Alford v. Canada (Attorney General), 2022 ONSC 2911 (CanLII)

Date: 2022-05-13

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
RYAN ALFORD	)	
Applicant	)	*Ryan Alford,* self-represented
- and –	)	
	)	
CANADA (ATTORNEY GENERAL)	)	*A. Gay* for the Respondent
Respondent	)	
- and –		*R. Agarwal* and *A Pannu* for the Intervenor
CANADIAN CIVIL LIBERTIES ASSOCIATION		
Intervenor		
	)	**HEARD**: January 21, 2022 (by Zoom)

FREGEAU, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] Section 18 of the *Constitution Act, 1867**[1]*** empowers the Senate and the House of Commons to define parliamentary privilege. The *National Security and Intelligence Committee of Parliamentarians Act,**[2]*** (the *"Act"*) established the National Security and Intelligence Committee (the "Intelligence Committee" or the "Committee") to review national security and intelligence activities of federal entities. Section 12 of the *Act* disentitles members or former members of the Committee from claiming immunity based on parliamentary privilege in a court proceeding against them arising from the disclosure of specific information obtained while exercising their role on the Intelligence Committee. The Applicant, law professor Ryan Alford, challenges the validity of s. 12 of the *Act*. He submits that s. 12 is *ultra vires* because (a) it restricts the constitutionally protected rights of parliamentary privilege and freedom of speech and debate in Parliament and (b) it was enacted without an amendment of the *Constitution Act, 1867,* pursuant to the general amendment procedure provided for in s. 38(1) of *The Constitution Act, 1982*. [3]

[2] For the reasons that follow, I agree with Professor Alford's argument, and I grant this application. I declare s.12 of the *National Security and Intelligence Committee of Parliamentarians Act ultra vires*.

B. HISTORY OF THE PROCEEDINGS

[3] This application was commenced in 2017. Following a hearing, Newman J. of this Court held that the Applicant did not have standing and dismissed the application.[4]

[4] The Court of Appeal allowed the Applicant's appeal, recognizing his public interest standing to raise the "pure question of law" at issue. The Court of Appeal identified that question as "the constitutional competence of Parliament to pass legislation abridging Parliamentary privilege, without a constitutional amendment."[5]

C. BACKGROUND

[5] The National Security and Intelligence Committee was established in 2017. It is comprised of three Senators and eight members of the House of Commons. Although its members are parliamentarians, the Intelligence Committee is not a parliamentary committee. Rather, the reports of the Committee's review activities are subject to parliamentary scrutiny. Section 21 of the *Act* requires the Committee to submit annual reports of the reviews it conducted during the preceding year to the Prime Minister. The Prime Minister, in turn, is required to table the annual reports in the Senate and the House of Commons, following which the reports are referred to the standing parliamentary committees.

[6] Section 8 of the *National Security and Intelligence Committee of Parliamentarians Act* provides a broad mandate to Committee members to review matters of national security and intelligence. Consistent with the broad mandate provided by s. 8 of the *Act*, s. 13(1) of the Act provides the Security Committee, subject to certain exceptions, with access to any information that is under the control of a department and that is related to the fulfilment of the Committee's mandate.

[7] Section 10 of the *Act* requires Committee members to comply with specific security requirements, including obtaining and maintaining the necessary security clearances and to take an oath to "not communicate or use without due authority any information obtained in confidence" in their capacity as members. Section 11(1) of the *Act* prohibits members or former members of the Committee from knowingly disclosing "any information that they obtained, or to which they had access, in the course of exercising their powers or performing their duties or functions under [the] *Act* and that a department is taking measures to protect".

[8] Section 12(1) of the *Act,* the subject matter of this Application, disentitles past and present Committee members from claiming immunity based on parliamentary privilege in a proceeding against them in relation to an alleged violation of s. 11(1), a provision of the *Security of Information Act* or in relation to any other proceeding arising from any disclosure of information that is prohibited under that subsection.

[9] Section 12(2) of the *Act* provides that a statement made by a member or former member of the Committee before either House of Parliament or a committee of the Senate, of the House of Commons or of both Houses of Parliament is admissible in evidence against them in a proceeding referred to in subsection (1).

[10] As can be seen, the parliamentary privileges of members and former members of the Committee are diminished by the *Act*. Sections 12(1) and (2) prevent the application of parliamentary privilege to statements made by current and past Committee members in either the House of Commons or the Senate that result in the unauthorized disclosure of protected information. Absent these provisions, members or former members of the Committee could disclose protected information during proceedings in Parliament and claim parliamentary privilege if prosecuted.

D. THE ISSUE

[11] Section 18 of the *Constitution Act, 1867* states:

> *Privileges, etc., of Houses*
>
> 18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof

[12] The issue to be decided on this Application is Parliament's constitutional competence, pursuant to s. 18 of the *Constitution Act, 1867*, to pass legislation abridging parliamentary privilege in the circumstances set out in s. 12 of the *Act,* without a constitutional amendment.

E. THE POSITIONS OF THE PARTIES

1. Professor Alford

[13] The Applicant submits that parliamentary privilege, which includes freedom of speech and debate in Parliament, is an inherent, absolute and essential privilege entrenched in the Canadian Constitution as a function of the preamble of the *Constitution Act, 1867,* which provides Canada with a "Constitution similar in principle to that of the United Kingdom".

[14] The Applicant contends that the restriction on parliamentary privilege found in s. 12 of the *Act* is an abrogation of freedom of speech and debate in Parliament and thus interferes with parliamentary privilege. He submits that it s. 12 goes beyond Parliament's authority to "define" parliamentary privilege pursuant to s. 18 of the *Constitution Act, 1867.* Given that parliamentary privilege is constitutional in nature, the Applicant submits that it cannot be abrogated by ordinary legislation, even if motivated by national security concerns. It is the Applicant's submission that for s. 12 to be enacted, an amendment to the *Constitution Act, 1867* in accordance with the amending formula found in the *Constitution Act, 1982* is required. The Applicant submits that the legislative restriction on parliamentary privilege and freedom of speech and debate in Parliament found in s. 12 of the *Act* was not enacted in compliance with the Procedure for Amending the Constitution of Canada, set out in ss 38-49 of the *Constitution Act, 1982* and is therefore *ultra vires* the government of Canada.

[15] The Applicant acknowledges that s. 44 of the *Constitution Act, 1982* empowers Parliament to amend the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons. However, the Applicant argues that this authority is expressly subject to section 42(1), which provides that amendments to the Constitution of Canada in relation to, among other things, the powers of the Senate and the Supreme Court of Canada, may only be made in accordance with the general amendment procedure set out in s. 38(1).

[16] The Applicant submits that s. 12 of the *Act* abrogates the power of the Senate and the House of Commons to regulate their own affairs and to determine the lawfulness of their own proceedings. The Applicant further submits that s. 12 of the *Act* assigns to the courts, and potentially to the Supreme Court of Canada, the role of presiding over litigation in which Committee members are being prosecuted for an alleged breach of s. 11(1) of the *Act.* Therefore, he submits that, the restriction on parliamentary privilege effected by s. 12 of the *Act,* exceeds the legislative authority of s. 44 of the *Constitution Act, 1982,* and can only be done in accordance with the general procedure for amending the Constitution of Canada found in s. 38(1) of the *Constitution Act, 1982*.

[17] The Applicant submits that although s. 18 of the *Constitution Act, 1867* provides Parliament with express statutory authority to grant itself additional privileges, it does not, however, grant Parliament the power to restrict or limit constitutionally entrenched privileges, including freedom of speech and debate in Parliament. The Applicant argues that if Parliament's authority to "define" parliamentary privilege pursuant to s. 18 includes the unqualified authority to limit or restrict parliamentary privilege, as suggested by the Respondent, we would not have a Constitution "similar in Principle to that of the United Kingdom", as provided for in the preamble to the *Constitution Act, 1867*.

2. Canada (Attorney General)

[18] The Respondent acknowledges that s. 12 of the *Act* circumscribes the application of parliamentary privilege in certain narrow circumstances. The Respondent submits that it is within Parliament's legislative power to diminish parliamentary privilege pursuant to its express constitutional authority to "define" parliamentary privilege found in s. 18 of *The Constitution Act, 1867*. The Respondent submits that Parliament's legislative power to define privileges is "plenary", subject only to the limitation that Parliament cannot confer privileges exceeding those held by the House of Commons of the United Kingdom. The Respondent suggests that the use of the word "define" by the framers of the Constitution expressly contemplates the ability of Parliament to enact laws that delineate the application of privilege.

[19] The Respondent submits that freedom of speech, which is an aspect of Canadian parliamentary privilege, is not an absolute right. The Respondent contends that Parliament has in the past waived its privilege of freedom of speech to allow its proceedings to be examined outside the House. The Respondent suggests that Parliament's authority to narrow the scope of Parliamentary privilege is supported by the historical authority of the House of Commons and Senate to waive privilege.

[20] The Respondent submits that s. 12 of the *Act* effects no change to the fundamental nature or role of the House of Commons, does not alter in any significant way the powers of the House of Commons or the Senate and thus does not amend the Constitution of Canada, as suggested by the Applicant. According to the Respondent, the general amending procedure established in s. 38 of the *Constitution Act, 1982*, which would involve the provinces in matters that fall squarely within the federal domain, has no application in this case.

[21] Further, the Respondent submits that, in any event, Parliament has the authority to circumscribe the parliamentary privilege of freedom of speech as it has done in s. 12 of the *Act* under s. 44 of the *Constitution Act, 1982*, which can be accomplished through federal legislation.

[22] Finally, the Respondent submits that this Court's inquiry should be limited to determining whether when a government department is taking protective measures under the *Security of Information Act*,***[6]*** Parliament's legislative authority to define parliamentary privilege pursuant to s. 18 of the *Constitution Act, 1867* permits Parliament to enact legislation precluding Security Committee members from invoking parliamentary privilege and claiming immunity in proceedings relating to the disclosure of information received in the course of their duties.

3. Canadian Civil Liberties Association

[23] The Canadian Civil Liberties Association (the "CCLA") has intervened in this Application to provide some global context to assist the Court in its consideration of Parliament's ability to limit the application of parliamentary privilege through federal legislation. The CCLA does not challenge the constitution validity of s.12 of the *Act*.

[24] The CCLA submits that in other Westminster-based jurisdictions (the United Kingdom, Australia and New Zealand) parliamentary privilege is absolute and that legislation in these jurisdictions comparable to the *Act* either expressly preserves parliamentary privilege or does not expressly suspend it. In other words, the CCLA notes that these jurisdictions are able to address security concerns without diminishing parliamentary privilege.

F. DISCUSSION

[25] The issue of Parliament's constitutional competence to limit or restrict parliamentary privilege, as it does in s. 12 of the *National Security and Intelligence Committee of Parliamentarians Act,* as a function of its authority to "define" privilege pursuant to s. 18 of the *Constitution Act, 1867****[7]*** requires an analysis of the scope of parliamentary privilege, and freedom of speech and debate in particular, in the context of Committee members fulfilling their duties and mandate under the *Act*.

[26] Parliamentary privilege developed in England in the 17th century through the struggle of the House of Commons for independence from the other branches of government, including the Crown and judiciary. It was accepted as forming part of the English common law and in the United Kingdom in 1689 it was recognized in the *Bill of Rights (U.K.)*.[8] Parliamentary privilege more gradually was accepted as a part of Canadian constitution law.[9]

[27] In the Canadian context, parliamentary privilege is the sum of the privileges, immunities and powers enjoyed by the Senate, House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions.[10]

[28] In the recent case of *Duffy v. Senate of Canada*[11] [*Duffy*] at paras. 25 – 35, the Ontario Court of Appeal, with extensive reference to the leading cases on parliamentary privilege, including *Chagnon v. Syndicat de la fonction publique et parapublique du Québec****[12]*** [*Chagnon*], *Canada (House of Commons) v. Vaid*,[13] [*Vaid*], and *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*[14] [*New Brunswick Broadcasting*] summarized the sources of parliamentary privilege, the role that parliamentary privilege plays in the separation of powers, the applicable approach when addressing questions of parliamentary privilege at the federal level, and the impact of parliamentary privilege on the court's jurisdiction.

[29] In *Duffy* at para. 27, the Ontario Court of Appeal held that parliamentary privilege became part of Canadian law through the common law as being an inherent and necessary component of the legislative function of federal and provincial legislatures. Citing *Vaid, Chagnon,* and *New Brunswick Broadcasting*, the Ontario Court of Appeal found that parliamentary privilege "was ***constitutionalized*** [my emphasis] through the preamble of the *Constitution Act, 1867*, which affirmed that Canada is to have a Constitution similar in Principle to that of the United Kingdom".

[30] In *Duffy* at paras. 28-29, the Court of Appeal noted that at the federal level, s. 18 of the *Constitution Act, 1867* gives Parliament the power to enact laws defining the privileges of the Senate and the House of Commons and that Parliament exercised this power under s. 4 of the *Parliament of Canada Act*, which defines the privileges of the Senate and House of Commons by reference to the U.K. House of Commons in 1867. However, and this is significant for present purposes, the Court of Appeal stated that s. 4(b) of the *Parliament of Canada Act,* which permits Parliament to "define" parliamentary privilege, "allows Parliament to ***expand*** [my emphasis] those privileges by legislation provided that they do not exceed those of the U.K. House of Commons at the date of the enactment".[15]

[31] At para. 30 of *Duffy*, the Ontario Court of Appeal noted that the Supreme Court in *Vaid*, at paras. 35, 36 and 37, described s. 4 of the *Parliament of Canada Act* as having conferred on the Senate and House of Commons

the full extent of the privileges permitted under the Constitution. The Court went on to note that the "main body" of the parliamentary privileges of Parliament are "legislative privileges" (rather than "inherent privileges") and which, unlike provincial legislative privileges, have "***an express constitutional underpinning*** [my emphasis] in s. 18 of the *Constitution Act, 1867"*.

[32] The Court of Appeal stated, at para. 31 of *Duffy*, citing *Vaid* and *Chagnon*, that "parliamentary privilege forms an essential part of how Canada's constitutional democracy maintains the fundamental separation of powers between the legislative, executive, and judicial branches of government". At para. 22 of *Duffy*, the Court further noted that parliamentary privilege helps protect the ability of the Senate, the House of Commons, and the provincial legislative assemblies to perform their constitutionally assigned functions by shielding some areas of legislative activity from external review – it grants the legislative branch of government the autonomy it requires to perform its constitutional functions.

[33] In *Duffy* at para. 35, the Ontario Court of Appeal concluded its review of parliamentary privilege by describing it a "a rule of curial jurisdiction". The effect of a matter falling within the scope of parliamentary privilege is that its exercise cannot be reviewed by any external body, including a court. Citing *Vaid* and *New Brunswick Broadcasting*, the Court of Appeal stated that parliamentary privilege recognizes Parliament's exclusive jurisdiction to deal with complaints within its privileged sphere of activity, thus providing immunity from judicial review.

[34] With this background about the nature of parliamentary privilege and focusing on the issues of the immediate case, the case law authoritatively establishes that the privileges of the House of Commons and the Senate have a constitutional status. Given this status, the next step in the analysis of the legality of s. 12 of the *National Security and Intelligence Committee of Parliamentarians Act* is to explore Parliament's authority to alter a matter that has constitutional status.

[35] In *New Brunswick Broadcasting*, the CBC brought a *Charter* application seeking an order allowing it to film the proceedings in the provincial legislative assembly which the provincial Legislature, in the exercise of its parliamentary privileges, had prohibited. In this case, McLachlin J., as she then was, stated that that it is a "basic rule" that one part of the Constitution cannot be abrogated or diminished by another part of the Constitution. This basic rule, in turn, raised the critical question to be resolved in *New Brunswick Broadcasting* of whether the privilege of the legislative assembly to exclude strangers from its chambers [as an exercise of parliamentary privilege] was a constitutional power?

[36] In *New Brunswick Broadcasting,* McLachlin J. held, at pgs. 373 and 374, that the legislative assembly's right to exclude strangers is a constitutional privilege inherent in the legislative assembly by virtue of the fact that the preamble to the *Constitution Act, 1867* proclaims an intention to put in place "a Constitution similar in principle to that of the United Kingdom". At pg. 377, McLachlin added the following:

> The manifest intention expressed in the preamble of our Constitution [is that] Canada retain the fundamental constitutional tenets upon which British parliamentary democracy rested. This is not a case of importing an unexpressed concept into our constitutional regime, but of recognizing a legal power fundamental to the constitutional regime which Canada has adopted in its *Constitution Acts*, 1867 to 1982.

[37] In *Vaid,* at para. 21, Binnie J. described parliamentary privilege as "one of the ways in which the fundamental constitutional separation of powers is respected". At para. 24, Binnie J. noted that differences will arise between the scope of privilege asserted by Parliamentarians and the scope of privilege the courts have recognized as justified. He further observed that when resolving such conflicts, it is important that both Parliament and the courts respect the legitimate sphere of activity of the other. Binnie J. adopted the following passage from McLachlin J.'s reasons in *New Brunswick Broadcasting,* where she stated at para. *389:*

> Our democratic government consists of several branches: the Crown […] the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.

[38] In *Vaid,* Binnie J. discussed inherent and legislated privileges at para. 33. He found that the ruling in *New Brunswick Broadcasting*, "read narrowly, affirmed constitutional status for privileges "inherent" in the creation of a provincial legislature". He noted that the federal government, unlike the provinces, has the express legislative power, found in s. 18 of the *Constitution Act, 1867*, to enact privileges that may ***exceed*** [my emphasis] those "inherent" in the creation of the Senate and House of Commons.

[39] Binnie J. went on to note, also in para. 33, that Lamer C.J.'s separate, concurring reasons in *New Brunswick Broadcasting* "considered that such "legislated privilege" would lack the constitutional status of "inherent" privilege. He added, "however, the logic of the separate judgments written by McLachlin J. and La

Forest J. points away from such a conclusion, their view was accepted as correct by a majority of the Court, and the point must now be taken as settled".

[40] At para. 34 of *Vaid*, Binnie J. concluded that the immunity from external review flowing from the doctrine of privilege is conferred by the nature of the function (the Westminster model of parliamentary democracy), not the source of the legal rule (i.e., inherent versus legislated privilege). He noted that *New Brunswick Broadcasting* established that "parliamentary privilege enjoys the *same* constitutional weight and status as the *Charter* itself". (emphasis in original)

[41] As appears from these cases, parliamentary privilege is one of the ways in which the fundamental constitutional separation of powers is respected. Parliamentary privilege is meant to enable the legislative branch and its members to proceed fearlessly and without interference in discharging their constitutional role, that is, enacting legislation and acting as a check on executive power. The insulation from external review that privilege provides is a key component of our constitutional structure and the law that governs it.[16]

[42] In *Chagnon*, at para. 24, Karakatsanis J. noted that "when tethered to its purposes, parliamentary privilege is an important part of the public law of Canada…the insulation from external review that privilege provides is a key component of our constitutional structure and the law that governs it".

[43] In *Gagliano v. Canada (Attorney General)*[17] at para. 108, the Federal Court found that parliamentary privilege "helps to demarcate the legislative spheres of jurisdiction and is therefore a fundamental aspect of our constitutional democracy".

[44] In my opinion, a review of these authorities establishes that parliamentary privilege, inclusive of freedom of speech and debate and the immunities enjoyed by the Senate, House of Commons and provincial legislative assemblies, and by each member individually, is an essential part of Canada's constitutional democracy, having been constitutionalized through the preamble of the *Constitution Act, 1867*.[18] To paraphrase McLachlin J. in *New Brunswick Broadcasting*, parliamentary privilege enjoys constitutional weight and status equivalent to that of the *Charter of Rights and Freedoms* itself.

[45] In *Reference re Senate Reform*,[19] in addressing proposed amendments to the *Constitution Act, 1867* that would abrogate the powers of the Senate, the Supreme Court of Canada noted that any legislation that would alter the basic structure of our legal order, which the Court labelled the constitutional architecture, required amendment pursuant to Part V of the *Constitution Act, 1982*.[20] In *Clark v Canada (Attorney-General)*,[21] the Ontario Court of Appeal held that freedom of speech and debate in Parliament is constitutional and absolute, and cannot be abrogated by ordinary legislation, even if this is motivated by national security concerns.

[46] It therefore follows, in my view, that Parliament's legislative authority to "define" parliamentary privilege pursuant to s. 18 of the *Constitution Act, 1867* does not provide Parliament with the constitutional competence to abrogate or restrict parliamentary privilege in the circumstances set out in s. 12 of the *Act*, absent a constitutional amendment pursuant to s. 38 of the *Constitution Act, 1982*.

[47] I further accept the submission of the Applicant that the restriction on parliamentary privilege effected by s. 12 of the *Act* exceeds the legislative authority of s. 44 of the *Constitution Act, 1982*, which provides that Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons. I agree that s. 44 of the *Constitution Act, 1982* is expressly subject to section 42(1), which provides that amendments to the Constitution of Canada in relation to, among other things, the powers of the Senate and the Supreme Court of Canada, may only be made in accordance with the general amendment procedure set out in s. 38(1). While Parliament may expand parliamentary privilege, by legislation,[22] it may only diminish parliamentary privilege including the privileges and immunities afforded parliamentary discourse and debate by an amendment of the *Constitution Act, 1867* pursuant to the amending formula set out in the *Constitution Act, 1982*.

G. CONCLUSION

[48] The restriction on parliamentary privilege effected by s. 12(1) of the *National Security and Intelligence Committee of Parliamentarians Act* is beyond Parliament's constitutional competence to define parliamentary privilege pursuant to s. 18 of the *Constitution Act, 1867* and exceeds Parliament's authority to amend the Constitution of Canada pursuant to s. 44 of the *Constitution Act, 1982*. Section 12(1) of the *Act* is therefore declared invalid.

[49] I am advised that none of the parties is seeking costs and I therefore make no order as to costs.

The Honourable Justice J. Fregeau

Released: May 13, 2022

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REASONS FOR DECISION

FREGEAU, J.

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[1] 30 & 31 Vict., c. 3
[2] S.C. 2017, c. 15.
[3] Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[4] *Alford v. Canada (Attorney General)*, 2018 ONSC 3984.
[5] *Alford v. Canada (Attorney General)*, 2019 ONCA 657 at paras. 3-4.
[6] R.S.C. 1985, c. O-5.
[7] Outside of the *Constitution Act, 1867,* s. 4(b) of the *Parliament of Canada Act,* R.S.C., 1985, c. P-1 implements Parliament's authority under s. 18 of the *Constitution Act, 1867* to define parliamentary privilege.
[8] 1689, 1 Will. & Mar. Sess. 2, c. 2.
[9] See *Duffy v. Senate of Canada*, 2020 ONCA 536 at paras. 25-26, leave to appeal to S.C.C. ref'd [2020] S.C.C.A. No. 335; *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at para. 22; *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 21; *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, 1993 CanLII 153 (SCC), [1993] 1 S.C.R. 319 at p. 345
[10] *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at para. 19; *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 29(2)
[11] 2020 ONCA 536.
[12] 2018 SCC 39.
[13] 2005 SCC 30.
[14] 1993 CanLII 153 (SCC), [1993] 1 S.C.R. 319.
[15] See also *Harvey v. New Brunswick (Attorney General),* 1996 CanLII 163 (SCC), [1996] 2 SCR 876, at para. 66.

[16] *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at paras. 23-24.
[17] 2005 FC 576 aff'd, 2006 FCA 86.
[18] See *Duffy v. Senate of Canada*, 2020 ONCA 536 at para. 27, leave to appeal to S.C.C. ref'd [2020] S.C.C.A. No. 335.
[19] 2014 SCC 32 at paras. 27-28.
[20] See also *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21 at paras. 87-103.
[21] (1977), 1977 CanLII 1084 (ON SC), 17 O.R. (2d) 593 (C.A.).
[22] *Duffy v. Senate of Canada*, 2020 ONCA 536 at para. 27, leave to appeal to S.C.C. ref'd [2020] S.C.C.A. No. 335; *Harvey v. New Brunswick (Attorney General),* 1996 CanLII 163 (SCC), [1996] 2 SCR 876, at para. 66.