

RECENT PRIVILEGE CASES

This note is to draw to the attention of the committee two developments overseas in relation to the use of members' participation in proceedings in Parliament as evidence against them in prosecutions for corruption offences. A case of unauthorised disclosure of committee documents is also referred to.

United Kingdom: misuse of members' entitlements

Following the great public controversy in the United Kingdom about misuse by members of the House of Commons of their entitlements to housing assistance, the government presented a bill to establish an Independent Parliamentary Standards Authority and a Commissioner for Parliamentary Investigations to police members' use of their entitlements and to proceed against any misuse of entitlements.

The bill contained a provision to the effect that article 9 of the Bill of Rights and the freedom of speech in Parliament would be set aside to allow members' participation in parliamentary proceedings to be used against them in any investigation of their use of their entitlements and in any prosecution for offences created by the bill. This provision was vigorously criticised by the Clerk of the House of Commons, Dr Malcolm Jack, in evidence before the Justice Committee of the House, as a serious abridgment of the freedom of speech in Parliament. In the course of his evidence, the Clerk again commended to members of the House the Australian *Parliamentary Privileges Act 1987* as a model that the United Kingdom should follow. The committee expressed concern about the provision, and in committee of the whole in the House the provision was struck from the bill by three votes. Subsequently, in anticipation of further defeats in the House of Lords, the government withdrew provisions in the bill which would have allowed the Authority and the Commissioner to take action against members. This will mean that they can only refer any alleged misuse of entitlements to the House and its Privileges Committee for remedial action.

The House of Lords further amended the bill to insert a provision declaring that it does not affect article 9, and put a two-year sunset clause on it, subject to extension by resolution of both Houses.

The end result is that a very significant change to the law of parliamentary privilege has been avoided.

United States: evidence to ethics committees

In a recent judgment the United States Court of Appeals held that statements made by a member of the House of Representatives to the House Ethics Committee, in an investigation of alleged improper acceptance of benefits from lobbyists, could not be used against the member in a subsequent criminal prosecution for the same matter.

It is obvious to us that statements made to a parliamentary committee are protected by parliamentary privilege and may not be used as evidence in proceedings before a court, but there were confusing judgments in the United States, one suggesting that statements to ethics committees were not always protected because they did not relate to legislative proceedings. These judgments were clearly inconsistent with judgments of the Supreme Court on legislative immunity. The court in the recent case could not overrule the previous judgments, but one of the judges suggested that the full court consider the question of law and explicitly

reverse the earlier contradictory judgments to make it clear that all statements to ethics committees are legislative proceedings and therefore protected by parliamentary privilege.

United Kingdom: unauthorised disclosure of committee documents

Following a leak to a newspaper of a draft report of a House of Commons committee, the committee concerned conducted a preliminary inquiry and the matter was then referred to the Committee on Standards and Privileges. That committee followed an email trail, and a recipient of the leak confessed to providing it to the newspaper. As a result, a member's staffer, a party researcher and a journalist were found guilty of contempt; the staffer was also found to have misled the committee. By way of penalty, the culprits had their security passes and their access to the parliamentary IT network suspended for various periods.