

SUPREME COURT OF CANADA



Case in Brief: *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*

2018 SCC 39 | Judgment of October 5, 2018 | On appeal from the Court of Appeal of Quebec

The Speaker of the Quebec legislature couldn't use parliamentary privilege to avoid the grievance process when he fired three security guards, the Supreme Court has ruled. Parliamentary privilege only covers decisions that are necessary for a legislature to fulfill its constitutional role.

In 2012, the Speaker of Quebec's National Assembly (its legislature) fired three security guards for using Assembly cameras to watch people in nearby hotel rooms. The security guards didn't think they should be fired. Their union filed grievances (a formal complaint under a collective agreement) on their behalf. This was the normal procedure for civil servants who felt they had been wrongly fired by their employer.

In this case, however, the Speaker said his decision to fire the security guards was covered by "parliamentary privilege." Parliamentary privilege is a kind of immunity (legal protection) that comes from the Constitution. It is meant to allow legislatures to operate without outside interference. It applies both to individual elected members and to the legislature as a whole. The Speaker said no one else was allowed to review his decision—not even a labour arbitrator—because it was covered by privilege. (A labour arbitrator is a person who decides complaints under a collective agreement.)

The Speaker based his argument on two specific types of privilege. The first was the privilege over the management of employees. The second was the privilege to exclude "strangers" from the National Assembly building, a task the security guards did on the Speaker's behalf. ("Strangers" are people who aren't members or officials of the legislature.) While both sides agreed that the privilege existed, they disagreed on whether it covered the firing of the guards.

The arbitrator ruled for the security guards, saying that the decision to fire them was not protected by parliamentary privilege, and that the grievances could be heard. The Speaker asked the courts to review the arbitrator's decision. The reviewing judge ruled for the Speaker, saying the decision was, in fact, covered by privilege, and the arbitrator wasn't allowed to hear the dispute. The Court of Appeal disagreed and ruled against the Speaker, saying parliamentary privilege did not apply.

Justice Andromache Karakatsanis also ruled against the Speaker, saying that parliamentary privilege did not apply to his decision to fire the security guards. She said the purpose of parliamentary privilege was to allow the Assembly and its members to do the work they needed to do under the Constitution independently and with dignity and efficiency. The scope of protected decisions had to be limited to what was closely and directly connected to the legislature's constitutional role. This was important because courts can't review decisions protected by privilege—even ones that go against the *Charter*. Justice Karakatsanis said that, while security was crucial to the legislature's work, not all decisions about security guard management had to be protected. She also said that, while excluding strangers from the legislative buildings was protected by privilege, protecting a decision to fire employees who helped do that was going too far. While the Speaker could fire the security guards if he had a good reason, Justice Karakatsanis said he still had to follow the same process for them as he would for any other civil servant. She said the dispute should go back to the arbitrator to decide. Five judges agreed with Justice Karakatsanis.

Justice Malcolm Rowe agreed that the case should be sent back to the arbitrator to decide, but for different reasons. He said the Assembly had set out how it would deal with employee management in the *Act Respecting the National Assembly*. In his view, the Assembly defined how it would use its privilege by passing this law. Under the Act, all employees of the National Assembly were civil servants, with the same rights and obligations as other members of the civil service. The Act provided a procedure to remove employees from the public service

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employment scheme, but the procedure was not exercised in this case. Justice Rowe said that the legislature couldn't set out the rules that would apply to it in law, and then later rely on privilege to depart from that law.

Justices Suzanne Côté and Russell Brown, writing in dissent, would have ruled for the Speaker. They said security was critical to the Assembly's ability to do its work, and the Speaker delegated certain security tasks, including the exclusion of strangers, to the guards. This meant there was a close and direct link between their work and the work of the Assembly, and so they were covered by parliamentary privilege. So was the Speaker's management of these employees, and his decision to fire them. Justices Côté and Brown noted that giving an arbitrator the power to revise the Speaker's decision to fire guards he no longer had confidence in would take away the Assembly's control over part of its security.

This decision made clear the scope of the parliamentary privilege over two activities: the management of employees and the exclusion of strangers. The majority and dissenting judges agreed that privilege should be limited to what was necessary for a legislature to fulfil its role. But the majority judges did not think the Speaker's decision in this particular case qualified.

For more information (case no. 37543):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of the decision:

- Majority: [Karakatsanis J.](#) ([Wagner C.J.](#) and [Abella, Moldaver, Gascon](#) and [Martin JJ.](#) in agreement)
- Concurring: [Rowe J.](#)
- Dissenting: [Côté](#) and [Brown JJ.](#)

Lower court rulings (in French only):

- Court of Appeal of Quebec ([appeal judgment](#))
- Superior Court of Quebec ([judicial review](#))
- Designated arbitrator (arbitration decision, not available online)

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