



PARLIAMENTARY PRIVILEGE

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INTRODUCTION

The House of Commons and its Members enjoy certain constitutional rights and immunities which are collectively referred to as parliamentary privilege (or simply “privilege”).

Parliamentary privileges were first claimed centuries ago when the English House of Commons was struggling to establish a distinct role for itself within Parliament. These privileges were necessary to protect the House of Commons and its Members, not from the people, but from the power and interference of the King and the House of Lords.

The privileges enjoyed by the House and its Members continue to be vital to the proper functioning of Parliament. From time to time the House of Commons in Canada has had to challenge the Crown, the Executive (Cabinet) or the Upper House (the Senate), by asserting its independence based on parliamentary privilege.

INDIVIDUAL AND COLLECTIVE RIGHTS RELATED TO PARLIAMENTARY PRIVILEGE

Rights that are protected by privilege are those that are necessary in order to allow Members of the House of Commons to perform their parliamentary functions. These rights are enjoyed both by individual Members of Parliament—because the House cannot perform its functions without its Members—and by the House, as a whole, for the protection of its Members as well as its own authority and dignity.

The rights and immunities related to Members individually may be grouped under the following headings:

- freedom of speech;
- freedom from arrest in civil actions;
- exemption from jury duty; and
- exemption from being subpoenaed to attend court.

The two most important collective privileges or powers of the House of Commons are its disciplinary powers and its exclusive right to regulate its own internal affairs.

DETAILED ARTICLES

Application of Parliamentary Privilege to Individual Members of the House of Commons

Application of Parliamentary Privilege to the House of Commons as a Whole

PROCEDURE IN MATTERS OF PRIVILEGE

Any claim that a privilege has been infringed upon or a contempt committed must be brought to the attention of the House at the earliest opportunity. Once the Speaker recognizes a Member on a matter of privilege, the Member must briefly outline the complaint, following which the Speaker may choose to hear from other

Members prior to deciding if there is a *prima facie* case of privilege (i.e., whether the matter appears to warrant priority or consideration).

If the Speaker finds there is a *prima facie* breach of privilege, the Member raising the question of privilege is asked to move a motion, usually requesting that the matter be examined by the Standing Committee on Procedure and House Affairs. If there is a favourable vote in the House on the motion (which can be debated), the matter is examined by the Standing Committee, which may choose to call expert witnesses. The Committee's report of findings and recommendations is presented to the House, and a motion to concur in, or agree to the report, may then be moved.

DETAILED ARTICLES

Origins and Definitions of Parliamentary Privilege

Procedure in Matters of Privilege

LIMITATIONS OF PRIVILEGE

Parliament does not possess the authority to determine the limits of its own privileges; these are part of the Constitution of Canada, and therefore the courts have the jurisdiction to determine the existence and scope of any claimed privilege. In doing so, their guiding principle has traditionally been the protection of parliamentary autonomy from the courts and the Executive. The primary question asked by the courts is whether the claimed privilege is necessary for the House of Commons and its Members to carry out their parliamentary functions of deliberating, legislating and holding the Government to account, without interference from those outside of Parliament.

Once a category of privilege is determined to exist and its scope is ascertained, the exercise of parliamentary privilege, including any decision or action taken within the privileged category, cannot be reviewed by the courts.

DETAILED ARTICLE

Limitations of Privilege

MORE INFORMATION—PARLIAMENTARY PRIVILEGE

[*House of Commons Procedure and Practice*](#), Second Edition, 2009

Chapter 3, Privileges and Immunities

Find this and other articles on House of Commons procedure by visiting the *Compendium of Procedure* Web site at www.parl.gc.ca/compendium-e.

For further information about the procedures of the House of Commons, please contact the Table Research Branch at (613) 996-3611 or by e-mail at trbdrb@parl.gc.ca.

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