

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Appellant

- and -

RYAN ALFORD

Respondent

**FACTUM OF THE INTERVENER
CANADIAN CIVIL LIBERTIES ASSOCIATION**

May 29, 2023

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TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – ISSUE	2
PART III – LAW AND ARGUMENT	2
A. Immunity From Prosecution Is Inherent and Necessary.....	2
B. To Protect Parliamentary Minorities, Immunity Must Remain Total	7
C. The Proposed Intrusion on Free Speech in Parliament Is Unprecedented.....	9
PART IV – RELIEF REQUESTED	10
SCHEDULE “A” LIST OF AUTHORITIES	i
SCHEDULE “B” TEXT OF RELEVANT STATUTES.....	i

PART I – OVERVIEW

1. Total immunity from civil and criminal action for words spoken in Parliament is an inherent and necessary right under the constitutionalized doctrine of parliamentary privilege. That immunity empowers parliamentarians to proceed fearlessly and without interference in discharging their constitutional role and to act as a check on executive power. Without complete immunity from prosecution, Parliament could not work effectively and parliamentarians could not carry out their legislative function.
2. Section 12 of the *National Security and Intelligence Committee of Parliamentarians Act* purports to destroy that immunity in the important and vexed area of national security and intelligence—including for the independent and opposition committee members best positioned to hold the Government to account in that area. The provision therefore opens the door to the muzzling of non-majority parliamentarians.
3. The Canadian Civil Liberties Association intervenes as a friend of the Court to make three submissions informing the context of the authority in section 18 of the *Constitution Act, 1867* to “define” parliamentary privilege. First, total immunity from civil and criminal action, as part of freedom of speech and debate in parliamentary proceedings, is a key component of our constitutional architecture. Second, that immunity is—and must remain—complete so that parliamentarians can discharge their constitutional role, and so that the threat of prosecution for parliamentary speech does not mute independent and minority voices in Parliament. Third, no natural limit of or side-constraint on freedom of speech in Parliament affects the sanctity of, or provides any precedent for abrogating, the inherent and necessary immunity from prosecution.

PART II – ISSUE

4. The pure question of law at the heart of this appeal is whether the authority to “define” parliamentary privileges, powers, and immunities by Act of Parliament under section 18 of the *Constitution Act, 1867* extends to abrogating parliamentarians’ total immunity from prosecution for words spoken in parliamentary proceedings, absent a constitutional amendment. The answer is “no”. The submissions that follow are offered to assist with and inform that determination.

PART III – LAW AND ARGUMENT

A. Immunity From Prosecution Is Inherent and Necessary

5. Parliamentary privilege refers to a bundle of recognized rights, privileges, and immunities of individual Members of Parliament and of Parliament itself said to be necessary for the proper functioning of Parliament.¹

6. Parliaments have asserted and courts have recognized parliamentary privilege for centuries. In the United Kingdom, article 9 of the *Bill of Rights* enshrined parliamentary privilege in 1689.² In Canada, the Supreme Court has unambiguously held that parliamentary privilege is an “important part” of our public law, both through the preamble of the *Constitution Act, 1867* and as an “inherent and necessary component” of the legislative function in the Westminster model of parliamentary democracy.³

¹ In *Canada (House of Commons) v Vaid*, [2005 SCC 30](#) at para [29](#) [*Vaid*], Justice Binnie (for the unanimous Supreme Court of Canada) defined parliamentary privilege in Canada as “the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions”.

² *Bill of Rights* [1688] (Eng), [1 Will & Mar sess 2, c 2](#), art 9. “That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.”

³ *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, [2018 SCC 39](#) at paras [18](#), [23](#) [*Chagnon*]; *Vaid*, *supra* note 1 at para [21](#); *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)*,

7. At the core of parliamentary privilege is the right of each parliamentarian to exercise freedom of speech and debate in parliamentary proceedings. That right immunizes individual parliamentarians and others taking part in parliamentary proceedings from any civil or criminal action or examination in legal proceedings, and immunizes parliamentary proceedings as such from impeachment or questioning in court.⁴

8. A reference book that the House of Commons makes publicly available as “one of the key procedural authorities used by Members of the Canadian House of Commons”, *House of Commons Procedure and Practice*, describes freedom of speech as “[b]y far, the most important right accorded to Members of the House”.⁵ It then quotes from a Special Committee on Rights and Immunities of Members report observing that freedom of speech is “a fundamental right without which [Members] would be hampered in the performance of their duties” that “permits [Members] to speak in the House 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 their constituents”.⁶

9. To execute their functions of office, parliamentarians must be uninhibited in voicing their concerns and discharging their duties without fear of civil or criminal prosecution for what

[\[1993\] 1 SCR 319](#) at 377. In *Vaid*, *supra* note 1 at para 21, Justice Binnie (for the unanimous Supreme Court) characterized the grounding of parliamentary privilege in the preamble to the *Constitution Act, 1867*, which calls for “a Constitution similar in Principle to that of the United Kingdom”, as a proposition that is “now accepted both by the courts and by parliamentary experts”.

⁴ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3: Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 2, [online](#), BOA Tab 1, citing Harry Evans & Rosemary Living, eds, *Odgers' Australian Senate Practice*, 13th ed, (Canberra: CanPrint Communications, 2012), [online](#) at 43-56, BOA Tab 2; J.P. Joseph Maingot, *Parliamentary Immunity in Canada*, “Chapter 3: Privilege of Freedom of Speech” (LexisNexis, 2016) at 3, BOA Tab 3. See also *Duffy v Canada (Senate)*, [2020 ONCA 536](#) at paras 35, 39, 63-66 (and the cited cases).

⁵ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 1, [online](#), BOA Tab 1.

⁶ Canada, Parliament, House of Commons, Special Committee on Rights and Immunities of Members: First Report, 30th Parl, 2nd Sess, Vol 122 (29 April 1977) at 720-1, [online](#), BOA Tab 4.

might be said in Parliament or committee.⁷ Immunity from prosecution must therefore be total, and Parliament and the courts in Canada have long understood the immunity to admit of no exceptions, regardless of the subject, motivation, or sensitivity of the parliamentary speech:

- a. *House of Commons Procedure and Practice* states that freedom of speech in Parliament permits “Members to speak freely in the Chamber during a sitting or in committees during meetings while enjoying **complete immunity from prosecution or civil liability for any comment** they might make”.⁸ It continues:

This freedom is essential for the effective working of the House. Under it, Members are able to make statements or allegations about outside bodies or persons which they might hesitate to make without the protection of privilege... The House of Commons could not work effectively unless its Members were able to speak and criticize without having to account to any outside body.⁹

- b. After a penetrating constitutional analysis of federal regulations that purported to prohibit disclosure of sensitive information about uranium, Chief Justice Evans of the Ontario High Court of Justice found in *Re Clark et al and Attorney-General of Canada* that “a Member is not amenable to the ordinary Courts for **anything** said in debate **however criminal its nature**”, and “would be **free to use the information in Parliament**”.¹⁰

⁷ For the House of Commons context, see Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Parliamentary Privilege: A Definition* (3rd ed, 2017), [online](#), BOA Tab 5. More generally, see J.P. Joseph Maingot, *Parliamentary Immunity in Canada*, “Chapter 3: Privilege of Freedom of Speech” (LexisNexis, 2016) at 3, BOA Tab 3.

⁸ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 3, [online](#), BOA Tab 1, citing J.P. Joseph Maingot, *Parliamentary Privilege in Canada*, 2nd ed (Montreal: McGill-Queens Press, 1997) at 33–36.

⁹ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 3, [online](#), BOA Tab 1.

¹⁰ *Re Clark et al and Attorney-General of Canada* (1977), [17 OR \(2d\) 593](#) (HC). (Emphasis added) John Sopinka, Sydney Lederman, and John J. Robinette were counsel in the case. Chief Justice Evans cites a leading treatise—

- c. When ruling on questions of privilege, Speakers have unreservedly confirmed the absolute nature of the immunity. For example, in 1984, Speaker Bosley noted that “the privilege of a Member of Parliament when speaking in the House or in a committee is **absolute**”.¹¹ In 1987, Speaker Fraser explained that the immunity is necessary in the national interest and for the effective operation of Parliament:

There are only two kinds of institutions in this land to which this awesome and far-reaching privilege [of freedom of speech] extends – Parliament and the legislatures on the one hand and the courts on the other. These institutions enjoy the protection of absolute privilege because of the overriding need to ensure that the truth can be told, that any questions can be asked, and that debate can be free and uninhibited. **Absolute privilege ensures that those performing their legitimate functions in these vital institutions of Government shall not be exposed to the possibility of legal action. This is necessary in the national interest** and has been considered necessary under our democratic system for hundreds of years. **It allows our judicial system and our parliamentary system to operate free of any hindrance.**¹²

- d. In the context of the 2004 sponsorship scandal, the House concurred in a report that a request to waive privilege was “as a matter of principle... contrary to the best interests of Parliament and parliamentary rights” because those participating

Erskine May’s *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 19th ed (London: Buttersworth, 1976) at 78—as follows: “Subject to the rules of order in debate... a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any section for libel, as well as from any other question or molestation.”

¹¹ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members, Freedom of Speech* (3rd ed, 2017) at 3, [online](#), BOA Tab 1, citing Canada, Parliament, *House of Commons Debates*, 33rd Parl, 1st Sess, Vol 1, (11 December 1984) at 1114, [online](#) (Emphasis added), BOA Tab 6.

¹² Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members, Freedom of Speech* (3rd ed, 2017) at 5, [online](#), BOA Tab 1, citing Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol 5, (5 May 1987) at 5765, [online](#) (Emphasis added), BOA Tab 7.

in parliamentary proceedings “**must** be assured that there is **complete** freedom of speech, so that they are able to be as open and forthright as possible”.¹³

- e. In 2015, a Senate Standing Committee affirmed that the “necessity of the privilege [of freedom of speech] is well established”. It cautioned: “If parliamentarians’ speech could be questioned or impeached outside of Parliament, then **parliamentarians could effectively be subject to control and intimidation** which would seriously restrict their ability to do their work”. It concluded that, today, the immunity “remains a clear necessity that should enjoy **near absolute protection**”, but recommended that the “**total or absolute immunity of free speech** should be limited to parliamentarians themselves”.¹⁴

10. The protection afforded to free speech and debate in Parliament dovetails with the value placed on free expression in Canada generally 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.**¹⁵

¹³ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 8, [online](#), BOA Tab 1, citing Canada, Parliament, House of Commons, The Standing Committee on Procedure and House Affairs, *Fourteenth Report*, 38th Parl, 1st Sess, (18 November 2004) at para 14, [online](#) (Emphasis added), BOA Tab 8.

¹⁴ Senate of Canada Standing Committee on Rules, Procedures, and the Rights of Parliament, “A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century” (June 2015) at 48, [online](#) (Emphasis added), BOA Tab 9.

¹⁵ *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at 1336 (Emphasis added).

B. To Protect Parliamentary Minorities, Immunity Must Remain Total

11. Virtually since its inception, the Supreme Court of Canada has linked freedom of speech in Parliament with exposing and denouncing Government abuses. In 1878, Chief Justice Richards in *Landers v Woodworth* 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.” In its most recent meaningful discussion of the topic, *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, Justice Karakatsanis for the majority found that legislative immunities “cultivate a space in which the voices of the people, including those who hold potentially unpopular opinions, can be heard and considered”. Courts are thus not put in the position of having to adjudicate disputes between the executive and parliamentarians (preserving legislative independence and the separation of powers), and parliamentarians not in the political majority can “proceed fearlessly and without interference in discharging their constitutional role” and act “as a check on executive power”.¹⁶

12. Immunity from prosecution is an essential feature of our constitutional architecture for creating democratic accountability. Freedom of speech in Parliament would be empty if the political majority could mute, through the threat of prosecution, independent or opposing voices that might otherwise hold the Government to account. In that situation, members of minority parliamentary groups could neither proceed fearlessly and without interference in discharging their constitutional role nor meaningfully check executive power. Thus, ensuring freedom of speech in Parliament and total immunity for *all* parliamentarians hews closely to the purpose of

¹⁶ *Landers v Woodworth* (1878), [2 SCR 158](#) at [197-198](#); *Chagnon*, *supra* note 3 at paras [20](#), [23](#).

parliamentary privilege, and is a crucial structural bulwark against the political majority muzzling non-majority parliamentarians.¹⁷

13. The *National Security and Intelligence Committee of Parliamentarians Act* creates democratic accountability on national security. To that end, it requires that “[n]ot more than five Committee members who are members of the House of Commons may be members of the government party”.¹⁸ The Government has many safety valves to preserve sensitive information under the statute, such as exceptions to what information is accessible and the unreviewable ability of Ministers to refuse access to special operational information and information asserted to be injurious to national security.¹⁹ So independent and opposition committee members are practically indispensable for achieving real accountability, and total immunity is a condition precedent to them fulfilling their role.

14. Courts take a “functional” approach to parliamentary privilege by “relating any novel situation in which a Member may become involved back to the function and purpose that parliamentary privilege was originally intended to serve: the need for Members of Parliament to be able to fearlessly debate issues of public policy in Parliament”.²⁰ The Court should thus approach the core interpretive issue in this appeal through the lens of the urgent need to protect parliamentary minorities to safeguard the function and purpose of parliamentary privilege.²¹

¹⁷ For a discussion of protecting parliamentary minorities, see Canada, Senate of Canada, 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, [online](#), BOA Tab 10, citing Canada, Parliament, Senate, Standing Committee on Rules, Procedures and Rights of Parliament, Proceedings, 42nd Parl, 1st Sess, No 12, (27 March 2018), [online](#) (evidence of Maxime St-Hilaire), BOA Tab 11.

¹⁸ *National Security and Intelligence Committee of Parliamentarians Act*, [SC 2017, c 15, s 4\(2\)](#).

¹⁹ *National Security and Intelligence Committee of Parliamentarians Act*, [SC 2017, c 15](#), ss [16](#), [18](#), [31](#).

²⁰ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 4-5, [online](#), BOA Tab 1.

²¹ The power to “define” privileges, immunities, and powers under section 18 of the *Constitution Act, 1867* can and must be read together with the preamble, including the principles that the preamble imports into our constitutional

C. The Proposed Intrusion on Free Speech in Parliament Is Unprecedented

15. Natural side-constraints on freedom of speech in Parliament do not affect the sanctity of, and create no precedent for abrogating, the inherent and necessary immunity from prosecution:

- a. ***Boundaries of parliamentary privilege*** – Freedom of speech in Parliament applies to parliamentary proceedings.²² That this right may not extend to other contexts (for example, press releases, interviews, social media activity, public meetings, or employee decision-making) does not undermine the immunity. Rather, it defines the proper boundaries of the immunity based on its purpose.
- b. ***Procedural restrictions*** – Parliament is subject to practices, conventions, and rules through which it regulates its proceedings. For example, Standing Orders may govern matters such as time limits on speeches, disrespectful or offensive language, and personal attacks.²³ These “ground rules” do not interfere with parliamentarians’ rights to speak truth, ask questions, or engage in free and uninhibited debate. Rather, they promote orderly proceedings in which those things can occur. Nor do they cross the line into allowing courts to impeach or question parliamentary activity. They are how Parliament regulates *itself*.
- c. ***Perjury*** – Witnesses in parliamentary proceedings who give false evidence may be charged with perjury.²⁴ That possibility does not abrogate parliamentarians’

architecture. There is nothing novel in doing so. See *Provincial Court Judges Assn (Manitoba) v Manitoba (Minister of Justice)*, [1997] 3 SCR 3 at para 95. Express provisions are not exhaustive when they address a right or concept.

²² *Vaid*, *supra* note 1 at para 43.

²³ Canada, House of Commons, *Standing Orders of the House of Commons*, (Consolidated version as of 30 March 2023), [online](#) (e.g. standing orders 18 on offensive language, or 50(2) on time limits for speeches), BOA Tab 12.

²⁴ *Parliament of Canada Act*, RSC 1985, c P-1, s 12.

free speech. Witnesses—not parliamentarians—can be charged. Consequences for deceiving Parliament *enhance* truth-seeking, truth-telling, and accountability.

- d. ***Waiver*** – Parliament has asserted privilege many times in the face of waiver requests (including in relation to the sponsorship scandal, as discussed above). It has never purported to renounce the immunity from prosecution,²⁵ or to waive privilege in a way that compromises parliamentarians’ rights to speak their conscience in Parliament.²⁶ Committees in the United Kingdom, Australia, and New Zealand have rejected waiving protections enshrined in article 9 of the *Bill of Rights*, citing the importance of those protections, that waiver by a “simple majority” opens the door to abuse by a majority at the expense of a minority or single parliamentarian, the risk of stifling free speech, and skepticism that constitutionally delimited court jurisdiction could be enlarged by waiver.²⁷

PART IV – RELIEF REQUESTED

16. The intervener takes no position on the outcome of this appeal. It seeks no costs and asks that no costs be awarded against it.

²⁵ See Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Parliamentary Privilege: A Definition* (3rd ed, 2017) at footnote 14, [online](#), BOA Tab 5. (“With the possible exception of the relinquishment of its power to try controverted elections, the Canadian House of Commons has never formally renounced any of the basic rights and immunities it claims for itself and its Members.”)

²⁶ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members, Waiving the Privilege of Freedom of Speech* (3rd ed, 2017) at 7-9, [online](#), BOA Tab 1.

²⁷ Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members* (3rd ed, 2017) at 9, [online](#), BOA Tab 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of May, 2023.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

Jurisprudence

1. *Canada (House of Commons) v Vaid*, [2005 SCC 30](#)
2. *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, [2018 SCC 39](#)
3. *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)*, [\[1993\] 1 SCR 319](#)
4. *Duffy v Canada (Senate)*, [2020 ONCA 536](#)
5. *Re Clark et al and Attorney-General of Canada* (1977), [17 OR \(2d\) 593](#) (HC)
6. *Edmonton Journal v Alberta (Attorney General)*, [\[1989\] 2 SCR 1326](#)
7. *Landers v Woodworth* (1878), [2 SCR 158](#)
8. *Provincial Court Judges Assn (Manitoba) v Manitoba (Minister of Justice)*, [\[1997\] 3 SCR 3](#)

Secondary Sources

1. Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3: Privileges and Immunities”, *Rights and Immunities of Individual Members, Freedom of Speech* (3rd ed, 2017), [online](#)
2. Harry Evans & Rosemary Living, eds, *Odgers' Australian Senate Practice*, 13th ed, (Canberra: CanPrint Communications, 2012)
3. J.P. Joseph Maingot, *Parliamentary Immunity in Canada*, “Chapter 3: Privilege of Freedom of Speech” (LexisNexis, 2016)
4. Canada, Parliament, House of Commons, Special Committee on Rights and Immunities of Members: First Report, 30th Parl, 2nd Sess, Vol 122 (29 April 1977) at 720–1, [online](#)
5. Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Parliamentary Privilege: A Definition* (3rd ed, 2017), [online](#)
6. Canada, Parliament, *House of Commons Debates*, 33rd Parl, 1st Sess, Vol 1, (11 December 1984), [online](#)
7. Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol 5, (5 May 1987), [online](#)
8. Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, “Chapter 3 Privileges and Immunities”, *Rights and Immunities of Individual Members, Waiving the*

Privilege of Freedom of Speech (3rd ed, 2017), [online](#)

9. Canada, Parliament, House of Commons, The Standing Committee on Procedure and House Affairs, *Fourteenth Report*, 38th Parl, 1st Sess, (18 November 2004), [online](#)
10. Senate of Canada Standing Committee on Rules, Procedures, and the Rights of Parliament, “A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century” (June 2015), [online](#)
11. Canada, Senate of Canada, 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), [online](#)
12. Canada, Parliament, Senate, Standing Committee on Rules, Procedures and Rights of Parliament, Proceedings, 42nd Parl, 1st Sess, No 12, (27 March 2018), [online](#)
13. Canada, House of Commons, *Standing Orders of the House of Commons*, (Consolidated version as of 30 March 2023), [online](#)

SCHEDULE “B”
TEXT OF RELEVANT STATUTES

Bill of Rights [1688] (Eng), 1 Will & Mar sess 2, c 2

Freedom of Speech.

That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

National Security and Intelligence Committee of Parliamentarians Act, SC 2017, c 15

Members

4(2) The Committee is to consist of not more than three members who are members of the Senate and not more than eight members who are members of the House of Commons. Not more than five Committee members who are members of the House of Commons may be members of the government party.

Refusal of information

16 (1) The appropriate Minister for a department may refuse to provide information to which the Committee would, but for this section, otherwise be entitled to have access and that is under the control of that department, but only if he or she is of the opinion that

- (a) the information constitutes special operational information, as defined in subsection 8(1) of the Security of Information Act; and
- (b) provision of the information would be injurious to national security.

Reasons

(2) If the appropriate Minister refuses to provide information under subsection (1), he or she must inform the Committee of his or her decision and the reasons for the decision.

Review bodies informed of decision

(3) The appropriate Minister must provide the decision and reasons to the National Security and Intelligence Review Agency and, in the case of information under the control of the Royal Canadian Mounted Police, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police.

Meetings held in private

18 Meetings of the Committee are to be held in private if any information that a department is taking measures to protect is likely to be disclosed during the course of the meeting or if the Chair considers it to be otherwise necessary.

Final decision

31 (1) The appropriate Minister's determination that a review referred to in paragraph 8(1)(b) would be injurious to national security or the appropriate Minister's decision to refuse to provide information under subsection 16(1) is final.

Committee's response

(2) If the Committee is dissatisfied with the determination or the decision, the Committee is not to bring the matter before the courts, but it may note its dissatisfaction in a report referred to in section 21.

Parliament of Canada Act, RSC 1985, c P-1

Perjury

12 Any person examined under this Part who wilfully gives false evidence is liable to such punishment as may be imposed for perjury. 12 Any person examined under this Part who wilfully gives false evidence is liable to such punishment as may be imposed for perjury.

ATTORNEY GENERAL OF CANADA
Appellant

-and-

RYAN ALFORD
Respondent

Court of Appeal File No. C70739

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

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