

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

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- and -

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Respondent

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PART I: OVERVIEW

“Parliamentary privilege is like an eggshell; one cannot break it just a little.”

– *CANADA V POWER* (JUSTICE ROWE, DISSENTING) ¹

1. The freedom of speech and debate in Parliament is the most important right accorded to parliamentarians. Complete immunity from prosecution for individual parliamentarians is the essence of that free speech privilege and a core feature of Canada’s constitutional structure. It empowers parliamentarians to proceed fearlessly and without interference in discharging their constitutional role, which includes acting as a meaningful check on executive power. Without complete immunity from prosecution, Parliament cannot work effectively and parliamentarians cannot carry out their functions of office.
2. The consequences of abrogating immunity from prosecution are acute for independent and minority-party parliamentarians. Complete immunity is a structural bulwark against the political majority muzzling the parliamentary minorities on whom Parliament depends the most for its executive-accountability function, both generally in parliamentary work and specifically under the *National Security and Intelligence Committee of Parliamentarians Act* (the **Act**).²
3. This appeal raises whether the authority to “define” parliamentary privilege under section 18 of the *Constitution Act, 1867* permits legislation exposing exercises of parliamentary privilege to judicial review and exposing parliamentary minorities to the type of external pressure that risks muting their voices in Parliament and hindering the discharge of their constitutional role.
4. The Canadian Civil Liberties Association (**CCLA**) intervenes to contextualize and inform that interpretive exercise and highlight the urgent need to safeguard the purpose and function of parliamentary privilege by protecting parliamentary minorities. The CCLA submits that section 18 should be read with three features of our constitutional architecture in mind: (i) the absolute nature and indispensable function of immunity from prosecution; (ii) the role of that immunity in delimiting curial jurisdiction; and (iii) the importance of preventing the muting of independent

¹ *Canada (Attorney General) v Power*, [2024 SCC 26](#) at ¶354 (per Rowe J, dissenting) (**Power**).

² *National Security and Intelligence Committee of Parliamentarians Act*, [SC 2017, c 15](#) (**Act**).

and minority voices in Parliament. Canadians have an interest in their representatives outside the government party remaining free and unfettered in their ability to hold the executive to account.

PART II: ARGUMENT

A. Parliamentarians Enjoy Absolute Personal Immunity from Civil and Criminal Action for Parliamentary Speech

5. Legislative immunities ensure the proper functioning of our representative democracy.³ From a popular perspective, they cultivate a space in which the voices of Canadians, including those who hold potentially unpopular opinions, can be heard and considered.⁴ From a legislative perspective, they guarantee Parliament itself and all parliamentarians: (i) an independent forum both to carry out their parliamentary functions and to freely debate and decide what laws should govern; and (ii) the unfettered ability to hold the executive branch of the government to account.⁵

6. Legislative immunities flow from the “nature and function” of legislative bodies in the Westminster tradition of parliamentary democracy.⁶ They — as with parliamentary privilege writ large — are an “important part” of our public law and an “inherent and necessary component” of the legislative function in our system.⁷ In particular, the insulation of parliamentary proceedings from external review, by a court or any other body, “is a **key component of our constitutional structure** and the law that governs it”.⁸ That insulation arises from among the oldest and most sanctified aspects of parliamentary privilege: the freedom of speech and debate in Parliament.⁹

7. The free speech privilege subsumes immunity of parliamentary proceedings as such from questioning and impeachment outside Parliament and immunity of parliamentarians from civil

³ *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, [2018 SCC 39](#) at ¶20 (**Chagnon**).

⁴ *Chagnon* at ¶20.

⁵ *Chagnon* at ¶21-24.

⁶ *Chagnon* at ¶1.

⁷ *Chagnon* at ¶18, 23-24.

⁸ *Chagnon* at ¶1-2, 18, 23-27. (Emphasis added) See also *Canada (House of Commons) v Vaid*, [2005 SCC 30](#) at ¶21 (**Vaid**); *Power* at ¶84.

⁹ *Vaid* at ¶21. See also *Re Clark et al and Attorney-General of Canada* (1977), 17 OR (2d) 593 (HC) at ¶54 (**Re Clark**), BOA, Tab 1.

and criminal action for words spoken in Parliament.¹⁰ Each individual parliamentarian enjoys immunity from prosecution personally.¹¹ But the immunity's purpose is functional — it supports the rights of the people by enabling their representatives to execute their official functions without fear of prosecution in court.¹²

8. In Canada, Parliament and the courts have long understood that this immunity admits of no exceptions, regardless of the subject, motivation, or sensitivity of the parliamentary speech.

9. Writing for the majority in *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)*, Justice McLachlin (as she then was) stated that “[t]he need for the right of freedom of speech [in Parliament] is so obvious as to require no comment”.¹³ She recognized an “unwritten **constitutional right** ... to speak freely in the House without fear of civil reprisal”, holding in clear and unequivocal language that such privileges “must be held **absolutely** and constitutionally if they are to be effective”.¹⁴

10. Parliamentary experts agree. They have characterized free speech as “[b]y far, the most important right accorded to Members of the House”.¹⁵ It is “a fundamental right without which [Members] would be hampered in the performance of their duties”.¹⁶ It permits parliamentarians to speak “without inhibition, to refer to any matter or express any opinion as they see fit, to say what they feel needs to be said in the furtherance of the national interest and the aspirations of

¹⁰ *Power* at ¶84. See also J.P. Joseph Maingot, *Parliamentary Immunity in Canada* (Toronto: LexisNexis Canada Inc, 2016), at 26, 34 (**Maingot**), BOA, Tab 2.

¹¹ *Maingot* at 26, BOA, Tab 2.

¹² *Maingot* at 26, BOA, Tab 2. See also *Duffy v Canada (Senate)*, [2020 ONCA 536 \(Duffy\)](#), leave to appeal to SCC refused, [39361](#) (11 February 2021) at ¶65, citing *Maingot* at 71-72, BOA, Tab 2; *Power* at ¶299 (*per* Rowe J, dissenting).

¹³ *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)*, [\[1993\] 1 SCR 319](#) at 385 (**NB Broadcasting**).

¹⁴ *NB Broadcasting* at 378-379. (Emphasis added) See also *Vaid* at ¶29(10), 39; *Duffy* at ¶63.

¹⁵ *House of Commons Procedure and Practice*, 3d edition, by Robert Marleau and Camille Montpetit, eds (Ottawa: House of Commons, 2017) (**House of Commons Procedure and Practice**), [Chapter 3: Privileges and Immunities, Rights and Immunities of Individual Members](#).

¹⁶ *House of Commons Procedure and Practice*, [Chapter 3: Privileges and Immunities, Rights and Immunities of Individual Members](#), citing Canada, House of Commons, Special Committee on Rights and Immunities of Members, *First Report*, 30th Parl, 2nd Sess, No 122 (29 April 1977) at [720-721](#) (**Special Committee on Rights and Immunities Report**).

their constituents”.¹⁷ The authoritative Canadian reference guide *House of Commons Procedure and Practice* states that “[f]reedom of speech permits Members to speak freely in the Chamber ... while enjoying **complete immunity** from prosecution or civil liability”. It also explains that the House “could not work effectively unless its Members were able to speak and criticize without having to account to any outside body”.¹⁸

11. The Senate Standing Committee on Rules, Procedures, and the Rights of Parliament has stated that, if parliamentary speech were reviewable by external bodies, “parliamentarians could effectively be subject to **control and intimidation** which would seriously restrict their ability to do their work”.¹⁹ The House Standing Committee on Procedure and House Affairs has warned that Members of Parliament “**must** be assured that there is **complete** freedom of speech, so that they are able to be as open and forthright as possible”.²⁰ Speakers have confirmed the absolute nature of the free speech privilege.²¹

12. The absolute protection afforded to free speech and debate in Parliament dovetails with the systemwide value placed on free expression in Canada since the *Canadian Charter of Rights and Freedoms*. As Justice Cory explained in *Edmonton Journal v Alberta (Attorney General)*:

It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. ***The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized.***²²

¹⁷ Special Committee on Rights and Immunities Report at [720-721](#).

¹⁸ House of Commons Procedure and Practice, [Chapter 3: Privileges and Immunities, Rights and Immunities of Individual Members](#), citing Maingot at 33-36, BOA, Tab 2. (Emphasis added)

¹⁹ Canada, Senate, Standing Committee on Rules, Procedures, and the Rights of Parliament, *Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century* (June 2015) at [48](#). (Emphasis added)

²⁰ Canada, House of Commons, Standing Committee on Procedure and House Affairs, *Fourteenth Report*, 38th Parl, 1st Sess (18 November 2004) at ¶[14](#). (Emphasis added)

²¹ See House of Commons Procedure and Practice, [Chapter 3: Privileges and Immunities, Rights and Immunities of Individual Members](#).

²² *Edmonton Journal v Alberta (Attorney General)*, [\[1989\] 2 SCR 1326](#) at [1336](#). (Emphasis added)

B. That Immunity Constitutionally Circumscribes Curial Jurisdiction

13. It is an exercise of parliamentary privilege every time a parliamentarian speaks during a parliamentary proceeding, whether in chamber or in committee.²³ Words spoken in that context are covered by the free speech privilege.

14. Parliamentary privilege marks out matters within Parliament’s exclusive jurisdiction.²⁴ This Court has repeatedly held that, when parliamentary privilege is at issue, the “only area for court review is at the initial jurisdictional level”.²⁵ Courts may inquire into the *existence* and *scope* of parliamentary privileges, but they lack jurisdiction to review *exercises* of privilege.²⁶

15. The principles of parliamentary privilege are “a means of distinguishing areas of judicial and legislative body jurisdiction”.²⁷ This is why parliamentary privilege is considered a “rule of curial jurisdiction”.²⁸ It is part of the Constitution of Canada, and “a corollary to the separation of powers because it gives the legislative branch of government the autonomy it requires to perform its *constitutionally-assigned functions*”.²⁹ Under our constitutional structure as it stands today, matters falling into established categories of parliamentary privilege are neither actionable nor justiciable in the ordinary courts — the courts fundamentally lack jurisdiction to review them.³⁰

16. Section 12 of the Act is an asserted exercise of the authority under section 18 of the *Constitution Act, 1867* to “define” parliamentary privilege in a way that would *expose* exercises

²³ Maingot at 71-72, BOA, Tab 2.

²⁴ *NB Broadcasting* at [382-384](#), citing *Stockdale v Hansard* (1839), [112 ER 1112](#) (KB).

²⁵ *NB Broadcasting* at [384](#).

²⁶ *Vaid* at ¶[29\(9\)](#), [29\(11\)](#).

²⁷ *NB Broadcasting* at [383-384](#).

²⁸ *Duffy* at ¶[35](#). See also *Vaid* at ¶[29\(9\)](#), [34](#); *Chagnon* at ¶[19](#), [24](#); *NB Broadcasting* at [350](#) (per Lamer CJ), [382-384](#) (per McLachlin J).

²⁹ *British Columbia (Attorney General) v Provincial Court Judges’ Association of British Columbia*, [2020 SCC 20](#) at ¶[66](#). (Emphasis added) See also *Duffy* at ¶[31-32](#); *Power* at ¶[122-123](#), [148](#) (per Jamal and Kasirer JJ, concurring).

³⁰ *Duffy* at ¶[64-65](#), citing Maingot at 71-72, BOA, Tab 2. See also *Vaid* at ¶[29\(10\)](#); *Power* at ¶[180](#) (per Jamal and Kasirer JJ, concurring). See also *Roman Corp Ltd v Hudson’s Bay Oil & Gas Co Ltd*, [\[1971\] 2 OR 418](#) (HCL) at [139](#), aff’d [\[1972\] 1 OR 444](#) (CA), aff’d [\[1973\] SCR 820](#). (“The Court has no power to inquire into what statements were made in Parliament, why they were made, who made them, what was the motive for making them or anything about them.”)

of privilege to judicial review. Understood in its proper context, section 12 therefore does not only purport to abdicate Parliament’s exclusive authority over privileged matters that may be subject to prosecution for improper disclosure of confidential information under section 11 of the Act. It also necessarily purports to *expand* curial jurisdiction over those same matters, engaging activities within the scope of — at least — the privileges to discipline members, over parliamentary proceedings, and over free speech.

17. As a result, through simple-majority legislation, the Act ostensibly reassigns functions that were constitutionally assigned to Parliament and creates jurisdiction that did not exist before to judicially review exercises of privilege.

18. Nothing in section 18 of the *Constitution Act, 1867* or our public law generally appears to authorize this gerrymandering of jurisdictional boundaries between the legislative and judicial branches, absent a constitutional amendment.

C. To Protect Parliamentary Minorities, That Immunity Must Remain Absolute

19. Virtually since its inception, this Court has linked free speech in Parliament to exposing and denouncing government abuses.

20. In 1878, in *Landers v Woodworth*, Chief Justice Richards — Canada’s first Chief Justice — wrote of Parliament: “One of the first and greatest of its privileges is free speech and one of the advantages of legislative bodies is the right of exposing and denouncing abuses by means of free speech.”³¹ This Court’s modern jurisprudence has also stressed the executive-accountability function of the free speech privilege, noting that absolute parliamentary privilege “enable[s] the legislative branch and its members to proceed fearlessly and without interference in discharging their constitutional role, that is, enacting legislation and acting as a check on executive power”.³²

21. But the legislative branch of government in the Westminster tradition of parliamentary democracy is not a homogeneous institution. It comprises both members of the government party and many others who may be broadly characterized as parliamentary minorities. Parliamentary

³¹ *Landers v Woodworth* (1878), [2 SCR 158](#) at [197-198](#).

³² *Chagnon* at ¶[23](#), citing *NB Broadcasting* at [354](#) and *Vaid* at ¶[21](#), [41](#).

minorities have been described as “the parliamentary groups that do not hold a clear majority, the independent members, the minority parties whose role can be quite crushed by the majority”.³³

22. Section 18 of the *Constitution Act, 1867* — and section 4 of the *Parliament of Canada Act* which claims the full extent of the privileges permitted under the Constitution — provides that parliamentary privileges, immunities, and powers are held and enjoyed and can be exercised by individual members of the Senate and House of Commons, not only by Parliament.³⁴ It is in this sense that the free speech privilege, including the complete immunity from prosecution, is “of a personal nature”.³⁵ When a parliamentarian speaks during a parliamentary proceeding, that individual parliamentarian is at least one privilege-holder in relation to that exercise of privilege.

23. A foundational principle of English parliamentary law, preserved by our Parliament, is “to protect the minority and restrain the improvidence and tyranny of the majority”.³⁶ Without absolute freedom of speech, that foundational principle would be compromised. Parliamentary minorities would lose their “unwritten constitutional right ... to speak freely in the House without fear of civil reprisal”.³⁷ They would lose the privilege “without which they could not discharge their functions”.³⁸ They would be exposed to the risk of external pressure — control and intimidation — absent the essential protection that permits them to proceed fearlessly and without interference or the threat of interference in holding the executive to account, referring to any matter or expressing any opinion that they consider necessary to advance the interests of their constituents and nation.

³³ Canada, Senate, Standing Committee on Rules, Procedures, and the Rights of Parliament, *Parliamentary Privilege: Then and Now – Report of the Standing Committee on Rules, Procedures and the Rights of Parliament* (June 2019) at 9, citing Canada, Senate, Standing Committee on Rules, Procedures, and the Rights of Parliament, *Proceedings*, 42nd Parl, 1st Sess, No 12, (27 March 2018), [online](#) (evidence of Maxime St-Hilaire).

³⁴ *The Constitution Act, 1867*, [30 & 31 Vict, c 3](#), s [18](#); *Parliament of Canada Act*, [RSC 1985, c P-1](#), s [4](#).

³⁵ Maingot at 26, BOA, Tab 2.

³⁶ House of Commons Procedure and Practice, [Chapter 5, Parliamentary Procedure](#), citing Sir John George Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada*, 2nd ed (Montreal: Dawson Brothers, 1892), at [258-259](#).

³⁷ *NB Broadcasting* at [385](#).

³⁸ *Vaid* at ¶[29\(2\)](#).

24. Parliamentary privilege thus has multiple important dimensions. It guards the integrity and independence of the legislative branch while also providing a structural bulwark against the muting of the independent and minority-party voices within Parliament on which discharging Parliament's constitutional role of holding the executive branch to account largely depends.

25. The Act under review — a core purpose and function of which is executive accountability — itself acknowledges the essential role of parliamentary minorities in achieving accountability by capping how many members of the committee established by the Act may be members of the government party.³⁹ The committee's membership during the 44th Parliament included MPs from the Official Opposition, New Democratic Party, and Bloc Québécois and senators from the Independent Senators Group and Progressive Senate Group.⁴⁰ These are the members best positioned and most likely to discharge Parliament's constitutional role of holding the executive to account on national security and intelligence issues.

26. Exposing those parliamentary minorities to prosecution, and up to 14 years in prison, for allegedly disclosing confidential information in a parliamentary proceeding would thwart the accountability function of both Parliament and the committee. It may also have a chilling effect on parliamentary minorities speaking and debating freely on national security and intelligence issues generally given the risks attending any accusation that protected information was misused.

27. Efforts aimed at protecting sensitive national security information should respect — and have always before respected — the need for absolute free speech in Parliament and the limits of curial jurisdiction. In *Re Clark et al and Attorney-General of Canada*, Chief Justice Evans of the Ontario High Court of Justice considered security regulations prohibiting the release of certain information about uranium without ministerial consent. Chief Justice Evans held that “a Member is not amenable to the ordinary Courts for *anything* said in debate *however criminal its nature*”,

³⁹ *Act*, s [4\(2\)](#).

⁴⁰ National Security and Intelligence Committee of Parliamentarians, “Current Committee Members” (accessed 24 June 2025), [online](#).

and “would be *free to use the information in Parliament*”.⁴¹ Indeed, the Attorney General of Canada *conceded* that such information could be used in Parliament.⁴²

28. Given its exclusive jurisdiction to discipline members and control its own proceedings, Parliament has all the tools it needs to address any illegal disclosures during parliamentary proceedings. The Act also greatly mitigates the risk of any harmful disclosure. For example, the Minister can refuse access to any information that it deems “special operational information” or “injurious to national security”, which decision is final, and the matter cannot be placed before the courts.⁴³ Of course, any disclosure outside a parliamentary proceeding is open to prosecution without offending parliamentary privilege.

29. The Act passed along party lines.⁴⁴ Yet it purports to deprive the parliamentary minority members who did not vote for it of their personal constitutional privileges required to play their significant parts in helping Parliament discharge its constitutional role of holding the executive to account. Any argument that Parliament “waived” parliamentary privilege by enacting section 12 does not account for this fundamental asymmetry between the alleged waiving party and the parliamentary minority privilege-holders whose constitutional privileges are said to be affected.⁴⁵

30. Canadian courts have questioned whether, as a matter of constitutional principle, parliamentary privilege can ever properly be waived.⁴⁶ Parliamentary committees in other Westminster jurisdictions — the United Kingdom, Australia, and New Zealand — have been established to consider whether a legislature could waive the free speech privilege, each concluding that “absent clear authority, the privileges could not or should not under any circumstances be waived”, including because “[t]o allow waiver by a simple majority, the question could be open to abuse by a majority at the expense of a minority or a single

⁴¹ *Re Clark* at ¶56, BOA, Tab 1. (Emphasis added)

⁴² *Re Clark* at ¶63, BOA, Tab 1.

⁴³ *Act*, ss [16](#), [18](#), [31](#).

⁴⁴ Canada, House of Commons, *Bill C-22, An Act to establish the National Security and Intelligence Committee of Parliamentarians and to make consequential amendments to certain Acts*, 1st Sess, 42nd Parl, 2017, [online](#).

⁴⁵ Canada, House of Commons, Standing Committee on Procedure and House Affairs, *Fourteenth Report*, 38th Parl, 1st Sess (18 November 2004) at ¶14.

⁴⁶ *Duffy* at ¶115-123; *Canada (Board of Internal Economy) v Boulerice*, [2019 FCA 33](#), leave to appeal to SCC refused, [38586](#) (18 July 2019) at ¶127.

Member”.⁴⁷ Regardless of the answer to the broader question of constitutional principle of whether parliamentary privilege can ever be waived, Canadians have a vital interest in their representatives outside the government party remaining free and unfettered in their ability to hold the executive to account. Assessing any purported abrogation of the free speech privilege should account for that vital interest and the role of parliamentary minorities in safeguarding the very purpose and function of parliamentary privilege.

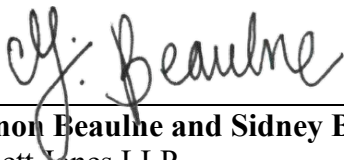
PART III: COSTS

31. The CCLA requests that no costs be awarded for or against it.

PART IV: ORDER SOUGHT

32. As permitted by the Order of Justice Karakatsanis dated May 15, 2025, the CCLA intends to make oral submissions not exceeding five minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 25th day of June, 2025.



Gannon Beaulne and Sidney Brejak
Bennett Jones LLP

⁴⁷ House of Commons Procedure and Practice, [Chapter 3: Privileges and Immunities, Waiving the Privilege of Freedom of Speech](#), citing *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th ed, at [204-205](#).

PART V: TABLE OF AUTHORITIES

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<i>Canada (Attorney General) v Power</i> , 2024 SCC 26	1, 6-7, 15
<i>Canada (Board of Internal Economy) v Boulerice</i> , 2019 FCA 33	30
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National Security and Intelligence Committee of Parliamentarians, “Current Committee Members” (accessed 24 June 2025), online	25
Sir John George Bourinot, <i>Parliamentary Procedure and Practice in the Dominion of Canada</i> , 2nd ed (Montreal: Dawson Brothers, 1892)	23

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<i>National Security and Intelligence Committee of Parliamentarians Act</i> , SC 2017, c 15	2, 25, 28
• Sections 11, 12, 16, 18, 31	
<i>Parliament of Canada Act</i> , RSC 1985, c P-1	22
• Section 4	
<i>The Constitution Act, 1867</i> , 30 & 31 Vict, c 3	22
• Section 18	