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'That bar is pretty high': Reform Act provides 'counterbalance' to party leader power despite workplace concerns raised by Rempel Garner, politicians say

Conservative MP Michelle Rempel Garner recently suggested the Reform Act provision to expel an MP from caucus may violate workplace harassment laws, but Errol Mendes says an MP is 'not an employee' of the House of Commons.

IAN CAMPBELL

Questions raised by Conservative MP Michelle Rempel Garner about whether the Reform Act violates workplace harassment laws or the House of Commons harassment policy are "complex and have some major uncertain legalities," but ultimately an MP is not an employee, according to law professor Errol Mendes.

Rempel Garner (Calgary Nose Hill, Alta) filed a question about the Reform Act on the order papers on June 10. On June 23 The Toronto Star reported that her question came as a growing number of Conservative MPs have threatened to expel her from their party caucus in recent months.

In her question, Rempel Garner asked, "if ... any provision of the Reform Act, 2014, particularly the provision regarding expulsion of caucus members, could contradict ... House of Commons ha-

rrassment policy, or any other piece of federal or provincial legislation regarding workplace harassment."

But Mendes, a University of Ottawa professor and one of several legal experts consulted by The Hill Times, cautioned that employment laws or House of Commons harassment policies may not be the best remedy for Rempel Garner and the concerns she has raised.

"Technically, she is not an employee of the House of Commons, she is an elected member of the Conservative Party," said Mendes, who studies constitutional law and human rights, in an email statement to The Hill Times. "So my conclusion [is] that she may be better off thinking about what actions she may or may not have towards the Conservative Party, rather than against the House of Commons or Parliament."

There are two harassment policies governing elements of the House of Com-

Conservative MP Michelle Rempel Garner submitted a question on the order papers in June asking if the Reform Act 'could contradict ... House of Commons harassment policy, or any other piece of federal or provincial legislation regarding workplace harassment.' The Hill Times photograph by Andrew Meade

mons as a workplace. One policy that relates to sexual harassment covers interactions between Members. Another policy that covers more general harassment only governs interactions between MPs and their staff, or between fellow staff members.

The Hill Times asked House of Commons Chief Human Resources Officer Michelle Laframboise whether, in her assessment, the act's provisions violate either of these policies, or create a potential for harassment not covered by these policies. In an email statement, Laframboise replied that, "Nothing in the Reform Act precludes access to the mechanisms provided in" either of the above

policies. She did not directly address whether the Reform Act creates the potential for harassment situations not covered by any gaps in those policies.

Rempel G19 interview request from The Hill Times for this story.

The Reform Act was authored by Conservative MP Michael Chong (Wellington-Halton Hills, Ont.) in an attempt to limit the extensive power wielded by party leaders in the Canadian parliamentary system and to provide greater power to MPs.

The act requires at the start of a new Parliament for each party caucus to vote on if it will adopt any of the four powers available to it under the act. These include the power to instigate a leadership review and to remove an MP by a vote of the caucus membership. Traditionally, in the Canadian system, the power to remove an MP has rested solely with the party leader.

Following the elections of 2015 and 2019, most parties were reluctant to adopt the measures, with the Conservatives and Bloc Québécois adopting only some of the powers, and the Liberals and NDP rejecting all four.

Following the 2021 election, the Conservative caucus adopted all four measures, while the other parties rejected all powers.

Reform Act sets a 'high bar' John Milloy, a former staffer in the office of prime minister Jean Chrétien, told The Hill Times the act sets a high threshold for MPs to remove a fellow member.

For this to occur, the caucus chair must receive a written note signed by 20 per cent of caucus members, asking for an

MP's membership to be reviewed. Then, on a secret ballot, 50 per cent of the caucus must vote in favour of expelling that MP.

"That bar is pretty high," said Milloy, who is a former Ontario Liberal MPP and cabinet minister.

"It's empowering MPs collectively to counterbalance what has been a phenomenon in Ottawa for many years, which is the leader calls the shots," he said. "It gives the power to caucus to decide who's going to be in the caucus, and not—and I used to be one—the kids in short pants around the leader."

Royce Koop, a University of Manitoba political science professor who studies representation and political parties, said that "this is the act working the way that it should be."

He added that while issues of harassment are serious, they may not be analogous to caucus conflict, and that the rules set out in the Reform Act may provide the best process for resolving political disagreements between caucus members.

"We know that these types of issues [harassment] are a problem in politics, and we should be concerned about them," said Koop. "But I would resist the importation of this kind of language into a discussion of caucus dynamics and caucus conflict."

Milloy, who is now a practitioner-in-residence in the political science department at Wilfrid Laurier University where he studies ethics, said an MP's workplace should be seen as the offices they run in their constituency and on Parliament Hill, and the interactions they have with those staff members, not

the party caucus members that they choose to affiliate with.

"I think we've got to get back to basics. A Member of Parliament is an independent individual that is elected by their constituents and responsible to their constituents," said Milloy. "That's the workplace."

"[Rempel Garner] has decided to sit as a Conservative, and as this sort of independent representative attends these caucus meetings," he said, noting that members can choose to leave a caucus to sit as Independents or join another party.

"The way it's being portrayed is like ... these are her bosses, these are people she reports to. No, she's accountable to the voters," said Milloy. "She makes a decision to attend the Conservative caucus, and they have the right collectively to decide whether any member of caucus can."

Milloy said that his concern is with how the role of MPs is understood, not the differences that exist between Rempel Garner and her caucus colleagues.

'Back to basics: Role of MPs affects perception of many issues "Whether they should eject her, that's for them to decide—and you know, if they make the wrong decision, they'll pay the consequences," he said.

Milloy said this is important because the understanding of the role of an MP affects how the public perceives many events that take place in Parliament, such as parties working together in coalitions or other arrangements.

The concerns raised by Rempel Garner mark the second time that the Reform

Act has made news in this Parliament, following the use of the act to remove Erin O'Toole (Durham, Ont.) as Conservative Party leader in February.

In the previous Parliament, the act was used to expel then-Conservative MP Derek Sloan from caucus by a vote of MPs in January 2021. In the Parliament created by the 2015 election, then-Independent MP Jane Philpott questioned the legitimacy of the expulsion of her and Jody Wilson-Raybould from the Liberal caucus on the grounds that the caucus did not follow the Reform Act provisions in that session, and may never have held the required votes.

Reform Act is 'a living tree' operating in a new context Jonathan Malloy, a political science professor at Carleton University, where he is the chair in Canadian Parliamentary Democracy, said these latest events are part of the ongoing evolution of the Reform Act.

"[The Reform Act] took, arguably, three elections to really get going. And now obviously with the overthrow of Mr. O'Toole we saw that it had real teeth," said Malloy. "And we're going to see where the Reform Act goes. ... It's a bit like the metaphor we use for the Charter of Rights and Freedoms. It's a living tree. You don't quite know where it's going to grow, what branches are going to sprout, and how it's going to be interpreted."

He noted that the act is now being used in a different context than Chong may have anticipated.

"The Reform Act envisioned a party caucus that was relatively united, whereas the Conservative Party ... is not very united right now," he said. "It's searching, arguably, for its soul."

Koop added that the longer the act is in place, politicians will adjust their strategies in order to operate more effectively under its conditions, and that proponents of the act, like Chong, should be wary that over time there may be attempts to "water it down."

"Politicians are very good at adapting to whatever environment they're in," said Koop. "The Reform Act is a new environment they're in. It changes the ways in which they pursue their goals to get the things they want."

Milloy, reflecting on his time as a federal staffer and provincial legislator, said he thinks having the Reform Act in place then would have been positive.

"I think members [Members of Parliament] would have felt more freely to speak their mind," he said, noting that feeling ambitious for a cabinet role or cautious as a new member of "offending the powers that be" were among many reasons why some members would be reluctant to speak their minds.

"The threat that the leader could throw them out of caucus ... kept a check on them at times, and they were perhaps a lot more circumspect than if they had known, 'No, the leader can't throw me out, and I would have to have all my peers to do it.'" icampbell@hill-times.com The Hill Times