

## **INQUIRY INTO PROCEDURAL FAIRNESS FOR INQUIRY PARTICIPANTS**

**Organisation:** House of Commons Canada

**Date received:** 12 December 2017

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Good afternoon,

The House of Commons of Canada derives its powers, privileges and immunities from [section 18 of the Constitution Act, 1867](#),

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

These powers include that of “[[sending](#)] for persons, papers and records,” i.e. compelling, if need be, the appearance of specific people before the House or its committees, and the production of papers or records. In practice, they have been exercised by committees and, usually, recipients of such requests have been willing to comply with the request to appear or for documents. Committees have generally been sensitive to requests that proprietary information be kept in confidence and witnesses who may have sensitive information to convey give evidence during *in camera* proceedings.

As to the second question, such cases are rare in Canada. Because witnesses may have to reveal information that might otherwise lead to consequences in other venues, there are afforded the same privilege to speak freely as Members of Parliament. The House has consistently asserted its privilege to preserve this right, as shown in the case in which [an official who had misled a committee](#) and who was to be subject to a Royal Canadian Mounted Police (RCMP) disciplinary proceeding. On behalf of the House, the Speaker asserted its privilege in a letter to the Commissioner of the RCMP, and the proceeding was stopped.

The House of Commons’ procedural authorities are silent on how requests for information that has been classified under the *Security of Information Act* should be treated. On November 25, 2009, the Special Committee on the Canadian Mission in Afghanistan [sent for documents](#) that related to detainees whom the Canadian Forces had turned over to the forces of Afghanistan. The House ordered the government on [December 10, 2009](#), to produce them “in their original and uncensored form.” On April 27, 2010, the Speaker found a *prima facie* case of privilege because the government had failed to comply with the House’s order. Rather than asking a member to propose a motion to refer the matter to the Standing Committee on Procedure and House Affairs, he [announced](#) that he would “allow House leaders, ministers and party critics time to suggest some way of resolving the impasse.” In the event, three of the four recognized parties in the House agreed to participate in an *ad hoc* committee (that also included three justices) to review the documents and determine which could be made public and how they should, if at all, be redacted to protect national security, international relations, or the Canadian Forces in Afghanistan.