

February 24, 2021

Hon. Bill Oliver
Speaker of the New Brunswick Legislative Assembly
Legislative Building, Centre Block
P.O. Box 6000
Fredericton, N.B.
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Bill.Oliver@gnb.ca

Re: Removal of Protesters from Parliament Square Grounds

Dear Speaker,

I am writing to you on behalf of the Canadian Civil Liberties Association (CCLA) in relation to an incident that took place on September 25, 2020 on Parliament Square grounds. In our view, actions taken that day by the Sergeant-at-Arms, purportedly under the authority of then-Speaker Daniel Guitard, constituted an unlawful and unreasonable restriction of rights protected by the *Canadian Charter of Rights and Freedoms*. We seek to lay out the facts and our understanding of the law, to ascertain your position on this matter, and to determine if there is a way to resolve it without resorting to the courts.

Events of September 25, 2020

On September 25, 2020, a protest was planned to take place on the grounds outside the legislative assembly. The purpose of the protest was to draw attention to the closure of Clinic 554 – the only location to obtain abortion services in Fredericton, and one of only four locations to obtain such services in the province. The protest would also serve to more generally highlight the province’s failure to fund clinic provided abortions. The Legislature was not in session and the protesters’ intent was not to disrupt any business at the Legislature. The event would take place over the course of the weekend; I understand that setting up tents and staying over the weekend was an integral part of the protest.

I am advised by Prof. Kerri Froc, one of the protesters and a professor of constitutional law at the University of New Brunswick, that she was approached in the afternoon by the uniformed Sergeant-at-Arms for the New Brunswick Legislature (though he never explicitly identified himself), alongside security guards. He informed Prof. Froc that structures could not be erected and that camping could not take place on the grounds and indicated he would be removing the tents. I understand from Prof. Froc that the Sergeant-at-Arms was initially dissuaded from taking down the tents by a staff member of a local Member of Parliament, who spoke to him. However, he advised the protesters that they had to be gone by 7:30 p.m. Other than eventually stating that he had authority as the Sergeant-at-Arms, the individual provided no legal basis for requiring the protesters or tents to be removed, he said he was doing this “because I can”. The protesters did not accept this as a valid legal basis for removal and planned to continue their protest and stay on the grounds until Sunday morning.

Later that evening, the Sergeant-at-Arms returned with Fredericton police and began forcibly removing the tents. He provided Prof. Froc with a notice, which I have attached for your reference, laying out rules for protests and saying that no structures could be erected on legislative grounds. No legal basis for the notice was provided, although the notice does state that the Sergeant-at-Arms was acting “under the Speaker’s authority over access to the Legislative Precinct”.

The actions taken by the Sergeant-at-Arms and accompanying police officers disrupted the peaceful protest that was taking place. A key goal of the protest was to remain on the grounds for the weekend to build momentum in relation to the abortion issue. This goal was irreparably undermined by the removal of the tents. Moreover, we understand that the police seized property belonging to others who were present on the grounds, including one individual’s iPad. No legal basis for this seizure of property was provided.

Legal concerns

As you are no doubt aware, the *Charter* protects freedom of expression and freedom of peaceful assembly. Canadians have a right to protest, and that right can be limited only when reasonable and clearly justified. In our view, the removal of the tents – a core component of the September protest – was neither reasonable nor justified. The protest involved expression on a political issue of significance in a location where its message would have high visibility. It did not disrupt legislative business, was peaceful and did not damage property.

While the notice furnished to Prof. Froc by the Sergeant-at-Arms defines the Legislative Precinct as including the Parliament Square grounds and appears to rely on parliamentary privilege as the basis for the Speaker’s “authority over access”, we do not believe that this is consistent with the law in New Brunswick. The *Legislative Assembly Act* defines the privileges and immunities of the Assembly, stating in part:

2(1) In all matters and cases not specially provided for by any Statute of the Province, the Legislative Assembly of New Brunswick, and the committees and members of the Legislative Assembly respectively, shall hold, enjoy and exercise the same privileges, immunities and powers that are held, enjoyed and exercised by the House of Commons of Canada and by the respective committees and members of the House of Commons of Canada.¹

Looking at the powers and immunities enjoyed and exercised by the House of Commons of Canada, it is our view that parliamentary privilege does not extend outside the walls of the Parliament buildings. The limited geographic scope of privilege was explicitly acknowledged in a Senate of Canada Committee report which stated clearly that while security through the Parliament buildings lies with security staff under the jurisdiction of the House and Senate Speakers respectively, the grounds of Parliament are under the jurisdiction of the RCMP and

¹ RSNB 2014, c 116.



Ottawa police.² A copy of a paper authored by Lyle Skinner, a graduate of UNB's Faculty of Law, that elaborates upon these points is attached to this letter. It demonstrates that parliamentary privilege does not extend to the legislative precinct of the New Brunswick Legislature.

Absent a valid claim of parliamentary privilege, we believe the Sergeant-at-Arms acted unlawfully in removing the tents and that the Speaker's authority over access to the Legislative precinct does not include the grounds of Parliament Square. While the protest is now long over, our concerns about the events of that day persist.

Since this matter will no doubt arise again in relation to future protests on any number of issues, we would be grateful if you could provide your position on the question of jurisdiction over the grounds on which the legislative building sits. Specifically, we ask that you affirm that the Speaker's privilege to control access to the legislative precinct does not include the grounds and that the notice that Prof. Froc received will not be used in the future to manage or disrupt protests on the grounds of Parliament Square. It is our understanding that Prof. Froc will pursue this matter before the courts if necessary, given the fundamental constitutional rights that are at stake. As an organization that has defended and promoted those rights for over fifty years, we intend to join her in those efforts if that becomes necessary.

We look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cara Faith Zwibel', written in a cursive style.

Cara Faith Zwibel
Director, Fundamental Freedoms Program

² See 2015, Senate of Canada, The Standing Committee on Rules, Procedures, and the Rights of Parliament, "A Matter of Privilege: A Discussion Paper on Parliamentary Privilege in the 21st Century" available online at: <https://sencanada.ca/content/sen/Committee/412/rprd/rep/rep07jun15-e.pdf>.