Question of privilege on the action taken by TVNZ in relation to its chief executive, following evidence he gave to the Finance and Expenditure Committee

Interim report of the Privileges Committee

Forty-eighth Parliament
(Simon Power, Chairperson)
April 2006

Presented to the House of Representatives
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Question of privilege on the action taken by TVNZ in relation to its chief executive, following evidence he gave to the Finance and Expenditure Committee

Recommendation

In this interim report of the Privileges Committee, we find that TVNZ has committed a contempt of the House and recommend that the House punish the contempt by:

- requiring from the Board of TVNZ a formal written apology to the House
- imposing on the Board of TVNZ a fine of $1,000

Referral of the question of privilege

On 16 February the Speaker ruled that a question of privilege arose from the action taken by Television New Zealand Limited (TVNZ) in relation to its chief executive following evidence he gave to the Finance and Expenditure Committee. The question consequently stood referred to this committee. The ruling is appended to this report (Appendix B).

Raising a matter of privilege: Standing Order 398

A member who makes an allegation of a breach of privilege or of contempt may not serve on an inquiry into that allegation. However, where a matter of privilege relates to proceedings before a select committee, it is the practice of the Speaker to seek the views of the committee concerned before ruling. To facilitate this process, the Standing Order on raising a matter at the earliest opportunity has been relaxed.¹

In these circumstances, a committee, as a whole, may well agree that a matter should be raised and, in effect, may resolve that the chairperson should raise the matter with the Speaker on its behalf. However, a chairperson does so voluntarily and in his or her capacity as a member of Parliament, not as the chairperson of a particular committee. No chairperson is obliged to raise a matter of privilege and no committee has the power to direct a chairperson to do so. The other members of that committee are therefore not parties to the raising of the matter unless they address letters to that effect to the Speaker in their own names.

Background to the question of privilege

On 14 December 2005 Mr Ian Fraser, the departing chief executive of TVNZ, appeared before the Finance and Expenditure Committee as a witness giving evidence on its inquiry into Television New Zealand. The focus of the inquiry was recent events at TVNZ such as

¹ SO 392(2)
“the high-profile performance and industrial relations issues”\textsuperscript{2}, including the circumstances surrounding the resignation of Mr Fraser.

Following his appearance before this committee, Mr Fraser received a letter, dated 22 December 2005, from the chairperson of TVNZ, Mr Craig Boyce. In this letter Mr Boyce advised Mr Fraser that his comments to the committee were inappropriate and “amounted to serious misconduct”. The letter advised him that, as a consequence, the board had resolved that he would not be required to carry out any functions on behalf of TVNZ for the balance of his notice period.

Mr Fraser raised these actions with the Finance and Expenditure Committee. Mr Boyce subsequently retracted the “misconduct” paragraph and apologised to the Speaker. Despite this apology, the Speaker ruled there was a wider issue for the House to consider.

**Disadvantaging a witness**

Standing Order 399 states that the House may treat as a contempt any act or omission which has the tendency to directly or indirectly obstruct or impede the House in the performance of its functions, or a member or officer of the House in the discharge of the member’s or officer’s duties.

Standing Order 400(t) provides that the House may treat as a contempt intimidating, preventing or hindering a witness from giving evidence, or giving evidence in full, to the House or a committee. Standing Order 400(w) provides as examples of a contempt, the assaulting, threatening or disadvantaging a person on account of evidence given by that person to the House or a committee. The generality of Standing Order 399 is not limited to the examples contained in Standing Order 400.

**Protection of witnesses**

In referring this matter to the committee, the Speaker advised: “I think that a general question of the status of select committee witnesses does arise that warrants the attention of the House.” We intend in this interim report to examine the particular incident involving the conduct of TVNZ and make a finding in respect of it. We then intend to examine the more general issue of protection of witnesses. We believe this issue is important for both Parliament and witnesses who appear before select committees.

Our starting point is the fundamental importance of protecting witnesses who give evidence to select committees. Select committees play a key scrutiny and examination role on behalf of the House. In carrying out these functions select committees rely heavily on their ability to receive evidence from persons and organisations. While Parliament has an unfettered right to information, this right does not guarantee absolute protection for a witness in relation to evidence provided before a select committee.

There should be no doubt that witnesses can participate in select committee proceedings without fear of intimidation or disadvantage as a result of their evidence. We question, however, whether it is realistic for the House or a witness to assume that no consequences

\textsuperscript{2} Letter from Chairperson of the Finance and Expenditure Committee to Mr Craig Boyce, dated 1 December 2005.
to relationships will arise from their giving evidence to a select committee. This point will be the subject of our further inquiry.

**Inquiry into TVNZ and subsequent actions**

On 30 October 2005 Mr Ian Fraser resigned as chief executive of Television New Zealand, giving six months notice. Mr Fraser and Television New Zealand then negotiated a variation to the terms of his employment contract. This agreement stipulated the tasks he would carry out on behalf of Television New Zealand until the expiry of his period of notice.

The Finance and Expenditure Committee determined to undertake an inquiry into TVNZ in addition to its scheduled annual review of the company’s financial and operational performance for the 2004/05 financial year. On 7 December 2005 the committee commenced this review, and Mr Fraser appeared before the committee, as the out-going chief executive, to be examined on the company’s performance for that financial year.

On 14 December 2005, Mr Fraser appeared again before the Finance and Expenditure Committee. On this occasion he appeared as a witness for the committee’s inquiry into certain high-profile events at TVNZ, including the circumstances surrounding his resignation. In his evidence to us, Mr Fraser said that prior to his appearance on 7 December he had attended meetings with other TVNZ officials to prepare for the financial review examination. For the meeting on 14 December, however, Mr Fraser told us he advised the TVNZ board that he would not participate in a similar process.

During this appearance, Mr Fraser made comments that were highly critical of the board and its members.

After his appearance on this second occasion, Mr Fraser received a letter from the chairperson of TVNZ advising him that the board had resolved that he would not be required to carry out any functions on behalf of TVNZ for the balance of his notice period.³

**Letter from TVNZ to Mr Fraser⁴**

The letter of 22 December 2005⁵ from Mr Boyce to Mr Fraser advised him that the Board considered the comments he made to the Finance and Expenditure Committee amounted to serious misconduct under the terms of his employment contract and the TVNZ Employment Code and Conditions of Employment.

This letter advised Mr Fraser that it would be inappropriate for him to continue to represent TVNZ for the balance of his notice period. The letter also advised him that his proposed attendance at a conference in New Delhi would be at his own cost, and he was required to return all TVNZ property and records. Mr Fraser was effectively put on what Mr Boyce described as “garden leave”.⁶ A copy of the letter is attached as Appendix C.

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³ Letter from Mr Craig Boyce to Mr Ian Fraser, dated 22 December 2005 (see Appendix C).

⁴ See Appendix C.

⁵ Ibid.

⁶ Transcript of hearing of evidence of 2 March 2006.
After receiving this letter Mr Fraser wrote to the Finance and Expenditure Committee to advise it of the consequences of his appearance before the committee as he understood them. The chairperson of TVNZ subsequently wrote to both Mr Fraser and to the Finance and Expenditure Committee conceding that the second paragraph of the letter could be interpreted as inhibiting the rights of witnesses before parliamentary select committees. The letter advised that the board unequivocally withdrew the “serious misconduct assertion” contained in paragraph 2 of the letter. The company, through the chairperson, also apologised to the committee if it had “inadvertently offended the committee as a result of its action”.

Finding of contempt: the actions of TVNZ

We have considered whether the actions taken by TVNZ in respect of Mr Fraser have a tendency to obstruct or impede the House in performance of its functions. Our examination has focused on whether the actions of TVNZ have amounted to “assaulting, threatening or disadvantaging” Mr Fraser. We have also considered whether the actions taken against Mr Fraser after he gave evidence to the Finance and Expenditure Committee might act to deter Mr Fraser, or others, from giving evidence in the future.

In our view the letter sent by the Chairman of TVNZ, Mr Craig Boyce, to Mr Fraser after his appearance before the Finance and Expenditure Committee’s inquiry does amount to a contempt.

There is a clear link in the letter between the concern of the board about comments Mr Fraser made to the select committee and the board’s view that Mr Fraser’s evidence amounted to serious misconduct under his employment agreement. It is clear to us that Mr Fraser’s evidence at the Finance and Expenditure Committee’s inquiry was the direct cause of the subsequent serious misconduct allegation and the board’s removal of duties from Mr Fraser for the balance of his notice period. The letter from the board states “The Board, at its meeting last Thursday, expressed considerable concern at the comments you made to Parliament’s Finance and Expenditure Committee the previous day. They were of the view that the comments provided voluntarily were quite inappropriate…the Board’s view is that it amounted to serious misconduct.”

Although the board later withdrew the assertion of serious misconduct, it did not withdraw its requirement that Mr Fraser no longer carry out any functions under his employment agreement.

Mr Fraser told us that he did not feel intimidated from providing information to the select committee. Mr Boyce’s evidence to us was that he believed TVNZ would not be called before the Finance and Expenditure Committee again. However neither of these points are relevant to the issue of disadvantaging a witness.

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7 See Appendix C.
8 SO 400(w).
9 SO 400(t).
10 See Appendix C.
It is a contempt of Parliament for an employer to later penalise a person solely on the basis of evidence given to a select committee. We consider that in its effect the letter sent by Mr Boyce does amount to disadvantaging Mr Fraser on account of his evidence given to the Finance and Expenditure Committee inquiry. Furthermore, the actions of the board could well have the effect of discouraging or deterring Mr Fraser or others from giving evidence in the future. In conclusion, we are of the view that the actions of TVNZ in respect of Mr Fraser have a tendency to obstruct or impede the House in the performance of its functions.

**Subsequent actions by TVNZ**

On occasions the acceptance that a contempt has been committed, an apology may be sufficient to satisfy the Privileges Committee that the matter does not require any further action. In this instance, however, we do not accept that the apology made by Mr Boyce, which was qualified in its terms, can be an end to this matter.

Mr Boyce told us that if he or the board had breached the Standing Orders of Parliament this was entirely inadvertent. We may still find that a contempt has been committed even though there was no intent to do so. Indeed, we would not expect a chairman or a board of a State enterprise (or any other organisation accountable to Parliament) to intentionally act in such a way as to breach the Standing Orders.

We are concerned about the ignorance of TVNZ about Parliament’s rules regarding witnesses appearing before select committees. We were told that the board took advice from internal and external legal advisers in respect of the employment issues (see the response from TVNZ at Appendix D). However, neither internal nor external legal advisers raised the possibility that such action might be in breach of Standing Orders. We find this extraordinary in the light of the responsibility State enterprises and other Crown agencies have to be accountable to Parliament. We note that TVNZ retains a general counsel, who ought to be able to advise the board competently on the relationship between State enterprises and Parliament and its select committees. We find it regrettable that this is not so. We are also surprised that TVNZ’s external legal advisers did not turn their minds to the issue of the Standing Orders.

Because this report contains findings about TVNZ, its general counsel, and TVNZ’s external legal advisers that could seriously damage their reputations, we were required to acquaint these parties with our findings, prior to the presentation of our report, and afford the parties a reasonable opportunity to respond to us on them.\(^\text{11}\) Their responses are appended to this report.\(^\text{12}\)

**Wider issues relating to the protection of witnesses**

We intend to continue to examine the wider issue of the protection of witnesses and the extent to which any action may be taken against them as a result of their appearance at a select committee. While witnesses before select committees, as in courts in general, must be free to give evidence without fear of threats or intimidation, there may be consequences

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\(^{11}\) SO 247.

\(^{12}\) See Appendices E, F, and G.
for relationships, particularly where witnesses give prejudicial or critical evidence. For example, if a departmental chief executive, State enterprise board member or official gave evidence critical of a Minister to a select committee, we question whether it is realistic to expect that no action would be taken in response. The matter is not clear-cut and we intend to examine this further. There is a question of balance, and it may be necessary for the House to develop some principles and guidance on the issues.

We consider this is an issue of significance to anyone who appears before a select committee or who has a relationship with people who regularly appear before select committees. In particular, the State Services Commissioner will have an interest in respect of departmental officials’ interactions with select committees. It is also relevant to the role of the Crown Company Monitoring and Audit Unit in promoting corporate governance best practice for State enterprises, Crown entities, and those public organisations accountable to Parliament. We intend to progress this matter following our interim report on the immediate issue concerning TVNZ and Mr Fraser.

Although we make no finding as to the veracity of the evidence presented to us, we do believe the protection afforded by parliamentary privilege carries with it responsibilities. With this in mind, in our final report, we will consider whether or how far this protection should extend to witnesses who attempt to use privilege to their own advantage or to make allegations they cannot or will not substantiate.

**Accountability to Parliament**

In 2003 a question of privilege was considered in relation to New Zealand Post. The Privileges Committee at the time highlighted the responsibility State enterprises have to be open and forthright in their dealings with parliamentary select committees. The committee made the point that “SOEs must acknowledge and accept the role these committees have in scrutinising their performance in order to be assured that public money is properly accounted for”.

Since then, however, State enterprises, including Television New Zealand, have ignored this advice.

During its 2003/04 financial review of Television New Zealand, the Commerce Committee raised concerns about the number of company credit cards held by staff, and high or unlimited spending on some of them. TVNZ refused to provide information on credit card usage to the committee, asserting that the Official Information Act 1982 gave it a legal right to withhold this information. TVNZ claimed that this right extended to a parliamentary select committee, but subsequently re-evaluated its position after the Clerk of the House made a submission to another committee on the use of the Official Information Act by agencies to withhold information from Parliament.

Although this situation was subsequently resolved, the committee said in its report that the matters it raised “strike at the heart of the role and function of Parliament.” Since Parliament is ultimately responsible for the expenditure of public monies, the report

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14 Submission from the Clerk of the House to the Finance and Expenditure Committee on the Public Finance (State Sector Management) Bill, April 2004.
concluded that for public agencies “appearance before a select committee … is the hard reality of that accountability”. 15

There have been two other recent instances of a State enterprise or a public organisation accountable to Parliament failing to recognise this responsibility. On both occasions the Finance and Expenditure Committee had to remind the entities of the role select committees play in holding them to account for the public money they receive.16

For these reasons we are not prepared to merely repeat past warnings to State enterprises and Crown agencies regarding their obligations to Parliament and its committees. We recognise that the majority of boards discharge their responsibilities to Parliament adequately. But as our findings in this case demonstrate, future shortcomings in meeting their obligations to Parliament and its committees will come at a cost. We intend to leave those who serve on the boards or in management of such organisations in no doubt that Parliament will treat with utmost seriousness any behaviour that impedes the proper process of accountability to the elected representatives of the people.

Conclusion

We are satisfied that the actions of TVNZ taken against Mr Fraser following his appearance before the Finance and Expenditure Committee’s inquiry do amount to a contempt. While we note that Mr Boyce tended an apology, we do not believe this is sufficient to put an end to this matter.

We recommend that the Board of TVNZ make a formal written apology to the House. We further recommend that the Board of TVNZ pay a fine of $1,000.

As we have noted, State enterprises have already received a strong warning about their obligations to Parliament and its committees. For that reason we are not prepared to merely accept an apology as the end of the matter. The quantum of the fine we recommend is less significant than the fact that Privileges Committee, for the first time in 103 years, is recommending that a fine be imposed. We note also that future breaches of privilege or contempt of this nature may incur a higher fine.

16 The reports of the Finance and Expenditure Committee on the 2003/04 financial reviews of Radio New Zealand and Air New Zealand.
Appendix A

Committee procedure
The committee met on a number of occasions during March and April 2006 to consider the question of privilege. On 2 March 2006, the committee heard evidence from Mr Craig Boyce, Chairperson of Television New Zealand Limited, and Mr Ian Fraser. Rt Hon Paul East, QC assisted Mr Boyce during the hearing of evidence.

The committee heard evidence from Mr David McGee, QC, Clerk of the House.

Committee members
Simon Power (Chairperson)
Hon Dr Michael Cullen (Deputy Chairperson)
Gerry Brownlee
Hon Lianne Dalziel
Hon Peter Dunne
Russell Fairbrother
Hone Harawira
Rodney Hide
Dr Wayne Mapp
Rt Hon Winston Peters
Metiria Turei
Hon Paul Swain
Lindsay Tisch

Hon Murray McCully replaced Lindsay Tisch for consideration of this matter. Hon Dr Michael Cullen, as the shareholding minister of TVNZ, withdrew from participation in the consideration of this matter. He was replaced by Maryan Street.

Committee staff
Louise Sparrer, Clerk of Committee
Debbie Angus, Clerk-Assistant (Legal Services)
Appendix B

Speaker’s Ruling of 16 February 2006

I have received letters from John Key and Shane Jones raising as a matter of privilege the action taken by Television New Zealand in relation to its chief executive following evidence he gave to the Finance and Expenditure Committee. It is suggested that this action could amount to a contempt of the House in that the chief executive may have been punished on account of that evidence.

From the material sent to me it is apparent that Television New Zealand has acknowledged that its actions could be interpreted as a contempt and has apologised for not considering this aspect of its action. I am also aware that the chief executive has reiterated his intention to pursue a personal grievance against the company, notwithstanding its apology. However, this is a private law matter between the chief executive and the company with which I am not concerned here.

Often, when a contempt has been acknowledged and an apology for it tendered, the Speaker will exercise a discretion not to take the matter further. However, in this case, despite Television New Zealand’s acknowledgement of error, I think that a general question of the status of select committee witnesses does arise that warrants the attention of the House. I am therefore not inclined to exercise that discretion in this case.

Consequently, I rule that a question of privilege does arise from the action taken by Television New Zealand in relation to its chief executive following evidence he gave to the Finance and Expenditure Committee. This question therefore stands referred to the Privileges Committee.
22 December 2005

Ian Fraser
34 Talavera Terrace
WELLINGTON 1

Dear Ian

The Board, at its meeting last Thursday, expressed considerable concern at the comments you made to Parliament’s Finance & Expenditure Select Committee the previous day. They were of the view that the comments provided voluntarily were quite inappropriate, and reflected not only on the Board collectively and on individual members, but on the organisation as a whole and were damaging to its reputation, brand, and commercial activities.

The Board’s view is that it amounted to serious misconduct under Section 5.5 of your employment agreement and Sections 18.3.16 and 3.10 of the TVNZ Employment Code and Conditions of Employment, for which the Company could terminate your employment. At this stage, however, this step will not be taken. Clearly you will give the Board no option but to consider doing so if you make any further disparaging comments about the Company, its Board or management.

Under the terms of your employment agreement as varied following your resignation, you agreed to carry out certain tasks for the Company. The Board resolved that this would now clearly be inappropriate. You will not therefore be required to carry out any functions on behalf of TVNZ for the balance of your notice period pursuant to clause 5.1 of your employment agreement. In particular, your intended attendance at the Commonwealth Broadcasting Association’s conference in New Delhi cannot be made at the Company’s expense. The Association can invite you to attend in your personal capacity if they wish, but your attendance would be at your cost.

Please can you return all TVNZ property and records to the Company at your earliest convenience.

Yours sincerely

Craig Boyce
Chairman

T. 09 916 7927  F. 09 916 7900  E. craig.boyce@smithscity.co.nz
23 March 2006

Mr Simon Power
Chairperson
Privileges Committee
Parliament House
WELLINGTON 1

Fax: 04 473 0127

Dear Mr Power

Question of Privilege concerning the action of TVNZ in relation to its chief executive following the evidence he gave to the Finance and Expenditure Committee

Thank you for your letter of 16 March requesting confirmation that the letter to Mr Fraser of 22 December 2005 was subject to consultation between TVNZ and Bell Gully prior to it being sent to Mr Fraser.

I can confirm that a draft of the letter was provided to Bell Gully for them to check in terms of employment law, which was subject to consultation prior to the letter being sent to Mr Fraser.

Yours sincerely

Noel Vauteir
Company Secretary/General Counsel

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QUESTION OF PRIVILEGE RELATING TO TVNZ

Appendix E

3 April 2006

Ms Louise Sparrer
Clerk of the Committee
Privileges Committee
Parliament Buildings
WELLINGTON

Dear Ms Sparrer,

QUESTION OF PRIVILEGE CONCERNING THE ACTION OF TVNZ IN RELATION TO ITS CHIEF EXECUTIVE FOLLOWING THE EVIDENCE HE GAVE TO THE FINANCE AND EXPENDITURE COMMITTEE: FINDINGS OF THE PRIVILEGES COMMITTEE

I acknowledge receipt of the letter of 29 March from the Chairman of the Privileges Committee.

I note that the Committee proposes to determine that the letter I sent on 22 December 2003 to the Company’s former CEO, Mr Ian Fraser, after his appearance before the Finance & Expenditure Committee, amounted to contempt of Parliament.

I would like to take this opportunity to confirm the advice I gave to the Committee when I appeared before it that in sending the aforementioned letter the Company and its Board had no intention of undermining the working of Parliament.

The overriding concern was to protect the interests of the Company, which is a Crown entity. The breach of the Standing Order was entirely inadvertent. On my part and also on behalf of the Board of TVNZ I confirm and repeat the apology I gave to the Committee.

I can confirm that procedures have been put in place to ensure that there is no repeat of this error in the future. In particular we will ensure that the advice sought from our lawyers will encompass advice in relation to any relevant Standing Order of Parliament.

Yours sincerely,

Craig Boyce
Chairman

T. 09 916 7927  F. 09 916 7900
3 April 2006

Ms Louise Sparrer
Clerk of the Committee
Privileges Committee
Parliament Buildings
WELLINGTON

Dear Ms Sparrer

QUESTION OF PRIVILEGE CONCERNING THE ACTION OF TVNZ IN RELATION TO ITS CHIEF EXECUTIVE FOLLOWING THE EVIDENCE HE GAVE TO THE FINANCE AND EXPENDITURE COMMITTEE: FINDINGS OF THE PRIVILEGES COMMITTEE

I have received the letter of 29 March from Simon Power MP, Chairman of the Privileges Committee. Mr Power requested that I address my response to his letter to you. I would like to bring the following matters to the Committee’s attention in their consideration of my position in the finalising of the Committee’s report to Parliament.

As Secretary to the Board of Television New Zealand Limited and the Company’s General Counsel, I prepared the initial draft of the letter following a resolution of the Board. The letter was eventually sent on 22 December 2005 by the Company’s Chairman to the Company’s former Chief Executive Officer. I accept that I did not advise the Board that there was a possibility the letter I was instructed to write to Mr Fraser could be in breach of Parliament’s Standing Orders.

The focus of my attention in relation to the preparation of the draft letter was on the Company’s right to take the action sought by the Board in relation to Mr Fraser’s duties during the balance of his notice period under his employment contract.

Although Parliamentarians are aware of the very wide scope of Standing Order 400, I would venture to say that few Company Secretaries or General Counsel of Crown entities (particularly those based outside the Capital) would have this knowledge. During my 16 years in the position of Company Secretary/General Counsel of TVNZ at no time have I had to deal with a situation of this nature involving Parliament’s Standing Orders. I would add that little Information seems to be available for employees in my position relating to the Standing Orders. Perhaps there is an opportunity following resolution of this matter for all Crown entities to receive some updated material on the possible impact on their operations of the Standing Orders. As an example, the Owner’s Expectations Manual issued by the Crown Company Monitoring & Advisory Unit contains no reference to the Standing Orders, let alone any reference to a possible conflict between those Standing Orders, employment contracts and corporate governance responsibilities.

Notwithstanding, I sincerely regret that the Standing Orders were not drawn to the Board’s attention and unreservedly apologise for my unintentional lapse in not ensuring that the Company complied with all of its obligations and for any offence to Parliament.
caused by the letter. I have, it should be noted, now agreed with our legal advisors, Bell Gully, new procedures to ensure that in future we receive comprehensive legal advice.

I ask that these points be taken into account by the Committee before presenting a report to the House which is critical of me and possibly seriously damaging to my reputation.

Yours sincerely,

[Signature]

Noel Tabner
Company Secretary/General Counsel
Appendix G

By email

Confidential

Louise Sparrer
Clerk of the Committee
Privileges Committee
Parliament House
Wellington 1

Dear Ms Sparrer

Question of privilege concerning the action of TVNZ in relation to its Chief Executive, following the evidence he gave to the Finance Expenditure Committee: findings of the Privileges Committee

We refer to the letter of 29 March 2006 from Simon Power, Chairperson of the Privileges Committee. Mr Power required that we address our response to his letter to you.

We have seen Mr Vautier's proposed response to the Privileges Committee and would also submit that while a regrettable oversight, it is perhaps understandable that as the external employment law advisers, this oversight was made. We regret this and have now familiarised ourselves with Standing Orders and have an understanding with our client that we will take them into account in advising in the future.

In giving our advice, the firm only advised on the draft letter to Mr Fraser from an employment law point of view as to whether the company was within its legal rights to take the step it proposed in its letter. We were not asked to consider any possible issues relating to Parliament's standing orders and regret that in the short time we had to give our advice we did not think to raise that matter.

In the circumstances, we do respectfully submit that it would be unduly harsh to name the firm. We consider that the last sentence in the draft paragraph naming the firm is superfluous and we ask that it be deleted. The finding in relation to both the internal and external advisors is already made earlier in the paragraph.

Yours faithfully
Bell Gully

David Simcock
Chairman