

Parliamentary Privilege in Canada 2nd Edition
by Joseph Maingot. Montreal and Kingston: House
of Commons and McGill-Queen's Press, 1998.
Pp. xxiv, 410. \$60.00.

Parliamentary privilege is a general term to describe certain rights and immunities enjoyed by the House and its members without which they could not discharge their functions. These rights extend only to a few areas of civil law. Members do not enjoy immunity from the criminal law as a result of their privileges.

The most important privilege is freedom of speech whose origins go back to Article 9 of the English *Bill of Rights* (1689). "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, and others including the power of Parliament to punish for contempt, was imported into Canadian law by clauses such as the preamble to the *Constitution Act 1867* and the *Parliament of Canada Act*.

While relatively simple in principle, privilege raises a host of difficulties when we come to interpreting its extent and limits. What is a proceeding of Parliament? Is it confined to precincts where Parliament meets or can it extend to any site used for parliamentary functions? Is it limited to members of the assembly or does it apply to persons who appear as witnesses? Do *Hansard* records enjoy privilege? What about extracts from them? What about television coverage? What penalties can be imposed for a breach of privilege? How can such penalties be enforced?

The answers will be found in what is surely a standard reference tool for legislators and students

of Parliament. This is actually a revised and expanded version of the original edition published in 1981. The date is significant for that was one year before the adoption of the Canadian Charter. If there are any public policy considerations to this book they revolve around the question of whether the Charter enhances or limits the traditional scope of parliamentary privilege. That issue is broached in the final chapter, which is largely a summary of a 1993 Supreme Court case where the majority upheld the Nova Scotia Assembly's right to refuse to allow televised coverage of its debates. Maingot argues that this decision strengthens privilege since the Highest Court gave its blessing to assemblies' "unfettered right to regulate their own proceedings."

Maingot does allow that where the liberty of the subject is affected, for example the punishment for contempt by the legislature of a journalist or other individual, the Charter has at the very least provided an additional arrow in the judicial quiver. "If a legislative body proposes to arrest, detain, charge or commit that person it must reckon with the Charter" (p. 350).

What is discouraging about this book is that it ends with the Supreme Court decision as if that edict was the last possible word on the subject. In the United Kingdom there are periodic parliamentary reviews of privilege to see if the doctrine ought to be refined to meet the needs of modern society. In Canada our policymakers seem so eager to abdicate responsibility to the courts that a serious parliamentary study ought to question whether, in the long term, our parliamentary institutions and practices risk eclipse by such deference.

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