

## ADVICE NO. 34

**PARLIAMENTARY PRIVILEGE — EXECUTION OF SEARCH WARRANTS  
DRAFT GUIDELINES**

Thank you for your letter of 4 December 2003, in which the Committee of Privileges seeks my comments on the draft guidelines for the execution of search warrants provided to the President by the Attorney-General and the Minister for Justice and Customs.

The draft guidelines appear to have been significantly amended since I last saw them, and they also take into account comments made on earlier drafts.

In analysing the draft guidelines, it should be recognised that they are to be interpreted and applied by police officers in the process of executing search warrants and conducting searches. The draft guidelines therefore cannot be lengthy or complex. They are not an exercise in legal drafting or law codification.

The draft guidelines are basically sound. They cover all of the essential points, and appropriately preserve the rights of senators who may be subjected to warranted searches.

The following changes, however, would improve the drafting of the guidelines.

Paragraph 4.1, third dot point: It is not clear why “confidential material” is referred to here. Parliamentary privilege and confidentiality are two different issues, and the guidelines are intended to cover parliamentary privilege. The expression “confidential material” should be replaced by “material covered by parliamentary privilege”, in accordance with the expression used elsewhere in the guidelines.

Paragraph 5.6, subparagraph (a): “in Parliament” should be “in Parliament House”.

Paragraph 5.11, third dot point: Perhaps the Presiding Officer and Clerk of the relevant House should be added to the list of examples of neutral third parties who might be asked to hold material until a process for determining its status is begun or a claim of parliamentary privilege is abandoned. It may be thought that the Presiding Officer and Clerk are not sufficiently neutral, in that they may be expected to favour unduly the affected member, but the member and the police could well agree on their acting as the neutral third party.

Paragraph 5.11, fourth dot point: The phrase “the Presiding Officer of the relevant House” should be “the relevant House”. The Presiding Officer of the relevant House cannot make a ruling on the status of material; the ruling has to be made either by a court (if the judgment of French J is not followed) or by the relevant House (if that judgment is followed).

Paragraph 5.11, after fourth dot point: For complete clarity, there should be a new fifth dot point here, along the following lines:

- When a member notifies the executing officer that the member will seek a ruling on a claim of parliamentary privilege, the items are to remain in the possession of the neutral third party until the disposition of the items is determined in accordance with the ruling.

It may be thought that this goes without saying, but it should be included for completeness.

With these changes I think that the draft guidelines will be appropriate.

I would be pleased to provide the committee with any further assistance in relation to this matter which the committee may require.