

PARLIAMENTARY PRIVILEGE

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

CONTENTS

1.	Procedures to be observed by Senate committees for the protection of witnesses	96
2.	Procedures for the protection of witnesses before the Privileges Committee	98
3.	Criteria to be taken into account when determining matters relating to contempt	99
4.	Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business	100
5.	Protection of persons referred to in the Senate	100
6.	Matters constituting contempts	102
7.	Raising of matters of privilege	104
8.	Motions relating to contempts	105
9.	Exercise of Freedom of Speech	105
10.	Reference to Senate proceedings in court proceedings	106
11.	Consultation between Privileges Committees	106

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

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

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

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

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

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

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

- (1) A person shall, as soon as practicable, be informed, in writing, of the nature of any allegations, known to the Committee and relevant to the Committee's inquiry, against the person, and of the particulars of any evidence which has been given in respect of the person.
- (2) The Committee shall extend to that person all reasonable opportunity to respond to such allegations and evidence by:
 - (a) making written submission to the Committee;
 - (b) giving evidence before the Committee;
 - (c) having other evidence placed before the Committee;
 - (d) having witnesses examined before the Committee.
- (3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the Committee shall ensure as far as possible that that person is present during the hearing of that evidence, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.

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

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

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

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

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

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

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

5. Protection of persons referred to in the Senate

- (1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate, makes a submission in writing to the President:
 - (a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and
 - (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

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

the President shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Senator who referred in the Senate to that person.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Senate.
- (6) In considering a submission under this resolution and reporting to the Senate the Committee shall not consider or judge the truth of any statements made in the Senate or of the submission.
- (7) In its report to the Senate on a submission under this resolution, the Committee may make either of the following recommendations:
 - (a) that no further action be taken by the Senate or by the Committee in relation to the submission; or
 - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the Committee, be published by the Senate or incorporated in Hansard,

and shall not make any other recommendations.

- (8) A document presented to the Senate under paragraph (5) or (7):
 - (a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:

- (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
- (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

6. Matters constituting contempts

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

Interference with the Senate

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

Improper influence of Senators

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

Senators seeking benefits etc.

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

Molestation of Senators

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

Disturbance of the Senate

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

Service of writs etc.

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

False reports of proceedings

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

Disobedience of orders

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

Obstruction of orders

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

Interference with witnesses

- (10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

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

Offences by witnesses etc.

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

- (a) refuse or fail to attend before the Senate or a committee when ordered to do so; or
 - (b) refuse or fail to produce documents, or to allow the inspection of documents, in accordance with an order of the Senate or of a committee.
- (14) A person shall not wilfully avoid service of an order of the Senate or of a committee.
- (15) A person shall not destroy, damage, forge or falsify any document required to be produced by the Senate or by a committee.

Unauthorised disclosure of evidence etc.

- (16) A person shall not, without the authority of the Senate or a committee, publish or disclose:
- (a) a document that has been prepared for the purpose of submission, and submitted, to the Senate or a committee and has been directed by the Senate or a committee to be treated as evidence taken in private session or as a document confidential to the Senate or the committee;
 - (b) any oral evidence taken by the Senate or a committee in private session, or a report of any such oral evidence; or
 - (c) any proceedings in private session of the Senate or a committee or any report of such proceedings,

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

7. Raising of matters of privilege

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

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

- (4) Where the President determines that a motion relating to a matter should be given precedence of other business, the Senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges. Such notice shall take precedence of all other business on the day for which the notice is given.
- (5) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a Senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (6) Where notice of a motion is given under paragraph (4) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

8. Motions relating to contempts

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

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

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

9. Exercise of Freedom of Speech

- (1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:
 - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
 - (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
 - (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
 - (d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
 - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

10. Reference to Senate proceedings in court proceedings

- (1) That, without derogating from the law relating to the use which may be made of proceedings in Parliament under section 49 of the Constitution, and subject to any law and any order of the Senate relating to the disclosure of proceedings of the Senate or a committee, the Senate declares that leave of the Senate is not required for the admission into evidence, or reference to, records or reports of proceedings in the Senate or in a committee of the Senate, or the admission of evidence relating to such proceedings, in proceedings before any court or tribunal.
- (2) That the practice whereby leave of the Senate is sought in relation to matters referred to in paragraph (1) be discontinued.
- (3) That the Senate should be notified of any admission of evidence or reference to proceedings of the kind referred to in paragraph (1), and the Attorneys-General of the Commonwealth and the States be requested to develop procedures whereby such notification may be given.

11. Consultation between Privileges Committees

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

PARLIAMENTARY PRIVILEGE**PROPOSED RESOLUTIONS OF THE SENATE**

These notes list the recommendations of the Joint Select Committee on Parliamentary Privilege on which the proposed resolutions are based, and indicate the nature of and the reason for any proposed modifications of the terms of the Committee's recommendations.

Some of the Committee's recommendations were for amendments to the Standing Orders, but the following all take the form of resolutions, in accordance with the practice of trying new procedures by resolution before they are written into the Standing Orders. It may also be desirable to keep all the matters together rather than have them scattered through the Standing Orders.

The proposed resolutions have been drafted so as to be consistent with the *Parliamentary Privileges Act 1987*.

Minor changes to the wording of resolutions recommended by the Committee and changes to take account of Senate practice and phraseology are not noted.

Proposed resolution 1: Procedures to be observed by Senate committees for the protection of witnesses

Recommendation 35 of the Committee. The Committee substantially adopted a suggested resolution put to it by the Senate Department, which reflected practices already adopted by Senate committees. The following modifications have been suggested to the resolution recommended by the Committee.

- (1) The resolution recommended by the Committee was limited to "investigatory" committees. There would seem to be no reason for not extending it to all committees.
- (2) Paragraph (5), referring to opportunity for witnesses to raise matters of concern to them before they give evidence, was not included in the Committee's recommendation, but it is suggested that it be included in the resolution.
- (3) Paragraph (6) of the Committee's recommended resolution would require reasons for refusing a witness's application to be heard in camera to be given in public. It may well be that a witness would prefer not to have the reasons published, and this is reflected in the proposed resolution (paragraph (7)).
- (4) Words have been added to paragraph (7) to make it clear that a witness may ask to give part of the witness's evidence in private session during the hearing of the witness's evidence. The witness may wish to answer a particular question in camera.
- (5) Paragraph (9) has been altered to make it clear that it is the responsibility of the chairman to rule on the relevance and necessity of a particular question, but that it is open to the committee to deliberate in private session and to determine whether any particular question, the relevance or necessity of which has been questioned, should be asked.
- (6) Paragraph (10) has been altered to make it clear that it is open to the committee to determine at once, without going into private session to deliberate, that a question objected to by a witness should not be pressed. It may happen that a Senator immediately withdraws a

question to which objection has been taken, and the committee accepts the withdrawal of the question.

(7) Paragraph (12) of the Committee's recommended resolution would provide that a committee may give reasonable opportunity for a person to respond to evidence adverse to the person. There would seem to be no reason for not making the reasonable opportunity mandatory, given that a committee may decide what is a reasonable opportunity in the circumstances (paragraph (13) of the proposed resolution).

(8) Paragraph (14) has been changed to provide a criterion for a committee to use when determining whether a request for a witness to be accompanied by counsel will be granted, namely, the need for the witness to be accompanied by counsel to ensure the proper protection of the witness.

(9) Words have been added to paragraph (15) to make provision for application by a witness for the reimbursement of legal costs where the witness has been granted the right to be accompanied by counsel, and for the committee to consider such application.

(10) Paragraph (16) is a new paragraph providing for a witness to make application for the reimbursement of expenses incurred in direct consequence of making a submission to a committee or giving evidence, and for the committee to consider such application.

Proposed resolution 2: Procedures for the protection of witnesses before the Privileges Committee

Recommendation 21 of the Committee. The Committee did not recommend the terms of a resolution. The procedures recommended by the Committee are cast in the form of conferring protection upon persons "against whom a complaint has been made". The difficulty with this formulation is that a reference to the Privileges Committee often does not contain a complaint against any person, but merely refers to a matter which may involve or may give rise to an allegation of contempt against a person. The Privileges Committee has the task of investigating the matter to determine whether any contempt has been committed, and if so, by whom, and of hearing evidence and making a determination in relation to any allegation of contempt which may emerge during the inquiry. In other words, it combines the functions of an investigative agency and a court of first hearing in a criminal matter. A person who is called merely as a witness may turn out to be the person against whom an allegation is made, and different allegations may be made against different people.

It would seem, therefore, to be preferable to confer protection on all persons involved in the Privileges Committee's inquiry against whom any allegation is made or any adverse evidence given, regardless of whether those persons are in the position of an "accused". This would have a considerable advantage over criminal proceedings in a court. In such proceedings very damaging accusations may be made against witnesses, by cross-examination and submissions, without those witnesses having any opportunity to respond or defend themselves; only the accused is protected, and only in relation to conviction for the specific charges before the court.

The proposed resolution had been drafted accordingly, and because of this it is substantially different from the rules suggested by the Committee. The proposed resolution having been drafted in this way, it subsumes recommendation 24 of the Committee, relating to the reputations of "third persons" in Privileges Committee inquiries.

Other modifications of the Committee's recommendation are as follows.

(1) Paragraph (a) of the Committee's recommended rules would give the Privileges Committee discretion to hear evidence in camera. Paragraph (7) of the proposed resolution would allow the Privileges Committee to hear evidence in camera only for the purpose of protecting witnesses or where the Committee considers it otherwise appropriate. It may be that the protection of witnesses should be the sole ground.

(2) Paragraph (h) of the Committee's recommended resolution would allow the person "against whom the complaint is made" to make submissions "at the conclusion of the evidence". This provision is based on the analogy with criminal proceedings. Paragraph (10) of the proposed resolution would allow any person affected by proposed findings of the Committee to make submissions on those findings before the findings are finally formulated and presented to the Senate.

Proposed resolution 3: Criteria to be taken into account when determining matters relating to contempt

Recommendation 14 of the Committee. The proposed resolution is cast in the form of a declaration by the Senate that it will take criteria into account in determining whether matters should be referred to the Privileges Committee and whether a contempt has been committed, rather than a resolution expressing an opinion as to how the penal jurisdiction should be exercised as recommended by the Committee. The proposed resolution would also require the Privileges Committee to take the stated matters into account.

Paragraph (a) of the proposed resolution contains the principle recommended by the Committee. Other matters not recommended by the Committee are suggested, as follows:

paragraph (b): the existence of another remedy, i.e., a civil or criminal action; and

paragraph (c): mens rea and reasonable excuse.

Proposed resolution 4: Matters to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business

The Committee did not recommend any specification of the matters to be taken into account in determining whether a motion should have precedence, but it would seem to be desirable to give the President some guidance in exercising this discretion, and to use the same criteria as the Senate itself would adopt to determine whether a contempt has been committed, except those which would involve any judgement of the content of an alleged contempt. The proposed resolution has been drafted accordingly.

Proposed resolution 5: Protection of persons referred to in the Senate

Recommendation 3 of the Committee. The Committee did not formulate a specific resolution, but suggested a series of ground rules for incorporation on a trial basis in the Standing Orders.

Modifications have been made to the procedures recommended by the Committee, as follows.

(1) The Committee suggested that a complaint of misuse of privilege should not contain “any matter amounting either directly or indirectly to an attack or a reflection on any Member of Parliament”. It is suggested that this criterion not be adopted. It may be extremely difficult for a person to claim that the person has been unfairly attacked in Parliament without at least indirectly reflecting on a member. Such a person may well need to state that a member did not tell the truth, which would be a grave reflection.

(2) The Committee suggested procedures that leave the Committee of Privileges at liberty to deal with the matter in any way it thinks fit. The proposed resolution would restrict the Committee to specific procedures and remedies. It is suggested that it would be desirable to do this to prevent undue interference with a member's freedom of speech.

Proposed resolution 6: Matters constituting contempts

Recommendations 27 to 33 of the Committee. The proposed resolution has been cast in the form of a declaration by the Senate, for the information of the public, as to matters it may treat as contempts.

The guidelines recommended by the Committee were taken from the *Offences Against the Parliament Bill 1981* introduced by Senator Button. The Committee departed from the provisions of Senator Button's Bill in a few places, and these departures are the subject of suggested modifications.

The following comments are offered and modifications suggested in relation to the Committee's suggested guidelines.

(1) The Committee suggested, as part of its description of “molestation”, that it would be a contempt to “engage in any course of conduct intended to influence a Member in the discharge of his duties as a Member”. It is suggested that this formulation could be regarded as preventing normal, acceptable and democratic methods of influencing members, e.g., telling a member that a vigorous campaign will be conducted against the member in the next election unless the member votes for a particular measure.

(2) The Committee suggested a contempt involving a member receiving any benefit on the understanding that the member would be influenced in the discharge of the member's duties, or entering into any arrangement controlling or limiting a member's independence or freedom of action or involving the member acting as the representative of an outside body. Paragraph (2) of the proposed resolution contains the Committee's formulation. In so far as this is intended to relate to bribery and corruption of members, it may be regarded as already covered, to the extent necessary in a declaration for the guidance of the public, by paragraph (2) of the suggested resolution. It may be thought that the wording suggested by the Committee is too wide and could make contempts out of normal, acceptable and democratic activities, e.g., a member agreeing to be bound by the decision of the member's party, or accepting the political support of an interest group, or agreeing to make representations on behalf of an interest group.

(3) The contempt of impairing the respect due to the authority of a House or a committee has been omitted from paragraph (5), relating to disturbance of meetings. It is suggested that this phrase is too vague.

(4) The provisions referring to the publication of in camera evidence and premature publication of reports have been combined in paragraph (16), and drafted so as to be consistent with the *Parliamentary Privileges Act 1987*.

Proposed resolution 7: Raising of matters of privilege

Recommendation 20 of the Committee. No substantive changes are suggested to the procedures recommended by the Committee.

Proposed resolution 8: Motions relating to contempts

Recommendation 22 of the Committee. The Committee recommended that 7 days' notice be given of any motion for the imposition of a penalty for a contempt. It is not clear in the Committee's report or the recommendation whether it was intended that this apply to a motion declaring a person to be guilty of a contempt as well as a motion for imposing a penalty. It has been assumed that this was the intention, and the proposed resolution has been drafted accordingly.

Proposed resolution 9: Exercise of freedom of speech

Recommendation 4 of the Committee.

The following modifications of the Committee's recommended resolution are suggested.

(1) The Committee's resolution would enjoin members to take account of the listed matters when reflecting adversely on any person. It is suggested that members should be asked to take the listed matters into account before they make a decision to reflect adversely on any person. The suggested resolution is therefore drafted to request members to consider the matters whenever they speak.

(2) The Committee's recommended resolution would ask members to take into account the damage that may be done by unsubstantiated allegations. It is suggested that members be asked to consider the damage that may be done by any allegations, whether substantiated or not.

Proposed resolution 10: Reference to Senate proceedings in court proceedings

Recommendation 8 of the Committee.

The following modifications of the Committee's recommended resolution are suggested.

(1) It would not seem to be appropriate for a resolution to reaffirm a law which is not made by resolution in the first place. The terminology of non-derogation has been substituted.

(2) Reference is made to any relevant law under section 49 of the Constitution, rather than only article 9 of the Bill of Rights, to take account of any possible interpretation of the effect of the *Parliamentary Privileges Act 1987*.

(3) In order to take full account of the possibility of unauthorised publication of proceedings, it is necessary to refer to any relevant law (such as the Act) and any relevant order.

(4) It would not seem to be appropriate for the Senate to be giving leave for evidence to be admitted when the courts have determined that leave is not as a matter of law necessary. The proposed resolution therefore declares that leave is not required.

(5) The resolution recommended by the Committee refers only to records and reports of proceedings and documents. It is necessary to refer to any form of evidence relating to proceedings.

Proposed resolution 11: Consultation between Privileges Committees

Recommendation 26 of the Committee. No modifications of the recommendation are suggested.

PARLIAMENTARY PRIVILEGE**PROPOSED RESOLUTIONS OF THE SENATE****Amendments to be moved by Senator Durack**

NOTES ON THE AMENDMENTS

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

Amendments (1) and (2). These amendments make it clear that a committee is not obliged to issue an invitation to appear or to produce documents before issuing a summons if the committee decides that a summons is warranted.

Amendments (3) and (4). These amendments remove the references to reimbursement of legal costs of a person who is accompanied by counsel before a committee and to the reimbursement of expenses incurred by a person in making a submission or appearing before a committee. In the normal course of committee inquiries witnesses are not accompanied by counsel and meet their own expenses except for travel to and from committee meetings.

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

Amendment (5). This is purely a drafting amendment to make it clear that, as contemplated by paragraph (2), a witness against whom adverse evidence is given may make application to have other witnesses called as well as to cross-examine witnesses.

Amendment (6). The proposed new paragraph (11) makes it clear that the President is to grant reimbursement of the costs of representation of witnesses before the Committee only where the President is satisfied that a person would suffer substantial hardship due to liability to pay those costs.

Resolution 5. Protection of persons referred to in the Senate

Amendment (7). This would place an additional restriction on submissions by aggrieved persons, namely that submissions should not contain anything offensive in character.

Amendment (8). The differences between the original paragraphs (2) to (8) and the proposed new paragraphs are as follows:

- amendments consequential on amendment (7) have been made throughout
- the requirement for the committee to invite the aggrieved person and relevant Senators to give evidence has been deleted, and an option for the committee to confer with those persons has been substituted, and other references to receiving evidence have been deleted throughout
- a requirement has been inserted that a response by an aggrieved person be succinct and relevant and not contain any offensive matter.

PRIVILEGE RESOLUTIONS

RESPONSES TO QUESTIONS RAISED IN DEBATE ON 25 FEBRUARY 1988

(1) Senator Puplick asked (*Hansard* p. 634) whether there would be any difference between publication of a response by a person named in the Senate and incorporation of the response in *Hansard*. The only difference between the two methods is that when a document is ordered to be published by resolution of the Senate copies are distributed by the Table Office to the normal list of recipients or other inquirers, but the text does not appear in *Hansard*. It is envisaged that in particular circumstances, e.g., if a response were of considerable length or, possibly, a considerable time had elapsed since the debate in the Senate, the Senate may think it appropriate that the response be published rather than incorporated in *Hansard*.

(2) Senator Puplick asked (*Hansard* p. 634) whether a response published or incorporated in *Hansard* would attract absolute privilege. A response published or incorporated would attract absolute privilege; that is why the rules provide that a response be succinct and strictly relevant and not contain anything offensive in character.

(3) Senator Cooney asked (*Hansard* p. 636) about the appropriateness of considering whether a person had a reasonable excuse for committing an act which might be a contempt in relation to such offences as obstructing the Senate in the performance of its functions. Resolution 3 merely indicates that the Senate will consider whether any defence of reasonable excuse is available. Of course, there may be contempts which, by their nature, exclude any defence of reasonable excuse (e.g. threatening a witness), but that does not prevent the Senate from considering whether such a defence is available.

(4) Senator Cooney asked (*Hansard* p. 637) whether questions as to a witness's credit would be regarded as relevant to a matter under inquiry by a committee. As Senator Durack pointed out, the question of whether a question is relevant would be determined in the first instance by the committee. A committee may well regard questions as to the credit of a witness as relevant, depending on the circumstances, but it would be for the committee to decide, subject to any direction by the Senate. The same answer applies to a question asked by Senator Harradine (*Hansard* p. 638) concerning relevance of questions.

(5) Senator Harradine questioned (*Hansard*, pp. 638 and 639) the inclusion of the expression "improperly influence" in the list of matters which may be treated as contempts. Resolution 6, as its terms indicate, is intended to give some guidance as to matters which may be treated as contempts. It is in the nature of the offence concerned that it is not possible to specify in advance all methods of influencing Senators which may be regarded as improper. It is analagous to such statutory offences as attempting to pervert the course of justice.

(6) Senator Harradine asked (*Hansard* p. 638) whether the existence of another remedy for an act which may be held to be a contempt, in the criteria to be taken into account when determining matters relating to contempts, refers to the inability to sue a person for an act which may be held to be a contempt. The criterion does refer to the availability of any civil or criminal remedy, but it does not follow that, as Senator Harradine suggested, no account will be taken of a matter because a civil or criminal remedy is available; it is merely a matter to be considered.

(7) Senator Haines referred (*Hansard* pp. 639 and 640) to the inclusion in the list of matters which may be treated as contempts of the references to influencing Senators and Senators seeking benefits in return for the discharge of their parliamentary duties. That these statements may be too broadly worded was suggested in the explanatory notes accompanying the draft resolutions. Again it must be stressed, however, that Resolution 6 is simply an indication, for the guidance of the public, of matters which may be treated as contempts. The resolution does not commit the Senate Committee to treat any particular matters as contempts, nor does it affect the ability of the Senate to judge particular cases on their merits and according to circumstances. The resolution therefore does not create any difficulties or give rise to any questions which did not exist before the resolution was passed.

[These responses were provided by Senator the Hon Gareth Evans in his capacity as Manager of Government Business in the Senate - see Senate Hansard 15 March 1988 p. 722]

