ASSOCIATION OF PARLIAMENTARY AND LEGISLATIVE COUNSEL IN CANADA

EDMONTON, ALBERTA, 11-13 SEPTEMBER 2013

Michael Carpenter, Speaker's Counsel
House of Commons[1]

Assisting police with their inquiries?

1. The time-honoured euphemism of 'assisting police with their inquiries' may conveniently cover a multitude of sins. It usefully extends both to suspects and those who are merely witnesses, or who are otherwise caught up in police inquiries. . Since the Damian Green fiasco in 2008, there has been a steady stream of criminal investigations and police activity of all kinds in and around the Parliamentary estate at Westminster. Those advising the Speaker and the House of Commons may therefore be excused for thinking they were pursuing a life of crime. In such cases the watchword has been that Officers of the House do not obstruct a criminal investigation, but neither do they participate in the same.

2. Fortunately (if that is the right word), the House of Commons and its Members have no monopoly on crime, and the legislatures in Canada and the United States have had their share of involvement with the criminal law, so there is a body of experience which may usefully be shared. As Joseph Maingot QC has pointed out, only the Commonwealth Parliaments and the Congress of the United States of America refuse to grant to Members any special immunity from arrest or prosecution.[2] Instead, protection is limited to those matters which are necessary for the legislature to function, and the most significant privilege is that of freedom of speech in proceedings. Apart, therefore, from what may be termed 'speech crimes' Members enjoy no special immunity from the criminal law, even where a crime might have been committed in the course of

proceedings.[3] It is also the case that the Palace of Westminster is no sanctuary from the reach of the criminal law. As much was most dramatically evident following the assassination of the then Prime Minister Spencer Perceval in the lobby of the House of Commons in 1812.[4] On that occasion, it was the Speaker himself who directed that the assassin, Mr Bellingham, should be detained in the 'prison room' at the Palace, and summoned the examining magistrate.

3. The principle that the precincts of the Westminster Parliament are not a haven from the criminal law was re-affirmed by the Speaker of the House of Commons in his statement of 3 December 2008 following the arrest of Damian Green MP and the search of his room at Westminster.[5] As is perhaps too well known (and too painful) to recall in detail, the search took place without a warrant.[6] The resulting *furore* led to the issue on 8 December 2008 of the Speaker's Protocol on the execution of a search warrant in the precincts of the House of Commons, a select committee inquiry and a number of police internal inquiries.[7]

The execution of search warrants on Parliamentary precincts

4. Unlike the protocols adopted in a number of Canadian jurisdictions,[8] the Protocol of 8 December 2008 (a copy of which is at Annex 1) is in no sense an agreement with the relevant police force. Such was the pressure of political events at that time, there was no opportunity to consult the Metropolitan Police or more widely.[9] In any event, the Protocol was principally intended as a set of instructions to Officers of the House as to the procedure they should adopt in the event of a search warrant being presented. In giving such instructions, the Protocol addressed two problems which the Damian Green case had highlighted.[10]

5. First, it made it clear that in future a warrant would always be required to conduct a search of a Member's office or gain access to a Member's parliamentary papers, including electronic records. This addressed the ambiguity over whether Officers of the House (in this case, the then Serjeant at Arms) had in fact given consent to a search without a warrant. Where a warrant is applied for under section 8 Police and Criminal Evidence Act 1984, the district judge hearing the application must be satisfied, *inter alia*, that there are reasonable grounds for believing that entry to the premises will not be granted unless a warrant is produced.[11] In circumstances where a constable believes he has the relevant consent, he cannot satisfy this condition and cannot apply for a warrant. Whereas warrants were issued for three other relevant properties in the

Damian Green case, no warrant was applied for in respect of the Member's office on the Parliamentary Estate. The Protocol is intended to put beyond doubt that consent will not be granted so that the same ambiguity over consent cannot arise in future. In the most recent case of a search warrant executed on 19 May 2013, the Protocol was one of the documents exhibited to the Circuit judge hearing the application in order to show that consent to search would not be given.

6. Secondly, the Protocol requires certain named Officers to be informed of any case where an Officer of the House becomes aware that a warrant is to be sought. This was intended to avoid the situation where an individual Officer fails to consult relevant colleagues through accepting any inappropriate obligation of confidentiality towards the police.[12] The Protocol therefore provides that "In all cases where any Officer or other member of the staff of the House is made aware that a warrant is to be sought the Clerk of the House, Speaker's Counsel, the Speaker's Secretary and the Serjeant at Arms must be informed. No Officer or other member of the staff of the House may undertake any duty of confidentiality which has the purpose or effect of preventing or impeding communication with these Officers".

7. Although history may generally repeat itself, first as tragedy and secondly as farce, this, mercifully enough, proved not to be so in the more recent case of the search warrant executed on 19 May this year by the Lancashire Constabulary at the House of Commons. Unlike the position in 2008, there was a clear and well-known statement of practice in the form of the Protocol, which in the event was followed to the letter. The Lancashire Constabulary conducting the criminal investigation against a Member was aware of the Protocol and made early contact with the Serjeant at Arms and Speaker's Counsel, who in turn informed Mr Speaker and the Clerk of the House. In confidential exchanges with the police, the particular relevant premises were identified and the scope of the warrant was limited to these, so there was no question of entering any other premises, such as other offices, on the day. It was also explained to the police that time would be needed after the issue of the warrant so that Mr Speaker could be consulted on its execution in accordance with the Protocol.[13]

8. The warrant was issued by the Circuit Judge at Preston Crown Court and was shown to Mr Speaker by Speaker's Counsel immediately thereafter, this being a few days before the execution of the warrant on 19 May. The warrant was examined personally by Mr Speaker. There were no proper grounds on which execution of the warrant could be refused, since the offence in question (a serious sexual assault) did

not raise any issue under Article IX of the Bill of Rights or any other question of privilege attaching to Parliamentary proceedings. As to that question, the Lancashire Constabulary had given undertakings as to the handling of any seized Parliamentary material until such time as any question of privilege was resolved.

9. The warrant was executed on a Sunday morning by plain clothes officers accompanied by the Serjeant at Arms and Speaker's Counsel. The Member concerned was informed that morning, but there was no press coverage or comment of any kind until after Mr Speaker's statement to the House the following Monday, which statement provoked very little comment. The episode showed the value of having a set of instructions which would anticipate, as far as possible, the likely questions which would need to be dealt with under some pressure of time, and against the probable background of incomplete information. Since the Speaker's Protocol is a public document, it is well known to the relevant police forces and also provided guidance to them as to the probable attitude of the House authorities.

10. It should be acknowledged that the Protocol of 2008 owes a considerable amount to the practice of the House of Commons of Canada. The then Clerk of the House, Sir William McKay had written a memorandum on the subject in 2000, which memorandum drew on first principles and Canadian experience.[14] The memorandum had attached to it the relevant pages of 'The Practice and Procedure of the House of Commons'. These, in turn, were based on a resolution of the House in 1990 adopting the conclusions of a Special Committee in these terms:

> "1. Well-established parliamentary tradition provides that search warrants may only be executed within the precinct of Parliament with the consent of the Speaker.
>
> 2. The Speaker may withhold or postpone giving his or her consent if it is determined that the execution of the search warrant will violate the collective and individual privileges, rights, immunities and powers of the House of Commons and its Members by interfering with the proper functioning of the House of Commons.
>
> 3. A search warrant must be executed in the presence of a representative of the Speaker who ensures that a copy of it is given to any Member whose affairs are subject of the search, at the time of the search or as soon as practicable thereafter."

11. The passage in Practice and Procedure nevertheless recognises that the Speaker can do no more than ensure the warrant is lawful on its face and that he does not have the right to review the lawfulness of a decision to issue the warrant. The passage notes that to do so could amount to an obstruction of justice and would blur the distinctions between Parliament as a legislative body and the judicial and executive functions of issuing and executing a warrant. It further notes that in examining a search warrant, the Speaker will consider its 'procedural sufficiency' and the precise description of the documents sought under it, concluding that the Speaker's role is 'restricted to an examination based on form and content and to ascertain if the execution of the warrant could otherwise result in a breach of privilege'.

12. A number of protocols in Canada have followed this pattern. In Prince Edward Island, for example, the Protocol requires the Charlottetown Police Services to allow time for consideration of a warrant by the Speaker and in the meanwhile for the Serjeant at Arms to arrange for the sealing of any room containing documents sought under the warrant. Similar provision is made in Alberta, British Columbia and Nunavut. In Quebec, there is similar provision for the examination of the warrant (*perquisition*) by the President before its execution. In the case where the search takes place in the administrative offices of the National Assembly, the documents which are the subject of the warrant are to be shown to the President before their release.

13. In the United States, the issue of controversy does not appear to have been so much the execution, as such, of a search warrant, as the question of whether such execution necessarily infringes the testimonial privilege of a Member of Congress under the Speech or Debate Clause. In *United States v. Rayburn Office Building* 497 F3d 654 Congressman Jefferson (whose office in the Rayburn Office Building had been the object of a search with a warrant) did not dispute before the District Court or the Court of Appeals that congressional offices were subject to the operation of the Fourth Amendment and thus subject to a search pursuant to a search warrant issued by the federal district court. Neither did he argue that advance notice was required by the Constitution before the police or FBI entered his room. Instead, his argument was that the warrant procedures were flawed because they allowed him no opportunity to assert his testimonial privilege before the officers 'scoured his records'. This argument succeeded before the US Court of Appeals which held that a search which allowed agents of the Executive to review privileged materials without the Member's consent violated the Speech or Debate Clause as far as paper records were concerned. However, the Court considered that the copying of computer hard drives and other electronic

media was constitutionally permissible because the relevant part of the warrant afforded the Congressman an opportunity to assert the privilege prior to disclosure of privileged materials to the police or FBI. In the event, the Court of Appeals ordered the return of 'legislative materials' to the Congressman, but the prosecutors were allowed to keep the rest.

14. The Court of Appeals for the 9th circuit took a narrower view of the privilege against disclosure in *United States v. Renzi* 651 F2d 1012. In that case, a former Congressman (Richard Renzi) was prosecuted for promising legislative action to benefit parties who agreed to purchase a parcel of land, the proceeds of which would be paid to a party for repayment of a debt to the Congressman. Renzi failed in his argument that the Speech or Debate clause protected him from criminal liability for promising legislation in this way, the court taking the view that the Clause did not protect promises of future acts, only completed legislative action and that taking a bribe was no part of the legislative process or function and is not a legislative act.[15] On the question of a privilege against disclosure, the Court of Appeals for the 9th Circuit held that it was not sufficient for the claim of privilege merely to show that the legislator would be distracted from his legislative task by the litigation. Instead it was necessary to show that the 'underlying action' was precluded by the Speech or Debate Clause. Comparing the present case with that of the bribery in *United States v. Brewster* the Court concluded that the Speech or Debate Clause did not bar disclosure of 'legislative act' evidence as part of an investigation into activity not protected by that Clause.

Production Orders and subpoenas relating to Parliamentary materials

15. Search warrants for the search of offices occupied by members of the legislature seem to be rare. In the House of Commons at Westminster there have been only two instances, one with a warrant and one without, in five years, and the *United States v. Rayburn Office Building* case appears to have been the first involving a search of the office of a Congressman. More common, at least at the House of Commons, are cases where documentary evidence or data is sought by way of *subpoena* or Production Order in the course of a criminal investigation.

16. The criminal investigations following the scandal over Members' expenses in 2009 have led to a reasonably well understood doctrine over how to respond to requests from the police for records held by the House authorities which relate to individual

Members. Its principles have been adapted to deal with the increasingly important question of access to electronic records.

17. In the administration of Members' expenses, the House of Commons (in the form of its Corporate Officer) held a number of relevant records, such as claim forms and supporting receipts. These are, of course, capable of containing personal data for the purposes of the Data Protection Act 1998. Although the 1998 Act provides a 'gateway' which permits the disclosure of personal data if this is necessary for the detection of crime or otherwise for the administration of justice,[16] the then Corporate Officer took the view (on advice) that data held on Members should not be disclosed to the police, except with the Member's consent or pursuant to a court order. The reason for such advice was that this policy would provide the closest analogy to the Speaker's Protocol on the execution of a search warrant. The relevant court order, known as a Production Order,[17] is generally obtained from a District or Circuit Judge under the Police and Criminal Evidence Act 1984 and has the features of a *subpoena duces tecum*.[18] In the event, no Production Order has yet been made against the Corporate Officer of the House of Commons in any case involving expenses. In all cases so far, the relevant Member has given consent to the disclosure.

18. A Production Order will specify a time (generally at least seven days) within which the specified records must be produced to a constable or be made available for inspection. A Production Order may be applied for without notice to the subject, but in practice there will have been discussion by the police with the House authorities so as to establish, for example, whether the records are in fact held and in order generally to limit the scope of the order, so that it does not become the proverbial 'fishing expedition'. In any event, unlike the case with a search warrant, there remains the opportunity of applying to the court for a variation of the terms of the Production Order, or even to set it aside, before its execution.

19. Increasingly, the relevant records are held in electronic form. These may either be held on electronic devices such as laptops, mobile phones, tablets etc. or are retrievable from a communications network, such as the network operated for both Houses by the Parliamentary Information and Communications Technology (PICT). Where such devices are seized in a search, the issue arises as to how the content of the devices is to be examined, either at all, or in such a way as to enable any issue of Parliamentary privilege to be asserted. A similar issue arises under a Production Order, although here the question is one of whether a record need not be produced by reason of any

privilege.[19] A further example is that where a Member gives consent to the examination of his records held in the PICT system, but where those records contain material which may be subject to Parliamentary privilege. In such cases, it is not within the power of the individual Member to waive such privilege (and, indeed, the House itself has no power to 'waive' the provisions of Article IX of the Bill of Rights 1689).[20]

20. The precise mechanisms have not as yet been fully developed (and have not been tested in litigation), but the following principles and methods have emerged from the practice at Westminster. They are again based on the experience in Damian Green in dealing with the paper records which were seized in that operation. Where paper records are seized, there is a tangible medium which can be bagged and kept securely until its examination. The papers in that case were kept in sealed bags until they could be examined in a 'sift' for issues of privilege by Officers of the House in the presence of the suspect's solicitors. The Member in question was not content with a 'sift' being carried out by Officers of the House and argued that it was for the House itself to determine the question of privilege (he had nevertheless agreed, through his solicitor, to the sifting process). However, any determination by the House at that stage would have involved debate and public discussion of evidence in an ongoing criminal investigation, with a clear risk of prejudicing a future trial.[21]As the then Speaker pointed out in his letter of 10 February 2009,[22]neither the Clerk nor any other Officer had claimed that the sifting exercise was conclusive but that it was a 'necessary and mutually agreed preliminary step'. The Speaker voiced his concern over the potential for the serious injustice which would arise if the House were at that stage to put itself in the position of interfering with the processes of a criminal investigation.

21. An essentially similar 'sifting' operation has been carried out in more recent cases of electronic records which are either produced by the Member voluntarily, or contained in a device seized under a warrant, or produced pursuant to a Production Order. In such cases, it has become the practice for the police, or PICT as the case may be, to produce a copied or 'cloned' version of the electronic records in consultation with the PICT or police counterparty, which copy or clone is then subsequently examined. The copy or clone is, in effect, the electronic equivalent of the sealed bag of documents.

22. In devising such arrangements, the view has been taken that it is neither lawful nor practicable to seek to prevent the police from seizing devices on the grounds that they might contain privileged material. It might be possible for an Officer of the House present at the search to make representations in respect of the seizure of hard copy

material, but this is plainly impractical with devices. Moreover, the view has also been taken that the material is not privileged from disclosure, even though its use as evidence might lead to impeaching or questioning in breach of Article IX of the Bill of Rights. As a former Clerk of the House, Sir William McKay, has explained "the prohibition in the Bill of Rights...is directed at argument in the courts-that is, at the use made of protected material which, if admitted, might open the way to judgments inhibiting Members' right of free speech. It does not confer a sacrosanct status on the documents themselves on which an absolute denial of police access may be based...I am driven to the conclusion that there are no grounds to prevent papers and records passing into police custody before being sorted into sheep and goats".[23]The good sense of the view taken by Sir William McKay is supported by the fact that extracts from Hansard and other public records of proceedings in Parliament are matters which may be admitted to prove the fact of the occurrence of such proceedings, but not as to the truth of their content. (It is quite possible that a Hansard extract might prove, for example, a Member's alibi). It is, therefore, impossible to state *a priori* that evidence of Parliamentary proceedings is never admissible.[24]

23. It seems likely that the position in Canada on this point will be substantially the same. In both jurisdictions, the prohibition in Article IX is concerned with the use which is made of Parliamentary materials, rather than with preventing their disclosure. In *Gagliano v. Canada (Attorney General)* [2005] 3 FCR 555 the Federal Court upheld the refusal of a Commission of Inquiry to allow previous inconsistent statements to the Public Accounts Committee to be used to cross-examine the witness before the Inquiry. The Court said that "the power to preclude cross-examination of witnesses using evidence obtained in previous proceedings of Parliament falls within the scope of parliamentary privilege because it is necessary to the functioning of Parliament. It is necessary at three levels: to encourage witnesses to speak openly before the parliamentary committee, to allow the committee to exercise its investigative function and, in a more secondary way, to avoid contradictory findings of fact". The emphasis is therefore on the use of the material and it is not suggested that there is any kind of blanket testamentary immunity enjoyed by participants in Parliamentary proceedings.

24. The position of the United Kingdom and Canada appears to be closer to that of the US Court of Appeals for the 9th Circuit in *United States v. Renzi* 651 F2d 1012 than it is to the decision of the Court of Appeals for the DC Circuit in *United States v. Rayburn Office Building* 497 F3d 654. It does not seem to be an accepted interpretation of the principles of Article IX in Canada or the United Kingdom that they generally prevent the

compulsory disclosure of evidence of Parliamentary proceedings. It is nevertheless easy to imagine a case in which the disclosure of particular evidence (such as that showing the stages in the drafting of a Committee report) will tend to invite the court to question proceedings of the legislature, and should on that ground be excluded. This, however, is a proposition about the use to which evidence is put, rather than a rule preventing it from being seen in the first place.

25. As for the examination of evidence seized or otherwise recovered in electronic form, there is plainly a difficulty in resolving any question of Parliamentary privilege when the material is in the exclusive custody and control of one party. To meet this problem, a system of 'chaperoning' the examination of the evidence seems to have worked well, at least in Westminster. The system involves the creation of a forensic image or copy of the material being created (by the police, or by PICT) which image is then opened in the presence of both parties and examined using search terms to identify material which might be so closely connected to Parliamentary proceedings as to raise an issue of privilege. When such material is identified, it is tagged in the presence of both parties so as to indicate a possible claim to privilege and is put to one side. It therefore closely follows the sifting procedure used in the Damian Green case.

Conclusion

26. As Thomas Jefferson remarked as long ago as 1800, in relation to equality before the laws, "those who make them shall not exempt themselves from their operation". John Hatsell, writing in 1818, remarked that "there is not a single instance of a Member's claiming the privilege of Parliament, to withdraw himself from the criminal law of the land: for offences against the public peace they always thought themselves amenable to the laws of their country."[25] On the other hand, the principles of Article IX of the Bill of Rights were prompted by the need to declare once and for all that the functioning of the legislature was not to be curtailed by an overbearing judiciary at the behest of the King. The result has been to preserve the freedom of speech and proceedings within the legislature, without placing individuals who engage in wrongdoing beyond the reach of the law. Against this general background, the similarities in the United Kingdom, Canada and the United States in relation to criminal proceedings against members of the legislature are more remarkable than their differences.

MC

[1] The views expressed are personal to the author.
[2] 'Politicians above the Law' Baico Publishing 2010.
[3] As where Ron Brown MP picked up the Mace during a poll tax debate in 1987 and threw it to the ground, causing damage. In the event, he was not prosecuted for criminal damage, but there was no legal reason why he should not have been. Michael Heseltine MP, as he then was, also picked up the Mace and held it above his head during a debate in 1976. Apart from being suspended, his chief punishment seems to have been to acquire the nickname 'Tarzan'.
[4] Perceval was shot on the day of a debate to rescind the 'Orders in Council' restricting trade with neutral countries (including the United States) and adopted to defeat Napoleon's Continental System. Perceval was opposed to rescinding the Orders in Council, but they were suspended by his successor Lord Liverpool- in the event too late to avert the declaration of war by the United States in 1812.
[5] "The Joint Committee on Parliamentary Privilege in its authoritative report in 1999 said that the precincts of the House are not and should not be "a haven from the law".There is therefore no special restriction on the police searching the parliamentary precincts in the course of a criminal proceeding—nor has there ever been."Official Report 3 December 2008 col .1
[6] The circumstances are described in the report of the Committee on the Issue of Privilege-Police Searches on the Parliamentary Estate 2009-10 First Report HC 62.
[7] A similar Protocol was adopted by the Lord Speaker for the House of Lords.
[8] Such as those in British Columbia, Nunavut and Prince Edward Island.
[9] However, the Protocol invited representations by Members for revision and indicated that a revised version would be issued if necessary.
[10] In their comments on the Protocol, the Metropolitan Police Service said that 'nothing in the Protocol should impede the ability of the police to search premises... where there is an imminent threat to life or the safety of the House or its Members, staff, and occupants'.HC 62 Ev. 159. On the other hand, the Protocol was concerned with circumstances where a warrant was required by law for a search, not with those where a search could be conducted without a warrant.
[11] Similarly, under the 'special procedure' under Schedule 1 to the 1984 Act (which applies to material which may be protected by legal privilege), the judge hearing the application must be satisfied that other methods of obtaining the material have been tried without success or have not been tried because they would be bound to fail. Most provisions relating to search warrants will have similar conditions requiring the issue of the warrant to be a last resort.
[12] In evidence to the Committee on Issue of Privilege-Police Searches on the Parliamentary Estate, the author referred (somewhat idiosyncratically) to the need to ensure that 'no-one is operating within a cupboard of their own making' HC 62 Session 2009-10, Q385.
[13] A search warrant may be executed within three months of its issue.
[14] Unhappily, the Serjeant at Arms was not aware of the memorandum by Sir William McKay at the time she gave consent to the search in Damian Green HC 62 Session 2009-10, Q709.
[15] Cf *United States v. Brewster* 408 US 501.
[16] See sections 29 and 35 of the Data Protection Act 1998.
[17] As also in Canada.
[18] The use of Latin may have declined, but few seem to object to the idea of lawyers working *pro bono publico*.
[19] This would be on the ground, essentially, that the evidence would not be admissible rather than being privileged from disclosure.
[20] Cf the remark of Lord Clarke JSC in *R. v. Chaytor*[2010] UKSC 52 referring to the doctrine of exclusive cognisance that 'unlike the privilege provided for in Article IX of the Bill of Rights, Parliament can waive or relinquish it. It seems to me to follow logically from that conclusion that it is for Parliament, and not the individual Member, to rely on it'.
[21] The matter was not, technically, *sub judice* for the purposes of the Resolution of the House of 15 November 2001 as the Member had not been charged with an offence. In the event, he was never charged. Nevertheless, the House had resolved on 8 December 2008 that the Committee originally set up to examine the issue 'must not in any way prejudice any police inquiry or potential criminal proceedings' and that it would therefore be adjourned until the completion of such inquiry and proceedings.

[22] HC62 2009-10 EV139.
[23] HC 62 2009-10 EV 150, paragraph 18.
[24] See the comments by the Metropolitan Police Service on the Speaker's Protocol HC62 Ev. 159
[25] John Hatsell 'Precedents of Proceedings of the House of Commons' 1818. It could be argued that there have been attempts since, although none has been successful.

ANNEX 1

MR SPEAKER'S PROTOCOL ON THE EXECUTION OF A SEARCH WARRANT IN THE PRECINCTS OF THE HOUSE OF COMMONS

1. In my statement of 3 December 2008 (OR col 3) I said I would issue a protocol to all Members on the searching of Members' offices. In future a warrant will always be required for a search of a Member's office or access to a Member's parliamentary papers including his electronic records and any such warrant will be referred to me for my personal decision.

2. Though much of the precincts of the House are open to the public, there are parts of the buildings which are not public. The House controls access to its precincts for a variety of reasons, including security, confidentiality and effective conduct of parliamentary business.

3. Responsibility for controlling access to the precincts of the House has been vested by the House in me. It is no part of my duties as Speaker to impede the proper administration of justice, but it is of equal concern that the work of the House and of its Members is not unnecessarily hindered.

4. The precincts of Parliament are not a haven from the law. A criminal offence committed within the precincts is no different from an offence committed outside and is a matter for the courts. It is long established that a Member may be arrested within the precincts.

5. In cases where the police wish to search within Parliament, a warrant must be obtained and any decision relating to the execution of that warrant must be referred to me. In all cases where any Officer or other member of the staff of the House is made aware that a warrant is to be sought the Clerk of the House, Speaker's Counsel, the Speaker's Secretary and the Serjeant at Arms must be informed. No Officer or other member of the staff of the House may undertake any duty of confidentiality which has the purpose or effect of preventing or impeding communication with these Officers.

6. I will consider any warrant and will take advice on it from senior officials. As well as satisfying myself as to the formal validity of the warrant, I will consider the precision with which it specifies the material being sought, its relevance to the charge brought and the possibility that the material might be found elsewhere. I reserve the right to seek the advice of the Attorney General and Solicitor General.

7. I will require a record to be provided of what has been seized, and I may wish to attach conditions to the police handling of any parliamentary material discovered in a search until such time as any issue of privilege has been resolved.

8. Any search of a Member's office or belongings will only proceed in the presence of the Serjeant at Arms, Speaker's Counsel or their deputies. The Speaker may attach conditions to such a search which require the police to describe to a senior parliamentary official the nature of any material being seized which may relate to a Member's parliamentary work and may therefore be covered by parliamentary privilege. In the latter case, the police shall be required to sign an undertaking to maintain the confidentiality of that material removed, until such time as any issue of privilege has been resolved.

9. If the police remove any document or equipment from a Member's office, they will be required to treat any data relating to individual constituents with the same degree of care as would apply in similar circumstances to removal of information about a client from a lawyer's office.

10. The execution of a warrant shall not constitute a waiver of privilege with respect to any parliamentary material which may be removed by the police.

11. In view of the concern shown by Members, I am circulating this document without delay, but I shall take into account any representations by Members for its revision and will issue a revised document, should this be necessary.

8 December 2008