

LETTER FROM MR P.M. LE GRAND

I refer to your letter of 1 November 1991 requesting advice on the points made in a letter of the same date from Mr P.M. Le Grand concerning his future appearance before the Privileges Committee.

Mr Le Grand has requested that he be summoned to appear before the Committee. The bases for this request are set out in points 1 to 3 of his letter. He appears to believe that if he is summoned he will be less at risk of prosecution in respect of his giving evidence. Point 4 of his letter appears to indicate that he has received some advice to the effect that if he is summoned this will remove any risk of prosecution; this would appear to follow from the statement that indemnification from prosecution is not necessary if he is summoned. He has not disclosed this advice, and therefore it is not possible to comment upon it, but his view seems to be partly based upon the opinions which have been given by the Solicitor-General in relation to the application of the secrecy provisions of the National Crime Authority Act to inquiries by parliamentary committees; he refers to the opinions given by the Solicitor-General and by me on that subject (he does not refer to the conflicting opinions which have been given by the Attorney-General's Department on the matter of secrecy provisions).

It should be noted, however, that the opinions of the Solicitor-General and of the Attorney-General's Department fall far short of claiming that a person may be prosecuted under the secrecy provisions for giving evidence to a parliamentary committee. The Solicitor-General avoids that question altogether, while one of the opinions of the Attorney-General's Department concedes that a person "probably" cannot be prosecuted for giving evidence to a parliamentary committee. As I have suggested in other advices, that avoidance and that concession arise because the law of parliamentary privilege, so recently and unambiguously declared in section 16 of the *Parliamentary Privileges Act 1987*, makes it abundantly clear that under no circumstances can a person be prosecuted for giving such evidence. (See opinion of the Solicitor-General, 20 August 1990, p 5 para 5; opinion of the Attorney-General's Department, 15 April 1991, p 3 para 6; my comments on those opinions, 28 August 1990, pp 2-3, 28 May 1991, pp 2-3; also my comments of 3 June 1991, p 2, on the Attorney-General's Department opinion of 14 May 1990.)

Even if one adopts the Solicitor-General's view, therefore, one cannot conclude that Mr Le Grand is in any substantial danger of prosecution for giving evidence to the Committee. Moreover, if one were to conclude that there is some possibility of a parliamentary witness being prosecuted for giving evidence, there is no basis I know of for concluding that the summoning of the witness reduces the risk. Certainly the opinions of the Solicitor-General do not provide any such basis. The advice which Mr Le Grand has received, and which he does not disclose, may contain some argument for such a view, but I cannot see what it could possibly be. If the giving of evidence before a parliamentary committee can constitute a criminal offence, the question of whether the witness is under summons would appear to be immaterial.

If I may go beyond commenting on the points which Mr Le Grand has made, and presume to advise the Committee as to its course of action, I think that Mr Le Grand's letter does not pose any serious difficulty for the Committee. Mr Le Grand would feel safer if he were summoned to appear, and presumably is reluctant to appear without a summons. The Committee could summon him to appear

while making it clear that the Committee does not necessarily accept his reasons for that action. The fact that a witness, however mistakenly, feels safer if summoned and is reluctant to appear without a summons is, in my view, a sufficient basis for the Committee to determine that the issue of a summons is warranted in the circumstances, within the terms of Privilege Resolution No. 1, paragraph (1).