



**PARLIAMENT OF THE
REPUBLIC OF TRINIDAD AND TOBAGO**

H.O.R PAPER NO. 11 / 2009

MP PARL: 14/1/1

**THE SECOND REPORT
OF THE
COMMITTEE OF PRIVILEGES
OF THE
HOUSE OF REPRESENTATIVES
(2009 Session)**

On the Alleged Deliberate Misleading of the House
by the Member for Siparia

Together with the Minutes of the proceedings

**The Second Report of the Committee of Privileges of the House of Representatives (2009 session) on
the alleged Deliberate Misleading of the House by the Member for Siparia**

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The Committee of Privileges

The Committee of Privileges is appointed each session by the Speaker in accordance with Standing Order 75(1) to consider and report to the House of Representatives on any matter which appears to affect the powers or privileges of the House as may be referred to it.

Membership – 2009 Session

Mr. Barendra Sinanan	-	Chairman
Mr. Colm Imbert	-	Member
Ms. Penelope Beckles	-	Member
Ms. Christine Kangaloo	-	Member
Mr. Stanford Callender	-	Member
Dr. Roodal Moonilal	-	Member
Dr. Tim Gopeesingh	-	Member
Mrs. Kamla Persad-Bissessar	-	Member

Secretarial Assistance

The Clerk of the House, Ms. Jacqui Sampson, served as Secretary to the Committee, with Ms. Lily Broomes and Mr. Julien Ogilvie, serving as Assistant Secretaries.

Matter Referred

Friday 01 May, 2009

At a sitting of the House held on Friday 1st May, 2009, the Honourable Neil Parsanlal, Minister of Information (*Member for Lopinot/Bon Air West*) moved a motion of privilege in accordance with Standing Order 27, alleging that the Member for Siparia committed a contempt of the House by deliberately misleading the House during the debate on the second reading

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of the Integrity in Public Life (Amendment) Bill, 2009 on Friday April 03, 2009.

Essentially, he complained that the member for Siparia deliberately misled the House –

By stating that His Excellency, The President did not act on correspondence sent to him by the Hon. Leader of the Opposition in relation to the appointment of persons to the Integrity Commission;

By stating that while the Hon. Leader of the Opposition had complied with the constitutionally required consultation process, His Excellency did not act with sufficient expediency.¹

Friday 01 May, 2009

The Speaker ruled that a *prima facie* case had been made out and referred the following matter to the Committee of Privileges

Meetings

To date your Committee has held Nine (9) meetings on the following dates:

1. Friday May 08, 2009;
2. Friday May 22, 2009;
3. Friday June 05, 2009;
4. Wednesday July 01, 2009;
5. Wednesday July 22, 2009;
6. Wednesday September 23, 2009.
7. Friday October 09, 2009
8. Friday October 30, 2009
9. Friday November 06, 2009.

The Minutes of the meetings are at **Appendix 5**

¹ Paragraph amended

The Facts of the Matter

At a sitting of the House of Representatives held on Friday 03, April, 2009 the Member for Siparia joined the debate on the Second Reading of a Bill entitled “An Act to amend the integrity in Public Life Act, chap. 22:01”.

Nature of statements made

2. During her contribution to the debate, the Member for Siparia questioned the conduct of His Excellency, The President in relation to the requisite consultation process between His Excellency and the Hon. Leader of the Opposition on the appointment of an Integrity Commission pursuant to section 4(4) of the Integrity in Public Life Act, 2000. The following excerpts of her contribution are relevant:

*“Madam Deputy Speaker, you may well know that the procedure for appointing these commissioners under section 4 of the existing law is that the President consults with the Leader of the Opposition and the Prime Minister and appoints the commissioners. **I am advised by the Leader of the Opposition that he has already responded to correspondence that was sent by His Excellency.** So what is the problem? Why can we not have an integrity commission?”*

*“We are fracturing our Constitution in this way. Section 138 mandates there shall be an integrity commission, for the commissioners to be appointed as prescribed; the Integrity in Public Life Act prescribes the appointment. **The Leader of the Opposition has complied with the consultation process by responding to the correspondence. What is THE problem?**”*

“This may not be the place, but I did write to His Excellency. I have a copy of the letter here and I am awaiting a reply from him. But, you know, I am seriously considering a discussion with my colleagues, that if we do not get a response to this very shortly—I think our ordinary letters will no longer be appropriate—we may have to issue a pre-action protocol letter to go for judicial review with respect to the delay by the President in appointing the commissioners.”

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Matter of privilege raised

3. At a sitting of the House of Representatives held on Friday 01 May, 2009, the Honourable Neil Parsanlal, Minister of Information (Member for Lopinot/Bon Air West) raised a matter of privilege in relation to the statements made by the Member for Siparia on the consultation process between His Excellency, The President and the Leader of the Opposition. In making his submission to the House, the Minister of Information contended that the Member for Siparia misled the House in that she knew or ought reasonably to have known that her allegations made against His Excellency were incorrect. In accordance with Standing Order 27, he moved that this matter be referred to the committee of Privileges.

Matter referred

4. On that day, after considering the submissions of the Member for Lopinot/Bon Air West and the contribution of the Member for Siparia during the debate held on Friday April 03, 2009, the Speaker ruled that a prima facie case of breach of privilege was established and referred the matter to the Committee of Privilege for its consideration and report.

Personal Explanation offered

5. At a sitting of the House of Representatives held on Monday May 04, 2009 the Member for Siparia offered a Personal Explanation with respect to her statements made during her contribution on the debate on the Integrity in Public Life (Amendment) Bill, 2009.

6. In her explanation the Member for Siparia said that her statements were based on the advice of the Leader of the Opposition and that she had no reason to believe that what she was saying would be misleading or erroneous. She explained that she subsequently became aware of what had transpired with the correspondence between the Office of President and the Office of Leader of the Opposition and apologized to the House for the inaccuracies in her April 3rd statement.

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Preliminary Issues

Withdrawal of Member

7. At the Second Meeting of your Committee held on Friday May 22, 2009, Mrs. Persad-Bissessar recused herself from the Committee's proceedings during its deliberations on this matter. On Friday June 12, 2009, Mr. Subhas Panday was appointed to serve on the Committee, temporarily, until your committee completed its deliberations on the matter involving Mrs. Persad-Bissessar.

Observation of proceedings by the accused

8. Your Committee confirmed *inter alia* that a Member of the Committee who has a direct interest in a matter before the Committee could be present during the Committee's proceedings, but would not be allowed to participate. As a consequence, the Member for Siparia was allowed to be present during the deliberations on the matter, but did not participate.

Committee's Deliberations on the Matter

9. During our third Meeting, your Committee determined that the question for consideration and report was:

“whether the Member for Siparia deliberately misled the House during her contribution in the House on April 03, 2009.”

10. To assist in its deliberations on the matter, your Committee requested that the Secretariat conduct research on the following:

- i. the meaning of willful or deliberate misleading the House;
- ii. the meaning of the words 'ought to have known'.

11. Your Committee took particular note of relevant research material comprising learning and interpretations from several jurisdictions in the

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Commonwealth, on the nature of the contempt of deliberately misleading the House.

12. Your Committee considered authoritative, the definition of the contempt to be found in David Mc Gee's *Parliamentary Practice in New Zealand (3rd Edition)*. According to Mc Gee, there are three elements to be established when it is alleged that a Member is in contempt by reason of a statement that he/she has made in the House:

- i. The statement must in fact, have been misleading;
- ii. It must be established that the member making the statement knew (or ought to have known) at the time that the statement was made that it was incorrect; and
- iii. In making the statement the member must have intended to deliberately mislead the House².

13. McGee adds that “for a misleading of the House to be deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead”³.

14. In addition, where the member can be assumed to have personal knowledge of the facts and made the statement in a situation of some formality (for example, by personal explanation), a presumption of an intention to mislead the House will more readily arise.

Procedure for inquiry

15. Your Committee agreed to proceed with its investigation in the following stages:

- consider the personal explanation made in the House by Mrs. Persad-Bissessar;
- consider the nature of the allegation made; and

² Pg. 653

³ Pg. 654

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- allow Mrs. Persad-Bissessar to give a further explanation for her actions.

The inquiry

Consideration of Personal Explanation

16. The personal explanation proffered by the Member for Siparia was considered during the third Meeting of your Committee. It was noted that Mrs. Persad-Bissessar had offered an apology to the House for her conduct; however the Member did not offer a direct apology to His Excellency, The President.

Consideration of the nature of the allegation

17. Your Committee called for and obtained a number of documents, namely:

- (i) correspondence exchanged between the Office of the President of the Republic and the Office of the Member for Siparia;
- (ii) the pre-action protocol letter sent to His Excellency, The President Mrs. Persad-Bissessar on behalf of Mr. Chandresh Sharma and others;
- (iii) Newspaper articles relevant to the matter;

18. These documents assisted us in comprehending the circumstances which surrounded the making of the statement by the Member for Siparia. We also called for and obtained an opinion from the Secretary of the Committee on the meaning of the phrase “ought to have known” which is the alternative state of knowledge in the second element to be established.

Evidence/Examination

19. Having considered the nature of the contempt of deliberately misleading the House, including the preconditions for such contempt to be established, your committee called for and examined the Member for Siparia

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in order to acquire further clarification on the matter and to provide a further opportunity for the Member to explain her actions. Mrs. Persad-Bissessar was examined by your Committee at its Fifth Meeting held on Wednesday July 22, 2009.

The Verbatim Notes on the examination of the Member for Siparia is at Appendix 5

Findings

His Excellency writes the Leader of the Opposition

20. In her speech to the House of April 3, 2009, Ms. Persad-Bissessar alleged that despite the response of the Leader of the Opposition to correspondence received on the matter from the President, His Excellency had failed to act with sufficient diligence. However, our investigations revealed that at the time this allegation was made, His Excellency had not yet written to the Leader of the Opposition on the matter. The facts revealed that it was on April 09, 2009 that the President wrote to the Leader of the Opposition advising of the names of persons whom His Excellency desired to appoint to the Integrity Commission, with a request that the Leader of the Opposition indicate whether he had any objections. There had been no earlier correspondence from His Excellency to the Leader of the Opposition on this matter.

Misplacement of correspondence sent to the Leader of the Opposition

21. We heard from Mrs. Persad-Bissessar that the Office of the Leader of the Opposition had misplaced the April 9th correspondence from His Excellency.

Pre-action protocol letter sent to His Excellency, The President

22. Mrs. Persad-Bissessar in her capacity as an Attorney-at-Law acting on behalf of Mr. Chandresh Sharma, MP sent a pre-action protocol letter on April 28th, 2009 to His Excellency, the President. The pre-action protocol letter was sent in relation to the alleged failure and/or inaction and/or omission of His Excellency to appoint the Chairman and other members of the Integrity Commission

REPORT

23. Your committee, by a majority conclude as follows:

The First Element

24. The statement made by the Member for Siparia during her contribution on the Integrity in Public Life (Amendment) Bill, 2009 was in fact misleading, in that it misrepresented the actual events that transpired in relation to the manner in which correspondence was exchanged between His Excellency, The President and the Leader of the Opposition.

The Second Element

25. There are two parts to this element: actual knowledge and constructive knowledge.

26. A majority of your Committee felt that, based on the evidence obtained, at the time she made the statement, Mrs. Persad-Bissessar did not know that the statement was untrue (actual knowledge).

27. With respect to constructive knowledge, your Committee remained divided. We accept that an investigative body may impute to a person knowledge, only upon the presumption founded on very high evidence (beyond a reasonable doubt) that the person had the means of knowing. After a careful consideration of all the evidence, the majority of members believed that the requisite standard of proof was obtained to impute knowledge to the Member for Siparia. However, a minority did not agree that the evidence was sufficient to conclude that the member could be considered to have had the means of knowledge and believe that it was undeterminable whether the Member was in a position of such proximity that she could be taken to be privy to information in the possession of the Leader of the Opposition.⁴

⁴ Paragraphs amended

The Third Element

28. There was general agreement that the Member for Siparia did not intend to mislead the House of Representatives. By a majority, we accept that the Member was under the assumption that the information that she was conveying to the House was accurate insofar as the source of the information was the Leader of the Opposition himself.

29. Additionally, your Committee believes that the Member for Siparia acted in good faith when she proffered a Personal Explanation for her conduct after it was determined that some of the contents of her speech were inaccurate.

Observations

30. Free speech is the most important parliamentary privilege and members should be careful not to abuse it. Ultimately the responsibility lies with the individual member. Therefore a Member of Parliament must exercise due diligence before making utterances⁵. Failure to exercise due caution has resulted in several improper and unwarranted remarks being made in Parliament. Although the statements of Members are guarded by Parliamentary privilege as prescribed by section 55 of the Constitution, Members are obligated to ensure that the statements that they make are not scandalous and or misleading so as cause/inflict undue damage to among other things, the reputation, credibility and reasonable perception of an individual, group, or entity.

31. The privilege of freedom of speech in Parliament places a corresponding duty on every member to use the freedom responsibly. The duty is all the greater now that the debates of the two Houses are broadcast live on the Parliament's television and radio channels and streamed on the Internet to anywhere in the world.

32. Speaker John A. Fraser of the House of Commons Canada had this to say about the importance, benefits and dangers of the right of parliamentary freedom of speech:

⁵ as per *Parliamentary Privilege-First Report UK Parliament (1998-1999 Session*

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"There are only two kinds of institutions in this land to which this awesome and far reaching privilege (of freedom of speech) extends — Parliament and the legislatures on the one hand and the courts on the other. These institutions enjoy the protection of absolute privilege because of the overriding need to ensure that the truth can be told, that any questions can be asked, and that debate can be free and uninhibited..... Absolute privilege ensures that those performing their legitimate functions in these vital institutions of Government shall not be exposed to the possibility of legal action.....This is necessary in the national interest and has been considered necessary under our democratic system for hundreds of years. It allows our judicial system and our parliamentary system to operate free of any hindrance.

Such a privilege confers grave responsibilities on those who are protected by it. The consequences of its abuse can be terrible. Innocent people could be slandered with no redress available to them.....Reputations could be destroyed on the basis of false rumour. All Hon Members are conscious of the care they must exercise in availing themselves of their absolute privilege of freedom of speech."

33. Your Committee endorses the words of Speaker Fraser and further agrees that it would be derelict in its duty if it did not remind members of these important aspects of the privilege of freedom of speech which are bestowed on each of us for the carrying out of our duties to the House and to the citizenry.

34. The strongest safeguard against abuses of freedom of speech in Parliament is the self-discipline of individual members. We suggest therefore that before making a potentially damaging accusation against an individual, a member should take steps to ensure that his/her source of information is reliable and, depending on the nature of the allegation, that there is some evidence of truth to the allegation. Your Committee is not implying that, before they speak, Members need to have evidence that would satisfy a court of law. However, we feel that Members' speech in such circumstances should be based on something firmer than mere rumour or supposition.

35. Additionally your Committee believes that every member has a duty to each other to ensure that advice and information offered is to the best of their knowledge accurate and or tenable.

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Conclusion

36. A majority of your Committee concluded that no contempt had been committed. However, two members felt that a contempt was committed. Likewise, a majority of your Committee regretted the fact that the Honourable Member for Siparia did not see it fit to also offer an apology to His Excellency, The President and recommended that the Member should proffer an apology to His Excellency, The President, with respect to her unsubstantiated references to the conduct of His Excellency during the consultation process for the appointment of Commissioners to the Integrity Commission.

37. Finally, your Committee wishes to re-emphasise the requirement for Members to be cautious as to how they make reference to His Excellency, The President in their contributions in the House.

Respectfully Submitted,

Mr. Barendra Sinanan
Chairman

Ms. Penelope Beckles
Member

Mr. Colm Imbert
Member

Ms. Christine Kangaloo
Member

Mr. Stanford Callender
Member

Dr. Roodal Moonilal
Member

Dr. Tim Gopeesingh
Member

Mr. Subhas Panday
Member

November 13, 2009



**PARLIAMENT OF THE
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H.O.R PAPER NO. 11 / 2009

MP PARL: 14/1/1

MINORITY REPORT

**COMMITTEE OF PRIVILEGES
OF THE
HOUSE OF REPRESENTATIVES
(2009 Session)**

On

The Alleged Deliberate Misleading of the House by
the Member for Siparia

INTRODUCTION

1. The undersigned members, constituting a minority within the Committee of Privileges (the Committee) hereby submit this report to be annexed to the Committee's Report (the Report) on the matter of the "alleged deliberate misleading of the House by the Member for Siparia".
2. The undersigned members **agree** with so much of the conclusion of the Report (at para 36 of the Report) which states that no contempt has been committed by the Member for Siparia.
3. The undersigned members **disagree** with that part of the Report which states that the Member for Siparia had constructive knowledge (paragraph 27 of the Report) and say that the evidence does not support such a conclusion.

PROFFER APOLOGY

4. The undersigned members **disagree** with that part of the conclusion of the Report (at para 36) which states that the Member for Siparia should proffer an apology. Our reasons are set out hereunder.
5. The body of the Report is incomplete in several material respects; particulars not referred to include the following:
 - (i) At the Second Meeting of the Committee, the Committee discussed the nature of the allegation made against the Member for Siparia by the Member for Lopinot/Bon Air West; one member contended that there were two separate privilege matters raised by the Member for Lopinot/Bon Air West and referred to the Committee, namely:
 - a) The imputing of improper motives against the president; and
 - b) The deliberate misleading of the House(see para 4.5 of Minutes of Second Meeting)
 - (ii) At the said Second Meeting of the Committee, the Committee requested its Secretariat to conduct research on the following:

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- a. What are the circumstances under which a Member could be found guilty of the contempt of deliberately misleading the House;
 - b. What are the norms of punishment (the consequences) for the contempt of deliberately misleading the House;
 - c. Whether bringing the Office of the President into disrepute by a Member while speaking in a debate in the House can amount to contempt of Parliament;
 - d. Precedents in relation to (c) above;
 - e. Whether the Committee could raise another matter against a Member who is already the subject matter before the Committee, and if so, the procedure to be followed;
 - f. Precedents on what impact (if any) does an apology for an alleged breach of Privilege have on further proceedings on the matter.
- (iii) No particulars are given in the Report of the research prepared by the secretariat and considered by the committee with respect to issues c, d, and e; instead the Report concentrates on the first two issues a and b and the last issue f.
- (iv) The research provided by the Ms. J. Sampson and Mr. J. Ogilvie of the Committee's Secretariat dated 26th May 2009 with respect to issues c, d and e was, *inter alia*, as follows:

“Whether the bringing of the Office of President into disrepute by a Member while speaking in a debate in the House can amount to a contempt of the House?”

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12. *This question arose in light of a Member's contention that the member for Lopinot/Bon Air West raised two separate matters of privilege, namely:*

- (i) That the Member for Siparia imputed improper motives against the President and that*
- (ii) Whilst doing so, the Member deliberately mislead the House.*

.....

20. *This settled practice governed by rules of procedure, also exists in Trinidad and Tobago. The Standing Orders of the House of Representatives impose firm restrictions against the use of the President's name....*

21. *Consistent with established practice in the jurisdictions referred to and elsewhere, it has been held that such action by a Member gives rise to the disciplinary powers of the House itself contained in standing orders as opposed to the raising of a privileges investigation, after the fact. Speaker Sinanan in ruling on a question of privilege which alleged similar breaches held that a breach of a Standing Order by a Member is a matter of Order and not a question of privilege. (emphasis added)*

Whether there are precedents of the contempt referred to in the previous section?

22. *No such precedent was found.*

Whether the Committee could raise another matter against a Member who is already the subject of a matter before the Committee, and if so, the procedure to be followed

23. *The procedure for raising a question of privilege is set out in standing order 27 of the House of Representatives. This means that again, consistent with the practice that exists in other jurisdictions, a question or privilege must first be raised in the House....*

24.....

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25. No precedent was found of a Committee of Privilege raising another allegation of breach/contempt against a member or other person who was the subject of an investigation before it. In fact no precedent was found of a Committee of Privilege going beyond the terms of its reference and proceeding to investigate a matter not validly before it."

A COPY OF THE SECRETARIAT'S RESEARCH IS ATTACHED AS APPENDIX A

ONE ALLEGATION OF BREACH/CONTEMPT

6. At its Third Meeting, the Committee considered the Research prepared by its Secretariat and noted that one question was to be determined, namely whether the Member for Siparia deliberately misled the House during her speech on April 03, 2009. Thereafter the deliberations of the Committee were concerned with that question.
7. The Committee therefore did not have before it any issue with respect to an alleged breach/contempt of bringing the Office of the President into disrepute.

NO OFFENCE EXISTS

8. The research provided makes it clear that making reference to the conduct of the President in a speech to the House does not constitute a breach of privilege/contempt (paragraphs 12-22 of the Secretariat's Research).

NOT WITHIN TERMS OF REFERENCE

9. The research provided and the facts of the matter make it clear that no allegation of breach/contempt with respect to bringing the Office of the President into disrepute was validly before the Committee (paragraphs 23-25 of the Secretariat's Research).

NO JURISDICTION TO RAISE ANOTHER ALLEGATION

- 10.** The research makes it clear that no precedent was found of a Committee of Privilege raising another allegation of breach/contempt against a member who was the subject of an investigation before it (paragraph 25 of the Secretariat's Research). The Committee therefore has no jurisdiction to raise another allegation against the Member for Siparia in addition to that contained in their terms of reference by resolution of the House and which was validly before it. Likewise the Committee has no jurisdiction to recommend a sanction against the Member for Siparia for an allegation of a breach/contempt not validly before it.

NO OFFENCE COMMITTED

- 11.** The Report concludes that no contempt was committed.

NO JURISDICTION TO RECOMMEND PUNISHMENT / SANCTION

- 12.** The Committee has no jurisdiction to recommend punishment/sanction, (namely, that the Member for Siparia proffer an apology) for a breach/contempt offence which does not exist nor for a breach/ contempt offence which has not been committed. To do so is to strike at the core of the fundamental tenets of justice and the rule of law.
- 13.** Moreover, there is precedent in our own jurisdiction in this session in the UDECOTT matter when the Committee had noted that whilst UDECOTT was in contempt of the House for statements made against the Member for Caroni East and recommended that the sanction against UDECOTT be that UDECOTT proffer an apology to the House, the Committee noted that no apology was required to be made to the Member for Caroni East whom they had maligned.
- 14.** While a recommendation carries no legal force or obligatory power as a directive, it is an instrument of indirect action aimed at inducing and/or persuading the receiver of the recommendation to act in a particular manner. This is effectively the imposition of a sanction.

RECOMMENDATIONS

15. In the circumstances, we cannot support that part of the conclusion of the Report which recommends that the Member for Siparia should proffer an apology. For the above reasons, we ask that Members of the House amend the Report by deleting the said recommendation that the Member for Siparia offer an apology.

Respectfully Submitted,

Sgd
Dr. Roodal Moonilal
Member

Sgd
Dr. Tim Gopeesingh
Member

Sgd
Mr. Subhas Panday
Member

November 13th , 2009

APPENDIX A

RESPONSES/RESEARCH IN RELATION TO THE QUESTIONS RAISED BY THE COMMITTEE OF PRIVILEGES AT PARAGRAPH 4.6 OF THE MINUTES TO THE SECOND MEETING (2009) SESSION OF THE COMMITTEE OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES.

What are the circumstances under which a Member could be found to be guilty of the contempt of deliberately misleading the House?

1. The following are the authorities which were referred to in an effort to provide the Committee with an answer to this question:

A. UNITED KINGDOM

2. Under the heading Misconduct of Members or Officers May's states that;

***"The Commons may treat the making of a deliberately misleading statement as contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt."**¹*

B. NEW ZEALAND

3. David Mc Gee, QC, in *Parliamentary Practice in New Zealand* (Third Edition)² explains:

"Deliberately misleading of the House

It is contempt deliberately to attempt to mislead the House or a committee, whether by way of a statement, in evidence or in a petition. This example of contempt, while always potential, was given explicit recognition in 1963 when, following a political cause célèbre (the Profumo affair), the House of Commons resolved that a former member who had made a personal statement to the

¹ Erskine May, *Parliamentary Practice*, 23rd Edition, 2004 p 132 – *the Profumo case attached*.

² Page 653-654

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House which he subsequently acknowledged to be untrue had committed a contempt of the House.

The contempt can be committed by anyone taking part in parliamentary proceedings. **It consists of the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew at the time was inaccurate or at least ought to have known was inaccurate.**

Members deliberately misleading the House

There are three elements to be established when it is alleged that a member is in contempt by reason of a statement that the member has made:

- the statement must, in fact, have been misleading;
- it must be established that the member making the statement knew at the time the statement was made that it was inaccurate;
- and, in making it, the member must have intended to mislead the House.

For a misleading of the House to be deliberate, there must be something in the nature of the incorrect statement that indicates an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters about which the member can be aware only in an official capacity. **But where the member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way of personal explanation), a presumption of an intention to mislead the House will more readily arise."**

C. AUSTRALIA

4. *House of Representatives Practice* Fifth Edition, I.C. Harris (Ed.) states that:

"The circumstances surrounding the decision of the House of Commons in *Profumo's Case* are of importance because of the guidance provided in cases of alleged misrepresentation by Members. Mr. Profumo has sought the opportunity of making a personal statement to the House of Commons to deny the truth of allegations currently being made against him. Later he was forced to admit that in making his personal statement of denial to the House, he had deliberately misled the House. As a consequence of his actions he resigned from the House,

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which subsequently agreed to a resolution declaring him guilty of a grave contempt...³”

D. INDIA

5. Kaul and Shakhder⁴ explain that;

“Cases not amounting to a Breach of Privilege or Contempt of the House

If any statement is made on the floor of the House by a Member or Minister which another member believes to be untrue, incomplete or incorrect, it does not constitute a breach of privilege or contempt of the House, it has to be proved that the statement was not only wrong or misleading but it was made deliberately to mislead the House. A breach of privilege can arise only when the member or the Minister makes a false statement or an incorrect statement wilfully, deliberately and knowingly”

6. In *Rajya Sabha at Work*, Narain (ed.) (2006)⁵ explains in addressing the issue of contempt of Parliament states that:

“Making a deliberately misleading statement in the House

In the opinion of the Committee (Committee of Privileges of the Rajya Sabha) it follows from the above observation **that acts which mislead or tend to mislead must be done wilfully with the intention to mislead or deceive. Thus, the element of deliberateness is an essential ingredient implicit in the alleged offence of deliberately misleading the House.”**

7. In a matter that was raised in Rajya Sabha on January 29th, 1980, during *Special Mentions*, Sarvashri Rabi Ray, Lal K. Advani and some other members stated that Shri N. K. Singh, D.I.G., C.B.I., (a Police Officer) who had been in charge of the 'Kissa Kursi Ka' case, had been apprehended from his house for being taken to Gurgaon. In response, the Minister of Home Affairs and the Minister of State in the Ministry of Home Affairs vehemently denied the claims made by the other Members.

8. On January 30th, 1980 one of the Shri Lal K. Advani sought to raise a question of privilege against the two Ministers for allegedly deliberately misleading the House.

9. In his ruling on the matter the Chairman (President of Rajya Sabha) stated that:

³ Page 729

⁴ *Practice and Procedure of Parliament (India)*, Kaul M. and S. Shakhder, 5th edition, 2001 Page 290

⁵ Page 234

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“The test to apply is: **Does the maker of the statement know that the statement he is making is false or again that the maker is making the statement which he does not believe to be true.** In either case, there would be deliberate misleading.”

In conclusion, the Chairman ruled that the Ministers were themselves misled by their official sources; he believed that “the Ministers were assured of the truth of what they relayed to the House.” He therefore ruled that in the circumstances no question of privilege existed.⁶

What are the norms of punishment (the consequences) for the contempt of deliberately misleading the House?

10. The House may impose the following punishments on a Member found guilty of deliberately misleading the House:

Admonishment or reprimand; or

Suspension from the service of the House, where the House determines that it imperative that it expresses its displeasure more strongly than by admonition or reprimand.

11. The Committee may wish to note the words of Kaul and Shakhder (supra) at page 231 that;

“Each house has the power to punish its members for disorderly conduct and other contempts committed in the House while it is sitting. This power is vested in the House by virtue of its right to exclusive cognizance of matters arising within the House and to regulate its own internal concerns.”

Whether bringing the Office of President into disrepute by a Member while speaking in a debate in the House can amount to contempt of the House?

12. This question arose in light of Mr. Imbert’s contention that the member for Lopinot/Bon Air West raised two separate matters of privilege, namely:

- (i) That the Member for Siparia imputed improper motives against the President; and that

⁶ <http://rajyasabha.gov.in/priv/priv-38.htm> (Rajya Sabha 1980)

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(ii) While doing so, the Member deliberately misled the House.

13. Section 55(1) of the Constitution states that:

“Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Senate and the House of Representatives, there shall be freedom of speech in the Senate and House of Representatives.”

14. Thus, while the speech and action in Parliament may be said to be unquestionable and free, it is well established that this freedom from external influence or interference does not involve any unrestrained licence of speech, within the walls of the House⁷.

15. It is submitted that the consideration of this question by the Committee gives rise to a further question, namely: what is the basis for a determination that an Office has been “brought into disrepute” by the words of a Member in debate. I have looked extensively, without success, for cases in which the words of a Member in debate have been held to lead to this result, although there are a number of cases, where the Courts have held that misuse of office can obviously bring disrepute upon an office⁸. However, the rules of order do prohibit the imputing of improper motives again Members of Parliament or questioning the conduct of His Excellency or other high office-holder except on a substantive motion moved for the purpose.

16. So put another way the question for consideration could be interpreted to be: *whether it is a contempt of the House for a Member, in his speech, to cast aspersions upon the office of the President or impute improper motives against that office at all, and moreso, in such a way to promote public ridicule of that office.*

17. Dave Mc Gee, in his treatise Parliamentary Practice in New Zealand⁹ states that while members are exempt from being punished or disciplined by anyone outside the House on account of what they may have said or done in the course of parliamentary proceedings, they are subject to being held accountable to the House for their conduct in parliamentary proceedings. He states that the House’s rules of order in debate and its rules for disciplining and ultimately suspending members from service in the House subject members to the power that the House possesses to exercise disciplinary powers over its own members. In New Zealand, Members are prohibited from using the sovereign’s or the Governor general’s names disrespectfully in debate or for the purpose of influencing the House in its deliberations.¹⁰

⁷ A paper on {parliamentary Privilege, Procedure and Practice, P.D.T. Achary – Secretary General, Lok Sabha, India, 2008

⁸ See for example the case of *Livingstone v Adjudication Panel for England* [\[2006\] EWHC 2533 \(Admin\)](#)

⁹ 3rd edition, 2005, at page 637

¹⁰ Ibid page 186

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18. May's states that disrespectful use Her Majesty's name is not permitted and that Members have been called to order as well for such action. He adds that they have also been "reprimanded, committed to custody of the Serjeant or even sent to the tower."¹¹

19. In India, members are not expected to make allegations against or cast aspersions on persons of high authority. They are barred from bringing in the name of the president during a debate for the purpose of influencing it¹². Achary explains that Rule 352 and 353 in the Lok Sabha, India guard against the making of unwarranted allegations. When a Member violates this restriction, the Speaker may direct him to discontinue his speech, or order the indecent or undignified words used be expunged from the records, or direct the Member to withdraw from the House.

20. This settled practice governed by rules of procedure, also exists in Trinidad and Tobago. The Standing Orders of the House of Representatives impose firm restrictions against the use of the President's name. Additionally, the imputing of improper motives or the casting of aspersions against persons in specified offices offends particular Standing Orders of the House.¹³

21. Consistent with established practice in the jurisdictions referred to and elsewhere, It has been held that such action by a Member gives rise to the disciplinary powers of the House itself contained in standing orders as opposed to the raising of a privilege investigation, after the fact. Speaker Sinanan in ruling on a question of privilege which alleged similar breaches held that a breach of a Standing Order by a Member is a matter of Order and not a question of privilege.¹⁴

Whether there are precedents of the contempt referred to the previous question

22. No such precedent was found.

Whether the Committee could raise another matter against a Member who is already the subject of a matter before the Committee, and if so, the procedure to be followed.

23. The procedure for raising a question of privilege is set out in standing order 27 of the House of Representatives. This means that again, consistent with the practice that exists in other jurisdictions, a question of privilege must be first raised in the House. This is because a Speaker is required to give his consent/or withhold consent to the investigation of an allegation

¹¹ May's *Parliamentary Practice* 22nd Edition, page 381

¹² *Practice and Procedure of Parliament (India)*, Kaul M. and S. Shakhder, 5th edition, 2000, page 313.

¹³ House of Representatives Standing Order 36

¹⁴ See the Ruling by the Chair on privilege Motion raised by the Member for Diego Martin West, Trinidad and Tobago, Nov. 28, 2008`

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of breach of privilege or contempt before the full House. Additionally, a question of privilege should be raised in the House at the earliest opportunity.

24. Indeed, depending on the nature of the breach/contempt alleged, the House, notwithstanding the procedure set out in Standing Order 27, could proceed against a Member by way of a validly moved and approved resolution of the House.

25. No precedent was found of a Committee of Privilege raising another allegation of breach/contempt against a Member or other person who was the subject of an investigation before it. In fact no precedent was found of a Committee of Privilege going beyond the terms of its reference and proceeding to investigate a matter not validly before it.

Precedents on what impact (if any) does an apology for an alleged breach of privilege have on further proceedings on the matter

26. Mc Gee (supra) page 675 states;

“Most findings of contempt end with the offender tendering an apology, which the House accepts. In most cases the apology or expression of regret is tendered to the privileges committee during its investigation of the question of privilege. **The absence of an expression of regret by an offender is a factor taken into account by the Privileges Committee during its investigation of the question of privilege.**”

27. Achary (supra) at page 18 states that it is a tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by taking no further notice of the matter.

28. In this context, the Committee is referred to the Third Report of the Committee of Privileges, House of Commons, UK (1976-1977), Appendix C, which shows that whenever an unqualified apology was made, the Committee recommended that no further action be taken.

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