The Supreme Court Rules: Parliamentary Privilege Not A Carte Blanche For Termination

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In its October 5, 2018 judgment in *Chagnon v Syndicat de la fonction publique et* parapublique du Québec (*Chagnon*),[1] the Supreme Court of Canada ruled that parliamentary privilege does not blindly protect the National Assembly from judicial scrutiny with respect to the termination of employees. The Court narrowly interpreted parliamentary privileges in particular consideration of the right to meaningfully associate in the pursuit of collective workplace goals constitutionally guaranteed under s. 2(d) of the *Canadian Charter of Rights and Freedoms*.

Facts

In the case at bar, three security guards employed by the National Assembly of Québec (the National Assembly) were dismissed by the president of the National Assembly for using their employer's cameras to observe activities inside the rooms of a nearby hotel. The guards were unionized, and thus their dismissal was contested by way of a grievance introduced by their union before a labour arbitrator.

The president of the National Assembly objected to the arbitrator's jurisdiction in deciding the grievances, arguing that his decision to dismiss the guards was immune from review since it fell within the ambit of the parliamentary privileges to manage employees and to exclude strangers from the National Assembly.

Arbitration Award

Arbitrator Pierre A. Fortin held that the decision to terminate the security guards did not fall within the scope of the privilege to exclude strangers from the National Assembly or to manage its employees. The arbitrator therefore called the parties to proceed on the merits of the guards' dismissal.[2]

Superior Court

The president of the National Assembly, however, moved for judicial review before the Superior Court. Bolduc J. sided with the president. While the judge agreed with Arbitrator Fortin's conclusion that the decision to terminate was not protected by the

privilege to exclude strangers from the Assembly, he did find that it was protected by the privilege over the management of employees.[3]

Court of Appeal

The union brought the case before the Court of Appeal which granted the appeal in a 2 vs. 1 decision. In a judgment written by Bélanger J.A., the majority of the Court of Appeal held that the arbitrator had correctly set aside parliamentary privilege as prohibiting the review of the terminations, since the guards' tasks were not closely and directly connected to the National Assembly's deliberative and legislative functions[4]

Supreme Court of Canada

The Supreme Court dismissed the president's appeal, confirming that the arbitrator's decision was indeed correct and that the dismissal of the security guards was not protected by parliamentary privilege.[5]

The Court did recognize that decisions falling within the scope of parliamentary privileges cannot be reviewed by an external body, including a labour arbitrator and a court.[6] However, such privileges must be narrowly construed, especially when coming into conflict with constitutional rights such as the right to meaningfully associate in the pursuit of collective workplace goals.

In its reasoning, the Court reverted to the "necessity test" it set out in *Canada (House of Commons) v Vaid (Vaid).*[7] In this case, the Speaker of the House of Commons asserted an extensive privilege over the management of all employees of the House, which would have immunized the decision to dismiss his chauffeur from external review.[8] The Supreme Court answered by setting out a "necessity test", according to which a matter may benefit from privilege only if it is "so closely and directly connected with the fulfillment by the assembly or its members of their functions as a legislative and deliberative body […] 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."[9] In *Vaid*, the Speaker of the House of Commons failed to demonstrate how the "necessity test" was satisfied; according to the majority of the bench, in *Chagnon*, the president of the National Assembly failed at the same task.

The Court stated that subjecting the management of guard staff to ordinary law and to a labour arbitrator's jurisdiction would not hamper the autonomy which the National Assembly requires to discharge its constitutional mandate.[10]Moreover, absent clear legislative intent to the contrary in the *Act respecting the National Assembly*[11] and the *Public Service Act*,[12] the guards were unionized.[13] Weighing the effects that the scope of the privilege claimed by the president would have over the right of the security guards to meaningfully associate in the pursuit of collective workplace goals guaranteed under s. 2(d) of the *Canadian Charter*,[14] the Supreme Court asserted that the former must be interpreted narrowly so as to be reconciled with the latter.[15] While readily recognizing the president's authority to dismiss the security guards for just and sufficient cause, as the case may be, a dismissal done in the exercise of the president's management rights is not to be insulated and unreviewable under ordinary labour law, including by an arbitrator.[16]

The Chagnon case is now free to proceed before the arbitrator on the merits of the guards' dismissal.

Key Takeaways

Legal immunities such as parliamentary privilege may seem like an amorphous body of procedures and rules. However, in *Chagnon*, the Supreme Court took a stand to express that although fluid and widely fact-specific, parliamentary privileges do not confer *carte blanche* to provincial parliaments when it comes to the management and dismissal of employees. Indeed, as evidenced in *Chagnon*, the administrative body faces a high burden in demonstrating that a specific labour decision is captured by parliamentary privilege and thus immune from judicial scrutiny.

While *Chagnon*'s main lessons are mostly tied to the parliamentary context, it was nevertheless an opportunity for the Supreme Court to reassert the constitutional nature of the right to meaningfully associate in the pursuit of collective workplace goals guaranteed under s. 2(d) of the *Charter*. Moreover, a comment on *Chagnon* is a chance to remind employers that all privileges recognized at law, such as solicitor-client privilege and labour relations privilege, are not absolutes and may, where the circumstances so require, be set aside by our courts.

[1] 2018 SCC 39 (*Chagnon*).

[2] 2014 QCTA 696.

[3] 2015 QCCS 883.

[4] 2017 QCCA 271.

[5] *Chagnon.*

[6] *Chagnon*, at 19. See *Stockdale v Hansard (1839)*, 9 Ad. & E. 1, 112 E.R. 1112 (Q.B.), at 1168, *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, at 350 and 382-384, as well as *Canada (House of Commons)* v. *Vaid*, 2005 SCC 30 ("*Vaid*"), at 29.

[7] *Vaid*; Chagnon, at 29 and 44.

[8] *Vaid*, at 52.

[9] *Vaid*, at 46.

[10] *Chagnon*, at 37 and 56.

[11] CQLR, c. A-23.1.

[12] CQLR, c. F-3.1.1.

[13] *Chagnon*, at 47-50.

[14] See *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, at 67.

[15] *Chagnon*, at 42 and 56.

[16] *Chagnon*, at 58.

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