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Editorial

The behaviour of Members of Parliament is occasionally in the spotlight. Recent events have shown that it is necessary to provide a robust and politically accountable process for investigating allegations of wrongdoing, and punishing those responsible. This is not confined to illegality per se, for which independent processes exist, but also includes political impropriety and conduct unbecoming of a Member of Parliament.

The Privileges Committee does not have an active role in punishing Members of Parliament for using

parliamentary privilege improperly, or indeed for improper actions within the House or outside. It does not inhibit their freedom of action within the Chamber. The potential difficulty is that the Privileges Committee either does not provide an effective check on the behaviour of Members of Parliament, or at least is not seen as being an effective check upon behaviour. Given that Members of Parliament enjoy certain collective and personal privileges, and that the Speaker, through their inherent authority as presiding officer of the House of Representatives, and the Privileges Committee, are the sole regulators of the behaviour of Members of Parliament.

The Speaker has a role in regulating the conduct of Members of Parliament, but unlike in the United Kingdom, in practice is comparatively inactive. It may be that the fact they are members of political parties, and are not as politically neutral as in the United Kingdom – where they renounce party membership on election – hampers their independence. At the very least there may be an inference of bias.



The Privileges Committee investigates allegations of breach of parliamentary privilege or contempt, and recommends to the House whether a breach or contempt has been made out and, if so, the appropriate punishment.

Parliament exercises several rights and privileges that protect its independence and facilitate its functions. Parliament's privileges fall into two categories: the first exists primarily to enforce Parliament's collective authority, the second exists



primarily to protect and benefit the members themselves. Yet, all of Parliament's privileges are the corporate privileges of Parliament itself, even if members benefit individually under them. The House of Representatives depends for the performance of its functions on the unimpeded use and service of its members. The Legislature Act 1908 establishes the legal basis of parliamentary privilege in New Zealand, which secured by adoption the rights, immunities, and powers enjoyed by the House of Commons of the United Kingdom as at 1865. This Act also confirmed the jurisdiction of the Courts to take judicial notice of the rights, immunities, and powers adopted. Parliament's privileges are considered part of the "general and public law of New Zealand", although Parliament rather than the Courts exercises penal jurisdiction and power to enforce them.

It might not be desirable to allow class actions, or require the Privileges Committee to hear claims that parliamentary privilege had been misused for personal gain, or in breach of, inter alia, the Human Rights Act. This could expose Members of Parliament to malicious complaints that could inhibit free speech. But where an individual is named in Parliament the Privileges Committee should be required to hold the Member to account if the allegation made is shown, to the satisfaction of the Privileges Committee, to be inappropriate.

Parliament has exclusive right to control its own proceedings. The House of Representatives can choose what matters to discuss and in what order, regardless of the priority the Crown attaches to particular items in the Speech from the Throne. This

privilege includes the powers of the House to punish members for misconduct in the House or its committees, to interpret and apply statutes that regulate or affect its own internal procedures, and to determine the content and application of its Standing Orders. The Courts retain residual jurisdiction only to enforce statutory rights that can be exercised outside Parliament, such as where rights under an Act affect third parties. The House does not have general jurisdiction over crimes committed within its precincts.

The House of Representatives has power to punish for breach of privilege and contempt of the House. The Crimes Act 1961 preserves the power and authority of the House to punish for contempt. Procedures for adjudicating breaches of privilege or contempt are prescribed in the Standing Orders, as supplemented by parliamentary practice and Speakers' rulings. The Privileges Committee of the House investigates allegations of breach or contempt and reports to the House with findings and recommendations. The House almost always adopts the committee's findings and recommendations.



The Standing Orders provide basic procedural protections for persons brought before the Privileges Committee. These protections include the right to be informed of the precise nature of the charge, the opportunity to respond to allegations, the right to be informed of and/or given a copy of any incriminating evidence held by the committee, the right to consult legal counsel, and the right to be informed of the right to make a written submission on the charge. The rule against bias does not constrain the House from acting as both prosecutor and judge in relation to its privileges – as a judge in its own cause. The New Zealand Bill of Rights Act 1990 (which guarantees the right to natural justice) has not deprived Parliament of its penal jurisdiction. The right not to be arbitrarily arrested or detained under the New Zealand Bill of Rights Act 1990 is binding on the House when it enforces its privileges. However, the rights on arrest or detention are not binding as these are confined to arrest or detention “under any enactment”. Nor do the rights of persons

charged with any offence avail persons charged with breach of privilege or contempt. The term “offence” is limited by statute to offences created “under any enactment”. Similarly, the minimum standards of criminal procedure guaranteed under the New Zealand Bill of Rights Act 1990 apply only to persons who are charged with an “offence”. Persons who are summoned before the Privileges Committee must rely on the minimum rights to natural justice provided under the Standing Orders, and the good sense and forbearance of the committee.

The House has power to imprison for breaches of privilege or contempt, as the ultimate deterrent against acts that would subvert its authority. No person can be summarily arrested by order of the House without a warrant issued by the Speaker. Although the power to imprison has never been used in New Zealand, the Standing Orders Committee has recommended that the power be abolished. It is doubtful whether the House has power to impose a fine for breach of privilege, as it is believed this power had been lost through desuetude when New Zealand adopted the powers and privileges of the Commons. The House may censure offenders, suspend members from sitting in the House, exclude members from the precincts, exact apologies, or prosecute under the criminal law. In New Zealand, the practice is to reprimand by resolution of the House rather than by the Speaker. The House reserves the right to summon strangers to the bar of the House for formal reprimand. The Courts will not interfere with the interpretation the House places on its own proceedings, and will not inquire into the reasons why it adjudges a person guilty of contempt.

The danger is that Parliament may not be seen as able to properly discipline its own membership. It is now established practice for professions to include lay members in their disciplinary tribunals. Members of Parliament, although not “professionals” in a strict sense, occupy an analogous position, and thus should maintain similarly high standards and be subject to similar disciplinary mechanisms.

Membership of a profession connotes a sense of public service. For this reason Roscoe Pound viewed a profession as composing a common calling in the spirit of public service. It logically follows that the goodwill of a profession largely depends on the people it serves, that is, members of the public.

Consequently, to perform the said functions in the spirit of public service, a high ethical and professional standard must be maintained within the rank and file of the profession. Members of

Parliament must exhibit a great sense of integrity, and, must give proper professional service.

For a profession to justify any powers or privileges which it may receive, it must be able to show that it is not selfishly concerned for its own interest but has regard for that of the public. It must show itself worthy of the power of domestic discipline which is conferred upon it. For this reason lay members should generally be appointed to the governing bodies of all self-governing professions and occupations. Professional bodies have a long tradition of lay members. For the bodies to be dominated by lay members however would be a perversion of the reason for including non-professionals.

Public involvement in the proceedings of disciplinary bodies is based on the purpose of enabling the public interest to be represented, and will help to assure the public that its interests are in fact being represented. It has the further effect of making the profession more responsive to the public. Without lay observers being present the public can only trust that the organised profession will be sensitive to its needs, and sufficiently responsible to endeavour to meet those needs.

Recently, in some jurisdictions, the number of lay members almost equals the numbers of lawyers on the legal profession's disciplinary bodies. This is perhaps going a little too far in this direction, as it threatens to undervalue the principle that members of a profession are best qualified to ensure that proper standards of competence and ethics are set and maintained.

Members of Parliament must be more independent than other "professionals", because the independence of Parliament is vital to the proper functioning of democracy. But this means that, if there are no lay members of the relevant disciplinary body (the Privileges Committee), then the body must be especially pro-active and vigilant.

Commentators have often expressed the belief that professionals, especially lawyers, are concerned to protect themselves and that professional societies exist solely for the benefit of members of the profession. The professions themselves must be alert to this perception, and do all they can to respond to it, without harming their professional integrity. Members of Parliament must be careful that they are themselves subject to a similarly strict and objective disciplinary procedure as is now imposed on, for instance, the legal profession. This is especially so

since the latter has been introduced by Parliament, in the Lawyers and Conveyancers Act 2006.

Other means of controlling the behaviour of MPs include the (soon to be abolished) Serious Fraud Office, the Ombudsman, and other non-judicial or quasi-judicial investigatory bodies. However, these present the same constitutional difficulties presented by involving the courts – Parliament is supposed to be non-reviewable by any external body. To allow any body to interfere would be inconsistent with this.

Politically, the introduction of the Mixed-Member Proportional (MMP) voting system may effect the position of the Privileges Committee, and also of Members of Parliament. A variety of commentators predicted that the advent of Mixed-Member Proportional (MMP) voting for the House of Representatives in 1996 would result in a more activist Governor-General, faced with the need to oversee the formation of a coalition or minority government. Though this doesn't appear to have eventuated, MMP may also have affected the relationship between MPs and the House of Representatives. The advent of MMP, through the strengthening of political parties, may weaken the effectiveness, such as it is, of the Privileges Committee.

We may be left only with the court of public opinion as a check upon the behaviour of Members of Parliament.

No part of the constitution is perfect, nor above criticism. Members of Parliament, if they wish to retain public confidence, must act in a robust and honourable manner. They are no more immune than is Her Majesty The Queen, and since their mandate derives from popular election, must be accountable to the electorate for their actions. It is important for them to remember this in an election year.

Professor Noel Cox



News in Brief

Princess Anne to visit

The Princess Royal will be in New Zealand 14th to 18th November, to represent the Duke of Edinburgh at the 23rd Commonwealth Agricultural Conference, being held in Christchurch. This is the conference of the Royal Agricultural Society of the Commonwealth, which comprises 21 Commonwealth Agricultural Show societies, and was founded by the Duke (still its President) in 1957.



The principal objective of the Society is to plan and hold biennial conferences to give members and other interested organisations allied to farming, the opportunity to network and explore their interests and mutual problems in agriculture. The second major objective is to encourage high standards within Agricultural Shows and to strengthen and improve relationships between the member show societies within the Commonwealth. The RASC is the only Non-Governmental Organisation representing agriculture across the Commonwealth.

Princess Anne will also attend several military engagements, as Colonel-in-Chief of the Royal New Zealand Corps of Signals and the Royal New Zealand Nursing Corps.

Government House renovations

A \$47.4m project was announced in June to restore and modernise Government House, Wellington. This is the most significant building work since the present buildings were erected in 1907-1910.

From the beginning of 2009 the Governor-General will be based in the former ministerial residence Vogel House, which will temporarily be known as “Government House Vogel”.

The conservation and renovation work is planned to take the next four years. It will include earthquake strengthening, and upgrading the fire protection services of the house. Additional work will involve replacing a number of services which are at the end of their life, such as water, wastewater, stormwater drains, power and communications and roading.



The restoration will also involve replacing inefficient heating and lighting, and introducing elements of environmentally sustainable design including solar water heating, insulation, rainwater collection, low energy use appliances and installation of a building management system.

A new roof will be built, and new ramps and lifts will be added to the building to enhance disabled access.

Government House in Wellington is a substantial and important example of a vice-regal residence, and is a major asset of the Crown of New Zealand. It is fitting that its first centenary should be marked in this way.

Lady Rose Windsor married

Lady Rose Windsor, the daughter of The Queen's cousin the Duke of Gloucester, has married.



Peter and Autumn Phillips

Her engagement to George Gilman (26), son of Peter Gilman, property developer and former director of



Leeds United Football Club, and Mrs Gillian Gilman, was announced 16th November 2007. The couple were married at The Queen's Chapel, St James's Palace, London on Saturday 19th July 2008. They will live in London.

Lady Rose Gilman works as an art assistant in the film industry. She was credited in *Harry Potter and the Order of the Phoenix* (2007), as "Rose Windsor".



Lady Rose's sister, Davina, married 31st July 2004 at Royal Chapel, Kensington Palace, New Zealander Gary Lewis. He is the son of Hore (Larry) Lewis and Mrs Vikki Carr. Originally from Gisborne, he is a member of a well-known East Coast Maori family.

League News

The death of Ian Madden, former Vice-Chairman

Ian Beresford Madden, MA New Zealand LLB Otago FSA(Scot) FHSNZ, was born 27th February 1931, the only son of Charles and Madge Madden. His education included Remuera Primary School, Auckland Grammar School and the Auckland University College (later the University of Auckland), from which he graduated with an MA in history in 1956. History was to remain an abiding lifetime passion.

Ian was a teacher at Otahuhu College 1956-57 before embarking on a career with the State Advances Corporation, Auckland; he was a legal officer there 1958-66. He was later a staff member in various law firms and companies 1967-76 (including as Earl Kent Massey & Co). Studying partly in Auckland and partly in Dunedin he completed a law degree and was admitted as a Barrister and Solicitor of the High Court of New Zealand in 1971. From 1974 until his retirement he was a property manager.

Ian Madden was one-time President of the Auckland Historical Society. His major publication as an historian was *Riverhead: The Kaipara gateway: an historical record of the upper reaches of the Waitemata Harbour* (Riverhead Jubilee Association, 1966).

Mr Madden was a founding member in 1962 of The Heraldry Society (New Zealand Branch) Inc., and was a Councillor at various times from 1962-95. He was made a Fellow (FHSNZ) in 2006.

Beyond heraldry, his major interests were political – he served in various capacities in the National Party – and the monarchy. He was a Councillor of The Monarchist League of New Zealand 2000-2004, and its Vice-Chairman 2004-2005.

Ian Madden died 13th August 2008 in the Elizabeth Knox Hospital, Epsom, Auckland, after a short illness, aged 77. His funeral service was on Saturday 16th August 2008 at All Souls Chapel, Purewa Cemetery and Crematorium, 100-102 St Johns Road, Meadowbank, Auckland.



Members of the League at the AGM

In related League matters, Sean Palmer was co-opted to the Council on 18th September, to replace retiring Councillor John Cox. A further vacancy remains, left by the retirement of Ian Madden's successor in office, Dr Robert Mann. Members interested in serving on the council, or otherwise assisting the League with its work, are invited to contact the Chairman.

Overseas News

Dumfries House rescued by the Prince of Wales

Dumfries House, in East Ayrshire, Scotland, was recently saved from possible destruction – or at least the dispersal of its contents – by an initiative led by the Prince of Wales.

The house and its 1,900 acre estate was bought in June 2007 by a consortium comprising The Prince's Charities Foundation, the Scottish Government, Historic Scotland, The Art Fund Garfield Weston Foundation, The National Heritage Memorial Fund, SAVE Britain's Heritage, The Monument Trust, The Dunard Fund, and The Siegmund Warburg Voluntary Settlement.

The former owner was John Crichton, 7th Marquess of Bute, a former racing driver. The house had been owned by the Butes from 1635. The marquess chose to sell the house to concentrate on his house on Bute – Mount Stuart.



The purchase cost £45m in total. A major element of the financial package was a £20m loan backed by the Prince's Charities Foundation. The Prince's Charities raises £110m annually, with the beneficiaries being community projects of the Prince's choice.

This is the first time the charities have acted to save a stately home. The value of the house – designed by the Adam brothers – is said to lie in its contents. If the threatened sale came to pass it would have been a heritage disaster on a scale not seen since the



Rothschild palace of Mentmore, in Buckinghamshire, was broken up in the 1970s.

The house is now owned by The Great Steward of Scotland's Dumfries House Trust, of which the Duke of Rothesay (the title used by Prince Charles in Scotland) is President.

The house was opened to the public on 6th June 2008.

VC reunion

The Prince of Wales and The Duchess of Cornwall with holders of the Victoria Cross and the George Cross at St James's Palace prior to a Reception given



by Their Royal Highnesses for the Victoria Cross and the George Cross Association, 9th September. The royal couple had earlier attended a Reunion Service for the Association, of which the Prince is President, at St Martin-in-the-Fields.



Two New Zealanders attended the reunion on the 9th September, our latest VC recipient Corporal Willie Apiata and Captain John Gregson, MN, who was awarded the Albert Medal as a Merchant Navy cadet in 1943. The Albert Medal was discontinued soon after and replaced by the George Cross for civilian gallantry. John Gregson lives in retirement in the Bay of Plenty. Willie Apiata is still a serving SAS soldier.

No ordinary man: The remarkable life of Arthur Porritt

Dr Graeme Woodfield and Joseph Romanos, *No Ordinary Man: The remarkable life of Arthur Porritt* (Trio Books Ltd, P.O.Box 17021, Karori, Wellington, 2008) 324 pages ISBN: 978-0-9582839-5-3 RRP NZ\$59.95 plus postage and packing.

Arthur Porritt was a multi-faceted New Zealander who achieved great things in several spheres. Among his achievements, he was a Rhodes Scholar in 1923, an Olympic sprint medallist, in 1924, in the 100 m



final made famous by the film *Chariots of Fire* (he remains New Zealand's only Olympic sprint medallist), and a widely-respected and much-honoured surgeon.

Porritt became president of the Royal College of Surgeons and the British Medical Association, two of the two major medical

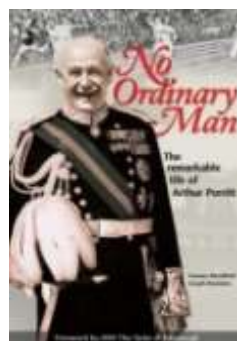
organisations in Britain.

He was also a member of the International Olympic Committee for more than half a century, and chairman of the Commonwealth Games Federation for 18 years.

Arthur Porritt was also a decorated war hero, who was present during the D-Day landings.

Porritt was Serjeant Surgeon to King and then to Her Majesty The Queen 1936-67. He was Governor-General of New Zealand 1967-72. He was the first New Zealand-born Governor General.

Knighted and later elevated to the peerage, he was an active member of the House of Lords for nearly 20 years.



In addition to their own research, the authors – one a medical doctor, the other a sports writer – have been given Porritt's extensive unpublished memoirs, and have made maximum use of these in compiling *No Ordinary Man*.

The book will be officially launched at a function to be hosted by the Governor-General at Government House, Auckland, on 20th November. This will be attended by Porritt's daughter, Joanna, who lives in London.

Orders can be sent to g.woodfield@auckland.ac.nz or j.romanos@ihug.co.nz or direct to the publishers.

Further information can be obtained from www.jacklovelock.com or www.triobooks.co.nz

Royal Residences past and present

A starter palace for Prince William and Kate?

The Prince of Wales has been given the green light to build an eco-friendly house, rumoured to be a “starter home” for Prince William once he gets married.

Planning permission has been granted for the six-bedroom property in the grounds of the Duchy of Cornwall’s Harewood Park Estate.

The home, built to stringent environmental parameters, contains a chapel, a rainwater reservoir and stables, and draws heavily from Greek and Roman classical references.

A spokesman for the Prince said that it was designed to be rented out, but would not comment as to who it might be offered to.

Many Royal watchers believe Prince William will make the estate his country residence after he gets married, although he is likely to have company as other redeveloped buildings there are already let out and plans for the future include offering “five-star holiday accommodation”.

The estate affords all the privacy a young royal couple like Prince William and his long-term girlfriend Kate Middleton would require, sitting on an isolated stretch of road near Ross-on-Wye, Herefordshire, close to the Welsh border.

It is less than an hour’s drive from Highgrove House, the Prince of Wales’s home in Gloucestershire. Work on the two-storey house will start later this year, with the emphasis on it being environmentally sustainable.

In a more functional than palatial move, a 200-litre rainwater reservoir will collect and recycle rainwater to the house. The house will even have an eco-friendly reed bed sewage system.

Forty per cent of the lighting will be energy efficient, solar panels will heat the water in the summer, whilst a wood chip boiler using wood from the estate will heat it in the winter.

The roof, made of salvaged Welsh slate, will be insulated using wool, whilst volcanic ash components in the 610mm-thick external walls, some of which will be built from recycled bricks and stone taken from the estate’s quarry, will keep the heat in.

The house has been scaled down from its original 14,885 sq ft to 8,500 sq ft to make it more energy efficient but the occupants will still live in splendour. There are six reception rooms downstairs and six bedrooms upstairs – five of which are en suite.

On the ground floor there is also a 25ft dining room and 18ft sitting room, as well as a kitchen, drawing room, library and orangery.

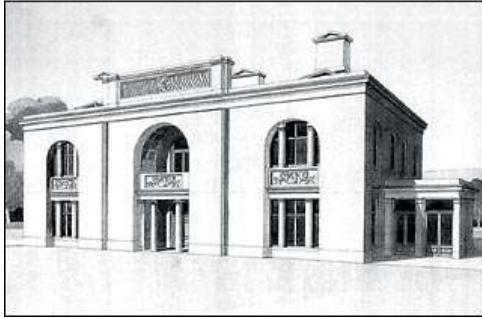
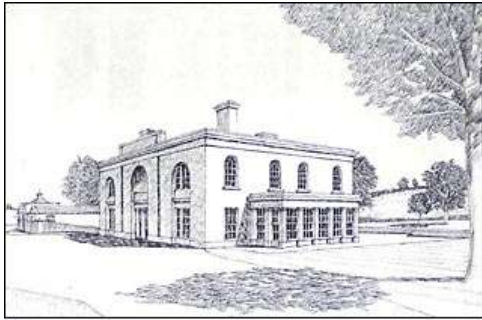


Low energy and water saving appliances will be fitted everywhere, whilst three large recycling bins will make the best use of waste and, according to a sustainability report, make “recycling and composting easy for the occupants”.

The report, by Dr Gail Kenton, of the BP Institute in Cambridge, gives the house a “very good” rating according to the Eco Homes 2006 criteria. It misses out on an “excellent” rating predominantly because of its remote location.

The most eye-catching aspect will be the entrance hall containing eight columns inspired by the Telesterion, built in 480BC at Eleusis, north of Athens. According to the plans, it will provide a “mysterious experience akin to being in a forest of columns, which provide a contrast to the large open spaces”.

Outside, arches, some of which were inspired by the Arc de Triomphe in Paris, will dominate the facade, whilst the walls will contain sculptures of winged lions.



The design of a four-bay garage has been based on one of the smaller monuments on the Acropolis in Athens.

Designed by the architect Craig Hamilton, the house is part of a redevelopment of the 900-acre estate, which was bought by the Duchy in 2000 and will be built on the site of a demolished 17th Century bungalow.

It offers stunning uninterrupted views across the border valleys.



Mike Wilmont, who dealt with the planning application at Herefordshire Council, said it was approved last Wednesday without objection.

He said: "When the initial application was made, it had Crown Exemption, which meant they could pretty much do what they wanted without the need for permission, but the rules changed last year so they needed planning permission from the council."

A spokesman for Prince Charles said: "Work will begin in due course. The house was scaled down in size because the Duchy felt a smaller property would have a greater commercial return. It has always been the intention to build it for the rental market."

Nick Britten

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See also *Monarchy New Zealand*, February 2007, for more on the Harewood Estate

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