At common law a colonial legislature enjoyed no power to punish for contempt, although it could take direct action to enforce obedience to its orders (such as evicting strangers or compelling attendance at a sitting). This prompted the House early in its life to legislate for the power to enforce or vindicate a breach of its privileges, or to punish for contempt of Parliament generally. Under the Parliamentary Privileges Act 1865, the House could punish persons who breached its privileges or committed contempts, without having to turn to the courts for protection. The power to punish for contempt is the power to take direct action that is sanctioned by law.

APPLICATION OF THE POWER TO PUNISH FOR CONTEMPT

The House can impose punishment on a person for breach of any of its privileges. However, by the very nature of these privileges, it is unusual for the House to be involved in enforcing them (except those relating to disclosure of select committee proceedings). Breaches are more likely to be raised in the context of legal proceedings before the courts. Parliamentary privilege is part of the general law of New Zealand and is recognised and applied by the courts (and by all other persons acting judicially), even if issues of privilege are not specifically raised by the parties to the litigation. Cases of breach of privilege only infrequently arise before the House itself.

The House’s power to punish includes the power to punish any act that the House considers to be a contempt, whether or not the action violates a specific privilege. The distinction between a contempt and a breach of privilege is not always clearly drawn; there is a tendency to refer to a “breach of privilege” when what is really meant is a contempt. The Standing Orders of the House list 25 examples of acts or omissions that might constitute contempts, but the list is illustrative rather than exhaustive and does not limit the general definition of contempt.

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2 Fenton v Hampton (1858) 11 Moo PC 347; Egan v Willis (1996) 40 NSWLR 650 (CA).
3 The types of punishment that the House might impose are considered in Chapter 47.
4 Parliamentary Privilege Act 2014, s 8(2) and (3).
5 Awatere Huata v Prebble [2004] 3 NZLR 359 (CA) at [40] per McGrath J.
6 SO 410.
7 SO 409.
“Contempt” is a term that may embrace all breaches of privilege as well as a great many other types of conduct that the House considers to deserve censure. There are many acts not amounting to breaches of privilege that may nevertheless interfere with the work of the House or its members, or represent a serious affront to the dignity of the House. As they are not violations of a specific privilege of the House, the courts cannot protect the House against such acts (unless they are also crimes or civil law wrongs). However, the House is in a preferred position, as its power to punish for contempt extends to punishing these further types of acts that may interfere with the House, but do not amount to breach of a specific privilege, such as the House’s freedom of speech or freedom from arrest). Just as breaches of privilege may be treated as contempts and punished, so may any other acts that “obstruct or impede [the House] in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels [or slanders] upon itself, its Members or its officers”. These types of acts, along with breaches of privilege, may be treated as contempts and punished accordingly.

**Definition of contempt**

There is no formal legal definition of a contempt. Ultimately, the House is the judge of whether a set of circumstances constitutes a contempt. This open-ended understanding of contempt has prompted criticism of the lack of certainty for persons whose conduct the House might regard as objectionable. In 1996 the House sought to define more clearly the types of conduct that it might decide constituted contempts. The House adopted a general definition of contempt, together with a long list of examples of the types of conduct that might fall within the general definition. It was emphasised that these examples were illustrative rather than exhaustive, and that new situations might arise that the House might wish to treat as contempts. Its right to do so is declared in the Standing Orders to remain undiminished.

The House based its general definition of contempt on Erskine May, which is the authoritative treatise on parliamentary law and practice in the United Kingdom. The House may treat as a contempt:

\[
\text{(a) obstructs or impedes the House in the performance of its functions, or} \\
\text{(b) obstructs or impedes any member or officer of the House in the discharge of the member’s or officer’s duty, or} \\
\text{(c) has a tendency, directly or indirectly, to produce such a result.}
\]

This definition refers expressly to the House, members and officers; but contempt may also embrace conduct involving other persons, such as witnesses before select committees and persons who petition the House, or strangers who obstruct or impede the House in discharging its functions. An action that produces, or tends to produce, this result may constitute a contempt of Parliament.

The general definition provides a template for the House to adjudge whether or not a contempt has occurred. However, the specific examples of the types of conduct that may constitute a contempt stand in their own right, as presumed obstructions or impediments to the House, or its members or officers. These

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9 SO 409.
10 SO 410.
12 SO 1.
13 SO 409(1).
examples do not create a two-stage test for contempt. Conduct that falls within an enumerated example will constitute a contempt, but conduct falling outside the examples may still constitute a contempt under the general definition.14

The House decides case by case whether a particular act or omission directly or indirectly obstructs or impedes the House, or one of its members or officers, in the performance of their functions. Deciding whether or not the House should intervene to punish for contempt entails an exercise of judgement and discretion. The Standing Orders provide that the House may take into account the conduct of any person taking part in parliamentary proceedings, and the nature of any action taken against any person because he or she participated in parliamentary proceedings.15

Exercise of the power

The House may declare conduct to be a contempt without any preceding inquiry into it.16 Under the House’s rules, however, a deliberative process is invariably followed before arriving at such a finding. The Speaker decides, in the first instance, if a matter of complaint falls within the definition of contempt, thus warranting investigation by the Privileges Committee. The Speaker rules whether or not the conduct complained of potentially entails breach of a recognised privilege, or falls within an enumerated example of contempt under the Standing Orders, or constitutes a contempt under the general definition. In deciding whether or not to intervene, the House must bear in mind the purpose of parliamentary privilege. The power to punish for contempt is not a power to punish for its own sake. It may justifiably be used only where it is necessary to vindicate the authority of the House when confronted by some obstruction or impediment to the transaction of its business. A potential contempt will not be pursued if there is no need to protect the functioning or authority of the House.17 However, the “double jeopardy” rule applying to courts of law does not apply to the House. A matter may be dealt with as a breach of an order of the House or of a committee,18 and be punished as a contempt of the House.19

The exercise of the power to punish is vested exclusively in the House. It is so important that it must be used with such deliberation that the House may not delegate it.20 No committee (including the Privileges Committee) has ever been delegated the House’s power to impose punishment for a breach of privilege or a contempt. Whatever investigative, preventative, punitive, or other coercive action the House may choose to take, it must avoid acting in a disproportionate or unreasonable way.21 The New Zealand Bill of Rights Act 1990 is binding on the House, which must respect the panoply of basic rights and freedoms that the Act affirms. In Australia, a Senate committee has accepted that, if a public servant refuses at the explicit direction of a Minister to answer a question or produce a document, the legislature’s remedy should lie against the Minister and not the

18 SOs 84, 89–96, 214.
official. It would be wholly unjust to impose a penalty on the public servant in such circumstances. 22 The House will proceed personally against a witness, official or other person engaged in parliamentary proceedings only if there is personal culpability. Political culpability must be distinguished from personal, and addressed at the political level. By making such distinctions, a legislature acts with reason and restraint within the limits of the general law to which the House is subject. Witnesses giving evidence on oath or affirmation to the House or a committee have the same legal privileges and immunities in respect of that evidence as have witnesses giving evidence on oath or affirmation in court. 23

The House’s three-stage procedure for invoking the power to punish for contempt is designed to ensure that the power is used proportionately and reasonably. The first stage is preliminary examination by the Speaker, the second stage is inquiry by the Privileges Committee and the third stage is endorsement by the House. The power to punish for contempt is a highly discretionary power, which is more often than not exercised to refrain from intervening. It is of the essence of parliamentary privilege that the House acts as judge in its own cause when it makes an allegation of breach of privilege or contempt and adjudicates upon it. Ultimately, the House must decide when to exercise its privileges, and genuine differences of opinion may arise as to whether doing so in a particular case is justifiable.

EXAMPLES OF CONTEMPT

The House has given in its Standing Orders 25 separate examples of the types of conduct that it may decide to treat as contempt. 24 These examples do not form an exhaustive code of contempts, although it would be exceptional for a case not falling within them to be treated as a contempt. 25 Miscellaneous examples of conduct that is not covered by the examples, but which the House may wish to treat as a contempt, are given below. 26 Such conduct must fall within the House’s general definition of an act or omission obstructing or impeding the House or persons executing its business. 27 Conduct lacking this attribute cannot be a contempt.

The types of contempt recognised by the House are discussed below under several broad headings:

- breach of privilege
- attendance of members
- pecuniary contempts
- records and reports
- disobedience to the rules or orders of the House
- interference or obstruction
- misconduct
- punishing parliamentary contributions
- reflections
- other contempts.

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22 Senate (Aust) Committee of Privileges Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill (49th report) [1994].
23 Parliamentary Privilege Act 2014, s 25(1). But see also: s 25(2) and, for example, the Crown Organisations (Criminal Liability) Act 2002, s 10(1)(d) and (2) (no person may invoke privilege against self-incrimination on behalf of a Crown organisation, and, for conduct that is not an act or omission of the person, as a ground for refusing to supply information requested by a committee of Parliament).
24 SO 410.
26 See under the heading, “Other contempts”, p 782.
27 SO 409.
Breach of privilege

The House may punish as a contempt of Parliament a breach of one of the privileges of the House.28 These privileges (freedom of speech, freedom from arrest, exemption from legal process, etc.) are part of the law of New Zealand and must be observed when issues of privilege arise in applying the law. The House bears a special responsibility, and may wish to be represented in legal proceedings to ensure that a point of parliamentary privilege is not overlooked and is fully addressed. A court, in ruling on an issue of parliamentary privilege, may reach a view that is contrary to the House’s view of the extent of its privileges. Tensions between Parliament and the courts do arise from time to time,29 although their collaborative institutional relationship endures. The courts are careful to correct or prevent breaches of parliamentary privilege in the same way as they correct or prevent any other breach of law. The courts uphold the House’s privileges in legal proceedings, and will stay actions in civil cases where their application would make it unfair to proceed with the trial of the case.30 The House will not normally entertain exercising its power to punish for a contempt where it has been dealt with in legal proceedings. Nevertheless, the House has specifically affirmed that the power remains available to it,31 and the House has, on occasion, reminded litigants that it remained an option.32

Attendance of members

The House’s Standing Orders require members’ attendance and their absence without permission to be recorded in the Journals.33 Absence from the House without permission is not a contempt, but it is open to the House to order members to attend the House when they have absented themselves from parliamentary duties.34 Failure to comply with such an order would be a contempt.35 A member’s absence from the House may also incur a financial penalty under the statutory regime for dealing with members’ remuneration. The imposition of a financial penalty is quite separate from the House’s power to punish for contempt, and does not entail any finding of contempt.36

Pecuniary contempts

**Disclosing financial interests**

Members must disclose any financial interest they have in any business before the House, before they enter upon it.37 (See pp 62–64.) Failure to disclose such an interest is a contempt.38 In all cases, it is the Speaker who determines whether or not the member actually has a financial interest. The Speaker’s decision is final39

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28 SO 410(a).
30 See, for example: Prebble v Television New Zealand Ltd [1994] 3 NZLR 1 (PC) at 11–12.
33 SOs 37 and 39.
35 SO 410(s).
37 SO 165(1).
38 SO 410(f).
39 SO 166.
and is not subject to review or reversal by the Privileges Committee if an allegation of contempt is made.

Registration of pecuniary interests

Members are required to make initial and annual returns of the pecuniary interests that they hold.知 (See pp 57-62.) Knowingly failing to make a return by the due date for a return is a contempt.知 It is also a contempt for any member knowingly to provide false or misleading information in a return of pecuniary interests.知 Knowingly providing false or misleading information is an important test imposing a high threshold. A member’s return must be inaccurate in a material matter that the member either knew or ought to have known to be incorrect.知

The onus is on members to make an honest attempt to return all the pecuniary interests they hold. It would not be a contempt if a member genuinely overlooked something, having turned his or her mind to the interests held. Conversely, a member does commit a contempt if he or she knew of an interest and decided not to declare it; the member would thus have “knowingly” failed to declare a relevant pecuniary interest.知 The fact that a third party (such as a trust) is involved does not relieve a member of the obligation to declare a relevant pecuniary interest.知 As members must declare all relevant pecuniary interests, the approach that is commended is, “if in doubt, declare it”.知

The Registrar may inquire into members’ compliance with their obligations to make returns. A member who reasonably believes that another member has failed to comply with his or her obligations may request in writing that the Registrar conduct an inquiry.知 If a matter of privilege is raised and the Speaker determines that it should be treated as a request that the Registrar conduct an inquiry, the Speaker forwards the matter to the Registrar.知 Upon completing the inquiry, the Registrar may determine that the matter involves a question of privilege and report it to the House.知 To deter vexatious requests for an inquiry, the House may treat as a contempt any such request for an inquiry made without supporting evidence.知

The Auditor-General exercises a supervisory role over members’ returns and may advise the Registrar of any matters arising from his or her review. However, a report from the Auditor-General is not a prerequisite to alleging a contempt regarding the return of pecuniary interests.

Bribery

Any member who receives or solicits a bribe to influence the member’s conduct in proceedings of the House or a committee commits a contempt.知 Owing to the serious nature of such allegations, members may not raise these matters incidentally in debate but must progress them in the proper way as matters of privilege.知 Also, given the seriousness of an allegation of bribery, the standard of proof needed to make it out is very high. This is reflected in the Speaker’s consideration of any matter of privilege that is raised.知

Allegations of bribery are rare and, when they are made, are seldom upheld. On none of the following occasions was the allegation upheld. In 1872 it was

40 SO 163(1) and App B.
41 SO 410(g).
42 SO 410(h).
44 Privileges Committee Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests (23 September 2008) [2005-2008] AJHR I.17D.
46 SOs, App B cl 16.
47 SO 402(3).
48 SOs, App B cl 16.
49 SO 410(i).
50 SO 410(j).
51 (1934) 128 NZPD 641 Statham.
alleged that a member had been offered money to use his parliamentary position to advance the interests of a railway manufacturer, but the allegation was not proven.\textsuperscript{53} In 1912 it was alleged that a member had been paid to support Sir Joseph Ward’s Government in a crucial vote in the House. The allegation was referred to a committee for investigation but there was no evidence to support it.\textsuperscript{54} In 2003 it was alleged that a member had solicited funds for herself or for other persons close to her in return for her vote, but the Speaker dismissed the allegation for lack of evidence.\textsuperscript{55}

It is a contempt to offer, or attempt to offer, a bribe to a member as an inducement to act in a certain way in the House or a committee.\textsuperscript{56} Although several allegations of attempted bribery have been made, no case has been upheld as a breach of privilege in New Zealand.\textsuperscript{57} In 1998, however, the Speaker warned that a contempt would be committed if a member was offered payment to resign his or her seat.\textsuperscript{58}

To constitute a contempt, a bribe offered or received must relate to the member’s conduct concerning business before the House or a committee, or business to be submitted to the House or a committee.\textsuperscript{59} The Speaker has determined that no question of privilege arose in relation to a member’s actions that were not part of the parliamentary process.\textsuperscript{60} Rather, the allegations related to the general conduct of the member, particularly in relation to dealings with constituents. However, it will be a contempt if a member accepts a benefit for actions the member has taken, or will take, in proceedings in the House.\textsuperscript{61} Attempting to bribe a member in any capacity at all, whether or not in relation to parliamentary business, is also a crime under the Crimes Act 1961. In 2010 a former member (and Minister of the Crown) was prosecuted and found guilty of bribery and corruption under that Act.\textsuperscript{62}

\textbf{Professional services connected with proceedings}

It is a contempt for a member to accept fees for professional services rendered by the member in connection with proceedings in the House or a committee.\textsuperscript{63} This contempt will be committed whether or not the member concerned participates in parliamentary proceedings on the matter for which the member has received fees. Nor need there be any suggestion of corruption on the part of the member. The House is concerned to ensure that a member’s judgement will not be influenced by a professional interest (other than an interest as a member of Parliament) that may be in conflict with the member’s public duties. Whether or not there is an actual conflict, the House will not tolerate even the appearance of conflict. Members must be vigilant to keep their official and private capacities separate in their personal business dealings.\textsuperscript{64}

In one case, it was considered immaterial that work for which a member received remuneration was completed before the member took his or her seat in Parliament. A newly elected member received payment for two local bills he had drafted in his former capacity as a practising solicitor. The House found him to have acted improperly and fined him a sum equal to his professional fees, even though he had completed the work before he entered Parliament.\textsuperscript{65} In a more recent

\begin{footnotesize}
\footnotetext{53}{(1872) 13 NZPD 533–539, 553–554, 582–584, 745.}
\footnotetext{54}{(1912) 157 NZPD 356.}
\footnotetext{55}{(19 February 2003) 606 NZPD 3551–3552.}
\footnotetext{56}{SO 410(l).}
\footnotetext{57}{Charles Littlejohn “Parliamentary privilege in New Zealand” (LLM Thesis, Victoria University of Wellington, 1969) at 144.}
\footnotetext{58}{(1998) 579 NZPD 14721 Kidd.}
\footnotetext{59}{(1992) 525 NZPD 8612 Gray.}
\footnotetext{60}{(26 July 2006) 632 NZPD 4404 Wilson.}
\footnotetext{61}{Ibid.}
\footnotetext{62}{Crimes Act 1961, s 103; \textit{Field v R} [2010] NZCA 556; [2011] NZSC 129.}
\footnotetext{63}{SO 410(k).}
\footnotetext{64}{(1991) 519 NZPD 4541 Gray.}
\footnotetext{65}{(5 October 1877) [1877] JHR 202.}
\end{footnotesize}
case, a comment (later withdrawn) that a member had been paid for things that a trust wished him to achieve in Parliament appeared to raise a serious question of contempt. Upon inquiry, however, it was found that there was no evidence that the payment was made, other than in recognition of past services to the trust rendered before the member was elected to Parliament.66

**Advocacy by members of matters in which they have been concerned professionally**

Closely related to receiving fees for professional services is advocacy in respect of business with which the member has been professionally involved. This type of contempt is based on a House of Commons resolution of 1858 that: “[I]t is contrary to the usage and derogatory to the dignity of this House that any of its members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward”.67 This is not taken to preclude members taking part in debates on matters (such as law suits) in which they have been professionally engaged.68 However, a member was held to have acted contrary to the terms of the Commons’ resolution, even though the parliamentary action he took (presenting a petition) occurred five years after he had acted professionally in respect of the petition.69

It is central to the democratic ideal that the purpose of elected office is to serve the public, not to enrich the office-holder or his or her personal connections. It is important for members to ensure that they do not use their position to influence the legislative process for their own advantage or that of someone with whom they are connected.70

**Records and reports**

The Clerk of the House of Representatives exercises custody of the journals and of all petitions and papers presented to the House, and all other records belonging to the House. Such documents must not be taken from the House or its offices without an order of the House or permission of the Speaker.71 To remove, without authority, any papers or records belonging to the House is a contempt.72 Similarly, to falsify or alter any such paper or record will be treated as a contempt,73 as will publishing a false or misleading account of proceedings before the House or a committee.74

The House has held to be a contempt a newspaper headline that grossly misrepresented the purport of evidence given before a select committee.75 The headline was considered to be of such a “startling and inaccurate nature” that it would lower the esteem in which the House was held. In another case, a member complained that a newspaper article falsely accused him of attacking the integrity of the Speaker in a speech he had made in the House (which, if true, could in itself be treated as a contempt). However, a motion to treat the article as a question of privilege was not proceeded with.76

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66 Douglas White QC Report for the Prime Minister on inquiry into matters relating to Te Whanau o Waipareira Trust and Hon. John Tamihere (20 December 2004).
68 Ibid.
69 (1877) 27 NZPD 497–498.
71 SO 10.
72 SO 410(d).
73 SO 410(e).
74 SO 410(r).
75 (20 November 1968) [1968] JHR 239.
Merely stating one’s opinion of the effect of a committee’s decision cannot amount to a contempt. A statement must purport to be a factual description of parliamentary proceedings to constitute a false or misleading account. An opinion piece will not usually trigger this contempt, although it may be considered a contempt if it amounts to a serious reflection on the character of the members of the committee.

**Disobedience to the rules or orders of the House**

The House will hold in contempt any person who disobeys an order of the House directed to him or her. Such an order would normally be a direction to attend the House or a committee to give evidence, or to produce to the House or a committee documents believed to be in the person’s possession. The power to hold in contempt disobedience to such an order directly supports the House’s power of inquiry.

In the United Kingdom, the powers of Parliament to compel evidence and deal with contempts have recently come under scrutiny. Generally, select committees have obtained information on request, without the threat of formal sanctions, although there have been occasional difficulties. In 2011 the Select Committee on Culture, Media and Sport summoned witnesses during its investigation into allegations of telephone-hacking. Difficulties were encountered and issues raised about imposing sanctions on witnesses for non-compliance. Subsequent inquiries have examined the options available in order to ensure that the House and committees have the powers they need to function effectively. In the United Kingdom, the Joint Committee on Parliamentary Privilege has recommended adopting internal measures that would include reasserting and clarifying Parliament’s historic penal powers and setting out fair procedures to be followed if those powers were to be invoked. The Joint Committee recommended such measures in preference to legislation to confirm Parliament’s penal powers.

**Orders to attend or produce documents**

It is unusual for the House itself or its committees to make an order for a person to attend the House or produce documents. The only committee that has the power to send for persons, papers and records is the Privileges Committee. This committee may direct a person to attend before it to give evidence, or to produce papers and records in his or her possession that are relevant to a matter before it. For committees other than the Privileges Committee, the House must specifically confer the power to send for persons, papers or records, and the current practice is not to do so. When occasion demands, the Speaker on behalf of the House may order a person to attend a committee or produce papers and records. The “centralisation” of the summoning power in the Speaker operates as a controlling influence on its exercise. A refusal to comply with the order of the Speaker would be treated as a contempt, as would a refusal to comply with the order of a committee (notably, the Privileges Committee) that possessed the summoning power.

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78 SO 410(o).
79 SO 410(t).
82 SO 401(2).
83 SO 196.
84 SO 197. See pp 494–497.
85 SO 410(s), (t).
Refusing to answer a question

A witness who refuses to answer a question when ordered to do so by the House or a committee may be held to have committed a contempt. Contempts have been upheld for refusal to answer a question in the House and before a select committee. Where a witness before a select committee objects to answering a question, the committee must consider in private the ground of objection and the importance of the question to its proceedings, before resolving to insist on a reply. A witness giving evidence on oath or affirmation might, for example, invoke a privilege or immunity that a witness giving evidence in court might claim.

Premature publication of select committee proceedings or report

It is a contempt to divulge the proceedings or report (including a draft report) of a select committee or a subcommittee, contrary to the Standing Orders. In general, the proceedings of a select committee or a subcommittee (other than during the hearing of evidence) are confidential until the committee reports to the House. This rule is designed to promote the good functioning of committees and to affirm that the House is entitled to be the first to hear from its committees. Speakers have warned members and journalists to respect this rule.

In practice, only members, officials, advisers, witnesses and journalists are in a position to divulge a committee’s proceedings, for only they are privy to them. However, other persons or organisations that disseminate information that has been improperly disclosed to them are also in contempt, and the House has punished them accordingly.

In principle, all evidence heard by select committees is heard at public meetings and all written evidence received is available to the public. Questions of contempt can arise only if the committee has taken special steps to protect evidence from public disclosure. Members have committed contempts in various ways: by divulging select committee proceedings to other persons, who have then publicised the proceedings; by writing a newspaper article disclosing evidence given at a select committee hearing that was not open to the public (it being no defence that the member was labouring under a mistaken belief that the evidence was in the public domain); by revealing in a television interview what had taken place at a select committee meeting; and by revealing the contents of a select committee report before it had been presented to the House. Members are also liable to be held in contempt if they disclose in the House debates proceedings that they are not at liberty to repeat outside the committee.

Members of the Parliamentary Press Gallery must remain especially alert. They have been held in contempt in providing for publication confidential select committee evidence. The newspapers that published the material have likewise been held in contempt. Similarly, a television network has been held in contempt.
for unauthorised disclosure of select committee deliberations. In these cases, the
initial breach of confidentiality of the select committee proceedings was not by
the persons or parties found in contempt, but by some other person or persons. In
each case, the committee concerned probed the question of who initially divulged
the proceedings but to no avail. The media jealously guard their journalistic
sources. The House might have held the journalists and the newspapers concerned
in contempt for refusing to divulge their sources, but this is not the way the House
has proceeded. The House has imposed punishment for a refusal to divulge a
journalist’s sources on only one occasion, many years ago.

Journalists may claim some immunity under the general law in order to protect
their sources. They can claim an immunity in criminal or civil proceedings, but this
protection does not affect the power of the House to carry out its functions. In an
inquiry into the unauthorised release of a draft select committee report, a journalist
would neither confirm nor deny that he had a copy of the draft report, and refused
to divulge his sources. The Privileges Committee found there had been a breach
of Standing Orders and the journalist tendered an apology. His actions were also
found to be in breach of the Press Gallery’s rules, which require its members to
act in a way that does not infringe Standing Orders. The committee referred the
matter to the chairperson of the Press Gallery to be dealt with under its rules.
The House has invariably treated the publication of confidential select committee
material as a contempt in its own right. Members or other persons may be adjudged
in contempt, whether the material was obtained first-hand or second-hand.

**Breach of the sub judice rule**

In 2009 the Privileges Committee reviewed the sub judice rule of not referring in
the House or a committee to matters subject to or awaiting judicial decision. The
committee’s recommendations were implemented in changes made to the
Standing Orders in 2011. It is in breach of Standing Orders and a contempt to
make reference knowingly to a matter that is suppressed by a court order in any
proceedings of the House or a committee. This contempt applies to members
and select committee witnesses alike.

The sub judice rule requires a member wishing to raise a matter that is subject
to court proceedings to give written notice to the Speaker. This requirement
ensures that the Speaker has the opportunity to balance the considerations set out
in the sub judice rule that are relevant to the exercise of the Speaker’s discretion. It
would potentially be a contempt if a member were to raise a sub judice matter in
the House or a committee without having given written notice, or, having given it,
in contravention of the Speaker’s ruling. The Speaker could report to the House
that the member’s conduct should stand referred to the Privileges Committee,
without requiring another member to raise it as a matter of privilege.

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102 (1976) 408 NZPD 4447.
103 (1903) 125 NZPD 693–694.
104 Evidence Act 2006, s 68. A witness examined before the House or a committee and giving evidence
on oath or affirmation can also invoke this protection of journalists’ sources privilege, under the
Parliamentary Privilege Act 2014, s 25.
105 Privileges Committee Question of privilege relating to an article published in the Sunday Star-Times
purporting to summarise the contents of a draft report of the Māori Affairs Committee on its inquiry into
106 Privileges Committee Question of privilege relating to the exercise of the privilege of freedom of speech
the sub judice rule.
108 SO 410(y).
109 SO 115.
111 Ibid.
Interference or obstruction

The House regards as most serious any attempt to prevent, dissuade or inhibit any person (a member, officer, witness or petioner) from participating fully in its proceedings. The House will punish such conduct to the extent necessary to preserve its effective functioning. An attempt to prevent participation may also be a crime (for example, an assault or threat of assault) punishable in the criminal courts.

Members and officers

Interferences or obstructions of members or officers may be overt or covert. Such interference or obstruction may consist of an assault, molestation, or a threat or other form of intimidation. Such action will be treated as a serious contempt if it occurs in the discharge of the member’s or officer’s duties. An early complaint of molestation of members entailed the sending of a spurious telegram to two Dunedin members, which caused them to return south and absent themselves from the House. The House took no action, even though the interference with the House’s right to the attendance of its members was a serious one.

In one case, a ministerial adviser made an insulting remark to a member as the member passed him in the Chamber on the way into a division lobby. The adviser was held to be in contempt for molesting the member in the execution of his duty. In another case, a jocular remark directed by one member to another in the division lobby was held not to be a contempt. The fact that the member took offence at the remark did not transform it into a contempt.

The Speaker may resolve that conduct does not fall within the House’s jurisdiction and refer the matter to the police. When an altercation occurred between two members in a lobby, one of the members was prosecuted for assault and pleaded guilty to a lesser charge of fighting in a public place. The Speaker has warned members not to allow banter in the Chamber to lapse into verbal intimidation. Banter that tends towards intimidation of members, particularly if a vote is in progress, may ultimately constitute a contempt. The House has reminded members of the Parliamentary Press Gallery not to impede the free access of members to the Chamber, or to pursue members who decline to be interviewed. In response to members’ complaints, the House adopted a protocol to regulate approaches to members on their way to the Chamber.

Sometimes, fine distinctions must be drawn between conduct that properly seeks to influence members’ views and conduct that amounts to intimidation or coercion. The latter type of conduct may be punished as a contempt, and must be distinguished from legitimate forms of persuasion. All members seek to influence their fellow members when they speak in debate. So, too, do lobbyists when they advance their clients’ interests. Conduct that seeks to influence members in the performance of their public duties is perfectly proper and permissible. People may even exert pressure on members (for example, by threatening to withdraw support at the next election), unless such an attempt to influence becomes an attempt to intimidate, or there is a threat to do something that is improper in itself. An extraordinary example involved a Bible-in-schools

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112 SO 410(m), (n).
113 (1864–1866) NZPD 929.
115 (1929) 222 NZPD 663–670; (1929) 223 NZPD 35–36.
116 (25 October 2007) 643 NZPD 12721; (6 November 2007) 643 NZPD 12761; “Private lives to be out of order” The Press (7 November 2007); “Mallard pleads guilty to fighting charge” The Dominion Post (18 December 2007).
120 (1979) 428 NZPD 4718 Harrison.
league, which accused a member of breaching the faith in failing to give total support to Bible reading in schools. The league announced that it would read his letter of explanation at every league meeting to be held in the province and would publicise his opposition in the House to Bible reading. The House resolved that this was an attempt to intimidate the member in his parliamentary conduct, and was punishable as a contempt.121 Likewise, a publication that had the effect of intimidating members in their parliamentary conduct might constitute a contempt, even if there were no specific intention to intimidate.122 In the United Kingdom, it has been suggested that “hacking” of members’ mobile phones might also constitute a contempt.123

Instituting legal proceedings against members or officers to restrain them from carrying out their official duties could also constitute a contempt, provided that such proceedings related to actions that members had taken or intended to take as part of their parliamentary duties. Seeking an injunction to prevent a member raising a matter in the House, for example, may be adjudged a contempt.124 However, as regards their actions outside the House, members are in the same position as any other citizen and may be the subject of legal proceedings without any parliamentary implications.125

Witnesses and others
A similar principle of protection from harassment operates regarding witnesses. Any attempt to intimidate, prevent or hinder a witness from giving evidence in full to the House or a committee may be held to be a contempt.126 Such intimidation or hindrance may be overt (for example, physically preventing a witness from attending and giving evidence) or less overt (for example, offering a bribe to give false testimony, or taking legal action to prevent a witness from giving evidence or from producing all the evidence in his or her possession).

Petitioners and counsel appearing on their behalf before the House or a select committee are also protected from molestation or obstruction while discharging their duties. Such molestation or obstruction may be treated as contempt.127

Serving legal process in the precincts of Parliament
Persons attend Parliament Buildings on sitting days to participate in or observe the transaction of parliamentary business. The House will hold the service (or attempted service) of legal process within the parliamentary precincts to be a contempt if this is done on any day that the House or a committee of the House is sitting.128 The House or committee need not be actually sitting at the time service is effected; a contempt is committed if such a sitting is held at any time on that day. No contempt is committed if the service of legal process is discharged with the authority of the House or the Speaker. As a matter of comity, service should ordinarily take place outside the precincts. In practice, if a member is willing to accept service at Parliament House, the Speaker will give authority for process to be

121 (1905) 134 NZPD 300–305.
125 Ibid.
128 SO 410(e).
served. Service on a member in the Parliament Buildings, even with the member’s agreement, will be a contempt if the Speaker’s authority is not obtained. 129

The parliamentary precincts are those areas that are legislatively held for parliamentary purposes. 130 They include the Parliament Buildings (the main building, library and executive wing) and the Bowen House building. 131 The service of a subpoena on a Minister in the Minister’s office in the Beehive (executive wing) was held to be a contempt as it was effected on a sitting day. The established practice is that law firms make arrangements with the Crown Law Office for effecting service on Ministers. 132

The limitation on serving or executing legal process within the precincts does not prevent police officers on duty within Parliament Buildings or grounds arresting anyone who commits or is about to commit a criminal offence. However, a warrant for the arrest of a person within the precincts should not be executed without first obtaining the Speaker’s permission.

Misconduct

Deliberate misleading of the House

It is a contempt to deliberately mislead (or attempt to mislead) the House or a committee, whether by way of a statement, evidence or a petition. 133 An example of contempt received explicit recognition in 1963, 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 House that he subsequently acknowledged to be untrue, had committed a contempt of the House. 134 It has been claimed that there is an established constitutional convention that Ministers should always tell the truth to Parliament, as far as this is possible without harming national security. 135 Whether or not this type of contempt represents a convention, a Minister lying to the House is a serious affront to the authority of Parliament. The duty of candour on Ministers has been said to be essential if Parliament is to hold the executive to account. 136

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 that the perpetrator knew or ought to have known was inaccurate. 137

Members deliberately misleading the House

Most often, allegations of deliberately misleading the House refer to statements made by members in the House. Such statements may be proffered in the course of debate, or by way of personal explanation, or in reply to a question.

There are three elements to be established when an allegation is made against a member regarding the member’s statement: the statement must, in fact, have been misleading; the member must have known that the statement was inaccurate at the time the statement was made; and the member must have intended to mislead the House. The standard of proof required is the civil standard of proof on the balance

129 “Developments—Australia and New Zealand—parliamentary privilege in Western Australia” (1991) 2 PLR 196 (Western Australian Royal Commission apologised for serving a subpoena in a member’s office even though member had invited investigators to the office).
130 SO 3(1).
133 SO 410(b).
136 “Time to come clean” The Observer (UK, 16 September 1984).
of probabilities. The serious nature of the allegation demands that it be properly established.138 Recklessness in the use of words in debate, although reprehensible and deserving of censure, falls short of the standard required to hold that a member deliberately misled the House.139 An allegation will be made out where a member questions a Minister over information given and the same information is repeated and later can be shown as false.140 The misleading of the House must not be concerned with a matter of no consequence, or such little consequence that it is too trivial to warrant the House’s attention. Such a misunderstanding should be cleared up on a point of order or through the asking of further supplementary questions, particularly when the matter is a contestable one.141

For a misleading of the House to be deliberate, there must be an indication of an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters of which the member can be aware only in an official capacity. But an inference of an intention to mislead can be drawn where the member can be assumed to have personal knowledge of the stated facts and made the statement in a formal manner or situation, such as by way of personal explanation.142

Most instances of deliberate misleading of the House will consist in statements made. However, it is conceivable that members might also mislead the House by their actions. For example, a member might deliberately misuse a voting proxy, or deliver to the Clerk a different document from that which the member obtained leave to table,143 or might misrepresent an authority to act on behalf of an absent member.144

Witnesses and petitioners deliberately misleading

Witnesses giving evidence to select committees are under an obligation to be truthful, whether or not they are under oath. The expectation that witnesses will be truthful in giving evidence is so compelling that evidence is not usually taken on oath. Witnesses have been held in contempt where they deliberately misled a committee, wilfully suppressed evidence or knowingly provided false information. Even to prevaricate before a committee might invite questions.145 A finding of contempt of Parliament brings reputational damage and public disapprobation, which is naturally to be avoided. Allegations of such contempt by witnesses are rarely made.146

For a witness to be held in contempt, there must be a strong indication of an intention to mislead the committee. Such an intention might be inferred from the nature of the evidence (where, for example, the evidence can be presumed to be within the personal knowledge of the witness), or from the circumstances of its delivery (for example, if an answer is deferred and subsequently delivered in writing, which might indicate a more considered reply than an immediate response).147

It is a contempt to present forged, falsified or fabricated documents to the House or a committee. The main form such a contempt has taken in the United Kingdom has been the affixing of forged or fictitious signatures to petitions. Any conspiracy to deceive the House or a committee will be held to be a contempt. No examples of this kind of contempt have occurred in New Zealand.

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139 Privileges Committee, report relating to alleged deliberate misleading of the House by a member (17 December 1982) [1982] AJHR I.6 at 17.
140 (25 May 2010) 663 NZPD 11212 Smith.
141 (1976) 405 NZPD 2131–2132.
142 (1986) 476 NZPD 5961 Wall.
**Correcting inaccurate information**

It is not a contempt to make a genuine mistake and thus tender incorrect information to the House or a committee. But it is incumbent on a member or person who has given misleading information on a parliamentary occasion to correct the error at the first opportunity once it is discovered. This obligation arises even if the correct information is not fully available when the error is discovered. Action to alert the House or committee must still be taken at that point, with a full correction to follow later.148

Misleading information can be corrected in several ways. A misleading statement made in the House in reply to an oral question is corrected by a personal explanation.149 Misleading information given by way of a reply to a written question is corrected by the Minister lodging an amended reply. Misleading information given to a committee can be corrected in either of two ways: by the witnesses appearing personally before the committee to withdraw and correct the information, or by a written correction if a personal appearance cannot be arranged, or if the committee agrees that it is not warranted.

**Misconduct in the presence of the House or a committee**

Any misconduct in the presence of the House or a committee may be held to be a contempt.150 Such misconduct may take the form of an interruption or disturbance to the proceedings of the House or of one of its committees. For example, a group of people in the public gallery who rose at the commencement of business and recited the prayer that the Speaker was about to read were held to have committed a contempt.151 But no question of contempt would arise if the Speaker had given permission for a celebratory contribution to be made from the galleries.152 Members who conduct themselves in a disorderly way while transacting parliamentary business may themselves be punished for contempt. The penal power of the House exists even though the Standing Orders contain specific procedures for disciplining members for breaches of order.153 The Standing Orders do not displace the inherent power of the House to discipline members and strangers who cause disruption to its proceedings.

**Punishing parliamentary contributions**

The House may punish members or others on account of their contributions to the House’s deliberations: for example, if they attempt to mislead the House or a committee, or disrupt the orderly conduct of proceedings. It is also a contempt for anyone outside the House to punish or disadvantage anyone for what they say or do in the course of parliamentary proceedings. Such extra-parliamentary conduct may also amount to a criminal or civil wrong, such as assault or trespass to the person, and be in breach of the Bill of Rights 1688 and the Parliamentary Privilege Act 2014.154

Anyone who assaults, threatens or disadvantages a member or a person (for example, a witness) on account of his or her conduct in Parliament commits a contempt.155 However, it must be established that the action directed at the member or person is in fact on account of what the member or person said or did.

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149 (14 May 2003) 608 NZPD 5678.
150 SO 410(p).
154 Bill of Rights 1688 (Eng), art 9 (freedom of speech); Parliamentary Privilege Act 2014, s 11.
155 SO 410(w), (x).
in parliamentary proceedings. Otherwise, it is not a matter of concern for the House. The legal effect of the action outside the House is of no consequence to the House.

A leading precedent involved the State enterprise Television New Zealand Ltd. The broadcaster advised its chief executive that his evidence to a select committee amounted to serious misconduct in his employment. This action was held to be in contempt for disadvantaging a witness. The House resolved that protection of select committee witnesses was of fundamental importance and that the actions of the broadcaster could deter or discourage select committee witnesses in the future. The House required a formal apology and imposed a fine of $1,000.

Article 9 of the Bill of Rights 1688 makes clear that evidence given at a select committee cannot be questioned in legal proceedings. However, conduct revealed in the parliamentary evidence would not be immune from investigation or action by outside authorities, such as the Police or the Commerce Commission, simply because it was the subject of evidence to a committee. Provided any criminal prosecution or civil action was supported by evidence obtained outside Parliament, a person could not be said to have been disadvantaged on account of a parliamentary contribution.

On two occasions, conduct complained of as a contempt has involved challenging a member to repeat outside the House, without protection of privilege, what the member had said in the House. The absolute protection against actions for defamation afforded members by the Bill of Rights 1688 and the Defamation Act 1992 is to allow them to speak freely in debate and promote the public interest without fear of legal repercussions. The damage to an individual unjustly attacked in the House is outweighed by the greater public good of permitting full, free and frank discussion in the House. A person unjustly attacked in the House is not without recourse: he or she may apply to the Speaker to enter his or her response in the parliamentary record (see Chapter 38). Any misuse of the right of freedom of speech in debate is for the House to discipline under its own internal procedures. Otherwise, the House views very seriously anything that tends to inhibit members in the exercise of their freedom of speech.

Challenges to repeat outside the House words spoken in debate entail the implication that what was said was untrue and a misuse of parliamentary privilege. Such challenges may constitute a contempt, although each case must be considered on its own merits. In one case, the person who challenged the member to repeat his statement outside the House explained his action at the bar of the House and apologised for his unwitting breach. In another case, a firm issuing the challenge published it in a letter and as an advertisement making a strong attack on the member. The firm was held to have committed a contempt, albeit again unwittingly. In the United Kingdom, a law firm threatened legal proceedings against a member if he repeated in Parliament statements he had made outside Parliament, and the House found the firm guilty of contempt. An apology was made to the House and the member, and no further action was taken.

156 Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997) 1996–1999 AJHR I.15A.
159 Defamation Act 1992, s 13(1).
160 (1895) 91 NZPD 778.
161 (1931) 229 NZPD 324, 365–378.
162 House of Commons (UK) Committee on Standards and Privileges Privilege: John Hemmings and Withers LLP (ninth report of session 2009–10) 2010 HC 373.
These precedents involved persons outside the House issuing challenges to members to repeat what they had said in the House. In debate, however, it is not automatically out of order and a breach of privilege for a member to invite another member to repeat outside the House what the member had just said. The cases involving contempt are confined to the issuing of formal challenges to the freedom of speech enjoyed by members. Nevertheless, it may become disorderly for a member to challenge another member persistently to repeat the member's comments outside the House. Persistent challenges would imply that the member was not telling the truth.163

Molestation of members on account of action a member had taken in the House may take quite intricate and subtle forms. In 1872 a person wished to make a member pay for the way the member had voted in a division, and applied (as he was legally entitled to do) to purchase pastoral land that the member held on licence. His application to purchase was intended to (and did) put the member to inconvenience and expense; it meant that the land had to be offered for sale at auction with no preference for the licensee. The House found the person to have committed a contempt, and induced him to withdraw his application to purchase.164

Two Prime Ministers have been the subject of complaint for remarks they made about the way members had voted. In 1869 William Fox wrote to a member after the member had voted against the Government in the House. The member, who was a serving officer in the Army, was told he must resign either his seat or his command. A committee appointed to consider the matter found that no contempt had been committed, and this was endorsed by the House. Nevertheless, the House proceeded to pass a resolution reiterating that every member of the House, without exception, was entitled to speak and vote in the House according to the member's conscience.165 A similar scenario occurred in 1896, when two West Coast members voted against the Government. Premier Richard Seddon made a veiled remark that he would not forget their decision, and this remark prompted a complaint to the House. However, after some discussion, the House resolved that no action be taken.166

Legal proceedings against witnesses
In 1818 the House of Commons passed a resolution declaring that witnesses were entitled to its protection in any legal proceedings brought against them on account of their testimony to the House or a committee.167 Instituting legal proceedings in such cases also constitutes a breach of privilege. Such proceedings infringe the freedom of speech guaranteed by the Bill of Rights 1688 to persons taking part in proceedings in Parliament.

Evidence given by a witness at a select committee cannot later be used as the basis for cross-examination in another proceeding or be used in a criminal or disciplinary investigation.168 In the United Kingdom, a judge apologised to Parliament in a decision for not intervening to prevent the cross-examination of a witness on the truth of evidence the witness had given to a select committee.169 The judge concluded that the questioning should not have been allowed by reason of the Bill of Rights 1688.

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164 (1872) 13 NZPD 78, 158–163, 187–192, 201.
165 (25 August 1869) [1869] JHR 195.
166 (1896) 194 NZPD 478–482.
169 Weir v Secretary of State for Transport [2005] EWHC 2192 (Ch) at [242].
Legislation formerly provided a legal indemnity for parliamentary witnesses who incriminated themselves while giving evidence on oath.\textsuperscript{170} The Parliamentary Privilege Act 2014 repealed the indemnity provisions and did not re-enact them.\textsuperscript{171}

**Reflections**

Speeches or writings that reflect on the character or conduct of the House, or of a member in his or her capacity as a member of the House, may be treated as a contempt.\textsuperscript{172} This is seen as a longstop means for the House to protect itself and its members against attacks that would lower the House in public esteem and compromise its ability to function effectively. However, the House’s penal power must not be used to inhibit legitimate political debate. To constitute a contempt, a statement would need to allege corruption or some kind of gross impropriety that could not be substantiated. Hard-hitting or contentious statements might well cause members to object, but they fall within the boundaries of acceptable political interchange.\textsuperscript{173} The limits of acceptable political and social comment change as social mores change. Accusing members of engaging in homosexual conduct at a time when such conduct was regarded as publicly unacceptable (and indeed was still a criminal offence) was considered by the House to be a serious reflection on members.\textsuperscript{174} Attitudes and beliefs change, and statements in earlier times that were considered to reflect adversely on the House or its members may not be viewed in the same way today.

**Reflections on the House**

Speeches or writings that reflect on the character or proceedings of the House may be treated as contempts. The fact that the prohibition on publication of reports of its debates formerly applied by the House of Commons has never operated in New Zealand does not authorise reflections on members in their parliamentary capacity, or on the propriety of the House’s procedures.\textsuperscript{175} The House held as a contempt an article criticising the practice of pairing in the House, which entailed the withdrawing of members from the Government or Opposition benches to offset a member’s absence and maintain voting parity at a time when all members were electorate members. The criticisms per se were not sufficient to establish a contempt but incorrect statements in the article falsely represented the proceedings of the House, which were held to reflect adversely upon it.\textsuperscript{176} It does not matter if reflections on members of the House in their capacity as members do not identify the particular member or members who are the subject of attack. Thus, when unnamed members of Parliament were accused of homosexuality or bisexuality, the person making the allegation (which she admitted was baseless) was found to have lessened the esteem with which members were held. Accordingly, she was held to have committed a contempt.\textsuperscript{177}

**Reflections on members**

Speeches and writings reflecting upon the character or conduct of individual members in their parliamentary roles may be punished as contempts. The words complained of must reflect on the member in the discharge of his or her duties in respect of particular proceedings in the House or a committee, and not merely arise out of the member’s status as a public figure. It is not a contempt, for instance, if a
member is attacked over the discharge of his or her constituency duties. Although constituency work is an integral part of being a member of Parliament, it is not work that is directly concerned with proceedings in the House. Similarly, most functions performed by Ministers are not performed as members of Parliament (apart from, for example, introducing bills and answering parliamentary questions) and do not involve any question of parliamentary privilege.178 However, a reflection on the Speaker in his capacity as chairperson of the Parliamentary Service Commission was found to relate to his capacity as a member of Parliament, as this is a position held ex officio by the Speaker.179

The House has a duty to protect itself and its members against attacks that would diminish its standing in public esteem and inhibit it from functioning effectively. However, this duty must be balanced against freedom of speech and of reporting and commentary by news media. The test is whether or not a reflection alleges corruption or impropriety, which would include financial influence by outside interests. An allegation of contempt was upheld where an email newsletter suggested that the liquor and tobacco industries’ support for a member meant he delivered his vote for their interests. The author of the email was ordered to apologise to the House and the member.180

To constitute a reflection on a member, it is not necessary that the words used should amount to an actionable defamation.181 Where the member does bring defamation proceedings, he or she is not precluded from also raising the reflection as a matter of privilege.182 The member may bring an action for damages in the courts instead of or in addition to pursuing a matter of privilege,183 although any court action taken will be taken into account by the House in considering the penalty to impose.184 Any member may raise a reflection on a member as a matter of privilege, even though the reflection may be on another member.185

Reflections on members in their parliamentary roles might be made out in almost any situation involving the House and its members. Adverse reflections have been found where a member was accused of perjuring himself in an election petition case,186 where a report that was submitted to the House accused a member of not having told the truth in statements he had made to the House,187 and where a member was accused of being “in the pocket” of the tobacco industry.188 The House also found that the Attorney-General had been libelled and a contempt committed when a newspaper editorial accused him of promoting a bill to further his claims to certain property.189 However, no contempt was found where two members were accused of hypocrisy over atomic bomb tests. The reflections did not concern the conduct of the members as members but related to statements they had made outside the House.190

179 Ibid.
180 Privileges Committee Question of privilege relating to a reflection on a member in his capacity as a member of the House (13 February 2007) [2005–2008] AJHR I.17C.
182 (1978) 417 NZPD 1261, 1294 Harrison.
183 See, for example: News Media Ownership v Finlay [1970] NZLR 1089 (CA).
185 (1912) 161 NZPD 672 Guinness.
186 (1911) 158 NZPD 748–768.
187 (1911) 156 NZPD 884–898.
189 (1877) 24 NZPD 473–479.
Reflections on the Speaker and other presiding officers

Some of the most serious reflections on members concern those against the character of the Speaker or any other presiding officer. Usually, they are accusations that presiding officers have shown partiality in discharging their duties. In 1975 the Privileges Committee reported on a question of privilege concerning a reflection on the Speaker thus: “[The] Speaker is in a special position. Being the embodiment of Parliament, reflections upon [the Speaker’s] character or conduct directly attack the very institution of Parliament itself, and have been dealt with accordingly here and in England”. The committee refused to consider the reasons “why” the attack on the Speaker had been made, but confined itself to a consideration of “whether” such an attack had been made.

Reflections upon the Speaker have been censured on six occasions. On one occasion newspapers launched the attack on the Speaker, and on the other five occasions members did so. In 1967 a newspaper article accused the Speaker of racial prejudice; in 1975 a member in a newspaper article criticised the way the Speaker was presiding over the House; in 1976 a member in a radio interview accused the Speaker of weakness and advocated replacing him; in 1982 a member in a press statement criticised the Deputy Speaker’s failure to call him to speak in a debate and suggested that the Deputy Speaker’s politics had overtaken his impartiality; in 1987 a member in a press statement made reflections on the way the Speaker was presiding over the House; and in 1998 a member accused the Speaker, as chairperson of the Parliamentary Service Commission, of selectively releasing personal information to disadvantage a political party.

The use of social media has tested the boundaries of this form of contempt. In 2015 the Privileges Committee considered the implications of people using social media to report on parliamentary proceedings, and to reflect on members of Parliament and presiding officers. The committee believed that members should not be discouraged from using social media as it offers a unique opportunity for them to share with the public news and information about aspects of their work. However, the committee reminded members and the Parliamentary Press Gallery of the parliamentary rules and practices that apply when using it. It confirmed that the contempt of reflections on a member or the Speaker remains an important restraint on conduct in relation to parliamentary proceedings.

Other contempts

The examples of contempts set out in the Standing Orders are illustrative rather than exhaustive. Other conduct not covered by those examples could conceivably amount to a contempt. The governing test is whether or not the conduct obstructs or impedes (or has the tendency to obstruct or impede) the House or its members in the discharge of their functions and duties.

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191 (1975) 400 NZPD 3295. See also: (11 November 2015) 710 NZPD 7871 Borrows (Deputy Speaker); (1 December 2015) 710 NZPD 8375–8376 Borrows (Deputy Speaker).
192 (1975) 400 NZPD 3295.
194 (1975) 400 NZPD 3295–3312.
199 Privileges Committee Question of privilege regarding use of social media to report on parliamentary proceedings (15 September 2015) [2014–2017] AJHR I.17A.
200 Ibid. See also: Legislative Assembly (Vic) Standing Orders Committee Report into use of social media in the Legislative Assembly and reflections on the Office of Speaker [2012] 209.
201 SO 409.
**Abuse of the right of petition**

In the United Kingdom, the submitting of a petition containing false or scandalous allegations against a person has been treated as a contempt. So, too, has inducing signatures to a petition by false representations and threatening to submit a petition against a member. No abuses connected with the right to petition have occurred in New Zealand and been treated as a contempt.

**Advice to the House**

There is no convention that Ministers will advise the House of important policy announcements or decisions. But the prior publication outside the House of a matter to be submitted to the House can, under some circumstances, constitute a contempt. For example, it may amount to a contempt if a document or statement (such as a departmental report) intended for first promulgation in the House is improperly obtained or intercepted, and then published before its promulgation in the House. However, the Privileges Committee has recommended that the House not treat as a contempt the premature release of parliamentary papers presented to the House under statute.

The premature release of information about bills may, in some circumstances, raise issues of contempt. A Minister committed a contempt when he prematurely released the contents of a message to the House from the Governor-General including the text of a bill His Excellency was transmitting to the House for introduction. However, these circumstances could not now arise as this method of introducing bills has been abolished. On the other hand, it is no contempt for the Government to disclose in advance of any formal parliamentary steps the terms of a bill about to be introduced into the House. Members of the House who learn of a bill from the news media in advance of its introduction might justifiably criticise this practice, but it does not raise matters of privilege or contempt. Yet it could be treated as a contempt if formal parliamentary steps had been taken in respect of a bill, such as notification to the Clerk that a bill was about to be introduced, or if notice of intention had been given to introduce a private or local bill. To disclose the contents of such a bill after that time could be treated as a contempt.

**Miscellaneous**

Other examples of conduct that may obstruct or impede the House in carrying out its functions are unauthorised use of the name of the House or its crest on an unofficial publication, the placing of material in the bill boxes reserved for members in Parliament House without the Speaker’s permission, and improperly attempting to induce a member to resign from the House.

**LEGAL SIGNIFICANCE OF CONTEMPT**

The House’s power to treat types of conduct as contempt may be legally significant in various ways. The power to punish for contempt is reaffirmed in statute law as one of the House’s privileges, immunities and powers, and all courts must take judicial notice of this. This power is exercisable only by the House itself—the courts do not
punish for contempt of the House, although they may be called upon to enforce punishments meted out by the House. 212 The fact that a contempt has been, or is about to be, committed does not create a cause of action for which relief can be obtained from a court. 213

Requests for official information or personal information held about an individual may raise issues for the House. It may furnish a good ground to withhold information under the pertinent statutory regime if the release of the information would constitute a contempt of the House. 214 An obvious example would be a request for the release of confidential select committee information that was held by a Minister or a Government department. Release of such information under the Official Information Act 1982 would be in contempt of the House. That statute and the Local Government Official Information and Meetings Act 1987 provide that nothing in the legislation authorises or permits the making available of official information that would constitute a contempt of the House. 215 In reviewing decisions to withhold official information or personal information, the Ombudsmen and the Privacy Commissioner may be required to judge whether a contempt would be committed were the information to be made available. 216 Similar provisions protect the House against contempt arising in the course of meetings of local authorities and committees of district health boards. Local authorities and health boards may exclude the public from their meetings if the public’s presence would be likely to result in disclosure of information that would constitute a contempt of the House. 217

Whether or not an otherwise lawful decision or action might constitute a contempt may be a governing factor in the legality of the decision or action. Thus the Human Rights Commission has accepted advice that it should not embark upon an inquiry where to do so would lead it into committing a contempt of the House. 218 The courts, too, would be expected to conduct their proceedings so as to avoid what might technically amount to a contempt. For example, they might resist a request to produce or inspect documents in the course of legal proceedings where the documents were subject to parliamentary confidentiality. Parties to litigation would need to obtain the permission of the House or the committee in question before the court would admit the documentary evidence. 219 Judicial deference to the sensibilities of the House is a feature of the relationship between the legislative and judicial branches of government. The possibility that a contempt of the House may be committed can be a significant factor in legal outcomes, even though contempt itself cannot give rise to a cause of action.

212 Parliamentary Privilege Act 2014, s 22(2), (3).
214 Official Information Act 1982, s 18(c)(ii); Local Government Official Information and Meetings Act 1987, s 17(c)(ii); Privacy Act 1993, s 29(1)(i).
215 Official Information Act 1982, s 52(1); Local Government Official Information and Meetings Act 1987, s 44(1).
217 Local Government Official Information and Meetings Act 1987, s 48(1)(b)(ii); New Zealand Public Health and Disability Act 2000, sch 4, cl 34(b).
219 See Regulations Review Committee Complaints relating to the Fisheries (Allocation of Individual Catch Entitlement) Regulations 1999 (14 June 1999) [1996–1999] AJHR L.16P at 12–14. See also: Parliamentary Privilege Act 2014, s 12 (prohibiting a court or tribunal producing or using documents or oral evidence that the House or committee received in private or as secret evidence, unless the House or committee has communicated them to the public, or authorised their communication to the public).