



# PARLIAMENTARY PRIVILEGE

## DEFINITION AND PURPOSE

Parliamentary privilege comprises the rights, powers and immunities accorded to Parliament and to parliamentarians to enable them to fulfill their parliamentary functions without interference or obstruction.<sup>1</sup> Privileges include:

- freedom of speech in Parliament and its committees;
- freedom from arrest in civil cases;
- exemption from jury duty and appearance as a witness in a court case; and
- in general, freedom from obstruction and intimidation.

The most fundamental privilege of Parliament is the right of a house to regulate its affairs, in other words, to establish its own rules of procedure and enforce them. Any action that violates these rights can constitute a breach of privilege. There are also general offences against the authority and dignity of Parliament that may not fall within specifically defined privileges and are considered contempts of Parliament.<sup>2</sup> Both breaches of privilege and contempts may be raised as questions of privilege.

There are five ways in which a question of privilege can be raised in the Senate. They are as follows:

- I. pursuant to rule 13-3, with written and oral notices (most frequently used method);
- II. pursuant to rules 5-5(k) and 13-2(2), as a substantive motion;
- III. pursuant to rule 13-4(a), without notice, for matters arising after the time for giving written notice has passed or during the course of a sitting;
- IV. pursuant to Appendix IV to the *Rules of the Senate* relating to the unauthorized disclosure of confidential committee reports, documents or proceedings; and
- V. by way of a committee report, bringing a possible issue of privilege or contempt relating to a committee to the Senate's attention.

This procedural note explains the most frequently used method of raising a question of privilege in the Senate, which is at the earliest opportunity with written notice given before a sitting of the Senate.<sup>3</sup>

## **PROCESS OF RAISING A QUESTION OF PRIVILEGE AT THE EARLIEST OPPORTUNITY**

The basic steps for raising a question of privilege in this manner are the following:

- Prior to a sitting of the Senate, the senator provides written notice of their question of privilege.
- The senator gives oral notice of their question of privilege during Senators' Statements.
- At the appropriate moment during the sitting, the senator is given the floor to explain the matter. Other senators may intervene to provide advice or alternative views to the Speaker.
- The Speaker renders a decision on whether there is a prima facie (at first glance) case of privilege.
- If the Speaker finds a prima facie question of privilege, the senator who raised it moves a motion for the Senate to take action or to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report.
- The motion is debated.
- If the motion is adopted, the Senate takes the appropriate action or the committee studies the matter, as the case may be.

### ***REQUIREMENTS TO RAISE A QUESTION OF PRIVILEGE***

The *Rules of the Senate* set out several criteria that must be met for a question of privilege to take precedence over any other matter in the Senate. These criteria are:<sup>4</sup>

- it must be raised at the earliest opportunity;
- it must be a matter directly concerning the privileges of the Senate, of any Senate committee or of any senator;
- it must be raised to correct a grave and serious breach; and
- it must be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.

If a question of privilege is not raised at the earliest opportunity, the senator raising it may do so by giving notice of a motion, but cannot follow the procedure described in this note.<sup>5</sup>

***WRITTEN AND ORAL NOTICES***<sup>6</sup>

Senators wishing to raise a question of privilege must give written notice to the Clerk of the Senate at least three hours before the Senate is scheduled to meet (or no later than 6 p.m. on a Thursday, in preparation for a Friday sitting). The Clerk has the notice translated and distributed to the offices of all senators. The senator who has given the notice is recognized during “Senators’ Statements” to give oral notice of the question of privilege. As with other Senators’ Statements, the senator is limited to an intervention of three minutes when giving oral notice. In the written and oral notices, the senator must clearly identify the subject matter that shall be raised as a question of privilege. In the oral notice, the senator must also indicate that, if there is found to be a case of privilege, he or she will either move a motion for action by the Senate or to refer the issue to the Standing Committee on Rules, Procedures and the Rights of Parliament.

***CONSIDERATION OF A QUESTION OF PRIVILEGE***<sup>7</sup>

The consideration of a question of privilege for which notice was given will take place as soon as the Senate has completed the Orders of the Day, but no later than 8 p.m. the same day (or noon on a Friday). If multiple notices on distinct questions of privilege have been received on the same day, the Senate will deal with them in the order that the written notices were received by the Clerk.

The Speaker decides when the arguments presented are sufficient to reach a decision on whether there is a prima facie question of privilege.<sup>8</sup> The Speaker then rules immediately or takes the matter under advisement for a ruling later. The Speaker must give reasons for the decision by citing any Rules, practices or other relevant written authorities.<sup>9</sup> Rulings on questions of privilege can be appealed.

***CONSIDERATION OF CASE OF PRIVILEGE***<sup>10</sup>

If the Speaker determines that there is a prima facie case of privilege, the senator who raised the matter may move a motion, immediately after the ruling, asking the Senate to take action on the issue or to refer it to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report.<sup>11</sup> Although this motion is moved immediately after the decision, debate only begins after the completion of Orders of the Day or at 8 p.m. (noon on Friday), whichever comes first. The debate can last no more than three hours, at which time the Speaker puts the question to a vote. During the debate, a senator may only speak once for a maximum of 15 minutes. This motion can be amended and, in most circumstances, debate can be adjourned.

**FOR ADDITIONAL INFORMATION ON PARLIAMENTARY PRIVILEGE**

[Senate Procedure in Practice](#) (Chapter 11)

**FOR ADDITIONAL INFORMATION ON OTHER POINTS COVERED IN THIS NOTE**

[Senate Procedural Note No. 2, Order of Business of Sittings](#)

[Senate Procedural Note No. 3, Debate](#)

[Senate Procedural Note No. 4, Voting](#)

[Senate Procedural Note No. 9, The Speaker of the Senate](#)

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**References**

<sup>1</sup> See the definition of privilege, Appendix I of the Rules.

<sup>2</sup> *Senate Procedure in Practice*, June 2015, p.230 and *House of Commons Procedure and Practice*, 3rd ed. (2017), pp. 80-83.

<sup>3</sup> See Speaker's ruling in *Journals of the Senate*, March 25, 2010, pp. 165-167. For more information about the other methods of raising a question of privilege, see *Senate Procedure and Practice*, June 2015, pp. 240-245.

<sup>4</sup> Rule 13-2(1).

<sup>5</sup> Rules 5-5(k) and 13-2(2).

<sup>6</sup> Rule 13-4.

<sup>7</sup> Rule 13-5.

<sup>8</sup> Rule 2-5(1).

<sup>9</sup> Rules 2-5(2) and 13-5(5).

<sup>10</sup> Rule 13-6.

<sup>11</sup> Rule 13-6(1).