of the original complaints. These more serious offences also called into question 'the sincerity of the apology' made by Mrs Gorman to the House in May 1999. The committee recommended that she be suspended from the service of the House for one month. On 1 March 2000 the House approved the committee's report and, after a lengthy debate, voted to suspend the member from the service of the House for one month—the longest suspension of a sitting member found guilty of contempt (as indicated above, the previous longest suspension was twenty days).

- March 2000. The committee considered a complaint against a member, Mr Tony Baldry, relating to his alleged failure to disclose a financial relationship. The committee upheld the complaint, finding that the member had breached the Code of Conduct and the May 1974 Resolution of the House relating to the declaration of members' interests. It recommended that the member make an apology to the House by means of a personal statement. The member apologised to the House 'without reservation' on 23 March. No penalties were imposed.

In June 1997 a Joint Parliamentary Committee was set up to 'conduct a general review of parliamentary privilege'. The committee's April 1999 report proposed a new Parliamentary Privileges Act covering three main areas: article 9 of the Bill of rights; control over parliamentary affairs, including penal and disciplinary powers; and reporting of parliamentary proceedings. The report was influenced by Commonwealth developments, particularly the Australian *Parliamentary Privileges Act 1987*. Chapter six of the report deals with the disciplinary and penal powers of the parliament. It provides a detailed list of categories of conduct which constitute contempt of parliament, and it makes a number of recommendations for change including penalties for contempt.

The committee made ten recommendations on disciplinary and penal power of which four are significant: the power of the Houses to imprison persons (whether members or not) who are in contempt of Parliament should be abolished, but the Houses should retain the power to detain temporarily persons who engage in acts of misconduct in the presence of either House or elsewhere within the precincts of Parliament; the penal powers over non-members should be transferred to the High Court; the Houses should retain these existing disciplinary powers over members, except that the power to imprison should be replaced with a power to fine; and the powers of the House of Lords to suspend its members should be clarified and confirmed. No action has been taken on the report's recommendations.

Scottish Parliament

At a meeting of the Scottish Parliament on 23 June 1999 the question of parliamentary privilege was raised. The Presiding Officer offered guidance to members, which included two key points: any privileges applicable to the Scottish Parliament are those conferred by or under the *Scotland Act 1998*; and Parliament does not derive rights by reference to privileges which exist (whether by statute or otherwise) at Westminster. There is no concept of 'parliamentary privilege' in relation to the Scottish Parliament or its members in the sense understood at Westminster.

The Scotland Act contains a number of provisions designed to provide sufficient protection to the Parliament to enable it properly to conduct its business. Any member who contravenes Section 39 (Members' Interests) is liable on summary conviction to a fine.

Standing orders also provide for the penalty of withdrawal of a member's rights and privileges by the Parliament on a motion of the Standards Committee. Sections 23–26 deal with the Parliament's power to call for witnesses and documents, enforceable by various legal penalties in appropriate cases. Any person guilty of an offence under these sections 'is liable on summary conviction to a fine…or imprisonment for a period not exceeding three months'.

16. United States

Powers to punish members

Article 1, section 5, clause 2, of the Constitution empowers each House to remedy contempts committed by its own members. It states: 'Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member'.

The Houses have two basic forms of punishment available to them: expel a senator or member by a two-thirds vote or, by a majority vote, censure a senator or member for serious misconduct. Fifteen senators and five members of the House have been expelled—the senators were expelled in cases involving disloyalty to the United States between 1797 and 1862, and five members were expelled during the Civil War. From the Civil War to the late 1980s, formal expulsion proceedings were instituted nine times in the Senate and eleven times in the House. On one occasion a House agreed to expulsion: in 1980, when the House of Representatives voted to expel Michael J. Myers for political corruption.

Censure proceedings in the Senate are carried out with a degree of moderation and have no tangible effect on a senator's ability to hold office. The Senate censured nine members between 1811 and 1990 for transgressions ranging from breach of confidentiality to fighting in the Senate chamber. In the House, a majority voted to censure a colleague for misconduct on twenty-two occasions up to 1988. Offenders are treated more harshly in the House—members are often denied the privilege of defending themselves, and in most cases a censured member is treated like a felon. Grounds for censure have included assault on a fellow member, insulting the Speaker, and treasonable utterances, as well as other offences.

Other milder forms of discipline include a reprimand (used only in the House), a rebuke (where a decision is announced at a press conference), or a loss of committee chairmanship. The Senate's permanent Select Committee on Ethics has employed lesser indications of disapproval in the form of a public or private letter of admonition to a member regarding a particular action. The committee also issues advisory opinions to members and staff who seek guidance on the appropriateness of proposed conduct.

Powers to punish non-members

The Houses have three means to punish those who disregard its subpoenas or orders.

1. Inherent (Self-Help) Contempt Powers

Until 1857, Congress used its inherent 'self-help' powers to punish all contempts. This power is implicit in the legislative functions of the Congress. The right to punish contempt of Congress was first employed by the House of Representatives in 1795 when a House committee investigating an alleged bribery of a member of the House cited a non-member for contempt and imprisoned him for nine days. The Senate's first contempt citation was in 1800 when an individual was brought before the Bar of the Senate for publication of 'false, scandalous and defamatory information'. The first contempt citation by the House of Representatives for refusal to produce documents occurred in 1812. The Supreme Court in 1821 confirmed this implied power to punish contempts in *Anderson v. Dunn*. Under the inherent powers, either House may dispatch its Serjeant at Arms to arrest and imprison those who obstruct its legislative functions. Imprisonment may be either for a specified period of time or for an indefinite period (but not, in the case of the House, beyond the current Congress, i.e., the term of the House of Representatives).

From 1795 to 1857 both the House and the Senate summarily punished individuals for the publication of scandalous material, bribery, attack upon members of Congress, and refusal to answer questions before investigating committees. Before 1857, contempt citations which originated from refusal to testify were adopted as a means of coercion—to compel individuals to testify. Despite the formal absence of legal safeguards, each individual brought before the Bar was given the right to counsel and time to prepare a defence.

2. Statutory Criminal Contempt

Federal statutes enable Congress to initiate criminal proceedings against persons who, under subpoena or order, refuse to produce materials or to testify. Following a contempt case in the mid-1850s which resulted in the Washington correspondent for the *New York Times*, J.W. Simonton, being imprisoned for two weeks for failing to name certain congressmen accused of soliciting bribes, Congress began to legislate in an effort to impose harsher penalties for contempt.

In 1857 Congress enacted a statute making it a criminal offence to refuse to give testimony or supply physical evidence demanded by Congress. The Act, however, was enacted to supplement, not supersede, Congress's inherent powers, and this remains the case today. From 1857 the courts, rather than Congress, became the main institution that determined guilt or innocence in contempt cases. The Act also changed the procedures for prosecuting an individual for contempt in ways that are so complex that it is difficult to quickly resolve the issues. The exact responsibilities of officials who play a part in those procedures are not certain. The statute, though indirectly coercive, was aimed mostly at punishing offenders. Significantly, the 1857 statute remains (with only minor amendment) in the current federal code as 2 U.S.C. s.192 and s.194:

s.192. Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

s.194. Certification of failure to testify or produce; grand jury action

Whenever a witness summoned as mentioned in section 192 of this title fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

Section 194 establishes four clear procedures to be followed by the House and the Senate if either chooses to refer a recalcitrant witness to the courts for criminal prosecution:

- Approval by a committee which then introduces into Congress a resolution citing the witness for contempt. House Rules provide that a House committee may issue subpoenas only when authorised by a majority of the members of the committee. While Senate committees normally have the freedom to determine what authorisation is necessary for the issuance of subpoenas, an enabling resolution may require that subpoenas be authorised by the full committee, not just its chairman.

- Calling up and reading the committee report on the floor.

- Senate or House approval of a resolution by a simple majority vote authorising the President or Speaker to certify the report to the US Attorney for prosecution (if Congress is in session), or independent determination by the President or Speaker to certify the report (if Congress is not in session).

- Certification by the President or Speaker to the appropriate US Attorney for prosecution.

Three additional points concerning section 192 are worth noting. First, although most prosecutions for contempt of Congress have involved witnesses who have been subpoenaed by a committee, a witness who voluntarily appears but subsequently refuses to testify may be prosecuted. Second, the term 'default' under section 192 includes all forms of failure to testify—refusing to appear, to be sworn, to answer questions, as well as leaving a hearing before being excused by the committee. Third, it is unclear whether the duty of the US Attorney to present a contempt to the grand jury is mandatory or discretionary, since the sparse case law that is relevant to the question provides conflicting guidance.

The potential conflict between the statutory language of section 194 and the US Attorney's prosecutorial discretion is illustrated by a 1982 case in which the House of Representatives did not secure the contempt prosecution of the head of the Environment Protection Agency (EPA), Anne M. Burford, for failing to provide two House committees with certain EPA documents. Burford was the first person to be held in contempt of the House of Representatives for refusing to produce information because of executive privilege. In this case, the Attorney for the District of Columbia, relying upon the prosecutorial discretion of the executive branch, refused to present the contempt citation to the grand jury; the Justice Department instead filed a lawsuit to block action on the contempt citation. In February 1983 the federal district court in Washington, D.C., granted a motion filed by lawyers for the House of Representatives to dismiss the justice suit. The matter was resolved in August, when the House dropped its contempt citation against Burford after she resigned as head of the EPA, and the White House agreed to meet congressional demands for access to certain EPA documents.

In another important contempt case, on 6 August 1998 the Committee on Government Reform and Oversight voted 24–19 to hold US Attorney-General, Janet Reno, in contempt of Congress. The committee found the Attorney-General in contempt for failing to comply with a July 1998 subpoena for two internal memos which made the case for an independent counsel to probe campaign finance abuses. On 17 September the committee chairman, Dan Burton, announced that he had filed a contempt of Congress resolution. The matter was not taken up by the full House—the contempt proceeding lapsed with the end of the 105th Congress in 1998. The bill citing Reno for contempt would have to be re-initiated by the House Committee on Government Reform before the full House could vote on it. No further action has been taken by the committee.

3. Statutory Civil Contempt

In 1978 Congress enacted a civil contempt procedure which is applicable only to the Senate. This statutory mechanism was tabled by the Senate as the *Ethics in Government Act* (1978) in an attempt to overcome problems which arose during the Watergate Affair. Under this procedure, the federal district court upon application of the Senate is able to issue an order to a person refusing, or threatening to refuse, to comply with a Senate subpoena. Its purpose is 'to compel obedience to the order of the court'. If the individual still refuses to comply, he/she may be tried by the court in summary proceedings for contempt of court, with sanctions being imposed to coerce compliance. Civil contempt can be more expeditious than a criminal proceeding and it also provides an element of flexibility, allowing the subpoenaed party to test his or her

legal defences in court without necessarily risking criminal prosecution. Two civil actions have been brought, both successfully, under the statute.

Unlike the House of Representatives' inherent self-help contempt powers which provide for the incarceration of a witness only for the duration of a session, under the statutory civil contempt procedure a witness may be incarcerated beyond adjournment at the end of a Congress if the committee securing the enforcement of its subpoena certifies to the court its continued interest in the information sought. In one of the two civil actions mentioned previously, the witness was imprisoned for eighteen months, a full six months longer than the maximum penalty available under the statute for criminal contempt.

Safeguards for the Protection of Witnesses

Various safeguards exist to protect individuals from unwarranted use of the self-help contempt powers. Three safeguards are recognised by the courts:

- An individual cannot be held in contempt if a committee is not clearly authorised by its parent body to conduct an investigation or if the subject of an investigation is outside the scope of the committee's jurisdiction.

- There must be a legislative purpose for an investigation or it must be conducted pursuant to some other constitutional power of the Congress.

- The question which a witness refuses to answer must be pertinent to the committee's investigation, and the witness's refusal to answer or to produce documents must be wilful.

A person accused of contempt is also entitled to all the safeguards accorded defendants in criminal cases: the offence has to be proven beyond reasonable doubt, the defendant is entitled to a jury, and an acquittal cannot be appealed. There are important constitutional limits on Congress's investigatory and contempt powers established over time by the Supreme Court. A witness, for example, may claim first, fourth or fifth amendment rights which relate, respectively, to privacy issues, unreasonable searches and seizures, and privilege against self-incrimination.

In an attempt to gain testimony from individuals who might claim their constitutional right to remain silent rather than to incriminate themselves, Congress has authorised grants of immunity from prosecution to such witnesses. An 1857 law, which contained an automatic and sweeping grant of immunity to witnesses, was replaced in 1862 with a law narrowing the basis for immunity. This law prevented a witness's own testimony from being used as evidence to gain a conviction, but there was nothing in the law to prevent evidence being used as a lead in discovering other evidence of crime. The law remained unchanged until the Immunity Act (1954) permitted either chamber by majority vote, or a congressional committee by two-thirds majority, to grant immunity to witnesses in national security investigations in return for agreeing to give evidence. In 1970 a new immunity law was enacted as part of the Organised Crime Control Act. It set out the rules for granting immunity to witnesses before congressional committees, courts, grand juries, and administrative agencies.

Summary

For two decades following the passage of the 1857 criminal statute, Congress still opted to use its self-help powers to punish contempts. At the time, resort to the courts was considered time-consuming and removed the witness from Congress's control, making it difficult for Congress to obtain the desired information from the witness after criminal proceedings had begun. Congress also feared that the judiciary would curb its investigatory powers if contempt matters were dispatched to the courts. But by the turn of the century, an increasing number of contempt matters was being referred to the courts principally because other legislative responsibilities became too pressing to allow full-scale congressional trials. Eventually, virtually all contempt matters were processed under the federal statute. The inherent powers are still available for use in appropriate cases, for example, apprehended destruction of documents, where swift action is required. The Senate used its powers in such a case in 1934.

Between 1789 and 1969 Congress is said to have voted 394 contempt citations; this figure includes citations under both the federal criminal statute and Congress's implied contempt powers. Of these citations, 384 involved the refusal by witnesses to answer questions or produce physical evidence; the remaining 14 related to alleged obstructions of legislative functions. It is also worth noting that, of the total, 283 contempt citations occurred after 1945 of which many grew out of the Committee on House Un-American Activities, 1945–1957.*

State Legislatures

Most state constitutions provide that each house, with the concurrence of two-thirds of all the members elected, may expel a member. State Houses have the same inherent powers to punish contempt as the Houses of Congress.

* Good statistical information on Congress's use of its contempt powers is provided in Hamilton (1976, 95) and Beck (1974). Appendix A to Beck contains a synopsis of all the major contempt cases initiated between 1795 and 1943; Appendix B to Beck lists all the prosecutions between 1944 and 1958.

Legislature	Unicameral or Bicameral	Basis for Privilege: Statutory/Inherent	Nature of Powers to Punish Contempt: Coercive/Punitive	Members/Non-Members
Australia Federal	Bicameral	Commonwealth Constitution, Section 49 *Parliamentary Privileges Act 1987* Eleven privileges resolutions agreed to by the Senate on 25 February 1988 The power to punish contempt is regarded as inherent in the legislative function (independent of section 49 of the Constitution)	Powers, privileges and immunities of the Parliament 'shall be such as are declared by the Parliament' and, until declared, shall be those of the UK House of Commons, at the establishment of the Commonwealth Fines of $5,000 for individuals and $25,000 for corporations, and six months imprisonment for individuals No specific mention of powers to punish contempt, although resolution 8 requires seven days' notice of any motion in the Senate to determine that a person has committed a contempt, or to impose a penalty for contempt Each House of Parliament has the inherent power to conduct inquiries by compelling the attendance of witnesses, the giving of evidence and the production of documents The Senate has imposed a penalty for a contempt only once, in 1971. The only case of either house imposing a penalty of imprisonment occurred in 1955 when the House found two persons guilty for attempting to intimidate a member	Members and non-members
New South Wales	Bicameral	No specific legislation defining the powers, privileges and immunities of the Parliament. Powers and privileges are implied by reason of necessity; those imported by the adoption of the	*Egan v. Willis and Cahill*, High Court, 1998, found that the Legislative Council possessed an inherent power to require the production of documents and to impose sanctions on a minister in the event of non-compliance. *Egan v. Chadwick and Others*, NSW	Members and non-members

New South Wales (continued)		*Bill of Rights 1689*; and privilege as conferred by other legislation	Court of Appeal, 1999, found that the Council's power extended to the production of certain documents for which claims of legal professional privilege and public interest immunity had been made. Both cases resulted from the Legislative Council finding a minister (Mr Egan) guilty of contempt for failing to table certain documents In June 1998 the Legislative Council's Standing Committee on Parliamentary Privilege and Ethics found a member (Mrs Arena) in contempt for certain allegations made before the house, and recommended the member be suspended until the submission of a formal apology. The house subsequently passed a motion by Mrs Arena accepting a 'statement of regret' The Council does not possess a general power to punish contempts	
Victoria	Bicameral	*Constitution Act 1975*	Each House can exercise the privileges, immunities and powers possessed by the House of Commons in 1855. There are no recent cases of contempt	Members and non-members
Queensland	Unicameral	*Parliamentary Privilege Act 1861;* and *Constitution Act 1867*, amended in 1978 by the insertion of section 40A, 45 and 52	The powers, privileges and immunities are the same as those enjoyed by the House of Commons 'for the time being' The Legislative Assembly has the power to punish contempt by way of a fine, and direct the Attorney-General to prosecute other contempts in the Supreme Court. The Assembly cannot punish contempts not enumerated in the 1867 Act. In September 1999, a member, being found guilty of contempt for deliberately misleading the House, was admonished by the Speaker and suspended for twenty-one days. In May 2000, two members were found guilty of engaging in disorderly and disrespectful conduct within	Members and non-members

Queensland (continued)			the parliamentary precincts while the House was in session and of behaving in a manner not befitting members of Parliament. The Members' Ethics and Parliamentary Privileges Committee (report No. 41) recommended that both members be suspended from the services and the precincts of the House for twenty-eight days, that they not be permitted to take their seats in the House until they had unreservedly apologised to the Speaker, and that one of the members, Mr Nelson, be discharged from membership of the Members' Ethics and Parliamentary Privileges Committee	
		Constitution Amendment Bill (introduced November 1999), currently before the Parliament	Seeks to relate the immunities of the Legislative Assembly to those of the British House of Commons as at Federation	
South Australia	Bicameral	*Constitution Act 1934*	Section 9 of the Act states that the Parliament cannot exceed the powers and privileges of the House of Commons as at 24 October 1856 The last contempt case occurred in 1968 when a witness who made false accusations against the chairperson of a committee was admonished at the Bar of the Council	Members and non-members
Tasmania	Bicameral	*Parliamentary Privilege Act 1858*, *Parliamentary Privilege Act 1885*, *Parliamentary Privilege Act 1957*	Each House of Parliament has the power to order the attendance of persons and papers, issue warrants, and punish summarily for certain contempts by imprisonment for the duration of the session Certain powers to punish contempts are also set out in the standing orders of each House, and include the power to suspend (Council only), fine and imprison. The last contempt case involving a member occurred in 1976 (the Privileges Committee found that a contempt had not been committed)	Members and non-members

Western Australia	Bicameral	*Parliamentary Privileges Act 1891*	Provides that the privileges of the Parliament are to be the same as those enjoyed and exercised by the British House of Commons at the time of the passing of the Act In December 1994 the Legislative Council authorised the President to issue a warrant for the arrest and imprisonment of Mr Easton (a non-member) for a maximum of seven days for refusing to comply with one of its orders In June 1999 the Legislative Council adopted the findings of a December 1998 report by a Select Committee of Privilege. The committee found that a senior officer of the Department of Resources Development was in contempt for failing under summons to produce certain documents, and recommended that a fine of $1,500 be imposed	Members and non-members
Northern Territory	Unicameral	*Legislative Assembly (Powers and Privileges) Act 1992*	The Assembly has the power to impose fines of $5,000 for individuals and $25,000 for corporations, and imprison individuals for up to six months In 1991 a journalist found guilty of contempt for the unauthorised publication of a document was ordered to apologise at the Bar of the Assembly There have been no contempt cases since the commencement of the 1992 Act	Members and non-members
Australian Capital Territory	Unicameral	*Australian Capital Territory (Self-Government) Act 1988* Legislative Assembly (Privileges) Bill	The privileges of the Legislative Assembly are those enjoyed by the House of Representatives. However, the Act provides that the Assembly cannot fine or imprison a person Currently before the Assembly	Members and non-members

Austria	Bicameral	Federal Law on Rules and Procedure Code of Criminal Procedure, section 159ff	The National Council and Federal Council have authority to summon any person to appear before a parliamentary committee. This regulation has not been used over the past two decades Investigating committees can request that a penalty for contempt, such as a fine, be imposed on a person who refuses to testify before a committee.	Members and non-members
Belgium	Bicameral	Criminal Code (Article 275) Senate standing orders 1880 statute	Imprisonment for up to six months or two years if offence takes place during a session Members may be suspended for remaining part of session for acts of violence Assembly may punish a person for failure to give evidence or produce documents to a committee of inquiry. Penalties include imprisonment for up to six months or a fine. There have been no recent contempt cases	Members and non-members
Canada Federal Parliament	Bicameral	*Constitution Act 1867*, repeated in section 4, *Parliament of Canada Act* (1985)	The Senate and the Commons have the same powers to punish contempt. Types of punishment include censure, imprisonment and expulsion. Neither House may impose a fine No recent contempt cases are cited	Members and non-members
Provincial/Territorial Legislatures		*Constitution Act 1867* Common law	The provincial legislatures have the authority to legislate much the same immunity as the Canadian Commons, and all have done so. Territorial privilege is not the same as that enjoyed by members of either the Federal Parliament or the provincial houses of assembly. All territories rely on the common law which provides their legislatures with	Members and non-members

Provincial/Territorial Legislatures (continued)			such privileges and immunities as are incidental and necessary to enable them to perform their legislative functions	
Denmark	Unicameral	Standing Orders Committee The Parliament does not possess powers to coerce or punish members and non-members for disobeying an order to give evidence before a committee and produce documents	A member can be suspended from the chamber for up to fourteen days. There have been no cases involving suspension	Members
Finland	Unicameral	Inherent powers The Constitution	The Parliament and its committees are empowered to obtain the information required to carry out their normal functions The Speaker is empowered under section 31.2 to suspend a member for a maximum of two weeks, and under section 28.3 to strip members of their representative functions, by means of a resolution supported by two-thirds of the votes cast	Members and non-members
France	Bicameral	Ordinance 58–11002 (1958), Article 6 Criminal code, clauses 434–13, 14 and 15	Any person who fails to appear before a parliamentary committee, and refuses to give evidence or take an oath, is liable to imprisonment for two years or a fine up to 50,000 Francs Persons who supply false evidence to a committee or interfere with a witness can be prosecuted at the request of the President of that committee or, if the offence has taken place after the release of the committee's report, at the request of the office of the relevant chamber of parliament	Members and non-members
Germany	Bicameral	Standing Orders	The President of the lower house (Bundestag) has the power to maintain order in the chamber, and authorise the state police to gain access to the parliamentary	Members and non-members

Germany (continued)			precinct. During committee hearings the chair exercises the power to maintain order. Under the standing orders the President can expel a member from the chamber for a maximum of thirty sitting days during which time the member is also prohibited from participating in committee hearings. Other less serious measures include admonition and rebukes by the President. Members of the public who disrupt proceedings can be removed from the parliament No information is available on the upper house (Bundesrat)	
Italy	Bicameral	The Constitution, Article 82 Criminal code	Authorises the police to enforce an order to appear before, or give evidence to, a committee of inquiry Any person who hinders the operation of Parliament may be imprisoned for no less than ten years. The penalty for disturbing the Parliament is imprisonment for one to five years; the penalty for slander against the Parliament is imprisonment for six months to one year	Members and non-members
Netherlands	Bicameral	The Constitution, Rules of Procedure	Under the Rules of Procedure the Speaker of the Second Chamber (the main legislative house) may exclude a member for one sitting day for violating standing orders. The Bureau of the Second Chamber (Speaker and Vice Presidents) can propose that the chamber prevent a member from attending committee meetings for up to one month for violating the confidentiality of information. The Speaker also has the power (based on convention) to restrict the movement of members inside the parliamentary precinct, and to order the exclusion of non-members from the public gallery. No information is available on the First Chamber. Under the Constitution committees of inquiry have the	Members and non-members

Netherlands (continued)			power to call witnesses to testify under oath, and to ask for police assistance if a witness refuses to appear before a committee.	
New Zealand	Unicameral	*Parliamentary Privileges Act 1865*	The House of Representatives may enforce the following types of punishment for contempt: imprisonment, fines, censure, prosecution, suspension from the House, expulsion, exclusion from the precincts, exclusion from the press gallery, and apology. No recent contempt cases are cited	Members and non-members
Norway	Bicameral	Constitution	Parliament has the power to require that any person appear before it and make a statement, but it does not have the power to compel a person to make a statement or punish a person. Parliament, however, can request the ordinary prosecuting authority to refer a contempt to the courts. A criminal offence committed by a member of Parliament is brought before a Court of Impeachment.	Members and non-members
Sweden	Unicameral	Federal Laws	The Committee on the Constitution of the Riksdag (legislature) can organise hearings with government officials and members of the public, but it cannot coerce anyone to appear at hearings	Members and non-members
Switzerland	Bicameral	Federal Laws	The committees of both houses have the authority to summon civil servants and submit questions to them, subject to the agreement of the government (Federal Council). Members of the government are entitled to attend hearings and supply additional information. The Parliamentary Control Committees are authorised to request from federal services and agencies any official documents and files, or any piece of information whether in oral or written form. The Federal Council can turn down a request for information in certain circumstances	Members
United Kingdom British Parliament	Bicameral	*Bill of Rights 1689* (in particular Article 9), and ancient practice as	Both Houses have the power to punish contempts. Sanctions available are reprimand, imprisonment for	Members and non-members

British Parliament (continued)		recorded in the rolls of Parliament and the journals of each House	remainder of the session, and a fine of unlimited amount (probably only the Lords). The Commons can also suspend and expel members Since 1988, there have been five contempt cases involving the suspension of a total of six members from the House. In 1988 a member who damaged the Mace and failed to apologise to the Speaker was suspended for twenty days. In 1990 a member who failed to register his pecuniary interests was suspended for twenty days without pay. In 1995 two members who accepted payment for the tabling of parliamentary questions were suspended for ten and twenty sitting days, respectively, without pay. And in 1997 a member who failed to register his directorship and shareholdings in a company was suspended for one week without pay In February 2000, the Standards and Privileges Committee found a member guilty of contempt for failing to register directorships, shareholdings and properties, providing misleading information to the parliament, making false allegations, and interfering with witnesses. The committee recommended the member be suspended from the House for one month. The House voted on 1 March to suspend the member for one month, which is the longest suspension of a sitting member found guilty of contempt	
Scottish Parliament	Unicameral	*Scotland Act 1998*	There is no concept of 'privilege' in the sense understood at Westminster Any member who contravenes Section 39 (Members' Interests) is liable on summary conviction to a fine	Members

Scottish Parliament (continued)		Standing Orders	Standing orders provide for the penalty of withdrawal of a member's rights and privileges by the Parliament on a motion of the Standards Committee. A member guilty of an offence under section 25 is liable on summary conviction to a fine or imprisonment for a period not exceeding three months	Members and non-members
United States Congress	Bicameral	Article 1, section 5 (clause 2) of the American Constitution	Congress has several types of punishment available to it. It can expel or censure a member, issue a reprimand or rebuke, or issue a letter of admonition	Members
		Inherent self-help powers	Either House may dispatch its Serjeant at Arms to arrest and imprison anyone found guilty of contempt. Used mainly as a coercive power	Non-members
		Statutory criminal contempt: United States Code, s.192 and s.194 (originating in 1857)	From 1857 the courts, rather than Congress, became the main institution that determined guilt or innocence in contempt cases. It has been more than fifty years since Congress last used its implied contempt powers. A person found guilty of a contempt is punishable by a fine of not more than $1,000 nor less than $100, and imprisonment for not less than one month or more than twelve months	
		Statutory civil contempt (procedure enacted only in the Senate in 1978, as part of the *Ethics in Government Act*)	The Senate can issue an order to a person refusing, or threatening to refuse, to comply with a Senate subpoena. Its main purpose, in the first instance, is to compel obedience	
Congress (continued)			Two successful civil actions have been brought under the statute to enforce Senate subpoenas	
States		State Constitutions	Each house may expel a member with the concurrence of two-thirds of all members elected. State houses have the same inherent powers to punish contempts as the Houses of Congress	Members

Bibliography

Anne M. Butler and Wendy Wolfe, *United States Senate Election, Expulsion and Censure Cases 1793–1990*, Revised Edn, Washington D.C., 1995.

L.M. Barlin (ed.), *House of Representatives Practice*, 3rd Edn, Australian Government Publishing Service, Canberra, 1997.

Carl Beck, *Contempt of Congress: A Study of the Prosecutions Initiated by The Committee on Un-American Activities, 1945–1957*, Da Capo Press, New York, 1974.

Business Bulletin 38/1999, 'Parliamentary Privilege', 6 August 1999, Scottish Parliament.

Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne University Press, Melbourne, 1966.

Enid Campbell, 'Investigating the Truth of Statements Made in Parliament: the Australian Case', *Public Law*, Spring 1998, pp. 125–136.

Commission on Government, Report No. 1, Western Australia, Perth, 1995.

Committee of Privileges [Australian Senate], *Parliamentary Privilege: Precedents, Procedures and Practice in the Australian Senate 1966–1999*, 76th Report, The Senate, Parliament of the Commonwealth of Australia, 1999.

Committee of Privileges [UK House of Commons], *First Report*, Volume 1, House of Commons, Session 1994–95, 3 April 1995.

Congress A to Z, Congressional Quarterly's Ready Reference Encyclopedia, Congressional Quarterly Inc., Washington D.C., 1988.

Congressional Quarterly, *Guide to Congress*, 4th Edn, Congressional Quarterly Inc., Washinton, D.C., 1991.

The Constitution of the United States of America (with explanatory notes), United States Information Agency, 1987.

Ernest J. Eberling, *Congressional Investigations: A study of the Origin and Development of the Power of Congress to Investigate and Punish for Contempt*, Columbia University Press, New York, 1928.

Harry Evans (ed.), *Odgers' Australian Senate Practice*, 9th Edn, Department of the Senate, Canberra, 1999.

Harry Evans, 'Parliamentary Privilege: Changes to the law at the Federal level', *University of NSW Law Journal*, vol. 11, no. 2, 1988, pp. 31–47.

Harry Evans, 'Franca Arena and Parliamentary Privilege', *Constitutional Law and Policy Review*, vol. 1, no. 1, May 1998, pp. 1–4.

Alistair Fraser, W.F. Dawson, Hohn H. Holtby (eds), *Beauchesne's Rules and Forms of the House of Commons of Canada with Annotations, Comments and Precedents*, 6th Edn, Carswell, Toronto, 1989.

John A. Fraser, *The House of Commons at Work*, Les Editions de la Cheneliere Inc. Montreal, 1993.

Ronald Goldfarb, *The Contempt Power*, Columbia University Press, New York, 1963.

John C. Grabow, *Congressional Investigations: Law and Practice*, Prentice Hall Law and Business, Clifton NJ, 1988.

Gareth Griffith, *Parliamentary Privilege: Use, Misuse and Proposals for Reform*, Briefing Paper No. 4, NSW Parliamentary Library Research Service, 1997.

Half-yearly Bulletin, Australian Chapter of the Society of Clerks-at-the-Table, No. 1, January 1999.

James Hamilton, *The Power to Probe: A Study of Congressional Investigation*, Random House, New York, 1976.

House Committee on Government Reform and Oversight, *Contempt of Parliament*, Report by the Committee on Government Reform and Oversight, Together With Additional Views, Minority Views and Additional Minority Views on the Refusal of Attorney General Janet Reno to Produce Documents Subpoenaed by the Government Reform and Oversight Committee, [US] House of Representatives Report 105–728, 17 September 1998.

Patricia M. Leopold, 'Report of the Joint Committee on Parliamentary Privilege', *Public Law*, Winter 1999, pp. 604–615.

Sir Donald Limon and W.R. McKay (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd Edn, Butterworths, London, 1987.

David McGee, *Parliamentary Practice in New Zealand*, 2nd Edn, 1994.

Peter McNab, 'Parliamentary Privilege in the Northern Territory: the "Mulholland Report" Affair and Beyond', *Legislative Studies*, vol. 10, no. 1, 1995, pp. 10–34.

Ian McNeill, *Parliamentary Privilege*, Information Paper No. 7, Legislative Assembly of the Northern Territory, October 1999.

J.P. Joseph Maingot, *Parliamentary Privilege in Canada*, 2nd Edn, House of Commons and McGill–Queens University Press, 1997.

Christos Mantziaris, *Egan v Willis and Egan v Chadwick: Responsible Government and Parliamentary Privilege*, Research Paper No. 11, Department of the Parliamentary Library, Canberra, 1999–2000.

Mason's Manual of Legislative Procedure, The American Society of Legislative Clerks & Secretaries in cooperation with the National Conference of State Legislatures, West Publishing Co., St. Paul, Minn., 1989.

Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, Cheneliere/McGraw-Hill, Montreal, Ottawa, 2000.

Members' Ethics and Parliamentary Privileges Committee, *Parliamentary Privilege in Queensland*, Issue Paper No. 3, July 1997, Legislative Assembly, Queensland.

Members' Ethics and Parliamentary Privileges Committee, *Report on a Matter of Privilege—Matter Referred to the Committee on 25 March 1991*, Report No. 31, 27 May 1999, Legislative Assembly, Queensland.

Members' Ethics and Parliamentary Privileges Committee, *Report on a Matter of Privilege—A Member Making a Deliberately Misleading Statement in a 'Dissenting Report'*, Report No. 35, 14 September 1999, Legislative Assembly, Queensland.

NSW Standing Committee on Parliamentary Privilege and Ethics, *Report on Inquiry Into the Conduct of the Honourable Franca Arena MLC*, Report No. 6, Legislative Council, Parliament of New South Wales, 1998.

Parliamentary Debates, [UK] House of Commons, 20 April 1988, p. 960; 7 March 1990, p. 976; 20 April 1995, p. 382).

Morton Rosenberg, *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, CRS Report for Congress 95–464A, 1995.

Select Committee on Members' Interests, *First Report*, [UK] House of Commons, Session 1989–90, 19 February 1990.

Select Committee of Privilege, [Western Australia] *Report of a Select Committee of Privilege on a Failure to produce Documents Under Summons*, Parliament House, Perth, December 1998.

Select Committee of Privilege, [Western Australia] *Report of a Select Committee of Privilege on a Failure to produce Documents Under Summons*, Parliament House, Perth, May 1999.

Jay R. Shampansky, *Congress' Contempt Power*, Report No. 86–83A, Congressional Research Service, Washington D.C., 1986.

Standards and Privileges Committee, [UK] House of Commons, *Fifth Report*, February 2000; *Seventh Report*, May 1999; *Fifth and Sixth Reports*, July 1997.

Table Research Branch, *Privilege in the Modern Context*, [UK] House of Commons, 1990.

The Table, The Journal of the Society of Clerks-At-The-Table in Commonwealth Parliaments, Vol. 66, 1998.

UK Joint Committee on Parliamentary Privilege, *Parliamentary Privilege—First Report*, House of Commons and House of Lords, April 1999.

WA Legislative Council, *Hansard*, Western Australian Parliament, June 1994, p. 2226; August 1994, p. 2835; December 1994, pp. 9974–10001.

Norman Wilding and Philip Laundy, *An Encyclopedia of Parliament*, St. Martin's Press, New York, 1971.

David Wilson, 'The First Question of Privilege', *The Table*, The Journal of the Society of Clerks-At-The-Table in Commonwealth Parliaments, Vol. 67, 1999, pp. 43–49.