Parliamentary Briefing No 2

Two important overseas cases of interest on parliamentary privilege and the exercise of coercive parliamentary powers over State witnesses and documents

Thursday 6 December 2012 (as subsequently revised)

1. Introduction

1.1 I wish to briefly discuss two cases on parliamentary privilege and an additional issue

1.2 There is no common theme other than the fact that they arose out of the preparation of the materials for the ANZACATT Training Courses in the future

1.3 The two cases are:

- *R v Chaytor*
- *Leigh v AG NZ*

1.4 The additional issue concerns the power of Cth Parliament and its committees to summon State Government witnesses and compel the production of documents in their possession

1.5 Background

(i) Recall the familiar provisions of Article 9 of the English *Bill of Rights*

"That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament."

It applies in relation to the Cth Parliament because both Houses enjoy the same powers privileges and immunities as were enjoyed by the House of Commons on 1 Jan 1901 and s 16 of the *Parliamentary Privileges Act* 1987 (Cth)

(ii) Exclusive jurisdiction principle

In *Bradlaugh v Gossett* (1884) 12 QBD 271 Stephen J said in relation to an unsuccessful attempt made to challenge the exclusion of a member of the House of Commons which involved the interpretation of the Parliamentary Oaths Act

"The House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned ;

and …even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly …" (at 280 -1) [1]

(iii) Compulsive powers of parliamentary inquiry

Power enjoyed by the House of Commons and its committees to conduct inquiries and coextensive power to send for persons papers and records ("the Grand Inquest of the Nation")

In *Howard v Gossett* (1845) 10 QBD 359, Coleridge J observed:

> "That the Commons are, in the words of Lord Coke, the general inquisitors of the realm…it would be difficult to define any limits by which the subject matter of their inquiry can be bounded…they may inquire into everything which it concerns the public weal for them to know; and they themselves…are entrusted with determination of what falls within that category. Co-extensive with the jurisdiction to inquire must be their authority to call for their attendance of witnesses, [and] to enforce it by arrest where disobedience makes this necessary (at pp 379-380)."

1.6 Now turn to the first of the cases I want to discuss

2. *R v Chaytor* [2011] 1 AC 684; [2010] UKSC 52 Supreme Court of the United Kingdom

2.1 Facts

The defendants in this case were members of the British Parliament who were committed for trial on charges of false accounting contrary to s 17(1)(b) of the *Theft Act* 1968(UK). The charges arose in respect of allegedly dishonest claims for expenses and allowances made whilst they were serving Members of Parliament. The claims were made under a scheme for expenses and allowances provided by resolution of the House of Commons and operated by administrative staff under the supervision of parliamentary committees.

The defendants each claimed that criminal proceedings could not be brought against them since their claims of expenses and allowances which enabled them to carry on their parliamentary duties and functions were protected by parliamentary privilege as part of "proceedings in Parliament" within the meaning of Article 9 the *Bill of Rights* 1689 (Eng) so

[1] See *Queen v Speaker of the House of Representatives*; and also *Boscawen v Attorney-General* [2008] NZAR 44 for what seems to be an Antipodean replica of *Bradlaugh v Gossett* as regards the resolution of a dispute between a private individual, Mr Queen and the Clerk of the NZ House of Representatives, regarding the interpretation and application of secrecy provisions in the NZ *Family Law Act* to submissions made to a parliamentary committee

as to fall under the exclusive jurisdiction of the Houses of Parliament to regulate their own affairs.

The claim was dismissed by the lower courts from which an appeal was brought to the Supreme Court.

2.2 The appeals were dismissed on the following grounds.

1. It was for the courts and not the Houses of Parliament to determine the scope of parliamentary privilege whether under Art 9 of the Bill of Rights or the exclusive jurisdiction enjoyed by those Houses.

    - Nothing surprising there since such cases as *Stockdale v Hansard* (1839) in England and *Fitzpatrick and Browne* (1956) and *Egan v Willis* (1999) in Australia

2. Art 9 was primarily directed to freedom of speech and debate in the Houses of Parliament and in parliamentary committees where the essential business of Parliament took place and the article only applied to parliamentary proceedings which were recognisable as part of the formal collegiate activities of Parliament.

3. Actions outside the Houses and committees would fall within such proceedings only where they bore a sufficiently close relationship to the essential business of Parliament and the failure of privilege to attach to such actions might adversely impact on that business.

4. Art 9 had no application to the submission of the claims of the defendants which was only an incident of the administration of Parliament and not part of its proceedings. Scrutiny by the courts of those claims would have no adverse effect on the essential business of the Parliament nor inhibit the freedom of debate or speech or any other activities bearing on members' parliamentary duties.

5. Unlike the absolute privilege created by Art 9, the exclusive jurisdiction enjoyed by the Houses of Parliament to regulate their own affairs could be waived or relinquished by the Parliament and extensive inroads had been made into areas previously falling within that exclusive jurisdiction. Parliament had by legislative and administrative changes largely relinquished any claim to exclusive jurisdiction in respect of the administrative business of the two Houses. Although *decisions taken by parliamentary committees* relating to administrative matters were protected by privilege from challenge in the courts, the *implementation* of such decisions was not so protected.

6. The presumption of statutory construction which had developed after the doubtful decision in *R v Graham-Campbell Ex parte Herbert* in 1935, namely, that statutes do not apply to activities within the Palace of Westminster unless they expressly provide to the contrary is open to question.

7. Parliament did not challenge the application of criminal law within its own precincts or the jurisdiction of the courts to try crimes committed there. The House of Commons did not assert an exclusive jurisdiction to deal with criminal conduct, even where it related to or interfered with proceedings in the House or its committees, but rather, where it considered appropriate, invited police investigation with which it cooperated.

- I pause here to mention that Stephen J had in the same case which I mentioned at the outset himself said

  "I know of no authority for the proposition that an ordinary crime committed in the House of Commons could be withdrawn from the ordinary course of criminal justice" (at p 283).

- *R v Chaytor* represents a helpful illustration of that proposition while Elliot's case represented another regarding the assault of the Speaker

  Cf criminal liability for seditious utterances in the same case

8. In exercising its different and overlapping jurisdiction to discipline for contempt of Parliament, the House of Commons had excluded from its review those claims for expenses and allowances which were the subject of police investigations.

9. The prosecution of the defendants in this case related to an *area of administrative activity* and did not touch the *essential business of Parliament* and accordingly for all these reasons parliamentary privilege did not preclude the prosecution of the defendants in the criminal courts in these cases.

2.3 Evaluation

(i) This case has important potential implications for a number of aspects of the law relating to parliamentary privileges in Australia and New Zealand. These include the determination of the scope of parliamentary privilege including Art 9 of the English Bill of Rights by the courts (justiciability), the waiver of parliamentary privilege, what

constitutes a proceeding in parliament, whether the concept of what is necessary for the proper and effective functioning of Parliament (necessity) underlies and restricts the scope of existing parliamentary privileges and the relationship between parliamentary privileges and the application of the ordinary criminal law,

(ii) It might have been thought that one illustration of the exclusive jurisdiction principle was members' entitlements especially if they were provided by *parliamentary resolutions* eg parliamentary remuneration and travelling allowances

(iii) As can be seen from *R v Chaytor* English courts have however now affirmed an important qualification which was always inherent in the exclusive jurisdiction principle. That qualification ensures that any immunity from judicial review did not extend to the operation of the *criminal law or legislation which creates new offences*

(iv) This is a sound qualification firmly based on an important aspect of the rule of law, namely, that all persons are equal under the law and are not exempt from this aspect of the law. As will have been seen the qualification was applied to dismiss attempts by British MPs to hide behind parliamentary privilege when resisting prosecution for making false claims of allowances contrary to the UK *Theft Act*

(v) But this involved drawing a difficult distinction between:

- On the one hand, the scheme which was established by *parliamentary resolutions* which provided for the payment of allowances
  - Thus making the scheme part of the proceedings of parliament so as to attract parliamentary privilege; and
- On the other, the *administration of the scheme* which involved the lodgement of claims by individual members to receive such allowances under the same scheme
  - Thus making the administration of the scheme <u>not</u> making it part of the proceedings of parliament so as not to attract parliamentary privilege

(vi) This may be compared with the Commonwealth scheme of parliamentary allowances which is contained in *legislation* and not the resolutions of the Houses: see *Parliamentary Allowances Act* 1952 (Cth) and *Remuneration Tribunal Act* 1973 (Cth).

(vii) There was no suggestion in the Australian case of *Crane v Gething* (2000) 97 FCR 9 decided by the present CJ when he was a judge of the F Ct that the administration and interpretation of such legislation fell within the exclusive jurisdiction of the Houses of the Commonwealth Parliament. It would be very surprising if there was, given that *Remuneration Tribunal Act* was not confined in its application to Members of the Commonwealth Parliament. Some of the administration of that legislation is also vested in the Executive and not officers of the Parliament as in the UK. Even if

parliamentary privilege was otherwise attracted, the *legislative* character of the allowances makes it possible to argue that it has been overridden by that legislation pursuant to Con ss 49 and 51(36).

(viii) On the question of whether individual members of parliament may rely on privileges waived by the parliament note there is a reference to waiver in para 63 in the judgment delivered by Lord Phillips. This seems to refer to a resolution passed by the *House of Commons* and not an *Act of Parliament* passed by both Houses with the assent of the Queen.

- The ability of a House to waive raises a significant issue because it may allow the majority to use their voting power to affect the rights of individual MPs who are not members of that majority

(ix) On my reading of the general approach taken by the Court, necessity seems to underlie and restrict the scope of parliamentary privileges. Lord Phillips said:

> "the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament (para 47)"

3. *Leigh v AG NZ*

3.1 Necessity

(a) This brings us back to speculation about the ultimate foundation of the privileges enjoyed by the houses of the Australian and NZ legislatures

(b) The common law recognised a principle of necessity for legislatures which were not granted the same powers, privileges and immunities as House of Commons:

Colonial legislatures only possessed "such [privileges] as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute": *Kielly v Carson* (1842) 4 Moo P C 63

(c) This should be compared with the approach adopted by the Canadian Supreme Court in the *Vaid Case* (2005) which analyses the doctrine of necessity as the foundation for the privileges of the British H of C

- *ie* whether the protection provided by parliamentary privilege is necessary for the proper and efficient conduct of the business of the House

(d) This might, at first sight, suggest that necessity now underlies *both* sources of parliamentary privileges

- But when I delivered the lectures for ANZACATT I suggested that the practical significance of this development would only lie in the determination of *new* claims of parliamentary privilege

- I doubted whether this was meant to cast new doubts upon the punitive powers to punish for contempt as regards those houses which enjoy the same privileges as those of the English House of Commons or the interpretation of other recognized categories of privilege

- Developments in the United Kingdom and New Zealand may now suggest the possibility that the concept of necessity may extend to restricting by interpretation the scope of existing privileges

(e) In *Attorney-General (NZ)* v *Leigh* the NZ SCt relied on the same kind of approach which was applied in *Chaytor* which was thought to rest on the necessity principle followed in *Vaid*

By way of elaboration I should now explain the facts in that case

Facts

P was engaged as a contractor to the Environment Ministry as a communications adviser in relation to climate change issues

She left the Ministry after another communications adviser was appointed to work on the same project

At the Minister's request, the Ministry provided the Minister with a briefing paper which was critical of the work which Ms Leigh had done

The Minister used the briefing paper to respond to parliamentary questions on the quality of P's work for the Ministry

P later sued the Minister and the Deputy Secretary of the Ministry in defamation and for negligent misrepresentation

Held

[1] Not surprisingly the Minster's statements in Parliament were covered by parliamentary privilege

[2] But the material prepared by persons who were not MPs for the purposes of answering parliamentary questions were only covered by qualified privilege

- The failure to extend parliamentary privilege was seen as the best way of striking a balance with the importance of preserving the ability of citizens to resort the court for redress of their rights

- It was not thought to be necessary for the proper and efficient despatch of the business of the House that the persons preparing the material to be protected by absolute privilege

- It was thought sufficient for them to be qualified privilege which was effective unless they acted in bad faith or for an improper purpose (ill will / taking of improper advantage)

- This sounds sensible and reasonable but the person preparing the material for use in Parliament may be deterred by the prospect of litigation concerning the alleged existence of bad faith [2]

(f) *Leigh* is also relevant for two other reasons

3.2 Communication between members including Ministers and public servants

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[2] Although not mentioned in the talk as delivered, it is worth mentioning that the plaintiff had also sought to sue for negligent misstatement in addition to defamation arising out the communications which the senior public servants had had with the Minister for his use in Parliament in relation to the quality of the plaintiff's work for the Ministry. By the time the case reached the Supreme Court this claim had been dismissed by the intermediate Court of Appeal essentially for the reason that the material supplied to the Minister was not a reference for future employment which would have given rise to a duty of care and there were policy factors which militated against the imposition of such a duty. The duty would have cut across the balance struck by the law of defamation and the defences recognised by that law and also the balance between freedom of speech on the part of a Minister of the Crown and the rights to the protection of reputation of citizens. There was no appeal against this aspect of the Court of Appeal's decision. The fact remains however that if an additional cause of action had been pleaded based on the same facts and that cause of action did not turn on the reputation of individuals, the result of this decision may have been to deprive the communications in question from immunity from suit since the communications were not thought to form part of the proceedings in Parliament within meaning of Article 9 of the English Bill of Rights.

(1) As I have just demonstrated *Leigh* is also clearly relevant to communications between Ministers and public servants

But before we can understand whether it is relevant in Australia for that reason I need to point to authority at common law [3] which deals with communications between members and constituents and shows that such communications are not covered by Art 9 as proceedings in parliament

- This means that members must exercise extreme care regarding the distribution of any communications which they receive if they contain defamatory allegations

- given the strict liability that may attach to their subsequent 'publication'

(2) More recent authority has had to deal with such communications in the light of the statutory definition in s 16(2) *PP Act* and has done a lot to clarify the law in this area in Australia

Leading case is *Rowley* v *O'Chee v* (1997) **E13**

The case involved an action in defamation arising out of remarks made by a Senator (D) in a radio interview which were critical of Rowley's (P) activities as a professional fisher and as a member of an official advisory committee to the Australian Fish Management Authority

P sought discovery of various documents that were in D's possession which he alleged were used in the course of parliamentary proceedings in the Senate – questions raised there

<u>*Held*</u>: At least some of the documents were thought to form part of the proceedings of the Senate

[1] Relevant test was whether they were retained in the possession of a senator (D) with a view to using them so as to constitute acts done *for purposes of or incidental* to the transacting of the business of the House pursuant s 16(2)

[2] Furthermore the immunity conferred by s 16 must necessarily continue to apply to documents after they have been prepared for the purposes of transacting the business of the House

- as well as *after* the business has been transacted in case it may be raised again in parliament

[3] Carney (2000) p 214 n 39. See also *Thomson v Broadley* [2000] QSC 100 where the possibility of relying on *qualified* privilege was acknowledged.

- although there may come a time when they will cease to come within that description (at pp 209 – 210)

[3] But note the main limitation which is quite significant:

- documents do not qualify until and unless the MP decided to retain them with a view to using them for the purposes of transacting the business of the House [4]

- Eg junk mail does not merely by being delivered to a member attract the privileges of the parliament p 209

Erglis v Buckley (2006) illustrates what falls within and what falls outside

Defamatory letter sent by nurses to Qld Minister which was subsequently read and tabled in Qld Parliament

Held: Parliamentary privilege attached to the typing, printing and sending the letter to the Minister once it was so used

- But not in relation to a copy of the letter which was left in a common room in the hospital and could have been and was read by any other hospital staff members who happened to visit that room

(3) I should now return to communications between *Ministers and public servants*

I have on a previous occasion mentioned *Sportsbet P/L v New South Wales* (No 3)[2009] FCA 1283 which was concerned with discussions involving parliamentary drafters regarding the preparation of legislation

They were not regarded as part of proceedings of the parliament so as to attract *absolute* privilege (as distinct from *qualified* privilege)

The question may be asked whether too narrow a view was taken about the scope of the incidentality concept

(4) As we just saw this now appears to be also the view taken in NZ

Recall that in *Attorney-General (NZ) v Leigh* the NZ S Ct decided that *a* briefing note prepared by a senior public servant for the Minister to use in Parliament was not regarded as part of proceedings in parliament

[4] Presumably privileged even if for some reason they were not subsequently used for the purpose in question.

- it was thought sufficient that such documents would enjoy *qualified* and not *absolute* privilege from liability in defamation

- note absence of provisions like sub-s 16(2) of the *Parliamentary Privileges Act* 1987 (Cth) regarding activities which are *incidental* to the carrying of a proceeding in parliament

(5) Compare the effect of the O'Chee and *Erglis* cases in Australia where the position is likely to be wider *Sportsbet* notwithstanding

3.4 Evidence

Leigh is also relevant to the rule that evidence of parliamentary proceedings cannot normally be used to impose a liability for or in respect of what was said or done in those proceedings

- *Eg* where MP defames X
- Exception for repetition cases : *Buchanan v Jennings* (supra)

- May be others eg allowing reliance on greater publicity generated by repetition of defamatory allegation in parliament as a means of aggravating award of damages for injury to reputation*: Erglis v Buckley* [2004] 2 Qd R 599 but now not in NZ as to which see *Leigh v A-G* [2011] 2 NZLR 148 (NZCA) where reliance was placed on the dissenting judgment in *Erglis* which with respect is I think to be preferred over the majority judgments on this point

- That does not turn on the absence of s 16 in NZ

4. Powers of Commonwealth parliamentary inquiries over State officials

4.1 The rule of law requires federal and State governments and their officials to obey the law and certain orders made by public authorities. But for this obligation to apply the orders must be lawful and legally valid under our federal Constitution.

4.2 As was stated by Stephen J in *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 there are limitations to be implied from the federal nature of the Constitution which "serve to protect the structural integrity [of] the State components of the federal framework, State legislatures and the executive": at p 216. Even though those limitations have never

been exhaustively or comprehensively stated and have had to be decided on a case by case basis,

- it is clear that that they operate to protect the way in which State governments function

- *ie* the *processes* of State governments rather than the content of their powers: *Tasmanian Dam Case* (1983) 158 CLR 1 at p 214 and *Street v Queensland Bar Association* (1989) 168 CLR 461 at pp 512-3 per Brennan J.

4.3 The limitations serve to restrict the scope of Commonwealth legislative power such as, for example, the likely inability of the same Parliament to pass a law which interferes with the freedom of State members of Parliament to say what they like in those Parliaments or the privileges of State Parliaments generally: G Lindell, "Advancing the Federal Principle through the Intergovernmental Immunity Doctrine" in H Lee and P Gerangelos, *Constitutional Advancement in a Frozen Continent* (Federation Press: Sydney, 2009) (ch 2) 23 at p 38

4.4 By parity of reasoning the same limitation is likely to apply to restrict the authority that both Houses of the Federal Parliament possess under s 49 of the Constitution including their powers of investigation and whatever coercive powers are needed to make those investigatory powers effective. It is for this reason that I have seriously doubted whether State officials could be compelled to answer questions about the performance of their official duties: see G Lindell, "Parliamentary Inquiries and Government Witnesses" (1995) 20 *Melbourne University Law Review* 383 at pp 388-390

4.5 It is true that the limitations have never been held to be absolute. Thus in the example given above the Parliament may well have the power to prohibit even State members of Parliament disclosing and making public military secrets in the course of State parliamentary debates.[5]

4.6 In my view the use of coercive powers to force State officials to cooperate with federal parliamentary inquiries with respect to the workings of State Cabinet involving for example the shredding of cabinet documents or the administration of State criminal law

[5] Another example drawn from a decided case is the execution of a Commonwealth search warrant against records kept by a State Department of Fisheries when the records consisted of confidential returns required to be filed with the same Department by fishermen and the warrant related to suspected breaches of federal income tax laws. Not surprisingly there are remarks in the case which emphasise the importance of facilitating law enforcement in regard to the breaches of the ordinary law by private individuals who might otherwise use their connection with the Crown to evade detection: *Jacobsen v Rogers* (1995) 182 CLR 572 at p 588. However, as was made clear by one of the judges in the case, the execution of the warrant against State Cabinet documents may well attract the kind of immunity I have described in this talk; at p 597-8 *per* Brennan J.

which protects children and others are, I think, likely to lie nearer to the *heart* of the federal limitation rather than within the *exceptions* to that limitation - especially when the matter is looked at from the federal perspective. [6] On the other hand and to deal with an issue which was raised in the questions which followed my talk, it is strongly arguable that the destination and administration of federal funds under s 96 of the Constitution could come within an exception flowing from the nature of the power to provide financial assistance to the States because of the need to ensure the proper accountability for the expenditure of such funds.

4.7 Without wishing to suggest that my researches have been exhaustive, what little I have been able to locate supports the likely application of the view I hold even in the US.

4.8 There is a case decided by a US District Court which categorically denies to a State legislative inquiry the power to subpoena Federal officials for the kind of federal reasons explained above: *US v Owlett* 15 F Supp 736 (1936).

4.9 If federal officials enjoy such immunity it is difficult to envisage the same immunity not being enjoyed by State officials in the reverse position. It is true that the view expressed in this case has not escaped criticism but it would be unsafe to assume that the case is not good law unless and until the contrary is decided by the US Supreme Court: see M Vitiello, "The Power of State Legislatures to Subpoena Federal Officials" (1983) 58 *Tulane Law Review* 548 as to the criticism.

4.10 Moreover, it is clear that in recent times the Supreme Court has supported a minor revival of federalism which if anything goes further in the same direction of State immunity as is illustrated by that Court's refusal to countenance the imposition of federal duties on State officials or State legislatures and their governments: see *Printz v US* 521 US 898 and *US v New York* 505 US 144 (1992) mentioned in my chapter of the book edited by Lee and Gerangelos cited above at pp 46 and 50.

4.11 Although also not mentioned in the talk as delivered, a contrasting view seems to have been taken by a single judge of the Prince Edward Island Supreme Court in *Attorney-*

[6] It will be noticed that my view about the likely inability to coerce State officials to force them to testify before federal parliamentary inquiries is not based on another possible federal limitation, namely, the view that those inquiries should be limited to inquiring into subjects which fall within federal legislative powers. I have doubted whether the High Court would give effect to this limitation if, for no other reason, than the fact that it has become increasingly difficult to know in advance what matters of inquiry would not fall within those powers: see Lindell above (1995) 20 *Melbourne University Law Review* at pp 386-88. Nor have I relied on another limitation sometimes suggested, namely, that parliamentary powers of inquiry are limited by public interest immunity or, as it was once described, "Crown" or "Executive Privilege". The reason is that I have not accepted the existence of such a restriction on the powers of the "Grand Inquest of the Nation" as to which see generally the article just mentioned but cf now *Egan v Chadwick* (1996) 46 NSWLR 650.

General (Canada) v McPhee and Ors. [7] The Court refused to prevent witnesses who were officers in the Federal Canadian Food Inspection Agency from being summoned to appear before a Committee of the Prince Edward Island Legislative Assembly, although it was recognised that it was only when the relevant witnesses appeared that the Court could determine whether the Committee intended to act outside its constitutional sphere of authority by inquiring into the administration or operation of a federal agency. It would in, any event, be unsafe to rely on this case, at least without more, because the method of distributing powers in Canada are not the same as the method followed in Australia and the United States. Furthermore even though the issue of constitutional immunity was dealt with by the Court, it did not have to consider an argument along exactly the same the lines as those outlined above.

4.12 Finally, I should emphasise that nothing I have stated here or elsewhere should be taken as suggesting that the view I have expressed has been settled by the High Court in Australia since so far as I know that court has never had to decide the issue.

4.13 Nor, for reasons which I have not had time to elaborate here, do I think that the issue was decided by the WA Full Court in *Aboriginal Legal Service of WA Inc v WA* (1993) 113 ALR 87

- although that case upheld wide powers of State parliamentary inquiries to investigate the affairs of an Aboriginal legal centre which received federal funding
- but was not thought to enjoy the immunities of the Federal Government or have a special relationship with that Government.

4.14 The most that can be stated is that my view is based on general principles which are likely to be applied if the issue should ever fall to be decided by the High Court.

[7] [2003] PESCTD 6 (14 Jan, 2003) esp at [32] – [37]. See also G Levy, "The Right of Provincial Legislatures to Summon Federal Officials" published in in the *Canadian Parliamentary Review*, Vol. 26, No. 2 and available on as at 17 Dec 2012 <ww.revparl.ca/english/issue.asp?art=10&param=58>. I am grateful to the Deputy Clerk for reminding me of the existence of Canadian authority on the issue which led me to discover the existence of this case.