The concept of the "independent" judiciary is a parliamentary practice and a convention. This notion of separation of powers, judicial independence and political non-interference in the adjudicative function is part of the great constitutional life of Canada. Albert Venn Dicey, in his book *Introduction to the Law of the Constitution* defines "conventions" as:

> ...customs, practices, maxims, or precepts which are not enforced or recognized by the Courts...

Conventions are observed in the practice of politics. We must be clear that conventions depend on political process and political players for enforcement, that is, that conventions depend on the actions of Parliament for enforcement.

The question of the relationship between convention and the law are clarified in jurisprudence and case law. In the case of *Madzimbuto v. Lardner-Burke and George*, Lord Reid stated:

> Their Lordships in declaring the Law are not concerned with convention.

In Canada also, the courts held that conventions can never be legally binding, and that they can have no effect on legal powers. In the case of the *Disallowance Reference*, Chief Justice Duff of the Supreme Court of Canada, said:

> We are not concerned with constitutional usage... or constitutional practice...We are concerned with questions of law.

Canada, as a constitutional society based on the rule of law, has developed coordinate constitutional institutions: the Crown, the executive, Parliament, and the courts; four coordinate entities. Effective governance compels comity between the constitutional institutions. On this comity, Edmund Burke, in his book, *Reflections on the French Revolution* has said:

> ...the constituent parts of a state are obliged to hold their public faith with each other...as much as the whole state is bound to keep its faith with separate communities.

In Canada, this faith, this institutional comity, has assured the smooth and continuous functioning of our Constitution. About co-institutional comity, or constitutional comity, Lord Simon, in 1974, in the case of *British Railways Board v. Pickin*, said:

> It is well known that in the past there have been dangerous strains between the law courts and Parliament — dangerous because each institution has its own particular role to play in our constitution, and because collision between the two institutions is likely to impair their power to vouchsafe those constitutional rights for which citizens depend on them. So for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other...

The Parliament of Canada Act, R.S.C. 1985, Section 5, on the law of privilege and the courts, says:

> The privileges, immunities and powers...are part of the general and public law of Canada and it is not necessary to plead them but they shall...be taken notice of judicially.

The law courts in Canada are generally allowed to enquire into the existence and extent of parliamentary privilege. The courts may ascertain the privileges concerned, and may enquire and determine the validity of the privilege claimed. However, they may not enquire into, and may make no adjudication on the exercise of privilege.

The law of privilege tells us, in the words of the Honourable A.G. Cameron, Speaker of the House of Representatives of Australia, that no one can:

> ...waive, cancel, impair, or destroy the privilege...

No court of law can "waive, cancel, impair, or destroy the privilege." The law of Parliament tells us that these laws can only be amended by Parliament. Joseph Maingot in his book *Parliamentary Privilege in Canada* says:

> The privileges of members of the Senate and of the House of Commons of freedom of speech, freedom from arrest, exemption to attend court as a witness, and the right to ignore a jury notice, are matters of law and only Parliament may change the law.

The jurisprudence and case law uphold this fact of unalterability, save by Parliament.

In 1884, the case of *Bradlaugh v. Gossett* declared that the House of Commons is not subject to the control of the courts in the administration of that part of the law which relates to its internal procedure only. The courts have no power to interfere in the jurisdiction of the Houses of Parliament over their own internal processes and proceedings.

A most severe confrontation between Parliament and the courts of law was the case of *Stockdale v. Hansard*. Mr. Hansard, acting on the orders of the House of Commons, had printed a report. From 1836 to 1840, Mr. Stockdale sued Mr. Hansard several times for statements contained in the report. The House of Commons was represented in court by the Attorney General, Sir John Campbell.

The Commons made orders and resolutions; the court denied them. The court, in Lord Denham, denied Mr. Hansard's defence of privilege of Parliament and found for Mr. Stockdale against Hansard. The House reprimanded Stockdale's lawyer, found Mr. Stockdale in contempt of Parliament, and committed him to prison. In prison, Mr. Stockdale started a fourth lawsuit. The Commons committed Mr. Stockdale's lawyers as they had committed the sheriffs.

• (1540)

Prison did not inhibit Mr. Stockdale and his lawyer, nor put an end to the persistent lawsuits. Parliament settled the dispute. They ended it. Parliament ordered Mr. Hansard to offer no more defence and then passed a law. This statute, the Parliamentary Papers Act, 1840, extends privilege to the staff who, as we see here in this chamber, produce our papers, which we call Hansard.

Stockdale v. Hansard established that the House has exclusive jurisdiction where the dignity and efficiency of the House cannot be upheld without it, saying:

> ...whatever is done within the walls of either assembly must pass without question in any other place.