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Parliamentary privilege trumps Competition Act, Tribunal rules

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Robert Gauthier is the proprietor of The National Capital News Canada, a now-defunct newspaper. He has been trying for over ten years to force the Speaker of the House of Commons to grant him access to the Parliamentary Press Gallery. The House of Commons is the lower chamber of Canada's federal parliament.

In 2002, Mr Gauthier became the first person to use new provisions in the *Competition Act* allowing private parties to apply to the Tribunal for leave to commence applications under the refusal to deal provision (among others). The Tribunal refused leave because the Speaker has the power to control access to the House as a matter of constitutional law and ancient parliamentary privilege.

Parliamentary privilege includes the right to exclude "strangers" (that is, people who are not members of Parliament) from the House and its precincts and to manage its internal affairs. The Speaker was exercising this right in refusing access to the gallery to Mr Gauthier. This exercise of parliamentary privilege cannot be reviewed by any court, nor, therefore, by the Tribunal.¹

Mr Gauthier renewed his application to the Tribunal in 2007, relying on a recent case from the Supreme Court of Canada that held that Parliamentary privilege does not apply to dealings with non-legislative employees of Parliament.² The Tribunal rejected Mr Gauthier's application again, first, because the issue he raised was *res judicata*, and second, because previously decided cases are not re-opened because of changes in the law. Third, the Tribunal noted that the Supreme Court decision relied on by Mr Gauthier affirmed that the right to exclude strangers is a category of Parliamentary privilege.³

¹ *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41.

² *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, 2005 SCC 30

³ *National Capital News Canada v. Speaker of the House of Commons*, 2007 Comp. Trib. 23



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