

**Charles Chauvel**

Chairperson

Privileges Committee

Regulations Review Committee

# **Appearing Before Parliamentary Committees**

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## The first parliamentary purpose: making law (1)

- Parliament comprises Sovereign in Right of New Zealand, and House of Representatives (s 14 Constitution Act 1986)
- Parliament has “full power to make laws” (s 15) which everyone, including all the branches of government, must obey
- Under MMP, House has become increasingly less a creature of the Executive than prior to 1993
- The House of Representatives has necessarily (because of the increase in the volume of law) relied increasingly and heavily on its committees in the performance of its legislative tasks –viz the SO revisions in 1985 and 1996

## The first parliamentary purpose: making law (2)

- But unlike European legislatures, the committees generally have only a rudimentary independent research resource, which members can augment to an extent via interest groups, the office of the clerk, PCO, the library and the parliamentary officers (Auditor-General, Parliamentary Commissioner for the Environment, Ombudsmen)
- While this remains the case, committees continue to rely on the Executive to make itself available to assist them in their lawmaking work, and generally, the Executive does so via its neutral, professional public service by agreeing to the appointment of departmental staff as committee advisors

## The second parliamentary purpose: accountability

- The Executive may not tax, borrow, spend or receive funds except by or under an Act of Parliament (s 22)
- It follows that the House must satisfy itself of the appropriateness of public expenditure
- This is the general purpose of the Estimates and financial review process, and is usually also the reason behind consideration of petitions and the conduct of inquiries
- The Executive relies upon its neutral, professional public service to implement its policies and operations
- Committees call members of that service to give evidence as to the lawfulness and wisdom of taxing, receiving, borrowing, and spending funds, because public servants are best placed to give that evidence

## Expectations (1)

- Properly constituted committee hearings are a 'proceeding of parliament' within the meaning of the Bill of Rights 1688
- Absolute privilege applies, so the expectation is that frank advice, and honest and full evidence, will be given, since there can be no question of legal consequences for what takes place before a committee
- On the other hand, consequences can flow if a public servant is impeded from acting frankly and honestly
- The convention of free, frank and fearless advice is of paramount importance

## Expectations (2)

- Ministers must be members of the House of Representatives (s 6)
- This is how they retain accountability to the House, including for the actions of the public service
- It follows that although officials may be sent to assist committees, or summoned to appear before them as witnesses over the efficacy of Government operations, only Ministers are entitled to justify policy, explain its development, and comment on alternative proposals
- In turn, ministers are entitled to rely on the professionalism and neutrality of public servants
- This means they are entitled to be fully briefed by public servants about their actual and intended conduct in committees, and to express and have respected and taken into account lawful views about such conduct

## Conclusion

- The proper conduct of public servants is essential to constitutional government
- It includes giving frank advice or evidence to committees, and never bowing to pressure to do anything less
- It also includes facilitating and supporting ministerial accountability by assisting the Minister to do everything within his/her lawful power to discharge that duty to the best of his/her ability, including never surprising the Minister
- An unwritten constitution inevitably creates grey areas
- SSC and Office of the Clerk guidelines provide further useful guidance



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