

# Unit 6

## Privileges and Immunities of Members

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### Overview

This unit identifies and explains the rights or privileges and the immunities of Members of Parliament, their historical basis, and their limits. As discussed in the previous unit, one of these rights is that of choosing a presiding officer (the Speaker) who could ensure that parliament had a direct right of access to the head of state. This is part of a parliament's right to control its own internal procedures. Procedural rights include the setting of the parliamentary timetable, expelling members from the chamber, expelling and excluding non-members from the parliament buildings, instituting and conducting inquiries, summoning witnesses and documents, and administering oaths. As well, parliaments have the right to publish their own proceedings; materials which, if published elsewhere, might be subject to civil libel laws. Protection does not extend to statements in other publications such as press releases, interviews or communications with constituents.

### Learning Objectives

After you have completed this unit you should be able to achieve the following:

1. List the basic privileges and immunities of members.
2. Outline the reasons for these privileges and immunities.
3. Explain the limitations on privileges and immunities.

### Commentary

#### Rights and Immunities of Members

The rights and immunities of members have evolved over time. The Bill of Rights in 1689, for example, provided an acceptance from the head of state of the right of parliamentarians to exercise free speech in their debates. This not only frees speakers from potential repercussions from the Crown, but also protects them from civil charges of slander. Nothing said in the House can be used as a basis for legal proceedings, a protection that sometimes allow parliamentarians license to say things about their political opponents they would not dare to repeat outside the chamber. It is not uncommon for parliamentarians (and other actors) who have been the subject of attack on the floor of the legislature to challenge the attacker to repeat the charges

outside of the chamber where civil law can be enforced. The guarantee of free speech is absolute with respect to external consequences. The freedom of speech is deemed critical to guaranteeing full and free debates on the issues of the day.

The House of Commons also possesses the privilege of excluding the head of state from the chamber. The Crown is unable to enter the Lower House in bicameral parliaments. Instead when the Crown wishes to address Parliament, members of the House of Commons move themselves to the upper house.

The right of the Commons to prevent the entry of the Crown dates back to 1642 when Charles I accompanied by armed soldiers entered the Commons and attempted to arrest five members for treason. He demanded that the five members be identified for arrest. The Speaker, protecting these members of parliament, refused to point them out despite the King's demands. Although the Commons attempted to bar the doors of the chamber the King and his officers forced their way in. Parliament subsequently declared that this entrance of the King and the concomitant demands were a breach of parliamentary privileges. These events helped launch the English civil wars, after which the powers of the Crown were further limited (Wilding and Laundry 1961). From this has evolved the tradition of barring the Crown from the Commons chamber. A few years ago Australia opened a new Parliament building and Queen Elizabeth II was invited to officially open the new edifice. The day before the official opening the Queen requested a tour of what would shortly be designated as the Lower House of the Australian parliament. Once that designation was made, the Queen would be unable to enter the chamber. During her reign she had never entered a lower chamber. These events also demonstrate the critical role of the Speaker in upholding the rights and privileges of members of parliament.

Another example of parliamentary privilege for which the Speaker carries responsibilities relates to the institution's right of prior consultation from the executive and its right to determine its own rules of procedure. In other words the Speaker is charged with seeing government does not overstep its bounds. An example from the Canadian parliament may clarify this right. In 1991 the Canadian opposition leader John Turner asked the Speaker to determine whether the government of the day was in contempt of Parliament because it was running television advertisements explaining a new tax before the bill had been presented to the House, let alone voted on.

The Speaker, despite being elected as a candidate for the governing party called the running of such ads "ill conceived and doing a great disservice to the great traditions of this place." He went on to declare that the government was not an executive or administrative democracy and called on ministers in the future to show greater respect for "parliamentary tradition and the absolute and ultimate right of parliament and only parliament to pass laws regarding taxation."

A further example of the protection of the rights of Parliament occurred in 1982. Normal procedure in the Canadian House of Commons provided for a bell to ring to summon members into the Chamber for a vote. Parliamentary tradition dictated that voting did not begin until representatives of the government and Opposition both indicated to the Speaker that they were ready to vote. In this instance the government was presenting a huge piece

of legislation that the Opposition wished to have broken into smaller pieces for more debate and consideration. The government refused, so the Opposition refused to report to the House for the vote. Hence the representative of the Opposition was not present to indicate to the Speaker that they were ready to vote; the bells continued to ring for 15 days and no vote took place. The government urged the Speaker to hold the vote in the absence of the Opposition since this was obviously an attempt at obstruction and an abuse of Commons tradition. The Speaker, who had been appointed by that government, refused to hold the vote, and also refused to intervene in the matter. The point of these examples is to indicate that parliamentarians have rights and that the government cannot unilaterally change the rules of procedure. Parliamentarians must approve changes to parliamentary procedure and governments must respect these traditions.

Another important element with respect to the rights and privileges of members of parliament is immunity from arrest. This right has changed over time. It developed to protect members of parliament from imprisonment arising from debts or civil matters. Such arrests would deprive Parliament of the contributions of some of its members so this immunity was established to protect members from arrest in civil cases for the duration of parliamentary sessions, and for a period of time on either side. It does not now, although it did at points in the past, provide immunity from arrest on criminal matters. Parliamentary immunity also enables parliamentarians to avoid serving on juries or from being required to act as a witness in judicial proceedings. This right however is generally waived in criminal cases.

Members of parliament also have privileges protecting them against external shows of disrespect to a member, or general disrespect to parliament itself. These include a variety of activities including the refusal to obey a summons to parliament, attempts to bribe or intimidate members, and violence or threats of violence against members.

In most Westminster model parliaments the privileges and immunities are based on tradition. However, in others they may be either part of the written law (Australia) or not even part of the written constitution (Canada). A famous 1993 Canadian case (*New Brunswick Broadcasting Co. v. Nova Scotia Speaker of the House of Assembly*) affirmed the constitutional status of the assembly's inherent privileges. The issue in this case was how the media's constitutional right to freedom of expression worked in relation to the right of a parliament to control its internal operations. Essentially, the case involved a television station claiming a right to film legislative proceedings in contravention of the Assembly's rules. The Supreme Court ruled against the television station, in part because other sections of the constitutions gave Canadian parliaments the same rights possessed by the British Parliament. The preamble to the Constitution Act, 1982 states that Canada is to have a constitution similar in principle to that of the United Kingdom. The majority of the Supreme Court held that the inherent privileges of an assembly were "constitutionalized" by the preamble. One limit on the extent of parliamentary privilege set by the Supreme Court is that those privileges must be "necessary to the capacity of the legislature to function." One part of the constitution then could not be used to override another part. In the absence of such constitutionally enshrined parliamentary privileges, it is not clear how the court would have ruled (see Marleau and Montpetit, 2000).

In all parliaments, the rights and immunities of individual parliamentarians and parliament as a collectivity rest on the willingness of the chamber and its speaker to assert these rights.

## Recommended Reading

Marleau, Robert and Camille Montpetit. *House of Commons: Procedure and Practice*, 2000, Chapter 3.

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## Study Questions

Based on your readings, see if you can answer the following questions. If not, read the commentary over again to find the answers.

1. What are the basic privileges and immunities of members?
2. Why have these privileges and immunities been given?
3. Are there limitations on privileges and immunities?

## Internet Resources

### Parliamentary Privilege

Parliament of Australia. House of Representatives Factsheet No. 5:  
“Parliamentary Privilege”  
<http://www.aph.gov.au/house/info/factsht/fs05.htm>

Parliament of Australia. Parliamentary Library Research Paper 1 2000-01:  
“Parliamentary Privileges”  
<http://www.aph.gov.au/library/pubs/rp/2000-01/01RP01.htm>

Australia. Legislative Assembly of the Northern Territory: Information Paper  
No. 7: “Parliamentary Privilege”  
<http://www.nt.gov.au/lant/pub/ip7.shtml>

Interparliamentary Union (IPU): CANADA: “Status of Parliament Members”  
<http://www.ipu.org/parline-e/reports/2056.htm>

Parliament of Tasmania. Library Fact Sheet No. F3: “Parliamentary Privilege  
and Bar of the House”  
<http://www.parliament.tas.gov.au/TPL/f3.htm>

UK Parliament. House of Commons. House of Lords. “Parliamentary  
Privilege—First Report”  
<http://www.parliament.the-stationery-office.co.uk/pa/jt/jtpriv.htm>

New Brunswick Broadcasting Co. v. Nova Scotia  
[http://www.lexum.umontreal.ca/csc-scc/en/pub/1993/vol1/html/1993scr1\\_0319.html](http://www.lexum.umontreal.ca/csc-scc/en/pub/1993/vol1/html/1993scr1_0319.html)

Parliament of Australia. Senate. “Parliamentary Privilege: The Meaning of  
Parliamentary Privilege” Brief No. 11  
<http://www.aph.gov.au/senate/pubs/briefs/brief11.htm>

India. Rajya Sabha. Parliamentary Privileges  
<http://alfa.nic.in/rs/rajya/19/94/i5/94I50901.htm>

House of Representatives Practice, 3rd. ed. “Parliamentary Privilege”  
<http://www.aph.gov.au/house/pubs/horpract/chap.245.htm>

### The Selection and Role of the Speaker

#### Parliamentary Speaker

Parliament of Australia: House of Representatives: Factsheet No. 3  
<http://www.aph.gov.au/house/info/factsht/fs03.htm>

Parliament of Tasmania: Parliamentary Library Fact Sheet No. H4  
<http://www.parliament.tas.gov.au/tpl/h4.htm>

UK Parliament. The Speaker of the Commons  
<http://www.parliament.uk/parliament/guide/speaker.htm>

UK Parliament. House of Commons Information Factsheet M2.  
"The Speaker" (November 2000)  
<http://www.parliament.uk/commons/lib/fs21.pdf>

Election of a Commons Speaker (2nd edition)  
<http://www.parliament.uk/commons/lib/research/rp2001/rp01-030.pdf>

The Independence of the Speaker  
<http://www.aph.gov.au/library/pubs/rn/1997-98/98rn38.htm>

## Limits to Rights

Parliament of Australia. House of Representatives Factsheet No. 17:  
"Protection of Persons Referred to in the House"  
<http://www.aph.gov.au/house/info/factsht/fs17.htm>

Parliament of Australia. Library Research Paper 2 1998-99: "A Code of  
Conduct for Parliamentarians"  
<http://www.aph.gov.au/library/pubs/rp/1998-99/99rp02.htm>

UK Parliament: Disciplinary and Penal Powers of the House of Commons  
<http://www.parliament.uk/commons/lib/fs62.pdf>