

ENGLISH VERSION

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**RULING ON THE QUESTION OF PRIVILEGE  
RAISED ON NOVEMBER 16, 2011,  
BY THE MEMBER FOR MOUNT ROYAL (MR. COTLER) CONCERNING  
INQUIRIES MADE TO HIS AND OTHER CONSTITUENTS BY  
CAMPAIGN RESEARCH INC. REGARDING AN “IMPENDING  
BY-ELECTION” IN HIS RIDING**

December 13, 2011

I am now prepared to rule on the question of privilege raised on November 16, 2011 by the hon. Member for Mount Royal (Mr. Cotler) regarding the negative impact an organized telephone campaign survey conducted in his constituency has had on his work and reputation.

I would like to thank the hon. Member for Mount Royal for having raised this important matter, having responded to the comments of other Members and for having provided the Chair with additional material in support of his allegations. The Chair would also like to thank the Government House Leader (Mr. Van Loan), the House Leader of the Official Opposition (Mr. Comartin) and the Members for Richmond—Arthabaska (Mr. Bellavance), Saanich—Gulf Islands (Ms. May), and Humber—St.-Barbe—Baie Verte (Mr. Byrne) for their comments as well as the Member for New Brunswick Southwest (Mr. Williamson) for his interventions.

In presenting his case, the hon. Member for Mount Royal stated that several constituents had contacted him about survey calls they had received from a telephone number identified as Campaign Research Inc., asking if they would support the Conservative Party in the (quote) *“impending, if not imminent, by-election”* (unquote). He has also informed the House that similar calls were placed to citizens in the Westmount—Ville-Marie constituency. The hon. Member for Mount Royal stated that this telephone campaign led his constituents and other voters to think that he had deserted his post, and overshadowed his parliamentary work. Noting that the House has the right to the services of its Members free from intimidation, obstruction and interference, he claimed that the confusion created among his electors was damaging his reputation and his credibility.

In the case before us, no one disputes the fact that there is no pending by-election. Yet the hon. Member for Mount Royal explains that he has been put in an ambiguous situation through this telephone campaign. He says:

(quote) *“Simply put, how am I, or any other member, to effectively represent a constituency if the constituents are led to believe that the member is no longer their elected representative? How can one correct the confusion and prejudicial damage that has been done in*

*the minds of those who may think I am no longer their representative in Parliament or no longer discharging my duties?"* (unquote)

To support his argument, the Member cited a ruling of Speaker Bosley, as found on page 4439 of the *Debates* of May 6, 1985, which states:

*(quote) "It should go without saying that a Member of Parliament needs to perform his functions effectively and that anything tending to cause confusion as to a Member's identity creates the possibility of an impediment to the fulfilment of that Member's functions. Any action which impedes or tends to impede a Member in the discharge of his duties is a breach of privilege."* (unquote)

The Chair finds striking the repeated emphasis that the Member has placed on the importance of this issue not only for himself but for all Members. This point has also been stressed by other Members who intervened. Because of the Chair's primordial concern for the preservation of the privileges of all Members, this is a matter worthy of serious consideration. As your Speaker, one of my principal responsibilities is to ensure that the rights and privileges of Members are safeguarded – and this is a responsibility I take very seriously.

The Member for New Brunswick Southwest (Mr. Williamson) argues, on the contrary, that the House should not even be seized of this question because *(quote) "...it lies outside its authority."* (unquote). He claims that:

*(quote) "...the conduct of political parties should not be judged by the House or by its members... The best place for this to be judged is among Canadians, not in the House..."* (unquote)

The Chair has no doubt that Canadians are indeed judging this matter, just as they are constantly judging this House by what happens here and what is said here and by the attitude that Members display toward one another.

It does not matter that the resources of the House of Commons itself were not used to carry on this particular campaign. On this point, let me point out that the rights and immunities of individual Members can be breached by a wide range of actions and that such actions are not limited, as has been suggested, to actions taken in the House or actions involving the use of House resources.

At the same time, in listening to the arguments on this question, I have seen that a certain confusion seems to exist with regard to the extent of the powers of the Speaker in dealing with questions of privilege. Several Members have ascribed to the Chair seemingly vast powers that neither I nor my predecessors have ever possessed. The role of the Chair is actually very limited, as the hon. Member for Mount Royal has himself pointed out, citing O'Brien and Bosc at page 145:

(quote) *"...the issue before the Speaker is not a finding of fact, it is simply whether on first impression the issue that is before the House warrants priority consideration over all other matters, all other orders of the day that are before the House."* (unquote)

In cases where a Member alleges that he has experienced interference in the performance of his parliamentary duties, the Speaker's task is particularly difficult. As O'Brien and Bosc states at page 111:

(quote) *"It is impossible to codify all incidents which might be interpreted as matters of obstruction, interference, molestation or intimidation and as such constitute prima facie cases of privilege."* (unquote)

Furthermore, in ruling on questions of privilege of this kind, the Chair is obliged to assess whether or not the Member's ability to fulfill his parliamentary functions has been undermined. *House of Commons Procedure and Practice*, second edition, at page 109, notes that my predecessors have stressed the importance of establishing a direct link to parliamentary duties in such cases, stating that:

(quote) *"...rulings have focused on whether or not the parliamentary functions of the Member were directly involved. While frequently noting that Members raising such matters have legitimate grievances, Speakers have consistently concluded that Members have not been prevented from carrying out their parliamentary duties."* (unquote)

In the Bosley decision cited by the Member for Mount Royal, the Speaker was confronted with a situation where the former Member of Parliament was identified in a print advertisement as the sitting Member: the very identity of the sitting Member was at issue.

In the case at hand, the Chair is entirely sympathetic to the situation faced by the Member for Mount Royal. There is no doubt that he has been

bombarded by telephone calls, e-mails and faxes from concerned and confused constituents. However, the Chair has great difficulty in concluding that the Member has been unable to carry out his parliamentary duties as a result of these tactics. The Member for Mount Royal has been extremely active in the House and in committee. By raising the matter in the House as he has done, the hon. Member has brought attention to a questionable form of voter identification practice and described in detail the negative impact it has had. Indeed, his interventions here in the House on this very question have garnered, as he himself points out, extensive sympathetic coverage in media across the country.

In a ruling delivered on August 12, 1988 (*Debates* p. 18272), Speaker Fraser stated that:

(quote) *“Past precedents are highly restrictive ... and generally require that clear evidence of obstruction or interference with a Member in the exercise of his or her duty be demonstrated in order to form the basis for a claim of a breach of privilege”* (unquote)

Speaker Milliken, in a ruling from February 12, 2009 (*Debates* pp. 765-6), also stressed this point:

(quote) *“in adjudicating questions of privilege of this kind, the Speaker is bound to assess whether or not the member's ability to fulfill his parliamentary functions effectively has been undermined.”* (unquote)

As I considered the Member for Mount Royal's case, a second ruling by Speaker John Fraser has resonated particularly for me. On May 5, 1987, Speaker Fraser concluded: (quote) *“Given all the circumstances in this case, I am sure that the Minister's capacity to function as a Minister and a Member of this House is in no way impaired. **I point out to honourable Members that this is the real issue of privilege, although there are obviously other matters that surround the particular fact in this case ... the Chair has to look very carefully at the exact point of privilege.**”* (unquote)

In today's case too, the so-called surrounding matters have given me pause. I am sure that all reasonable people would agree that attempting to sow confusion in the minds of voters as to whether or not their Member is about to resign is a reprehensible tactic and that the hon. Member for Mount Royal has a legitimate grievance.

I would hope that his airing of this grievance and the discussions this case has provoked – here in the House and in the media – will lead to two results. On the one hand, managers of legitimate exercises in voter identification should be more careful in the information they disseminate to the people they contact. On the other hand, Canadians contacted this way should be more wary and judge more critically any information presented to them by unsolicited callers.

I can understand how the Member for Mount Royal and others are seeking relief from the climate of cynicism – not to say contempt – about parliamentary institutions and practice that seems to prevail. But I fear that such relief is not within my gift: the Speaker's powers in these matters are limited, as my predecessors have repeatedly stated.

The words of Mr. Speaker Fraser in a ruling of December 11, 1991 seem particularly apt in these circumstances:

*(quote) "The Chair can devise no strategy, however aggressive or interventionist, and can imagine no codification, however comprehensive or strict, that will as successfully protect the Canadian parliamentary traditions that we cherish as will each Member's sense of justice and fair play. Especially at this time of crisis of confidence in our parliamentary institutions, our constituents deserve and will tolerate no less."*(unquote)

Accordingly, after studying the precedents in these matters, I am not able on technical grounds to find that a prima facie case of privilege exists in this case.

I would like once again to thank the hon. Member for Mount Royal for bringing this serious and important matter to the attention of the House and of Canadians.