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Dockets: T-551-07 and T-580-07

Citation: 2007 FC 564

OTTAWA, Ontario, May 29, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

DEPUTY COMMISSIONER BARBARA GEORGE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

BETWEEN

DEPUTY COMMISSIONER BARBARA GEORGE

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Intervener

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] At issue in these applications is the interplay between parliamentary privilege and the jurisdiction of the Royal Canadian Mounted Police (RCMP) to investigate an alleged perjury before a parliamentary committee.

[2] These reasons pertain to two applications for judicial review, each brought by Deputy Commissioner Barbara George (the Applicant) of the RCMP pursuant to s. 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the *Federal Courts Act*). The applications were heard together. In the first application, the Applicant seeks judicial review of decisions by RCMP Commissioner Beverley Busson (Commissioner Busson) on March 30, 2007 to investigate whether the Applicant had contravened the RCMP members' Code of Conduct (the Code of Conduct Investigation) and to suspend the Applicant with pay pending that investigation. In the second application, the Applicant requests the court review RCMP Chief Superintendent Robert Paulson's (C/Supt. Paulson) decision on April 3, 2007 to initiate a criminal investigation into allegations made against the Applicant (the Criminal Investigation). Among other remedies, the Applicant is asking the court to quash and declare both investigations invalid.

[3] As a preliminary matter, the parties agreed that although the initial applications for judicial review respectively named Commissioner Busson and C/Supt. Paulson as Respondents, neither application was challenging a decision made by the named persons in their private capacity. Therefore, naming them personally was incorrect pursuant to s. 23 of the *Crown Liability and*

Proceedings Act, R.S.C. 1985, c. C-50, and the sole Respondent in both applications ought to be the Attorney General of Canada. The style of cause has been amended accordingly.

[4] For contextual purposes, it is worth noting that the decisions implicated in these applications were made, at least in part, in response to allegations against the Applicant which surfaced during parliamentary hearings into the Auditor General's findings of impropriety regarding the administration of the RCMP's pension and insurance funds.

[5] For the reasons set out below, I have concluded that the first application pertaining to the Code of Conduct Investigation ought to be granted in part and that the second application relating to the Criminal Investigation ought to be dismissed.

PART I – BACKGROUND FACTS

[6] The Applicant is a 29 year veteran career officer with the RCMP. In October 2003, she was appointed Chief Human Resources Officer and in that role she served on the RCMP Senior Executive Committee. In June 2006, the Applicant became Deputy Commissioner Human Resources.

[7] On February 21, 2007, the Applicant, Commissioner Busson, and other officials appeared as witnesses before the House of Commons Standing Committee on Public Accounts (Public Accounts Committee) in respect to its ongoing review of Chapter 9, of the November 2006 Report

of the Auditor General of Canada, entitled “Pension and Insurance Administration – Royal Canadian Mounted Police”.

[8] In the course of their Public Accounts Committee appearance, the Applicant and other RCMP witnesses were asked questions regarding the Ottawa Police Service investigation into allegations of wrongdoing respecting the RCMP pension and insurance plans.

[9] Subsequent to the Applicant’s appearance, the Public Accounts Committee decided to invite several additional witnesses to testify before the Committee on March 28, 2007, including Staff Sergeant Ron Lewis, Chief Superintendent Fraser Macaulay, Staff Sergeant Steve Walker, and Staff Sergeant Michael Frizzell (the RCMP Group).

[10] On March 26, 2007, two days before the RCMP Group appeared before the Public Accounts Committee, the Applicant was asked to attend a private meeting with Commissioner Busson. During this meeting, Commissioner Busson urged the Applicant to step aside as Deputy Commissioner Human Resources and to step down from the RCMP Senior Executive Committee.

[11] The Applicant was reluctant to step aside from her position in the absence of any evidence of wrongdoing on her part. However, the Applicant ultimately agreed to do so because she was concerned that she could not fully and effectively discharge her duties under the circumstances.

[12] On March 27, 2007, the Applicant and Commissioner Busson signed a formal written agreement which reflected the arrangements made in the course of the meeting the previous evening. Under the terms of the agreement the Applicant was granted a combination of Pre-Retirement Leave and Educational Leave to complete her Masters Degree in Criminology at Simon Fraser University.

[13] On March 28, 2007, the RCMP Group appeared before the Public Accounts Committee. In the course of the Group's testimony, several allegations were made against the Applicant both by witnesses from the Group and by individual Committee Members. These allegations received considerable media attention in the days that followed.

[14] At 1:45 p.m. on March 29, 2007, the Minister of Public Safety held a televised press conference at which he announced his decision to initiate an independent investigation into the allegations made during the Public Accounts Committee's meeting of March 28, 2007.

[15] At 4:00 p.m. on March 29, 2007, Commissioner Busson held a televised conference to announce her support for the Minister of Public Safety's decision and that the RCMP would cooperate fully with the independent investigation. During that conference, Commissioner Busson explained that while the Applicant had not been fired from her position, her status was "under review".

[16] At or about 5:30 p.m. on March 29, 2007, following an *in camera* meeting of the Public Accounts Committee, the Applicant was informed of the Committee's decision to summon the Applicant, among others, to return as a witness to address the allegations which had been made against her.

[17] Later in the evening of March 29, 2007, the Applicant learned that she would be the subject of an internal investigation initiated by Commissioner Busson to determine whether she had breached the RCMP's Code of Conduct. The Applicant was further informed that she would likely be suspended with pay from the RCMP as a result of this investigation.

[18] On the morning of March 30, 2007, the Applicant received formal written notice of the internal Code of Conduct Investigation and suspension. Among the reasons given for her suspension was the allegation that the Applicant had given false testimony to the Public Accounts Committee on February 21, 2007.

[19] On April 3, 2007, C/Supt. Paulson, the RCMP officer mandated by Commissioner Busson to conduct the internal disciplinary investigation, advised that he had personally decided to initiate a collateral criminal investigation into the allegation that the Applicant perjured herself before the Public Accounts Committee.

PART II – ISSUES

[20] The issued raised in these applications for judicial review are as follows:

(a) Whether the grievance procedure under the *RCMP Act* provides an adequate alternative remedy for the relief requested in these applications.

(b) Whether the Respondent has the jurisdiction to undertake a collateral criminal investigation on the basis of testimony to the Public Accounts Committee.

(c) Whether the Respondent has the jurisdiction to undertake an internal Code of Conduct investigation on the basis of testimony provided to the Public Accounts Committee and to suspend the Applicant pending the investigation.

(d) Whether the Applicant was denied procedural fairness.

PART III – SUBMISSIONS OF THE PARTIES

The Applicant's Position

[21] The Applicant submits that parliamentary privilege provides that the testimony given by witnesses before a committee of the House of Commons cannot be used against them in any subsequent civil or criminal proceedings. As such, the testimony given by the Applicant before the Public Accounts Committee on February 21, 2007 is protected by parliamentary privilege and cannot be used against her in the context of either an internal disciplinary investigation or a criminal investigation. According to the Applicant, the RCMP does not have the jurisdiction to undertake investigations into matters arising directly from her testimony before the Public Accounts Committee.

Respondent's Position

[22] The Respondent submits that this court lacks jurisdiction to grant much of the relief sought by the Applicant. In the alternative, this court should decline to exercise any jurisdiction it may have on the ground that both applications for judicial review are premature. First, the remedies provided by the grievance process under Parts III and IV of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the *RCMP Act*), are adequate alternatives for what the Applicant seeks from judicial review of the Code of Conduct Investigation. Second, the Federal Court does not have the requisite jurisdiction to review the decision to initiate the Criminal Investigation. According to the Respondent, it would be unprecedented and contrary to public policy for this court to interfere with ongoing RCMP investigations and to determine matters prior to any disciplinary action being taken or any charges being laid. Any evidentiary or procedural concerns ought to be addressed as the investigations unfold or in any subsequent proceedings.

PART IV – ANALYSIS

A. Adequate Alternative Remedy

[23] As a threshold issue, it is necessary first to consider whether the RCMP grievance process provides for an adequate alternative remedy for the relief requested by the Applicant in these applications.

[24] Both parties agreed that the adequate alternative remedy principle does not apply to the application for judicial review regarding the Criminal Investigation because the grievance process outlined in the *RCMP Act* does not offer any form of relief to those implicated in a criminal investigation.

[25] With regard to the Code of Conduct Investigation, the Applicant submits that the grievance process outlined in Part III of the *RCMP Act* does not constitute an adequate alternative remedy in this case due to the unique circumstances at issue, the length and complexity of the process and its inability to provide the relief requested for the Applicant. Further, the Applicant says that the RCMP does not have the jurisdiction to conduct an investigation into matters which are clearly protected by parliamentary privilege. The Applicant relies on *Griffin v. Summerside (City) Director of Police Services*, (1998) 159 D.L.R. (4th) 698, at para. 49, for the proposition that an application for judicial review to prohibit an administrative tribunal from proceeding may be sought as soon as the absence of jurisdiction is clearly foreseen.

[26] On the other hand, the Respondent argues that the application regarding the Code of Conduct Investigation is really a disguised grievance that must be dealt with in accordance with Parts III of the *RCMP Act* before recourse is made to the Federal Court: *Prentice v. Canada (Royal Canadian Mounted Police)*, 2005 FCA 395. Given the preliminary stage of the investigations, and given that the *RCMP Act* creates a comprehensive scheme for the resolution of workplace disputes,

which allows for grievances to be brought with respect to any decision, the Respondent submits that the court should decline to exercise its jurisdiction.

[27] As general rule, if an administrative regime provides for an adequate remedial process, applicants ought to exhaust that alternative before challenging administrative decisions in the courts. When applying the adequate alternative remedy doctrine, courts have considered a variety of factors in determining whether they should enter into judicial review or require an applicant to proceed through a statutory appeal procedure. These factors include: "the convenience of the alternative remedy, the nature of the error and the nature of the appellate body (i.e. its investigatory, decision-making and remedial capacities)": *Canada Pacific Ltd. V. Matsqui Indian Band*, [1995] 1 S.C.R. 3 at para. 37. The category of factors is not closed, and it is for the courts in the particular circumstances of the case to balance the relevant factors.

[28] In regards to the convenience of the RCMP grievance process, the Applicant submitted the affidavit, sworn on April 16, 2007, of RCMP Staff Sergeant Greg Melvin Nixon (the Nixon Affidavit). The Nixon Affidavit confirms that completing the grievance process can take "several months if not a year or more" and that it would not be possible to complete "the process in a matter of weeks". The Respondent did not contest this assertion. In my view, this evidence clearly establishes that the statutory grievance process is lengthy and not suitable for resolving a discrete preliminary dispute over jurisdiction.

[29] As I discuss below, the nature of the error alleged in the present case is jurisdictional and beyond the expertise of the Commissioner. I do not accept the Respondent's characterization that this application for judicial review is merely a disguised grievance for which redress is provided by the *RCMP Act*. At this time, the court is not reviewing the factual basis for the Applicant's suspension or whether she ought to have been relieved of her duties. Rather, these judicial reviews are concerned with the discrete preliminary question of whether the immunity provided by parliamentary privilege precludes RCMP investigations allegedly based on witness testimony before a parliamentary committee. This matter goes to the scope of activity covered by the privilege, and is ultimately within the province of the judiciary. As such, the Applicant ought to be allowed the opportunity to have the question determined with the force of *res judicata* by the Federal Court at the outset and not be compelled to proceed through a lengthy and possibly needless internal appeal process: see Justice La Forest in concurring reasons in *Matsqui*, at para. 107.

[30] I note parenthetically that regardless of whether the present applications are granted or not, the court's determinations will at the very least also provide guidance to the RCMP in regards to its rights and obligations going forward.

[31] Given the extended internal grievance process under the *RCMP Act*, the potential waste of the Applicant's and the RCMP's resources, and the jurisdictional nature of the primary alleged error, I am satisfied that the grievance procedure does not constitute an adequate alternative means of answering the questions posed by the Applicant in this review.

B. Criminal Investigation

a. Intervention of the Attorney General of Ontario

[32] On April 26, 2007, the Attorney General of Ontario (AGO) filed a motion to intervene in these proceedings, pursuant to s. 109 of the *Federal Courts Rules,* SOR/98-106, on the basis that he would assist in the determination of the legal issues relating to the Criminal Investigation.

[33] After hearing his representations, I was satisfied that the AGO has a constitutional and statutory interest in these proceedings, particularly in how they relate to the criminal justice system, and that his participation would assist the court in deciding the issues related to the Criminal Investigation. The Motion to intervene is granted and the Attorney General of Ontario will be added to the style of cause as an Intervener.

b. Jurisdiction of the Federal Court to entertain an application for judicial review in the course of a criminal investigation by the RCMP

[34] There is no dispute between the parties that the reason for the criminal investigation currently being conducted by C/Supt. Paulson is to determine whether the Applicant contravened s. 131 of the *Criminal Code,* R.S.C. 1985, c. C-46, and s. 12 of the *Parliament of Canada Act,* R.S.C. 1985, c. P-1, during her appearance before the Public Accounts Committee on February 21, 2007. Those respective sections read as follows:

Perjury **131.** (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.	Parjure **131.** (1) Sous réserve du paragraphe (3), commet un parjure quiconque fait, avec l'intention de tromper, une fausse déclaration après avoir prêté serment ou fait une affirmation solennelle, dans un affidavit, une déclaration solennelle, un témoignage écrit ou verbal devant une personne autorisée par la loi à permettre que cette déclaration soit faite devant elle, en sachant que sa déclaration est fausse.
Perjury **12.** Any person examined under this Part who wilfully gives false evidence is liable to such punishment as may be imposed for perjury.	Parjure **12.** Quiconque, étant interrogé dans le cadre de la présente partie, fait délibérément un faux témoignage encourt les peines prévues en cas de parjure.

[35] The Applicant takes the same position towards the criminal investigation as towards the internal Code of Conduct Investigation, i.e. that the Criminal Investigation into allegations of perjury based on the Applicant's testimony before the Public Accounts Committee would constitute a breach of the parliamentary privilege and is therefore unlawful.

[36] The Respondent first submits that it is not clear that a decision of a peace officer made in the course of a criminal investigation is even amenable to judicial review under s. 18.1 of the *Federal Courts Act*. Second, regardless of whether the decisions of peace officers to initiate criminal investigations are subject to judicial review, the Respondent argues that courts must be reluctant to interfere with normal police powers of investigation.

[37] The Intervener goes even farther. The AGO argues that the decision by C/Supt. Paulson to engage in an investigation of the Applicant is not justiciable and that a person under criminal investigation cannot apply to a court to have the investigation terminated. Accordingly, the Federal Court has no jurisdiction to declare C/Supt. Paulson's criminal investigation invalid or to enjoin his investigation. Both the Respondent and the Intervener stress that when C/Supt. Paulson decides to initiate a criminal investigation, he is acting in his capacity as a peace officer, not as an agent of a government body. The independence of the police when acting in their capacity as criminal investigators is an important principle embraced by the rule of law and premised on the necessity of peace officers being free to make inquiries into criminal allegations without undue interference by the executive or Parliament.

[38] I am inclined to agree with the Respondent and Intervener with regard to the criminal investigation. I am not convinced that the Federal Court has the requisite jurisdiction to sit in review of a peace officer's decision to initiate a criminal investigation. The Federal Court is a statutory court that derives all of its jurisdiction from the *Federal Courts Act* and, unlike provincial superior courts, it has no general or inherent jurisdiction to deal with criminal matters: see *Letourneau v. Clearbrook Iron Works Ltd.*, 2005 FC 333, at para. 9. While the Federal Court does have limited criminal jurisdiction, for examples see s. 4 of the *Federal Courts Act* and s. 472 of the *Federal Courts Rules*, SOR/98-106, this jurisdiction is circumscribed by express or implied statutory provisions.

[39] The traditional jurisdiction test for the Federal Court was set out by Justice McIntyre in *ITO-International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, at p. 766:

> 1. There must be a statutory grant of jurisdiction by the federal Parliament.
>
> 2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
>
> 3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the *Constitution Act, 1867*.

[40] The first branch of the *ITO* test requires the Applicant to establish an express or implied grant of jurisdiction which authorizes the Federal Court to quash and declare invalid a criminal investigation.

[41] The Applicant applied for judicial review of C/Supt. Paulson's decision to initiate a criminal investigation pursuant to s. 18.1 of the *Federal Courts Act*. The remedies under s. 18.1 are available only in relation to decisions of "a federal board, commission or other tribunal". The term "federal board, commission or other tribunal" is defined in s. 2 of the *Federal Courts Act* as follows:

"federal board, commission or other tribunal" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*. [Emphasis added.]	«office fédéral » "*federal board, commission or other tribunal*" «office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*. [mon soulignement.]

[42] The question then becomes whether C/Supt. Paulson's decision to criminally investigate the Applicant involved him exercising powers conferred on him by an Act of Parliament. Sections 5 and 9 of the *RCMP Act* provide some guidance in this regard. They read as follows:

5. (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the Minister, has the control and management of the Force and all matters connected therewith.	5. (1) Le gouverneur en conseil peut nommer un officier, appelé commissaire de la Gendarmerie royale du Canada, qui, sous la direction du ministre, a pleine autorité sur la Gendarmerie et tout ce qui s'y rapporte.
9. Every officer and every person designated as a peace officer under subsection 7(1) is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law until the officer or person is dismissed or discharged from the Force as provided in this Act, the regulations or the Commissioner's standing orders or until the appointment of the officer or person expires or is revoked.	9. Les officiers ont qualité d'agent de la paix partout au Canada, avec les pouvoirs et l'immunité conférés de droit aux agents de la paix, au même titre que les personnes désignées comme telles en vertu du paragraphe 7(1), jusqu'à leur renvoi ou leur congédiement de la Gendarmerie dans les conditions prévues par la présente loi, ses règlements ou les consignes du commissaire ou jusqu'à l'expiration ou la révocation de leur nomination.

[43] The Applicant suggested at the hearing that these sections constitute a grant of police powers on RCMP officers by Parliament and, therefore, are sufficient to bring C/Supt. Paulson's decision within the scope of the Federal Court's review jurisdiction.

[44] I disagree. While I recognize that the powers of peace officers are incorporated into the *RCMP Act*, nevertheless, it is well established that when peace officers conduct criminal investigations they are acting pursuant to powers which have their foundation in the common law independent of any Act of Parliament or Crown prerogative. In other words, the *RCMP Act* imports and clothes with statutory authority police powers, duties and privileges which remain largely

defined by common law: *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1990), 74 O.R. (2d) 225 (Div. Ct.).

[45] The Supreme Court of Canada clearly set out the relationship between the police and the executive government when the police are engaged in law enforcement in *R. v. Campbell*, [1999] 1 S.C.R. 565. Justice Binnie, for a unanimous court, wrote at paragraph 27 that:

> A police officer investigating a crime is not acting as a government functionary or as an agent of anybody. He or she occupies a public office initially defined by the common law and subsequently set out in various statutes. In the case of the RCMP, one of the relevant statutes is now the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10.

[46] While for certain purposes the RCMP could be acting in an agency relationship with the Crown, when an RCMP officer is in the course of a criminal investigation, he or she is independent of the control of the executive government: *Campbell*, at para. 31. This is why police investigating crimes do not enjoy the Crown's public interest immunity: *Campbell*, at para. 27. In short, when investigating crimes peace officers are not subject to political direction; rather they are answerable to the law and, no doubt, to their conscience: *Campbell*, at para. 33.

[47] In support of this finding of police independence, the court in *Campbell* at paragraph 33 cited with approval Lord Denning in *R. v. Metropolitan Police Comr., Ex parte Blackburn*, [1968] 1 All E.R. 763 (C.A.), at 769:

> I have no hesitation, however, in holding that, <u>like every constable in the land, he [the Commissioner of Police] should be, and is, independent of the executive</u>. He is not subject to the orders of the Secretary of State, save that under the Police Act 1964 the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every

> chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone. [Emphasis added.]

[48] The proposition flowing from the above jurisprudence that police conducting criminal investigations are independent of the Crown is buttressed by Professor Ken Roach's recent observations in "The Overview: Four Models of Police-Government Relations", *Research Papers Commissioned by the Ipperwash Inquiry* (2007), online: The Ipperwash Inquiry <http://www.ipperwashinquiry.ca/policy_part/meetings/pdf/Roach.pdf>. At page 76 of his article, Professor Roach concludes that, while there is still much dispute about the scope of police independence beyond the criminal investigation sphere, "there seems to be growing consensus that the police should be protected from political direction in the process of criminal investigation."

[49] In light of the above jurisprudence and commentary, I am not persuaded that C/Supt. Paulson's decision to initiate a criminal investigation against the Applicant is properly characterized as a decision by a "federal board, commission or other tribunal" and, therefore, that the Federal Court has the requisite jurisdiction to review his decision pursuant to s. 18.1 of the *Federal Courts Act*.

[50] Moreover, even if the Federal Court had the jurisdiction to quash a criminal investigation, I am even less convinced that the Federal Court would be the most appropriate forum to entertain the

Applicant's challenge to C/Supt. Paulson's investigation. Quashing a criminal investigation is really a question of criminal procedure, an area in which the provincial superior courts because of their inherent criminal jurisdiction have developed greater relative expertise and specialization than the Federal Courts. It would be most unusual for the Federal Courts to venture into a realm of what is essentially criminal procedure: see *Kourtessis v. M.N.R.*, [1993] 2 S.C.R. 53, per Justice La Forest, at 84. If the RCMP were to lay criminal charges against the Applicant and the matter was to proceed to a criminal trial, the evidence would not be heard and the ultimate decision would not be made in this court. Different considerations come into play in the criminal justice system than those related to the major function of the Federal Courts, which is to deal with questions of an administrative and civil character and other matters of particular federal concern: *Kourtessis v. M.N.R.*, per Justice La Forest, at 84.

[51] As I discuss below, parliamentary privilege is an important principle under Canadian law, no less important than police independence. Both play important roles in maintaining the appropriate degree of separation between different branches of government. Both are designed to protect particular spheres of power, both of which are integral to the functioning of our constitutional democracy. However, given the limitations on this court's power to decide criminal matters and to grant the remedy the Applicant seeks, wisdom dictates that this court should not interfere with the RCMP's discretion to pursue a criminal investigation.

[52] This is not to say that the Applicant would be without recourse in any subsequent criminal proceedings. It is clear that any issue with respect to parliamentary privilege remains alive and that

the admissibility of any evidence which derives directly from the Applicant's testimony before the Public Accounts Committee will have to be addressed when the criminal investigation unfolds. Canadian law provides an elaborate system of checks and balances to protect the rights of suspects and the accused. The laws of evidence dictate what may be used against an accused in a criminal trial. A person under police investigation has the rights and freedoms guaranteed by the *Charter* and once a person is charged with an offence, the procedural protections of the *Criminal Code* buttress the *Charter* rights of the accused.

[53] In summary, I decline to review C/Supt. Paulson's decision on the ground that, even if the Federal Court has the necessary jurisdiction, it would be inappropriate, under the circumstances of the case and at this early stage, for this court to quash and invalidate the Criminal Investigation.

C. Internal Code of Conduct Investigation

[54] In addition to the application relating to the Criminal Investigation, the Applicant is also seeking judicial review of two decisions made by Commissioner Busson dated March 30, 2007: 1) to initiate an internal investigation, pursuant to s. 40(1) of the discipline provisions of the *RCMP Act*, into allegations that the Applicant breached ss. 39(1) of the *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361 (the *RCMP Regulations*); and 2) to suspend the Applicant from her duties with pay pursuant to s. 12.1 of the *RCMP Act*, and provisions of the Administrative Manual XII.5.D, pending the outcome of the Code of Conduct Investigation.

[55] In contrast to the Criminal Investigation, there is no serious dispute that the Federal Court has the requisite jurisdiction to review Commissioner Busson's decisions pertaining to the Code of Conduct Investigation. Clearly, the Commissioner's powers to suspend officers and to initiate internal administrative investigations into a member's conduct derive from the *RCMP Act* itself and, therefore, are amenable to judicial review under s. 18.1 of the *Federal Courts Act*.

a. Applicable Standard of Review

[56] The primary question raised in this application relates to the scope of parliamentary privilege. Specifically, whether this privilege precludes the RCMP from conducting an internal investigation into allegations of perjury, among others, against a RCMP Deputy Commissioner on the basis of testimony she gave before a House of Commons Committee.

[57] In my view, this is a pure question of law involving the separation of powers and, therefore, correctness is the applicable standard of review. The court owes no deference to Commissioner Busson's decisions to initiate an internal Code of Conduct Investigation, and to suspend the Applicant pending that investigation, in so far as they touch on parliamentary privilege. I have reached this conclusion based on a consideration of the four factors enunciated in *Pushpanathan v. Canada (Minister of Citizenship and Immigration),* [1998] 1 S.C.R. 982, at paras. 29-38. In this instance, three of the four factors point notably toward a more searching standard of review. Even when issues lend themselves to a "jurisdictional" characterization, such as in the present case, the

pragmatic and functional analysis must not be skipped: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140, at para. 23.

1. Privative clause: Section 32(1) of the *RCMP Act* provides that the Commissioner's decision in respect of any grievance is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court. Although the strength of the privative clause is undermined by the express provision of a right of review in this court, the overall meaning of section 32(1) suggests some degree of deference.

2. The relative expertise: With respect to relative expertise, deference is called for only when the decision maker is in some way more expert than the court and the question under consideration is one that falls within the scope of the greater expertise: *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, at para. 28. As set out above, the central question in the present case is how the immunity provided by parliamentary privilege impacts a RCMP internal investigation based, in part at least, on witness testimony before a parliamentary committee. This is primarily a legal question within the province of the judiciary. It involves the separation of powers and it strays from the RCMP's core areas of expertise. Since the court has more relative expertise than the Commissioner on this issue, the second factor points to a more searching standard of review.

3. Purpose of the statute and the relevant provision: The nature of the question under consideration, i.e. the interplay between parliamentary privilege and the RCMP's powers to investigate, does not fit easily within the general purpose of the *RCMP Act*, which is to provide a police force for Canada (s.3), and reviewing Commissioner Busson's decisions does not involve a polycentric balancing exercise. Rather, the particular grievance provisions implicated in this review seek to resolve a dispute between RCMP members and the Commissioner (s. 31(1)). Since this statutory dispute mechanism approximates the judicial paradigm, this factor also suggests less deference.

4. The nature of the question: As discussed above, the nature of the question under review is a pure question of law. This factor also suggests that more judicial scrutiny is warranted in this case.

b. Parliamentary Privilege

i. The Law

[58] Parliamentary privilege is one of the ways in which the fundamental constitutional separation of powers is respected: *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, at para. 21. The principle is designed to prevent courts or other entities from interfering with Parliament's legitimate sphere of activity. In Canada, the privilege originates from both the common law and the *Constitution Act, 1867* which calls for a "Constitution similar in Principle to that of the

United Kingdom". Prior to Confederation, absent a specific grant from the Parliament of the United Kingdom, the common law principle was well established: privileges that were necessarily incidental to a legislature were deemed to exist: J.P. Maingot, *Le privilège parlementaire au Canada*, 2nd ed., (Ottawa: House of Commons and McGill-Queen's University Press, 1997), at 16. Today, the privilege enjoys the same constitutional weight and status as the *Charter*: *Vaid*, at para. 34.

[59] Writing with respect to the historical tradition of parliamentary privilege, Justice McLachlin, as she then was, writing for the majority in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, stated at page 378:

> It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.

[60] Justice Binnie, writing for a unanimous court, summarized the legal test for parliamentary privilege in *Vaid* at para. 46:

> In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency.

[61] The first step a Canadian court is required to take in determining whether or not a privilege exists is to ascertain whether the existence and scope of the privilege have been authoritatively

established in relation our Parliament: *Vaid*, at para. 39. Some categories, such as freedom of speech in the House and the authority to discipline members for example, have long been recognized as established categories of privilege, justified by the exigencies of parliamentary work: *Vaid*, at para. 29.

[62] In the present case, a former witness before the Public Accounts Committee seeks to invoke parliamentary privilege to preclude the RCMP from investigating her on the basis of testimony she gave before that committee. The Applicant submits that this claim to privilege fits squarely within the category and scope of privilege recently recognized by this court in *Gagliano v. Canada (Attorney General)*, 2005 F.C. 576. In that decision, I concluded 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 for the functioning of Parliament.

[63] While I do not intend to fully canvass the reasons in *Gagliano*, it is worth emphasizing several key justifications for providing immunity to a parliamentary witness' testimony. First, although witnesses before a parliamentary committee are not Members of Parliament, they are not strangers to the House either. Rather they are guests who are afforded parliamentary privilege because, as with members, the privilege is necessary to ensure that they are able to speak openly, free from the fear that their words will be used against them in subsequent proceedings: *Gagliano*, at para. 77. This is related to the more general idea "that whatever is done or said in either House should not be liable to examination elsewhere": *Stockdale v. Hansard* (1839), 9 Ad. & E.I. 1112 (Q.B.) at 1191. Given the overriding importance of the House of Commons as "the grand inquest of

the nation", it is fundamental that members and witnesses alike are not inhibited from stating fully and freely what they have to say: *Prebble v. Television New Zealand*, [1995] 1 A.C. 321 (P.C.).

[64] Second, without the power to protect witnesses, Parliament's investigative function would be seriously compromised because witnesses would be less forthcoming: *Gagliano*, at para. 83.

[65] Finally, if Parliament has reason to believe that a witness has deliberately misled the House, it is up to Parliament, and Parliament alone, to initiate proceedings and discipline such conduct. Misleading the House is contempt of the House punishable by the House: if a court or another entity was allowed to inquire into whether a member or a witness had misled the House, this could lead to exactly the type of conflict between two spheres of government that the wider principle of parliamentary privilege is designed to avoid. The courts would be trespassing on Parliament's jurisdiction: *Pepper v. Hart*, [1993] A.C. 593 (H.L.); *Hamilton v. Al Fayed*, [2000] 2 All E.R. 224 (H.L).

ii. The Decisions of Commissioner Busson

[66] Commissioner Busson's letter to the Applicant dated March 30, 2007 explains that the Commissioner decided to initiate a Code of Conduct Investigation under s. 40 of the *RCMP Act* as a result of the Applicant's testimony before the Public Accounts Committee on February 21, 2007, and the testimony of the RCMP Group on March 28, 2007.

[67] The formal Notice of Suspension, also dated March 30, 2007, informed the Applicant that pursuant to s. 12.1 of the *RCMP Act* she was suspended with pay pending the outcome of the investigation. The notice also set out three specific allegations against the Applicant, which explained why she was being investigated and suspended. The allegations read as follows:

1. That on, or about September 19, 2003, at or near Ottawa, Ontario, you did conduct yourself in a disgraceful manner that could bring discredit on the Force. During a meeting with Chief Superintendent Fraser Macaulay, you advised him that he was on an island by himself and that others would not tell the truth. You explained that Chief Superintendent Macaulay was naïve to think anyone would stand beside him in this type of situation. This is contrary to subsection 39(1) of the *Royal Canadian Mounted Police Regulations, 1988*.

2. That on February 21, 2007, during an appearance before the Standing Committee on Public Accounts, at or near Ottawa, Ontario, you did conduct yourself in a disgraceful manner that could bring discredit on the Force, by giving false testimony, contrary to subsection 39(1) of the *Royal Canadian Mounted Police Regulations, 1988*.

3. That between February 21, 2007, and March 28, 2007, at or near Ottawa, Ontario, you did conduct yourself in a disgraceful manner that could bring discredit on the Force in that, knowing that you had been involved, directly or indirectly, in Staff Sergeant Mike Frizzell's removal and knowing that I had undertaken, as Commissioner of the RCMP, to provide the Standing Committee on Public Accounts with all of the information pertaining to Staff Sergeant Frizzell's removal, you failed to inform me, your superior officer, of the above. Failing to disclose the extent of your involvement has resulted in an incomplete response being provided to the Committee. This failure to disclose your involvement is contrary to subsection 39(1) of the *Royal Canadian Mounted Police Regulations, 1988*.

[68] The Applicant makes the general submission that Commissioner Busson's choice to notify the media and other RCMP members of her decisions "was extremely prejudicial to the Applicant" in the face of Parliament's and the Minister's ongoing investigations. With respect, I believe this goes too far. In response, I would simply say that a decision to suspend an officer with pay pending an investigation is essentially a non-judgmental and non-disciplinary decision: see *Griffin v. Summerside (City) Director of Police Services*, at para. 30. It is a preliminary decision to verify factual allegations and it does not presume guilt. Further, the allegations of wrongdoing respecting

the RCMP pension and insurance plans were clearly part of the public arena prior to any public announcements by the Commissioner of the suspension. The Public Accounts Committee began its public hearings into the Auditor General's report on February 21, 2007.

[69] The Respondent submits that the first and third allegations do not originate from the proceedings of the Parliamentary Committee and, since they come from sources other than testimony before the House, do not offend parliamentary privilege. Therefore, the RCMP ought to be free to investigate these allegations.

[70] I agree. Parliamentary privilege does not extend so far as to preclude all other entities from concurrently investigating matters which are also before the House. Rather it precludes other entities from holding Members of Parliament or witnesses before committees liable for statements made in the discharge of their functions in the House. Therefore, provided the RCMP is able to conduct its investigation without resorting to the Applicant's testimony before the House, parliamentary privilege does not apply and the RCMP is free to do as it pleases within the confines of the law and its constituent statute.

[71] Without commenting on how the actual investigation may unfold and what issues may arise between the parties in the future, at this stage I am satisfied that on their face the first and third allegations made against the Applicant by Commissioner Busson do not necessarily concern parliamentary privilege. In other words, I am satisfied that these allegations may be established without having to rely on statements made to the Public Accounts Committee. Moreover, the

allegations appear to provide ample justification for the Code of Conduct Investigation and consequent suspension with pay.

[72] In light of the foregoing, I find that parliamentary privilege is not a valid reason to quash the decision to investigate the first and third allegations made against the Applicant. Nor is there reason to quash the decision to suspend the Applicant with pay.

[73] I now turn to the second listed basis for the Code of Conduct Investigation, the allegation that the Applicant gave false testimony before the House Committee.

[74] The Applicant submits that she cannot be investigated by the RCMP for deliberately misleading the Public Accounts Committee because her testimony is protected by parliamentary privilege. She says that the RCMP investigating her for statements she made before the Public Accounts Committee is analogous to the police investigating whether a Member of Parliament was dishonest in the House of Commons.

[75] I agree with the Applicant. Unlike the other allegations, which may be established from other sources of evidence, there is no way to demonstrate in an internal Code of Conduct proceeding that the Applicant gave false testimony to a parliamentary committee other than by using the allegedly false statements as evidence against the Applicant. Parliamentary privilege does not allow this.

[76] As stated above, one of the primary justifications for providing immunity to witnesses, as well as to Members of Parliament, is to ensure that they can speak openly and freely before a Committee without fear that what they say will later be held against them. In other words, for Parliament to fulfil its deliberative and investigative functions with dignity and efficiency it is necessary that witnesses before House committees can be confident that their testimony is immune from subsequent challenges from outside the House. Lord Brown-Wilkinson, on behalf of the House of Lords and the Judicial Committee of the Privy Council, emphasized this idea in *Prebble v. Television New Zealand*, where he wrote that the purpose underlying parliamentary privilege is:

> … to ensure so far as possible that a member of the legislature and witnesses before committees of the House can speak freely without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness at the time he speaks is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect. [Emphasis added]

[77] The "free-speech" rationale becomes even more compelling in the present circumstances because by the time the Applicant received notice on March 30, 2007 that she was the subject of an RCMP Code of Conduct Investigation she had already been summoned back to testify before the Public Accounts Committee. Late in the afternoon on March 29, 2007, the Applicant was informed that she was to reappear as a witness before the Committee sometime during the week of April 16, 2007. Further complicating matters, earlier in the day of March 29, 2007, the Minister of Public Safety announced his decision to initiate an independent investigation into allegations made against the Applicant by the RCMP Group. The Applicant then learned, on April 3, 2007, that in addition to the other investigations she was now subject to a collateral criminal investigation. Therefore, even

before the Applicant was to reappear before the Public Accounts Committee to answer questions regarding her previous statements, she knew she was subject to no less than three separate investigations, each pertaining to her February 21, 2007 testimony.

[78] In my view, these circumstances give rise to two immediate concerns. First, the other investigations clearly impinge on the Applicant's confidence to speak freely and openly during her reappearance before the Committee and this, in turn, undermines the Committee's ability to efficiently carry out its investigative function. Pursuant to Standing Order 108(3) of the House of Commons, the Public Accounts Committee's mandate is to review and report on the *Public Accounts of Canada* and all Auditor General reports. The hearings with respect to RCMP pensions and insurance funds are in direct response to the Auditor General's report of November 2006. The testimony provided by the Applicant in the course of her appearance before the Public Accounts Committee on February 21, 2007 is, therefore, directly connected to the Committee's function of holding the government to account. If witnesses are uncertain whether their comments to a House Committee will be immune from examination elsewhere, then their feelings of vulnerability may well prevent them from speaking openly. This would obviously reduce the effectiveness of parliamentary hearings: *Gagliano*, at para. 78.

[79] The second concern is that, as mentioned above, it is not for the courts or another entity, apart from the House of Commons, to determine whether Parliament has been misled. Misleading Parliament is a breach of the code of parliamentary behaviour and liable to be disciplined by Parliament: *Hamilton v. Al Fayed*, at 231. Where Committees of the House of Commons have

reason to believe that they have been lied to by a witness, parliamentary practice and precedent dictates the procedure to be followed: see R. Marleau and C. Montpetit, eds., *House of Commons Procedure and Practice*, (House of Commons, 2000). At the time the RCMP initiated their investigations, none of the appropriate procedural steps had been taken by the House of Commons. For the courts or the RCMP Commissioner to initiate an internal investigation on the question of perjury before the House, prior to any decision on the matter by the House itself, would be to trespass within an area over which Parliament has exclusive jurisdiction.

[80] Moreover, since Parliament has the authority to investigate and punish the Applicant for misleading the House, and still may do so, any RCMP investigation into the allegation that the Applicant provided false testimony to the Public Accounts Committee raises the prospect of conflicting decisions on an identical matter by two separate branches of government. Two conflicting decisions on the same issue reached by two separate government branches would amount to RCMP interference with Parliament's autonomy. This is precisely what the privilege aims to avoid. As Lord Brown-Wilkinson wrote in *Pepper v. Hart*, [1993] A.C. 593, at 334: "Misleading the House is a contempt of the House punishable by the House: if a court were also to be permitted to decide whether or not a member or witness had misled the House there would be a serious risk of conflicting decisions on the issue".

[81] One of the Respondent's main submissions in this judicial review is that it is premature for the court to determine whether parliamentary privilege applies in this case and that the matter should be addressed as the investigation unfolds. I disagree. Allowing a discrete preliminary issue

within the province of the judiciary to fester until the grievance process runs its course would seem to be in no party's interest. Further, in my opinion, if any action was premature in the circumstances of this case, it was the decision of Commissioner Busson to investigate the Applicant on the basis of her statements before the House prior to the completion of her testimony before the Public Accounts Committee and prior to any waiver given by Parliament to withdraw its protection. Short of an express waiver of the privilege by Parliament, it is premature for any outside entity to inquire into an alleged contempt of the House.

[82] Based on the foregoing, I am of the opinion that Commissioner Busson did not have the jurisdiction to investigate the allegation that the Applicant gave false testimony to the Public Accounts Committee.

D. Procedural Fairness

[83] In oral argument, the Applicant submitted that she was denied procedural fairness because she was not offered an opportunity to be heard before she was suspended from employment.

[84] In written submissions, the Applicant submitted that the RCMP's internal investigation is flawed because it raises a reasonable apprehension of bias. The Applicant's primary concern seems to be that the Commissioner will be directly involved in the internal investigation as a witness who will be questioned by C/Supt. Paulson, the very officer she appointed to conduct the investigation. If C/Supt. Paulson faces two conflicting versions of events, which is not unlikely, he will be forced to

choose between the Applicant and the Commissioner. Given that the Commissioner is C/Supt. Paulson's superior, the investigation's structure is flawed and the impartiality of any eventual recommendation is compromised.

[85] The Respondent submits that an interim suspension with pay pending investigation is not a disciplinary decision and that the degree of procedural fairness required at this stage is significantly less than during the grievance process which may follow any adverse recommendation made against the Applicant.

[86] The Respondent also submits that the Applicant's bias argument is misconceived for the following reasons. First, the Applicant has misconstrued the impartiality requirement for investigators, which is less than the standard applied to adjudicators. Second, the Respondent notes that the Applicant has provided no proof suggesting bias beyond how the allegations in the Notice of Suspension were worded. Third, the Applicant's submissions fail to appreciate the procedural safeguards against Commissioner interference built into the structure of the investigation and the grievance process. While the Commissioner appointed C/Supt. Paulson pursuant to her statutory powers, she is not the investigator, she is not the decision maker in any disciplinary proceedings that may result, and she retains no authority to alter any final disciplinary decision rendered by an adjudicator. These safeguards were explained in Louise Morel's affidavit, which was sworn April 16, 2007 and submitted by the Respondents. Ms Morel is the RCMP's Director General of Employee and Management Relations.

[87] I agree with the Respondents. As I noted above, the decision to investigate allegations and to suspend an officer with pay pending that investigation are not final disciplinary decisions; rather they are essentially preliminary non-judicial decisions. Generally speaking, decisions of a preliminary nature will not trigger a fairness duty: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at para. 26. Even in cases where preliminary decisions do trigger a duty to act fairly, such as in formal inquiries where personal reputations are at stake, the individuals implicated will not be entitled to full trial-like procedural protections during this pre-trial fact finding stage: see *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440; *Masters v. Ontario* (1994), 18 O.R. (3d) 551. Therefore, procedural fairness requirements in the context of a suspension with pay pending an administrative investigation are necessarily lower than those triggered by disciplinary proceedings which would follow an adverse investigation. As Justice Jenkins keenly observes at paragraph 28 of *Griffin*, supra, the lower procedural fairness requirement at the preliminary stage is not a license to treat people unfairly; rather it is necessary to allow investigators the chance to do their job and it is corollary to the higher standard to be applied to any subsequent proceedings:

> Given that the events flowing from the suspension would have been either a return to his office and employment without any negative consequences, or a hearing or some suitable opportunity to answer and explain following the outside investigation before any disciplinary action would be imposed, the level or degree of procedural fairness required at the interim suspension stage should not be subject to too onerous a judicial scrutiny. To impose more precise standards of procedural propriety could unduly hamper the Director's administration of the Police Department. This deference at this stage is not a license to avoid appropriate requirements for procedural fairness. To the contrary, I view it as a natural, and necessary, corrollary to the relatively low standard required at this early stage of interim suspension with pay pending an investigation, that the standards of procedural fairness and associated judicial scrutiny would be substantially higher and more stringent regarding any disciplinary suspension which would follow an adverse investigation report.

[88] At this stage of the investigation, in the absence of any evidence of bias beyond the wording of the allegations, which I note closely reflects the wording of ss. 39(1) of the *RCMP Regulations*, I am satisfied that the safeguards the RCMP has in place are sufficient to meet the requirements of natural justice. The reasonable apprehension of bias test must be applied flexibly in the context of investigations: *Beno v. Canada (Commission of Inquiry into the Deployment of Canadian Forces in Somalia - Létourneau Commission)*, [1997] 2 F.C. 527 (FCA), at para. 26. I accept the Respondent's affidavit evidence that in the circumstances of this case, Commissioner Busson is not the investigator and she retains no authority to influence or alter any decisions made with regard to the Applicant's potential grievance.

[89] I note further that the Applicant had the opportunity to discuss her side of the story when she met privately with Commissioner Busson on March 26, 2007. At that time, the Applicant was asked to step aside as Deputy Commissioner Human Resources and to step down from the RCMP Senior Executive Committee. Although the Applicant did not admit to any wrongdoing and expressed reluctance to step aside, she ultimately agreed to do so on the basis of concerns that she could not fully and effectively discharge her duties under the circumstances. The following day, on March 27, 2007, the Applicant and Commissioner Busson signed a formal written agreement which reflected the arrangements made the previous evening (the Exit Agreement). In exchange for agreeing to step down, the Applicant was granted a combination of Pre-Retirement Leave and Educational Leave to complete her Masters Degree in Criminology at Simon Fraser University.

[90] I note parenthetically that due to the allegations made against the Applicant by the RCMP Group on March 28, 2007 before the Public Accounts Committee, and the subsequent suspension with pay pending an internal investigation, Commissioner Busson notified the Applicant in her letter dated March 30, 2007 that the Exit Agreement would be held in abeyance until the conclusion of the investigation. The Applicant did not raise this as an issue in either written or oral submissions, so I will not address it now.

[91] The events surrounding these applications for judicial review continue to unfold. In light of all the foregoing, I am not prepared to intervene at this stage beyond precluding the RCMP Code of Conduct Investigation from inquiring into the allegation that the Applicant made false statements to the Public Accounts Committee and impeaching the Applicant on that testimony. Any procedural fairness concerns, including the apprehension of bias or an opportunity to be heard, may be dealt with in the context of any disciplinary proceedings that may result or any subsequent application for judicial review before this court.

PART V – CONCLUSION

[92] These applications for judicial review involve the interplay of several legal principles – parliamentary privilege, the adequate alternative remedy doctrine, police independence, and procedural fairness – each of which has been designed to assist in demarcating one part of the government from another, and in defining each part's proper role. Two issues in particular, namely parliamentary privilege and police independence, are integral to our constitutional equilibrium.

Courts must be vigilant in guarding the legitimate sphere of activity enjoyed by each branch of government, while at the same time remaining cognizant of the limits of each branch's powers, including their own.

[93] While it is true that the *RCMP Act* provides for a comprehensive grievance process, it is not a suitable procedure, nor is it an efficient way to resolve what is essentially a question over the scope of parliamentary privilege and how the immunity provided by that privilege impacts an internal Code of Conduct Investigation based, in part at least, on witness testimony before a House Committee. Since this is a discrete preliminary question within the province of the judiciary, it is appropriate that this court provides some guidance to the parties at this time.

[94] However, given the Federal Court's limited jurisdiction over criminal matters, especially when compared to the general criminal jurisdiction of the provincial superior courts, and the law which holds that peace officers investigating crimes derive their powers from common law rather than from statute, it is not appropriate for this court to review a decision by the RCMP to initiate a criminal investigation.

[95] Clearly, both Parliament and the RCMP have legitimate powers to investigate wrongdoing. The circumstances leading to these applications have brought the integrity and proper functioning of the two entities' investigative capacity into conflict. With regard to the application pertaining to the Code of Conduct Investigation, I have concluded that although parliamentary privilege precludes outside bodies from holding parliamentary witnesses liable for false statements made to House

Committees, the privilege does not extend so far as to prevent all other entities from concurrently investigating matters which may also be before the House. For this reason, the RCMP is free to investigate allegations that the Applicant breached the RCMP's Code of Conduct in the discharge of her duties, but may not investigate the specific allegation that the Applicant provided false testimony to the House. Parliamentary privilege protects what is said in the House and, if the House believes it was misled, it is for the House alone to investigate and punish this offence.

[96] Since the Code of Conduct Investigation is still in its infancy, it would be premature for this court to interfere on the basis of procedural fairness, particularly in the absence of any evidence of an obvious defect in the investigation.

[97] Accordingly, Commissioner Busson's decisions regarding the internal Code of Conduct Investigation are upheld, except for the decision to investigate the specific allegation that the Applicant gave false testimony to the House. That aspect of her decision is unlawful because it offends parliamentary privilege. The first application pertaining to the internal Code of Conduct Investigation is granted in part and the second application pertaining to the Criminal Investigation is dismissed.

JUDGMENT

THIS COURT ORDERS that:

- The decisions of Commissioner Busson regarding the internal Code of Conduct Investigation (i.e. to investigate allegations that the Applicant breached the RCMP's Code of Conduct and to suspend the Applicant with pay) are upheld, except for the decision to investigate the specific allegation that the Applicant gave false testimony to the Public Accounts Committee, which is unlawful and is hereby set aside.
- The application for judicial review, court file number T-551-07 (the Code of Conduct Investigation), is granted in part.
- The application for judicial review, court file number T-580-07 (the Criminal Investigation), is dismissed.
- Due to the equivocal nature of the overall result and the public interest implicated in these applications, no party is entitled to costs.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-551-07 and T-580-07**
STYLE OF CAUSE:	**DEPUTY COMMISSIONER BARBARA GEORGE**

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

BETWEEN

DEPUTY COMMISSIONER BARBARA GEORGE

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Intervener

PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	May 29, 2007
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DATED:	May 29, 2007

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