ADVICE NO. 13

Thank you for your letter of 27 May 1992 in which you seek advice on the effect of paragraph (10) of Privilege Resolution No. 2.

That paragraph provides:

> As soon as practicable after the Committee has determined findings to be included in the Committee's report to the Senate, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the Committee, in writing and orally, on those findings. The Committee shall take such submissions into account before making its report to the Senate.

I think that the correct interpretation of this paragraph is that it requires the Privileges Committee to make its proposed findings known and afford all reasonable opportunity to make submissions to the Committee on those findings to persons who are *adversely* effected by those findings. There would be no need for the Committee to make its proposed findings available to a person who is referred to but not in an adverse way. The concept of adverse reference to a person or adverse finding, however, should be interpreted broadly, and the proposed findings should be made available to anybody who could reasonably be regarded as adversely affected by the findings.

The basis for this interpretation is the rationale of Privilege Resolution No. 2 as expounded in the explanatory notes which were presented when the resolutions were moved in the Senate. The procedures set out in Resolution No. 2, as the explanatory notes explain, were in substitution for the criminal trial model for Privileges Committee inquiries proposed by the Joint Select Committee on Parliamentary Privilege. The Joint Select Committee proposed that rights analogous to the rights of an accused person in a criminal trial be conferred upon persons "against whom the complaint has been made" in Privileges Committee inquiries, including the right to make submissions to the Committee "at the conclusion of the evidence". The explanatory notes pointed out that the criminal trial model was inappropriate in that the Privileges Committee combines the functions of an investigatory body as well as those of a tribunal to hear the evidence and make determinations. The resolution was therefore cast in terms of conferring rights upon all persons involved in an inquiry, who may or may not turn out to be "the accused". Paragraph (10) of the resolution was intended to replace the provision for the right of the "accused" to make final submissions to the Committee.

The procedures in Resolution No. 2, and the particular procedure contained in paragraph (10), therefore, are designed for the protection of persons against whom adverse findings may be made.

I do not think that the right conferred by paragraph (10) should be confined to occasions when the Committee proposes to make a finding that a contempt has been committed by a person. I think that the history outlined above supports the interpretation that paragraph (10) should be applied whenever the Committee is proposing to make a finding adverse to a person in broad sense. Thus a person whose conduct is criticised should be afforded the right contained in paragraph (10), even though a finding that a contempt has been committed is not made against that person. The rationale

of this interpretation is that an adverse finding against a person or criticism of their conduct can be just as damaging to them as a finding that a contempt has been committed.

Please let me know if I can provide any clarification of this advice or any further assistance.