



HOUSE OF COMMONS
CANADA

**WAIVING PARLIAMENTARY PRIVILEGE FOR THE
TESTIMONY OF BARBARA GEORGE**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, M.P.
Chair**

June 2007



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has the honour to present its

TWENTIETH REPORT

Pursuant to Standing Order 108(2), the Standing Committee on Public Accounts has considered the issue of waiving parliamentary privilege for the testimony of Barbara George. The Committee has agreed to table this Report as follows:

BACKGROUND

In accordance with Standing Order 108 (3)(g), the November 2006 Report of the Auditor General of Canada was referred to the House of Commons Standing Committee on Public Accounts. On 21 February 2007, the Committee proceeded to consider chapter 9 of this report, *Pension and Insurance Administration—Royal Canadian Mounted Police*. The Committee met with various officials, namely, from the Office of the Auditor General of Canada: Hugh McRoberts, Assistant Auditor General; Gordon Stock, Principal; from the Royal Canadian Mounted Police: Beverley Busson, Commissioner; Barbara George, Deputy Commissioner, Human Resources; Paul Gauvin, Deputy Commissioner, Corporate Management and Comptrollership; Brian Aiken, Chief Audit Executive; from the Ottawa Police Service: Vince Bevan, Chief; Vince Westwick, Consellor; from the Treasury Board Secretariat: Phil Charko, Assistant Secretary, Pensions and Benefits Sector.

During this hearing, Deputy Commissioner George was asked who ordered the alleged removal of Staff Sergeant Mike Frizzell from the Ottawa Police Service investigation, called Project Probity, into allegations of fraud and abuse in the management of the RCMP's pension and insurance plans. D/Commr. George denied any involvement and stated she did not know who ordered S/Sgt. Frizzell's removal.

The Public Accounts Committee subsequently decided to invite additional witnesses to appear on 28 March 2007, namely: Staff Sergeant Ron Lewis, Staff Sergeant Mike Frizzell, Chief Superintendent Fraser Macaulay, Assistant Commissioner David Gork, Staff Sergeant Steve Walker, and Denise Revine. On 26 March 2007, two days before the hearing, Interim Commissioner met with this group. On the basis of this meeting, Commr. Busson asked D/Commr. George to step aside from her position as Deputy Commissioner, Human Resources, and take pre-retirement and educational leave.

At the hearing on 28 March 2007, the Committee heard evidence that appeared to contradict the testimony given by D/Commr. George on 21 February 2007. Witnesses alleged that D/Commr. George was involved in the removal of S/Sgt. Frizzell, and this was reinforced by several e-mails. On 29 March 2007, Commr. Busson decided to suspend D/Commr. George from her position and to launch an internal investigation to determine whether or not she had breached the RCMP's Code of Conduct. On 3 April 2007, Chief Superintendent Bob Paulson, the RCMP officer mandated to conduct the internal disciplinary investigation, decided to initiate a criminal

investigation into the allegation that D/Commr. George had contravened section 131 of the *Criminal Code of Canada*, that is, whether she had committed perjury by making a false statement under oath.

D/Commr. George subsequently filed an application with the Federal Court to have both of these investigations quashed and declared invalid on the basis that parliamentary privilege protects any statements made before the Public Accounts Committee. On 29 May 2007, Federal Court Justice Danièle Tremblay-Lamer released her decision. This decision upheld the principle of parliamentary privilege and ordered the RCMP to cease the Code of Conduct investigation as it related to the testimony before the Public Accounts Committee. The Justice wrote:

For the courts or the RCMP Commissioner to initiate an internal investigation on the question of perjury before the House, prior to any decision on the matter by the House itself, would be to trespass within an area over which Parliament has exclusive jurisdiction.¹

The Federal Court determined that it did not have jurisdiction to rule on whether parliamentary privilege applied to police investigations, since such investigations fall under the jurisdiction of provincial superior courts. In doing so it did, however, emphasize that in the context of investigations and prosecutions: “It is clear that any issue with respect to parliamentary privilege remains alive...”²

As a result, on 5 June 2007 C/Supt. Paulson wrote to the Speaker of the House of Commons, Peter Milliken, asking the House of Commons to waive privilege. C/Supt. Paulson wrote:

Defending the integrity of the privilege by pursuing action against those who may abuse it is key to maintaining trust in Parliament. There are, of course, a number of ways through which Parliament may decide to pursue action against someone who has provided such testimony. One such avenue is for Parliament to waive the privilege and permit the testimony to be used in a criminal investigation and admitted as evidence in a criminal prosecution. ... I am therefore respectfully requesting that the House of Commons consider waiving privilege surrounding Deputy Commissioner George’s testimony on the 21st of February 2007 so that it might be presented to a Criminal Court.

On 6 June 2007, Speaker Milliken wrote to C/Supt. Paulson saying that the Public Accounts Committee would consider this matter and provide its recommendations to the House

¹ Federal Court of Canada, Deputy Commissioner Barbara George v. Attorney General of Canada (29 May 2007), FC 564, paragraph 79 (emphasis in original).

² *Ibid.*, paragraph 52 (emphasis in original).

of Commons. This report constitutes the response of the Public Accounts Committee to C/Supt. Paulson's request.

PARLIAMENTARY PRIVILEGE

Parliamentary privilege of the freedom of speech and debate within proceedings of the Houses of Parliament is one of the fundamental principles of Parliament. It dates back at least to the *Bill of Rights*, 1689, Article 9, which states "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." This principle has been enshrined in the *Constitution Act of 1867*, Section 18,³ and the *Parliament of Canada Act*, Sections 4 and 5.⁴

Freedom of speech in parliamentary proceedings is viewed by most observers as the most significant aspect of parliamentary privilege. It allows Members of Parliament to speak freely, without fear that what they say will be later held against them in the courts or other proceedings. It is essential for the effective working of the House. Members must be assured that there is complete freedom of speech so that they are able to be as open and forthright as possible in parliamentary discussions and debates.

Witnesses who appear before parliamentary committees are entitled to the same protections.⁵ Without witnesses having the protections of its privileges, Parliament's investigative function would be compromised as witnesses would be less forthcoming. Witnesses need to be confident that their testimony is immune from subsequent challenges elsewhere. Consequently, testimony before a parliamentary committee, including the House of Commons Standing Committee on Public Accounts, is protected by parliamentary privilege. Its use is

³ *Constitution Act of 1867*: "The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

⁴ *Parliament of Canada Act*, Section 4: The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act. Section 5: "The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially."

⁵ In 1818 the British House of Commons unanimously adopted a resolution to this effect. See also *Gagliano v Attorney General of Canada*, 2005 FC 576 (CanLII) — 2005-04-27

prohibited in any proceeding outside of the House of Commons. On 30 April, the Chair of the Public Accounts Committee, Shawn Murphy, summarized the issue:

It is important that all witnesses before this Committee be assured that the testimony they give to this committee cannot be used elsewhere against them. The credibility given to witness testimony and to this committee's proceedings as a result will be seriously compromised if witnesses can be intimidated by actions taken against them or by worries about actions that could be taken against them.

This is not to say that Members are prepared to treat with impunity allegations that witnesses misled or lied to parliamentary committees. If a witness is found by a committee to have given untruthful testimony, then the committee can refer the matter to the House of Commons to have the House of Commons waive its privileges over the testimony and refer the matter to the Crown to determine whether the witness should be charged with perjury for deliberately lying to a parliamentary committee, pursuant to section 132 of the *Criminal Code*, "Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years." However, until it is determined by the House of Commons that it ought to waive its privileges, all testimony by witnesses before its Committees is protected by parliamentary privilege, and therefore is unavailable for any other use in or for any other legal proceeding or process, including investigations.

In addition, untruthful testimony before a chamber of Parliament or a parliamentary committee may constitute contempt of the House. Misleading a parliamentary committee affronts the dignity and authority of Parliament because it can obstruct or impede the House in the performance of its functions. Contempt of the House can be punished with the various penalties at the disposal of the House, from reprimand to imprisonment.

WAIVING PARLIAMENTARY PRIVILEGE

In the fall of 2004, the Commissioner of the Commission of Inquiry into the Sponsorship Program and Advertising Activities of the Government of Canada requested that the House of Commons waive the privilege afforded to witnesses who appeared before the Public Accounts Committee during its hearings on the Sponsorship Program. The Commissioner wanted to check for any inconsistencies in statements before the Commission of Inquiry and the Public Accounts Committee. In its report on the matter to the House of Commons, the Committee reaffirmed parliamentary privilege for all evidence, submission, and testimony by all persons participating

in the proceedings of the Public Accounts Committee.⁶ The House of Commons concurred in this report on 15 November 2004.

In its consideration of the issue, the Standing Committee on Procedure and House Affairs concluded that it is primarily the responsibility of the House to pursue and punish allegations of perjury and contempt of Parliament.⁷ To permit the use of testimony from a parliamentary committee to be used before a judicial proceeding would undermine and challenge the long-established principle of the autonomy and independence of the legislative and judicial branches. In addition, if the House of Commons were to waive parliamentary privilege, it would undermine the confidence that Members and witnesses have in their right to freedom of speech in Parliament. Exceptions to parliamentary privilege make it difficult, if not impossible, to know when statements could be challenged outside of Parliament, which would undermine the confidence that privilege is designed to protect.

Privilege belongs to the House of Commons, and not the individual witness. Only the House of Commons may waive these privileges.. In considering whether privileges ought to be waived in these circumstances the Speaker has asked this Committee to consider the matter and, if necessary, report to the House with recommendations.

The Members of this Committee believe that this privilege should be defended and upheld. Therefore, with the respect to the request by C/Supt. Paulson for the House of Commons to waive parliamentary privilege for the purposes of examining the testimony of Barbara George on 21 February 2007 before the Public Accounts Committee in an investigation for use in a criminal proceeding, the Public Accounts Committee recommends:

⁶ House of Commons Standing Committee on Public Accounts, 38th Parliament, 3rd Report, *Chapter 3, the Sponsorship Program, Chapter 4, Advertising Activities and Chapter 5, Management of Public Opinion Research of the November 2003 Report of the Auditor General of Canada referred to the Committee on February 10, 2004, privilege, powers and immunities of the House of Commons*, November 2005.

⁷ House of Commons Standing Committee on Procedure and House Affairs, 38th Parliament, 14th Report, *Privileges, powers and immunities of the House of Commons*, November 2005. The House concurred with this report on 18 November 2004.

RECOMMENDATION 1

That The House of Commons reaffirms the parliamentary privileges and immunities of freedom of speech, which preclude the use of testimony before a parliamentary committee in any other legal proceeding or process, including investigations undertaken for possible criminal prosecution.

RECOMMENDATION 2

That the House of Commons not waive parliamentary privilege for the purposes of any criminal investigation of perjury founded on the testimony given by Barbara George or any other witnesses before the Standing Committee on Public Accounts.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 49, 63, 64 and 68 including this report is tabled](#)).

Respectfully submitted,

Hon. Shawn Murphy, M.P.
Chair