

On the question of the relationship between Parliament and the courts of law, the finest articulation that I have heard has come from Professor Dr. Edward McWhinney, a most learned scholar:

The essence of the constitutional system is harmony and balance between the main organs of government: Courts, Parliament and Cabinet. The relations between these institutions rest on the principle of comity, that is to say, mutual respect and deference. A consequence of this is the principle of economy in the use of power, and avoidance of escalation to direct institutional confrontation, where alternative, more moderate controls are available.

Parliament's privileges are inherent rights, historically antecedent to and not dependent upon the Constitution Act of 1867. From the English constitutional battles of the early seventeenth century on, it has been axiomatic that the courts are constitutionally obligated to respect and defer to parliamentary privilege. Parliament, as an institution, is not subject to the courts. Members of Parliament, in their personal capacity, are subject to the general law, like anyone

else. But the Courts, in applying the law to Members, are obligated to respect Parliament to the extent that, for example, where the normal civil processes as to service of papers or requesting appearance before the courts are readily available, they must be used and exhausted by the courts.

In conclusion, the relationship between Parliament and the courts of law may be simply put: It is the relationship between politics and law, and the discernment to know the difference. Such discernment allows us to know where one ends and the other begins. It is the understanding of personal limitations as well as institutional limitations. The success of the Canadian Constitution and the Canadian civil society to date have been dependent on the fact that both have been worked by gentlemen and ladies of honour, governed by courtesy, by rules, and the discernment to know the difference between law and politics.

On motion of Senator Carstairs, debate adjourned.

The Senate adjourned to Wednesday, December 7, 1994, at 1:30 p.m.