



The Supreme Court of Canada holds that the Constitution allows Parliament to set limits on parliamentary privilege for members of a national security and intelligence committee.

Parliamentary privilege can be defined 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. Parliamentary privilege forms an important part of Canada's constitutional law because it sets out protections needed for parliamentarians to perform their functions. For example, it includes the ability to speak freely in Parliament without facing legal consequences and it allows each House of Parliament to control its own internal proceedings. The Constitution gives Parliament the authority to define how its privileges apply, including setting limits on them by adopting legislation. However, the authority is not unlimited.

In 2017, Parliament adopted the *National Security and Intelligence Committee of Parliamentarians Act* to create a committee made up of members of Parliament and senators to review Canada's national security and intelligence activities. Because their work involves highly sensitive information, members must obtain security clearance and agree not to disclose any information obtained through their work on the Committee. Section 12 of the *Act* provides that members cannot rely on parliamentary privilege to avoid legal consequences if they disclose any information.

Mr. Alford, a law professor, challenged section 12 of the *Act* before the Ontario Superior Court of Justice, arguing this provision is unconstitutional because it limits parliamentary privilege, including freedom of speech in Parliament and each House's authority to control its own proceedings. He argued that these aspects of parliamentary privilege have constitutional status and cannot be limited by ordinary legislation like the *Act*. The judge agreed with him and found that section 12 went beyond the limits of Parliament's authority to define parliamentary privilege under the Constitution. The Court of Appeal disagreed. It held that section 12 of the *Act* is within Parliament's authority to define its privileges. Mr. Alford then appealed to the Supreme Court of Canada.

The Supreme Court dismissed the appeal.

The limits placed on members of the National Security and Intelligence Committee of Parliamentarians are constitutional.

Writing for the majority, Justice Rowe began by explaining that the Constitution gives Parliament the power to define the privileges, powers and immunities of its Houses and their members. This power includes the ability to set limits on those privileges. When Parliament does so, it is exercising legislative authority given to it by the Constitution, not amending the Constitution itself.

As he further explained, this power is, however, not unlimited. It must be exercised in a way that is consistent with the purpose of parliamentary privilege and with Parliament's role in Canada's constitutional order. Parliament cannot use this power to fundamentally change or undermine its role as a legislative body.

In this case, Justice Rowe said that the limits set out in section 12 of the *Act* are narrow. They apply only to members who choose to sit on this Committee and only to confidential information obtained through that role. They do not affect freedom of speech in Parliament more broadly, nor do they prevent Parliament from controlling its own proceedings. As such, these limits are a valid exercise of Parliament's constitutional authority. By adopting them, Parliament did not alter the Constitution. It acted within the scope of the power given to it to define parliamentary privilege.

Breakdown of the decision: *Majority:* Justice [Rowe](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed) | *Dissenting:* Justice [Côté](#) would have allowed the appeal

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