

ADVICE NO. 35

This note is to acquaint the committee with two matters of interest, and to suggest a possible course of action in relation to one.

United Kingdom Corruption Bill

The committee would be aware that there has been considerable publicity and concern in the United Kingdom in recent years about corruption of members of Parliament. Due to defects in the statutory law, it was discovered that members of Parliament could be prosecuted only for a common law offence of corruption. There arose a quite mistaken perception that parliamentary privilege was a barrier to the successful prosecution of members for corruption, and a view that the law of parliamentary privilege should be modified accordingly. A joint committee on parliamentary privilege gave credence to this view, notwithstanding attempts to dissuade them of it. The Home Office prepared a draft Corruption Bill, which included a provision that parliamentary privilege would be waived to allow proceedings in Parliament to be used against any person in a prosecution for a corruption offence. This bill was referred to another joint committee.

I made a submission to the joint committee, pointing out that the perception that parliamentary privilege was a problem was mistaken, and that it would be extremely unwise to undermine the fundamental constitutional principle of parliamentary immunity, not least because this would indirectly undermine that principle in other jurisdictions which gained their parliamentary privilege law by reference to the United Kingdom. This submission was supported by others, including the recently retired Clerk of the House of Commons.

In its report, the joint committee recommended that the provision be narrowed so as to permit the use of parliamentary proceedings to prosecute only the accused member and any co-accused. This is still a highly unsatisfactory and unnecessary erosion of parliamentary immunity.

Attachment 1 is an extract from *Odgers' Australian Senate Practice*, 10th ed, 2001, which sets out the principle involved and refers to two supporting cases, one American and one British. Attachment 2 shows the provision in the draft bill, attachment 3 is my submission to the joint committee, and attachment 4 shows the joint committee's report on the relevant provision and the recommended substitute provision.

I have expressed to my British counterpart the hope that members of the House of Commons will have sufficient independence and regard for a basic constitutional principle to reject the proposed provision.

The Privileges Committee may wish to consider the possibility of writing to its British counterpart to express concern about the proposed provision.

Answers to questions on notice: privilege of publication

Attachment 5 is a brief paper on a gap in the protection by parliamentary privilege of the process of asking and answering questions on notice. All stages of the asking and answering of such questions are protected, but the gap is that the general publication of answers is not protected until they appear in the next sitting's Hansard, which may be after many weeks where questions are answered in a long adjournment.

The paper suggests a simple amendment of the standing orders to close this gap.

The paper has been circulated to the Procedure Committee by the President, with a suggestion that the matter can wait until that committee has sufficient business to hold a meeting, but if members of that committee consider that the matter should be dealt with more expeditiously, this will be arranged.

Likewise, if the Privileges Committee considers that the matter should be dealt with more expeditiously, I will suggest to the President that this be done.