Date: 20061221

Docket: T-1329-05

Citation: 2006 FC 1544

Ottawa, Ontario, December 21, 2006

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

JIM PANKIW

Applicant

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

and

KEITH DREAVER, NORMA FAIRBAIRN, SUSAN GINGELL, PAMELA IRVINE, JOHN MELENCHUK, RICHARD ROSS, AILSA WATKINSON, HARLAN WEIDENHAMMER, and CARMAN WILLET

Respondents

and

SPEAKER OF THE HOUSE OF COMMONS

Intervener

REASONS FOR JUDGMENT AND JUDGMENT

1. ***Introduction and Background***

[1] This is a judicial review application from a preliminary jurisdictional decision of a Canadian Human Rights Tribunal (the Tribunal) dated July 21, 2005 holding it had constitutional and statutory jurisdiction to hear and determine nine complains referred to it by the Canadian Human Rights Commission (the Commission).

[2] During his time as a Member of Parliament, Dr. Pankiw, the applicant in these proceedings, authored and distributed an information brochure known as the "householder" to his constituents in the riding of Saskatoon- Humbolt. The householder is printed and paid for under the auspices of the House of Commons. Each M.P. is entitled to send up to four householders per year to constituents. Dr. Pankiw was defeated in the 2004 elections.

[3] The nine complainants Keith Dreaver, et. al., allege in October 2003, Dr. Pankiw distributed a householder containing discriminatory comments about Aboriginal peoples contravening sections 5, 12 and 14 of the *Canadian Human Rights Act,* (CHRA). I set out in Appendix A to these reasons sections 5, 12, 13 and 14 of the *CHRA*.

[4] None of the parties' records contain a copy of the Commission's investigation report or the Commission's decision sending the matter to the Tribunal nor did those records contain a copy of any of the complaints filed or a copy of the householder in question.

[5] Before any evidence was taken, the Speaker of the House of Commons (the Speaker) who was granted intervener status, brought a preliminary motion before the Tribunal claiming it did not

have statutory or constitutional jurisdiction to investigate the complaints touching on activities he had undertaken as a Member of Parliament.

[6] The Tribunal heard argument on this motion on an agreed statement of facts in early March, 2005 at a time, the Supreme Court of Canada had under reserve the case of *Canada (House of Commons)* v. *Vaid* which it decided on May 20, 2005, reported as [2005] 1 S.C.R. 667.

[7] The grounds for the preliminary objection on jurisdiction were: (1). The arguments put before the Supreme Court of Canada in *Vaid*, (2) The preparation and sending of householders to all constituents is not a "service" as that term is used in sections 5 and 14 of the *CHRA*. (3) The Board of Internal Economy of the House of Commons has exclusive jurisdiction to determine the proper use of householders and (4) Political speech is subject to review only by the electorate in the democratic process and review by the Tribunal, a government decision-maker, of the contents of a Member of Parliament's communications with his constituents, particularly that of an opposition M.P. would violate the constitutional principle of the separation of powers and Parliamentary privilege.

[8] The agreed facts were:

> (a) In October, 2003 Dr. Jim Pankiw, then independent Member of Parliament for the riding of Saskatoon-Humbolt, had printed and delivered, in his capacity as a Member, a "householder" that the complainants allege contains material that is discriminatory;
>
> (b) A householder is a printed brochure sent to each householder within a constituency by each Member of Parliament. Each Member may send up to four householders per year;
>
> (c) The householders are printed by the House of Commons;

> (d) The authority to have householders printed by the House of Commons is found in the Members' Offices Bylaw, Bylaw 301, of the Board of Internal Economy of the House of Commons. This Bylaw is elaborated upon in the Manual of Allowances and Services for Members of the House of Commons;
>
> (e) As at the date of this agreed statement of facts, the Supreme Court of Canada has heard the case of *Vaid* v. *The House of Commons*, SCC File 29564, on September 13, 2004 and has reserved its decision;
>
> (f) June 28, 2004 Dr. Pankiw was defeated in the 38th general election.
>
> [Emphasis mine]

[9] The issues raised in this judicial review application are the following:

> 1. Does Parliamentary Privilege apply to the sending of householders resulting in an absolute immunity from external review outside the House itself?
>
> 2. Does the Tribunal's jurisdiction offend the separation of powers?
>
> 3. Does the Tribunal's jurisdiction offend democratic principles and the guarantee of freedom of expression?
>
> 4. Does the Board of Internal Economy's exclusive jurisdiction to review the proper use of funds or services by an M.P. oust the Tribunal's jurisdiction to deal with a complaint of discrimination under the *CHRA* in respect of the content of a householder?
>
> 5. Should this court deal, at this stage, with the issue of whether the sending of a householder to constituents "is a service customarily available to the general public" within the meaning of section 5 and 14 of the *CHRA* or whether the content of the householder breaches section 12 of that statute?

[10] The applicant's record contains the affidavit of Charles J. Duperreault. At the relevant time, Mr. Duperreault was an articling student at the House of Commons. His affidavit is very brief. He states the complainants filed human rights complaints regarding the content of a householder issued by a Member of Parliament to his constituents and adds that "Since the complaints related to the functions of a Member of Parliament, the House of Commons brought a motion challenging the jurisdiction of the Tribunal to hear the matter", attaching as Exhibit "A" to his affidavit, the Notice

of Motion raising the preliminary objection. He indicates the Commission and the House of Commons agreed to proceed on the motion based on an agreed statement of facts which he appends as Exhibit "B". Finally, in his affidavit, he deposes to the date of the Tribunal's hearing and the date of its decision. He was not cross-examined on his affidavit.

[11] The record of the respondent Commission was not supported by any affidavit. The respondent complainants did not participate in this judicial review.

[12] The record of the intervener, the Speaker of the House of Commons, (as prime mover of the jurisdictional motion before the Tribunal) was supported by the affidavit of Robert R. Walsh, sworn on January 25, 2006. Mr. Walsh is the Law Clerk and Parliamentary Counsel of the House of Commons. He deposes as follows:

> "1. I am the Law Clerk and Parliamentary Counsel of the House of Commons and as such have knowledge of the matters deposed to herein.
>
> 2. As Law Clerk and Parliamentary Counsel, I am responsible for providing legal advice and representation for the House of Commons, the Administration of the House of Commons, as well as for Members of Parliament in respect of legal and legislative matters. I am also a Table Officer of the House of Commons. As the Law Clerk, I attend meetings of the Board of Internal Economy.
>
> 3. I have been employed at the House of Commons for 14 years. From 1991 to 1996 I was General Legislative Counsel, from 1996 to 1999 I was also Director of the Committees Branch of the House and in December 1999 I was appointed to the position of Law Clerk and Parliamentary Counsel with responsibility for both legislative counsel and legal counsel services.
>
> 4. Communications between Members of Parliament and their constituents is generally regarded by members as an important part of their parliamentary responsibilities and necessary for the effective carrying out of their parliamentary function.
>
> 5. At the present time a Member's primary means of communication with constituents is through publications called "householders" and "ten percenters", which are unaddressed mass mailings to constituents.

> 6. As noted in the Affidavit of Charles Duperreault, filed by the Applicant, the sending of these publications is regulated by the Board of Internal Economy of the House of Commons through its By-laws and the Manual of Allowances and Services. In addition, provisions of *Canada Post Corporation Act* enable this material to be delivered as mail without postage. That *Act* also allows Members of Parliament to send mail under a postage-free frank and for members of the public to send mail without postage to Members.
>
> 7. Indicative of the importance attached to the use of householders and ten percenters by Members, in the last year there have been six points of privilege raised in the House alleging breaches of privilege relating to the franking privilege, householders and ten percenters (February 15, April 18, May 3, May 4, May 10, and November 3, 2005). In all cases the Speaker determined that a *prima facie* case of breach of privilege was established. In four instances the matter was referred in the usual manner to the House of Commons Standing Committee on Procedure and House Affairs for further consideration. Attached as Exhibit "A", "B", "C", "D" are extracts from the Journals of the House of Commons for the four referrals to committee. Attached as Exhibit "E" is the Speaker's ruling of February 15, 2005, resolving that issue in the fifth instance without referral to a committee.
>
> 8. In the sixth point of privilege, raised on November 3, 2005, which related to the content of a particular householder, the matter was debated in the House over four sitting days. The Journals of the House of Commons relating to this debate are found at Tabs 1 and 2 of Volume 2 of the Application Record.
>
> 9. In addition to these several points of privilege, questions relating to content permissible in householders and ten percenters are often brought to House legal counsel by Members, Caucus research bureaus and House Administration (printing and postal).
>
> 10. Given my experience at the House of Commons over the last 14 years and the recent rulings and proceedings in the House of Commons and its Committees, it is apparent that Members of Parliament consider the ability to communicate with their constituents, in an unfiltered fashion, an important aspect of their parliamentary function." [Emphasis mine]

[13] Mr. Walsh was not cross-examined on his affidavit.

[14] On April 25, 2006, pursuant to section 57 of the *Federal Courts Act*, the applicant served and filed a Notice of Constitutional Question stating that he intends to question "the

constitutional applicability of sections 5, 12 and 14 of the *Act* [CHRA] to the publication and distribution of "householders" by Members of the House of Commons."

[15] The *Vaid* case was one involving an employee of the House of Commons, a chauffeur to the Speaker of the House, who made a complaint to the Commission alleging, *inter alia*, a refusal to continue his employment by the Speaker was based on a prohibited ground of discrimination. The Commission referred the matter to the Tribunal whose jurisdiction was challenged, the Speaker and the House of Commons claiming that the Speaker's power to hire, manage and dismiss employees was within a category of Parliamentary privilege and therefore immune to external review by the courts or the Tribunal. The Tribunal dismissed the challenge. On an application for judicial review, both the Federal Court, Trial Division, as it then was, and the Federal Court of Appeal upheld the Tribunal's decision.

[16] In the Supreme Court of Canada, the *Vaid* case turned on two points: First, the existence and scope of the Parliamentary privilege claimed, i.e., "the management of its employees" and second, whether the availability of a grievance under the *Parliamentary Employment and Staff Relations Act* (PESRA) ousted the investigative and dispute resolution machinery under the *Canadian Human Rights Act* on the facts of the case.

[17] In *Vaid*, Justice Binnie, writing the Court's reasons for judgment, decided the Parliamentary privilege claimed by the Speaker over all the House of Commons' employees was over-broad and did not include support staff such as Mr. Vaid but he had no doubt "the privilege attaches to the House's relations with some of its employees" (paragraph 75). On the other hand, he allowed the

appeal, taking the view Mr. Vaid should have proceeded under *PESRA* rather than to the Tribunal whose jurisdiction was thereby ousted.

[18] Justice Binnie stated the case law and learned authors defined Parliamentary privilege as "in the Canadian context is the sum of the privileges, immunities, and powers enjoyed by the Senate, the House of Commons, and the provincial legislative assemblies, and by each member individually, without which they could not discharge their functions" (paragraph 29.2). The onus lies on those who assert the privilege to establish that "the category and scope of privilege they claim do not exceed those that at the passing of the Parliament of Canada [were] held, enjoyed and exercised by the Commons' House of Parliament of the United Kingdom…and by the members thereof" (paragraph 53). See also paragraph 38 of his reasons where Justice Binnie refers to section 18 of the *Constitution Act, 1867* as the basis for his proposition at paragraph 53 of his reasons.

[19] He set up a two-step test to determine this issue. At paragraph 39 of his reasons he stated "The first step a Canadian Court is required to take in determining whether or not a privilege exists within the meaning of the *Parliament of Canada Act*, (PCA) is to ascertain whether the existence and scope of the claimed privilege have been authoritatively established in relation to our own Parliament or to the House of Commons at Westminster" and to answer this question, he examined both Canadian and British authority on the question considering judicial pronouncements, historical documents, committee reports and the writings of learned authors on the issue of the existence and scope of Parliamentary privilege. As Appendix B to these reasons I set out the relevant provisions of the *PCA*.

[20] At paragraph 40 of his reasons, he described the second step as arising "when a claim to privilege comes before a Canadian court seeking to immunize Parliamentarians from the ordinary legal consequences of the exercise of powers in relation to non-Parliamentarians, and the validity and scope in relation to the U.K. House of Commons and its members have not been authority established, our courts will be required (as the British courts are required in equivalent circumstances) to test the claim against the doctrine of necessity, which is the foundation of all Parliamentary privilege" adding "Of course in relation to these matters, the courts will clearly give considerable deference to our own Parliament's view of the scope of autonomy it considers necessary to fulfill its functions", cautioning, "If a dispute arises between the House and a stranger to the House, as in the present appeal it will be for the courts to determine if the admitted category of privilege has the scope claimed for it" emphasising "This adjudication … goes to the existence and scope of the House's jurisdiction not to the propriety…in any particular case." [Emphasis mine]

[21] He re-stated that Parliamentary privilege at paragraph 41 is defined "By the degree of autonomy necessary to perform the Parliament's constitutional function" quoting Sir Erskine May or as defined by Maingot in terms of necessary immunity to members of Parliament or the provincial legislators in order for "those legislators to do their legislative work" and to the question "Necessary in relation to what question?", therefore, "the answer is necessary to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly's work in holding the government to account for the conduct of the country's business."[Emphasis Mine]

[22] At paragraph 44, he was of the view there had to be "A purposive connection between necessity and the legislative function" quoting an extract from the British Joint Committee Report on Parliamentary privileges that:

> "The dividing line between privileged and non-privileged activities of each House is not easy to define. Perhaps the nearest approach to a definition is that the areas in which the Courts ought not to intervene extend beyond proceedings in Parliament, but the privileged areas must be so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly." [Emphasis by Justice Binnie]

[23] Concluding at paragraph 46, Justice Binnie wrote as follows:

> "All of these sources point in the direction of a similar conclusion. 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 [page 700] of autonomy required to enable the assembly and its members to do their work with dignity and efficiency." [Emphasis mine].

[24] As an aside to Justice Binnie's analysis in my view, his statement is important because it seems to recognize that the traditional "walls of Parliament" foreclosure may be permeated to limited extent.

2. *The Tribunal's Decision*

[25] The Tribunal rejected the submissions advanced by the applicant supported by the Speaker they were:

> 1. The Board of Internal Economy of the House of Commons (the Board) had exclusive jurisdiction to deal with the complaints on the basis of section 50 and following of the *PCA*;
>
> 2. He enjoyed parliamentary immunity from having the complaints investigated and adjudicated by the Tribunal;

3. The *CHRA* did not apply to Dr. Pankiw;

4. The doctrine of the separation of powers between the Legislative and Executive Branches of Government disentitled the Tribunal, as part of the Executive, from otherwise exercising its jurisdiction to investigate and adjudicate upon the complaints.

[26] I deal with each of the Tribunal's findings separately.

(a) Exclusive jurisdiction of the Board

[27] This first issue, the exclusive jurisdiction of the Board of Internal Economy of the House of Commons, (the Board) was raised in the context of the proper use of House resources. It was argued the Board has the exclusive authority to oversee householders, including their content.

[28] The Tribunal made the following factual findings on this point:

> "Householders are printed using the resources of the House of Commons. Funding for householders is provided by the Board of Internal Economy of the House of Commons. The Board exists pursuant to section 50 and following of the *Parliament of Canada Act*, (PCA). Members of the Board include government and opposition Members of the House of Commons. It is chaired by the Speaker of the House. The Board's functions are to act on all financial and administrative matters in respect of the House of Commons, its premises, services and staff, as well as its Members."

[29] As mentioned, Appendix B to these reasons set out certain provisions of the *PCA*. Those related to the Board are found in sections 50 to 54. Certain By-laws made by the Board are set out in Appendix C and the Members' Service Manual statements dealing with householders are at Appendix D.

[30] The Tribunal concluded the Board did not have exclusive jurisdiction to deal with complaints about the content of "householders" in the face of the provision of subsection 52.6(1) of the *PCA* which reads:

SECTION 52.6 Exclusive authority 52.6 (1) The Board has the exclusive authority to determine whether any previous, current or proposed use by a member of the House of Commons of any funds, goods, services or premises made available to that member for the carrying out of parliamentary functions is or was proper, given the discharge of the parliamentary functions of members of the House of Commons, including whether any such use is or was proper having regard to the intent and purpose of the by-laws made under subsection 52.5(1). [Emphasis mine]	SECTION 52.6 Compétence exclusive 52.6 (1) Le bureau a compétence exclusive pour statuer, compte tenu de la nature de leurs fonctions, sur la régularité de l'utilisation — passée, présente ou prévue — par les députés de fonds, de biens, de services ou de locaux mis à leur disposition dans le cadre de leurs fonctions parlementaires, et notamment sur la régularité de pareille utilisation au regard de l'esprit et de l'objet des règlements administratifs pris aux termes du paragraphe 52.5(1). [Je souligne]

[31] Whether the sending of householders constituted a parliamentary function as defined by the Board in its Bylaw 101 was not an issue for the Tribunal since, according to it, would not lead to a conclusion of exclusive jurisdiction in *Vaid*, above it was held the *CHRA* was a quasi-constitutional document and an exemption from its provision must be clearly stated. It could not find such clear statement for the following reasons.

[32] First, it stated paragraph 52.6 (1) of the *PCA*, on its face, contained no reference on the non-application of the *CHRA* or the ousting of the Tribunal's jurisdiction.

[33] Second, the Tribunal examined the dictionary meaning of “proper” and the expression “régularité” used in the French text. It said the term “régularité” is more closely associated with the notion of administrative regularity and chose this meaning because “Such reading is more consistent with the direction given in paragraph 52.6(1) of the *PCA* that the Board should, in determining whether the use of House resources was proper, have regard to the intent and purpose of the By-Laws made under subsection 52.5(1), [of the *PCA*].”

[34] Third, it found the printing of householders is specifically addressed in Members’ Offices By-law No. 301 concluding:

> “It is obvious from a reading of the by-laws that their intent and purpose is to regulate the administration of House resources (e.g. purchasing office equipment, printing stationery, leasing office space, remunerating staff, etc.). The by-laws do not contain provisions touching upon human rights principles, nor, for that matter “decent” or “respectable” conduct to use the definition of “proper” suggested by the Respondent, [Dr. Pankiw].”

[35] The Tribunal derived comfort from the Ontario Court of Appeal’s decision in *Ontario* c. *Bernier*, [1994] A.O. no. 647 and the Québec Court of Appeal’s judgment in *R.* v. *Fontaine,* [1995] A.Q. No. 295. It said “At issue in both cases was whether section 52.6(1) ousted the jurisdiction of the courts to hear a case involving charges that a Member had used the funds allocated to him by the Board in a manner that contravened the *Criminal Code*” and concluded both appellate courts found otherwise, holding that 52.6(1) “only gives the Board authority to determine if a Member of the House of Commons used these resources in a manner consistent with the by-laws.” adding “significantly, the term “by-laws” of the English text of section 52.5 and 52.6 is rendered as “règlements administratifs” in the French version.” [Emphasis mine].

[36] The Tribunal closed this issue writing:

> "As Madame Justice Arbour commented at paragraph 4 of the *Bernier* decision, Parliament established the Board to exclusively manage the internal workings of the House of Commons. In doing so, Parliament did not express an intention to remove from the courts their jurisdiction to apply the *Criminal Code* to Members. In our opinion, the same conclusion can be drawn with respect to the authority of the Tribunal to determine if there has been a violation of the *CHRA*. Parliament has not shown an intention to exclude Members, and particularly, their householders, from the application of the *CHRA*." [Emphasis mine].

(b) Parliamentary privilege or Immunity

[37] On this point, the Tribunal concluded the scope of Parliamentary privilege did not cover the sending of householders to constituents. It reasoned:

> "14. Nor does it appear to us that the *PCA* and section 52.6, in particular, extends the scope of any privilege or immunity from which Members may benefit. Parliamentary privilege provides Members with an absolute immunity from civil or criminal prosecution when speaking in the House of Commons or engaged in a proceeding in Parliament (see J.P.J. Maingot, Parliamentary Privilege in Canada, Second Edition). Over the years, the assertion of Parliamentary privilege has varied in its scope and extent. But as the Supreme Court of Canada noted in *Vaid*, (at paragraph 23), a narrower concept of privilege has developed in most recent times. The Court referred to a 1971 ruling of the Speaker of the House who stated that Parliamentary privilege "does not go much beyond the right of free speech in the House of Commons and the right of a Member to discharge his duties in the House as a Member of the House of Commons.
>
> 15. The respondent, [Mr.Pankiw] agrees that the immunity attached to Parliamentary privilege does not extend to statements or publications made by Members outside of the House or parliamentary proceedings. Thus, members of legislatures are not immune from criminal prosecution from statements made to the press outside the Chambers of Parliament (see *re.Ouellet* (Nos. 1 and 2) [1976] C.A. 788), nor from liability in defamation actions for answers given to a reporter outside a legislature (see *Ward* v. *Clark*, 2000 BCSC, 979). It follows that there is no immunity from the application of the *CHRA*." [Emphasis mine]

(c) Does the CHRA apply to a Member of Parliament?

[38] Dr. Pankiw argued before the Tribunal the legislative scheme of the *CHRA* does not apply to him because he lacks the appropriate "federal" quality that would make him subject to the federal human rights scheme. He is not engaged in a federal work, undertaking or business, nor is he part of the federal Crown or the Government of Canada advancing, "the only factor that brings him within the federal sphere of activity is that in communicating with his constituents through a householder, he is carrying out his parliamentary function as a member of the House of Commons." The Tribunal viewed Dr. Pankiw's argument as being premised on his contention the legislative authority over a member of the House of Commons is limited to the *PCA*.

[39] The Tribunal rejected this argument in the following terms:

> "The purpose and scope of the *CHRA* is articulated in section 2 and is not as limitative as the respondent suggests in his submissions. The provision states that the purpose of the *CHRA* is to give effect, "within the purview of matters coming within the legislative authority of Parliament" to the principles of equal opportunity elaborated therein.
>
> In our opinion, the statutory language of the *CHRA* is broad enough to also encompass statements made by Members in householders published and paid for by the House of Commons, pursuant to an Act of Parliament, the *PCA*. Since Parliament enacted this legislative framework, which ultimately regulates householders, it is plain that the publication and content of householders must also fall within the purview of matters coming within Parliament's legislative authority." [Emphasis mine]

(d) The doctrine of the separation of powers

[40] The last of Dr. Pankiw's arguments to shield himself from the reach of the *CHRA* turns on the doctrine of the separation of powers between the legislative and the executive branches of government. He argues this doctrine would be breached or undermined if an administrative tribunal such as the Tribunal which, he argues, is not constitutionally distinct from the executive,

were allowed to examine and decide upon the content of a Parliamentarian's communications with constituents.

[41] According to the Tribunal, the underpinning of Dr. Pankiw's argument on this point is a reference to the Supreme Court of Canada's decision in *Re Alberta Legislation* [1938] S.C.R. 100 on how Parliament functions, "it works under the influence of public opinion and public discussion. It derives its efficiency from free public discussion and "the freest and fullest analysis" and examination from every point of view of political proposals."

[42] The Tribunal stated Dr. Pankiw contended, "The expression of political views by a member of the House of Commons is political speech and should be subject only to review by the electorate through the democratic process."

[43] The thrust of his argument, according to the Tribunal, is that, "no outsider, particularly an agent of the executive branch of the State, should be able to interfere with this free and unfettered debate and exchange of ideas in the legislature." Dr. Pankiw argued, the Tribunal said, "the Government should not have any say or control over the free speech of a member of the House, particularly of the Opposition" further submitting "Allowing the review of contents of householders and other forms of Members' political speech would limit their ability to fully express their views. This, in turn, would have a chilling effect on the free and public debate of various opinions. It would also result in denying the electorate their Member's real point of view by preventing access to full and frank information required to make a completely informed decision."

[44] The Tribunal did not accept these arguments for various reasons.

[45] First, it cited the Supreme Court of Canada conclusion in *Bell Canada* v. *Canadian Telephone Employees Association* [2003] 1 S.C.R 884, that the Canadian Human Rights Tribunal "had a high degree of independence from the executive branch". The Tribunal concluded, "In our opinion, given this finding of the Supreme Court, to treat the Tribunal as an arm of "the Government" for the purposes of this case is highly questionable."

[46] Second, the Tribunal acknowledged Justice Binnie's words at paragraph 21 in *Vaid*, above, that each branch of government, (the executive, the legislative and the judicial) "is vouchsafed a measure of autonomy from the others" and "Parliamentary privilege is one of the ways in which the fundamental constitutional separation of powers is respected." [Emphasis mine]

[47] The Tribunal also quoted from Justice Binnie's words at paragraph 20 in *Vaid,* above,

> "…nor is doubt thrown by any party on the need for its legislative activities to proceed unimpeded by any external body or institution, including the courts. It would be intolerable, for example, if a Member of the House of Commons who was overlooked by the Speaker at question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker's choice of another Member of the House discriminated on some grounds prohibited by the *Canadian Human Rights Act*, or to seek a ruling from the ordinary Courts that the Speaker's choice violated the Member's guarantee of free speech under the *Charter*. These are truly matters "internal to the House" to be resolved by its own procedures…" [Emphasis mine].

[48] The balance of Justice Binnie's words in this paragraph which the Tribunal did not quote is:

> "Quite apart from the potential interference by outsiders in the direction of the House, such external intervention would inevitably create delays, disruption, uncertainties and costs which would hold up the nation's business and on that account would [page 681] be unacceptable even if, in the end, the Speaker's rulings were vindicated as entirely proper." [Emphasis mine]

[49] The Tribunal interpreted the thrust of Justice Binnie's comments as:

> "There is no doubt that statements made by a Member in the House constitutes an inherently legislative function that is subject to the immunity associated with Parliamentary privilege. No outside authority may interfere with this activity either. But as we have already stated, Parliamentary privilege does not attach to statements in householders that are distributed to constituents. In our opinion, this situation is not analogous to the example given by the Supreme Court in *Vaid*, *supra*…" [Emphasis mine]

[50] Third, nor, in the Tribunal's opinion, was the situation before it, analogous to the fact situation in the Federal Court of Appeal's decision in *Taylor* v. *Canada (Attorney General),* [2000] 3 F.C. 3, a case in which a human rights complaint under the *CHRA* had been filed against a judge of the then Ontario Court, (General Division). The judge, in that case, had allegedly ordered the complainant, who was seated in his courtroom, to remove a headdress that he wore as part of his religious practice. In the Tribunal's view, the Federal Court of Appeal in *Taylor* above held that "the principle of judicial immunity applied so as to prevent human rights proceedings against judges from being brought before the Commission and ultimately, the Tribunal. It continued "the principle of judicial immunity exists to ensure that judges can perform their duty with complete independence and free from fear."

[51] The Tribunal referred to Dr. Pankiw's submission that just as the principle of judicial independence must be protected so must that of the legislative branch. The Tribunal distinguished *Taylor* on the factual context noting the Federal Court of Appeal said "the orders

for the control of order or decorum in the court room during the course of a trial fall within the inherent jurisdiction of the court and that the judge had engaged in a purely judicial act to which judicial immunity attached" [Emphasis mine]

[52] Fourth, the Tribunal distinguished the case before it from that of *Ontario (Speaker of the Legislative Assembly)* v. *Ontario (Human Rights Commission)* (2001), 54 O.R. (3d) 595, decided by the Ontario Court of Appeal.

[53] In that case, a human rights complaint was filed with the Ontario Human Rights Commission in which it was alleged that the daily recital of the Lord's Prayer by the Speaker of the Ontario Legislature was in breach of the *Ontario Human Rights Code*. In the Tribunal's view of that case, "the issue was whether the daily recital of the Lord's Prayer was a matter inherently related to the conduct of proceedings within the legislature. The Court found this to be the case and therefore the *Code* did not apply because of the parliamentary immunity."

[54] The Tribunal concluded its ruling on this point with the following statement:

> "Finally, we would also note that although the Supreme Court in *Re: Alberta Legislation*, emphasized the importance in our democracy of maintaining free public opinion and discussion, these rights are not absolute. The Court recognized that these values are subject to legal limits, such as the provisions of the *Criminal Code* and the common law. The *Charter* and the *CHRA* equally impose legal limits on free public opinion and discussion." [Emphasis mine]

3. Analysis

(a) Standard of Review

[55] In this case, the standard of review of the Tribunal's findings is correctness. This was the standard adopted by my colleague Justice Tremblay-Lamer in *Canada (House of Commons)* v. *Vaid* [2002] 2 F.C. 583 when she reviewed the Tribunal's finding it had jurisdiction over the House of Commons and the former Speaker and it had statutory jurisdiction over the applicant.

[56] In coming to this conclusion on the standard of review, Justice Tremblay-Lamer relied upon the Supreme Court of Canada's decision in *Canada (Attorney General)* v. *Mossop*, [1993] 1 S.C.R. 554 to the effect curial deference does not extend to findings of law in which the Tribunal had no particular expertise. She also relied upon the Ontario Court of Appeal's decision in *Ontario (Speaker of the Legislative Assembly)* v. *Ontario (Human Rights Commission)*, above, where Justice Finlayson found no deference should be accorded "on an issue as fundamental as the decision of the Commission to assert jurisdiction over the activities of the Speaker."

(b) Preliminary legal observations

[57] Based on Justice Binnie's reasons in *Vaid*, above, I make the following preliminary observations which, in my view, provide the legal framework governing the analysis in this case.

[58] First, at paragraph 29.1 he wrote: "Legislative bodies created by the *Constitution Act, 1867* do not constitute enclaves shielded from the ordinary law of the land", citing from the Supreme Court of Canada's decision in *New Brunswick Broadcasting Co.* v. *Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319 at pages 370-371, "the tradition of curial deference does not extend to everything a legislative assembly might do, but is firmly attached to certain specific activities of Legislative Assemblies, i.e., the so-called privileges of such bodies", and further citing the U.K. Joint Committee on Parliamentary privilege that "privilege does not embrace and protect the

activities of individuals whether members or non-members, simply because they take place within the precincts of Parliament." [Emphasis mine]

[59] Second, at paragraph 29.3, he wrote, "Parliamentary privilege does not create a gap in the general public law of Canada but is an important part of it, inherited from the Parliament at Westminster by virtue of the preamble of the *Constitution Act, 1867* and in the case of the Canadian Parliament, through section 18 of the same *Act*."

[60] Third, at paragraph 33, he drew a distinction between inherent versus legislated privilege pointing out "However, unlike the Provinces, the Federal Parliament has an express legislative power to enact privileges which may exceed those "inherent" in the creation of the Senate and the House of Commons, although such legislated privilege must not "exceed" those "enjoyed and exercised" by the U.K. House of Commons and its Members at the date of enactment. He then cited section 18 of the *Constitution Act, 1867* and, in the next paragraph wrote, "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 privilege versus legislated privilege)" concluding "Parliamentary privilege enjoys the same constitutional weight and status as the *Charter* itself." [Emphasis mine]

[61] Fourth, he then referred to section 4 of the *PCA* stating at paragraph 35, "Parliament has conferred on the Senate and the House of Commons the full extent of privileges permitted under the Constitution. In doing so, however, our Parliament neither enumerated nor described the categories

or scope of those privileges except by general incorporation by reference of whatever privileges were "held, enjoyed and exercised by the U.K. House of Commons." [Emphasis mine]

[62] Fifth, he wrote at paragraph 36, "the main body of the privileges of our Parliament are therefore "legislated privileges" and according to section 4 of the *PCA* must be ascertained by reference to the law and customs of the U.K. House of Commons which are themselves composed of both legislated (including the *Bill of Rights of 1689*) and inherent privileges."

[63] Sixth, at paragraph 29.10, he identified the existence of categories or spheres of activity to which Parliamentary privilege relates as including freedom of speech, control by the Houses of Parliament over debates or proceedings in Parliament, disciplinary authority over members and non-members who interfere with the discharge of parliamentary duties stating, "such general categories have historically been considered to be justified by the exigencies of Parliamentary work." [Emphasis mine]

[64] Seventh, he said at paragraph 29.11, "The role of the courts is to ensure that a claim of privilege does not immunize from the ordinary law the consequences of conduct by Parliament or its officers and employees that exceeds the necessary scope of the category of privilege", concluding at paragraph 29.12, "Courts are apt to look more closely at cases in which claims of privilege have an impact on persons outside the legislative assembly than those which involve matters entirely internal to the legislature." [Emphasis mine]

[65] Eighth, in elaborating on the analytical two-step process, the first inquiry is to look whether the existence and scope of the claimed privilege "is authoritatively established (either by British or Canadian precedent) and if so, "it ought to be accepted by a Canadian court without the need for further inquiry into its necessity". This result contrasts with the situation in the Provinces where legislated privilege, without any underpinning similar to section 18 of the *Constitution Act, 1867*, would likely have to meet the necessity test." (See *Vaid*, above, at paragraph 37). [Emphasis mine]

[66] Ninth, at paragraph 38, Justice Binnie stated, "nevertheless, while section 18 of the *Constitution Act, 1867* provides that the privileges of the Canadian Parliament and its members should not "exceed" those of the U.K. our respective Parliaments are not necessarily in lock-step. It seems likely that there could be "differences" consisting of Parliamentary practices inherent in the Canadian system or legislated in relation to our own experience, which would fall to be assessed under the "necessity" test defined by the exigencies and circumstances of our own Parliament. This point would have to be explored if and when it arises for decision."

(c) Discussion and conclusions

(i) Parliamentary privilege in publications authored by an M.P.

[67] In order to decide this issue, I embark upon the required analysis. The first step asks whether the applicant, supported by the Speaker, has pointed to either British or Canadian authorities which authoritatively establish the existence of a parliamentary privilege granting a member of Parliament absolute immunity from outside review (the courts, administrative tribunals or the Crown) with

respect to the content of that member of Parliament's authorship and distribution of householders to constituents.

[68] I reiterate the disadvantage the proponents of such immunity have placed this court by not putting into the record the impugned householder or any other householder authored and distributed by Dr. Pankiw.

[69] In my view, the proponents of the existence of such immunity have failed to demonstrate such a Parliamentary privilege.

British authorities

[70] The applicant and the Speaker rely upon two British cases: *Davison* v. *Duncan* (1857) 119 E.R. 1233 at 1234 and *Wason* v. *Walter* 1868, [1861- 1873] All E.R. 1005 at 114.

[71] In my view, these two cases do not authoritatively establish the existence of a Parliamentary privilege in respect of publications authored by an M.P. and distributed to constituents. *Davison* is the lead case. Factually, this case involved a plaintiff suing for libel in connection with an article in a newspaper giving an account of what happened at a meeting of an Improvement Commission and the reporting of disparaging words spoken by some commissioners.

[72] The judges hearing the case made some remarks about the privilege which an M.P. might enjoy with respect to the sending of a copy of a speech he made in Parliament to his constituents. Those remarks were *obiter* and, moreover, the privilege referred to was not an absolute immunity

from outside review by the courts or tribunals but a qualified privilege found in defamation law. Joseph Maingot is of the view this case does not support the existence of a Parliamentary privilege with respect to the sending of householders by an M.P. to his constituents, (see his remarks at page 47 of his book under the heading "Publication for the Information of Members' Constituents"). I might add in the 23rd Edition (2004) of Erskine May's Parliamentary Practice, no reference is made to this case.

[73] The case of *Wason* v. *Walter* , above is closer to the case at hand as it concerned a libel action by an ordinary citizen who alleged he was defamed in a speech made in the House of Commons by an M.P. which was fairly and faithfully reported in the Times. The Chief Justice of the Queen's Bench Division stressed the importance of communications between an M.P. and his constituents as laying the ground work for the defence of qualified privilege in a libel action. More specifically, the Chief Justice endorsed what had been said in *Davison* v. *Duncan.* Again, this case is not one of absolute privilege in the Parliamentary context.

[74] The Report of the Joint Committee on Parliamentary privilege of the United Kingdom Parliament does not support the existence of Parliamentary immunity to correspondence between an M.P. and his constituents for two reasons: such correspondence is not in connection with "proceedings in Parliament" and the exceptional protection granted by a Parliamentary immunity should remain confined to the core activities of Parliament unless a pressing need is shown for an extension. The Joint Committee was of the view there was insufficient evidence of difficulty, at least at present, to justify so substantial in increase in the amount of Parliamentary material protected by absolute privilege (see Joint Committee Report, chapter 2, paragraphs 103 to 112).

[75] I make another point. What we are dealing here is not speech but a written publication authored by a member of the House of Commons, published by that member under the authority of the House and printed distributed free to constituents by way of public funds. The problem is analogous, in my view, to that faced by the U.K. High Court in the seminal case of *Stockdale* v. *Hansard* (1839), 112 E.R. 1112 at 185-187 where the High Court did not recognize Parliamentary privilege flowing from a resolution of the U.K. House of Commons ordering the printing of a report on prisons which had been laid on the Table of the House which the plaintiff Stockdale alleged was libelous. The court felt no Parliamentary privilege was necessary for the publication outside of Parliament of such reports. This case was countered by the enactment by the U.K. Parliament of the *Parliamentary Papers Act of 1840* which provides more generally that proceedings, criminal or civil against a person for the publication of papers by order of either House of Parliament shall immediately be stayed on the production of a certificate verified by affidavit to the effect that such publication is by order or under the authority of either House of Parliament (see, Erskine May at page 100). The *PCA* has enacted a similar legislated privilege in section 7 of that *Act*.

Canadian authorities

[76] Turning now to a consideration of the Canadian authorities, counsel for the proponents of the immunity could not cite a case directly on point which authoritatively established an absolute immunity from court or tribunal review of allegedly disparaging remarks contained in a householder distributed by a federal legislator.

[77] By analogy, counsel relies on the case of *Roman Corp. Ltd. et al*. v. *Hudson's Bay Oil & Gas Co. Ltd. et al*. [1973] S.C.R. 820, affirming the Ontario Court of Appeal's decision reported at (1971) 23 D.L.R. (3d) 292 upholding Justice Holden's trial decision reported at (1971) 18 D.L.R. (3d) 134. *Roman Corp*. had sued the Prime Minister of Canada and the Minister of Energy, Mines and Resources for inducing breach of contract, conspiracy to injure, intimidation and unlawful interference with economic interests grounded on statements made in the House of Commons by both of them and replicated at length in a telegram sent by the Prime Minister to the plaintiff and additionally grounded on a press release issued by the Minister which, in effect, reflected substantially what he had said in the House of Commons on two previous occasions.

[78] At trial, Justice Holden ruled the telegram and press release, although not communications made within the walls of the House of Commons, enjoyed the same privilege as if made in that chamber because they were only extensions of the statements made by the Prime Minister and Minister falling therefore within that privilege. The result was the paragraphs in the statement of claim referring to the statements in the press release and the telegram were struck. Specifically, Justice Holden relied upon the Privy Council's decision in *A.-G. Ceylon* v. *de Livera* [1963] A.C. 103 which concerned the interpretation of what constituted "acting in the capacity" of a member of the House of Representatives of Ceylon.

[79] In the Court of Appeal, Justice Aylesworth upheld Justice Holden's reasoning and his reliance upon the *A.-G. Ceylon* case. In his view, the issue turned on what is a "proceeding in Parliament" and he quoted with approval the following statements made by Viscount Radcliffe, at page 120 of the reported case:

> "The words used in the Ceylon Bribery Act "in his capacity as such" have not presented themselves in that form to the House of Commons, although it is likely that they are themselves an echo of some words that appear in Erskine May's Parliamentary Practice (see, for instance, the current 16th edition of Erskine May, at pp.122, 124). What has come under inquiry on several occasions is the extent of the privilege of a member of the House and the complementary question, what is a "proceeding in Parliament"? This is not the same question as that now before the Board, and there is no doubt that the proper meaning of the words "proceedings in Parliament" is influenced by the context in which they appear in article 9 of the Bill of Rights (1 Wm. & M., Sess. 2, c.2); but the answer given to that somewhat more limited question depends upon a very similar consideration, in what circumstances and in what situations is a member of the House exercising his "real" or "essential" function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely with a members' true function."
>
> and again at p. 121:
>
> "The most, perhaps, that can be said is that, despite reluctance to treat a member's privilege as going beyond anything that is essential, it is generally recognized that it is impossible to regard his only proper functions as a member as being confined to what he does on the floor of the House itself." [Emphasis mine]

[80] Justice Aylesworth concluded "As members of the Cabinet, the respondents Trudeau and Greene are necessarily members of either of the House of Parliament with greatly enlarged functions and duties and such privileges as apply to the ordinary Member of the House apply equally to them." He continued "In my view, both of them were respectively discharging those "essential functions", referred to by Viscount Radcliffe, in the dispatch of the telegram and in the press release in the former instance Trudeau was making good his word to the appellant Roman that the plaintiff would be informed of the guidelines to be decided by the Government as announced in the House the same day; in the press release the respondent Greene was announcing publicly, and for the benefit of the public, the guidelines implementing Government policy as previously announced in the House. Accordingly, the actions of both respondents in this regard fell with "proceedings in Parliament"".

[81] In the Supreme Court of Canada, that court decided the case on grounds other than privilege "without dissenting from the views expressed in the courts below as to the privilege attached to statements made in Parliament."

[82] The *Roman* case was relied on by the defendant Ouellet in the case of *re Ouellet No. 1* (1976) 67 D.L.R. (3d) 73, where the Minister of Consumer and Corporate Affairs had been held in contempt by a judge of the Superior Court of Québec for remarks the Minister made about him to two reporters. That judge had issued an order for committal for criminal contempt the validity of which was contested by the Minister in a proceeding which was decided by Associate Chief Justice Hugessen, then of the Superior Court of Québec, who held that the absolute privilege enjoyed by a member of Parliament with respect to "proceedings in Parliament" did not extend to slanderous words spoken to a journalist outside the walls of the Chamber itself in the outer Government lobby, and the federal cabinet Minister was liable for contempt of court for words spoken in such circumstances if they constitute contempt. He ruled the absolute privilege enjoyed by members of Parliament is to protect the function of Parliament, but that function does not require that press conferences given by members be regarded as protected from legal liability.

[83] Associate Chief Justice Hugessen noted absolute privilege "is a drastic denial of the right of every citizen who believes himself wronged to have access to the courts for redress and should not be lightly or easily extended." He continued by writing, "It is not the precinct of Parliament that is sacred, but the function and that function has never required that press conferences given by members should be regarded as absolutely protected from legal liability." [Emphasis mine]

[84] Of the *Roman* case, he noted that the Supreme Court of Canada "expressly refrained from either agreeing or disagreeing with the views expressed by the Ontario Court of Appeal and the trial judge." He commented the *Roman* case:

> "Can be easily distinguished from the case at bar. As appears from the reports, the defendants Trudeau and Greene were doing no more, outside the House of Commons, than repeating and giving effect to a government policy which had previously been announced inside the House. Nothing of the sort obtains here as the evidence indicates that the respondent was simply giving an interview to a journalist on a matter of public interest …. There is nothing in the evidence to indicate that the matter had been discussed in the House of Commons or that there had been any previous announcements of government policy. Assuming that the pronouncements of the Ontario Courts above cited are good law, I would not be prepared to extend them to every statement made by any member to the press on any matter whatsoever." [Emphasis mine]

[85] He said the opinion that the views expressed by the Ontario Courts "give me great difficulty" for the reason they did not discuss or mention certain decisions and appear to run contrary to the *Stockdale* case, above. He made reference to the *de Livera* case, above and stated reference to it "is misleading for that decision dealt with a statute which made it an offence to offer a bribe to a member "in his capacity as such member" and that the Privy Council "expressly recognized that the question of what are "proceedings in Parliament", though clearly related, is a narrower one than that as to the functions or capacities of a member of Parliament as such." He concluded with the following words "Indeed it could hardly be otherwise. A member of Parliament is clearly fulfilling his function as a member when he visits with or receives his constituents, opens fund drives, presides at local meetings, or carries out a number of other tasks but to pass from that proposition to the statement that all these activities are proceedings in Parliament is a step that I am not prepared to take. Indeed it has been held that a provincial Premier who addresses a meeting of party-supporters does not even enjoy a qualified privilege." [Emphasis mine]

[86] Justice Hugessen's decision was reviewed by the Québec Court of Appeal in *Ouellet (Nos. 1 and 2)* (1976) 72 D.L.R. (3d) 95.

[87] Chief Justice Tremblay upheld Justice Hugessen's decision. He distinguished the *Roman* case which he characterized as one where "the plaintiff was appealing statements made by the Prime Minister of Canada and another Minister of the Crown in the Chamber announcing the intention of the government to propose legislation for the purpose of stopping the completion of a transaction … as well as a telegram sent repeating the statement. He concluded by stating he could not admit the statement uttered outside the chamber constitutes "proceeding in Parliament"".

[88] I cite the decision of Justice Evans, Chief Justice of the High Court of Justice of Ontario in *re Clark et al. and the Attorney-General of Canada* (1997) 81 D.L.R. (3d) 33 a case in which the applicants, all members of the then Federal Progressive Conservative Party, brought an application in the Supreme Court of Ontario seeking a number of declarations with respect to the *Uranium Information Security Regulations* (the Regulations) promulgated under the *Atomic Energy Control Act*. One of the issues in that case was whether, as members of Parliament, they could release to the media and to constituents information covered by the *Regulations*. One of the declarations sought was that the *Regulations* do not prohibit the applicants or any member of the House of Commons from releasing or disclosing any such documents in the course and in furtherance of Parliamentary debate.

[89] In that case, counsel for the applicants argued the members of Parliament were entitled to release the information to the press and members have the right to release the information to their constituents. Chief Justice Evans rejected those arguments. He stated:

> "The privilege of the Member is finite and cannot be stretched indefinitely to cover any person along a chain of communication initiated by the member. The privilege stops at the press. Once the press have received the information, the onus falls on them to decide whether to publish. They cannot claim immunity from prosecution on the basis of the Parliamentary privilege which protects the member releasing the information. Whether they have a valid defence under the *Regulations* is another matter. Finally, the member does not have the right to release the information to anyone he chooses outside of Parliament. The concept of "proceedings in Parliament" cannot be extended beyond all logical limits. I am not satisfied the privilege enables the member to release the information to his constituents. The concept of "proceedings in Parliament" cannot be extended to cover the information function of a member. This is consistent with the ruling of the House of Commons in the *Official Secrets Act*." [Emphasis mine]

[90] In coming to this conclusion, Chief Justice Evans stated he had considered the U.K. authorities and the decision of the Courts in *Roman Corp. Ltd*, above, noting that Justice Holden quoted from 28 Hals (3rd edition, at pages 457 -458) that an exact and complete definition of "proceedings in Parliament" has never been given by the courts of law or by either House and the comment made by Justice Aylesworth to the effect "that the modern judicial concept of the meaning and application of the phrase "proceedings in Parliament" is broader than had been the case in some instances in the past." If this be so, according to Chief Justice Evans, "certainly there would appear to be ample justification for it in the development of the complexities of modern government and in the development and employment in government business of greatly extended means of communication." He noted Justice Aylesworth's comments that "both Messers Trudeau and Greene were discharging their "essential functions" in making the statement to the media and in sending the telegram."

[91] In coming to the conclusion that the privilege of the member cannot be extended to information sent to constituents, the basis for his doing so was that he did not consider that "the real and essential functions of a member include a duty or right to release information to constituents" adding "the cases indicate that the privilege is finite and I would not be justified in extending the privilege to cover information released to constituents." [Emphasis mine]

[92] I conclude the applicant and the Speaker have failed to point to any authoritative recognition of the existence of any parliamentary privilege with respect to the contents of householders authored by an M.P. of the Canadian House of Commons and distributed to constituents. In the circumstances, I must engage in step two of the analysis to determine whether such immunity can be justified by the doctrine of necessity in the modern world in order to protect and ensure the ability of a federal legislator to vigorously do his/her job. I conclude such necessity has not been demonstrated for the following reasons.

[93] First, counsel for the applicant and the Speaker invoked the principle of democracy, the doctrine of the separation of powers, free political speech and section 2(b) of the *Charter* in support of his argument the tribunal lacked jurisdiction with respect to the content of householders. In my view, in a very real sense, the arguments advanced in respect of those issues tend to be the same as would support those in favor of finding necessity justifies the claimed privilege. As will be seen, I have determined those arguments have failed. I conclude necessity for an absolute immunity is not justified by the principles or doctrines of democracy, separation of powers, free political speech or section 2(b) of the *Charter*.

[94] Second, from the reasons for judgment of then associate Chief Justice Hugessen in *Ouellet No. 1* and those of Chief Justice Evans in *Clark*, above, it cannot be said the sphere of activity, the authorship and distribution of a householder by an M.P. to his constituents, as stated by the British Joint Committee Report on Parliamentary Privileges and adopted by Justice Binnie in *Vaid*, above, at paragraph 44 is so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly.

[95] Third, neither the House of Commons at Westminster nor its counterpart in Ottawa has considered absolute immunity over communications to constituents is necessary for the performance of legislative duties. If such had been the case, section 7 of the *PCA* might have been amended to protect this sphere of activity via the statutory stay provided in subsection 7(3).

[96] Fourth, further evidence of lack of necessity to immunize the content of householders from review by the courts or the Canadian Human Rights Tribunal flows from the fact that when the PCA was amended in 1991 to enhance the statutory scheme related to the Board first established in 1985, the application of the *CHRA* which was enacted in 1977 was not excluded.

[97] Fifth, the proponents of the claimed privilege in this case refer to certain House of Commons proceedings involving householders where issues surrounding householders had been raised by members in that House. In particular, counsel for the proponents relies on the Ontario Court of Appeal's decision in *The Honourable John Manley, in his capacity as Member of Parliament for*

Ottawa South, v *Telezone Inc. et al*. (2004) 69 O.R. (3d) 161 where Justice MacPherson looked favorably to rulings made by Speakers of legislative chambers in matters of the scope of Parliamentary privileges as follows:

> "The views of the two Speakers are not binding on this court. However, given the experience and high reputation of these two parliamentarians, and in the context of a legal dispute that centres on the definition of a parliamentary privilege, it seems obvious that their careful and considered rulings should be accorded substantial respect. I do so."

[98] As mentioned, the affidavit of Robert R. Walsh, Law Clerk and Parliamentary counsel of the House of Commons at paragraphs 7 and 8 refers to six instances where points of privilege had been raised in the House of Commons during 2005 alleging breaches of privilege relating to the franking privilege, householders and ten percenters and that in all cases, the Speaker determined that a *prima facie* case of breach of privilege was established with the result that, in four instances, the matter was referred in the usual manner to the House of Commons Standing Committee on Procedure and House Affairs for further consideration. He also refers to the Speaker's ruling on February 15, 2005 resolving the issue without referral to a Committee and, lastly, on the sixth point of privilege, raised on November 3, 2005, which related to the content of a particular householder, the matter was debated in the House over four sittings.

[99] In addition, the intervener's record contained extracts of the journals of the House of Commons and the February 15, 2005 debates of the House of Commons.

[100] I examined the material put forward by the Speaker and make these observations:

- The Speaker's ruling on February 15, 2005 concerned a ten percenter and the contention that its distribution was not authorized by the appropriate Member of Parliament in terms of printing and franking;

- On November 3, 2005 the Speaker issued a ruling finding a *prima facie* breach of privilege on a question raised by a Minister of the Crown concerning mailings of householders into his riding by several members of an opposition party. The Minister of the Crown claimed that these householders sent into his riding contained false allegations;

- The question of privilege raised on March 21, 2005 by an M.P. concerned a householder sent into his riding by an opposition party and whether the householder in question conformed to the guidelines regarding the content of householders and ten percenters;

- The Speaker also referred to two questions of privilege raised on May 3, 2005 concerning a householder which the M.P. had sent to constituents but into which had been inserted a reply card that appeared to have been sent as a ten percenter by another member as well as another complaint related to a question of privilege regarding franked mailing his constituents had received from a member in a neighborhood riding.

[101] I cannot conclude from these Speaker's rulings that the House of Commons has asserted jurisdiction over the content of householders and has provided a remedy to an individual, not an M.P., who was aggrieved by what was printed.

[102] Finally, any delays, disruption and uncertainties caused by external intervention by a hearing before a Tribunal is minimized by the existence of other Parliamentary privileges such as no issuance of subpoenas against a member during a Parliamentary session.

(ii) Democracy, separation of powers and free political speech

[103] Counsel for the applicant and the Speaker made a forceful over-arching argument the Tribunal's jurisdiction to hear and determine complaints relating to members of Parliament carrying out their Parliamentary function in publishing and distributing householders to constituents would offend the principle of democracy in the Canadian Constitution in the context of an M.P.'s role in the House of Commons in the fulfillment of that democracy which is necessarily anchored or based

on: (1) The necessity of free political speech and the cardinal role played by the electorate in regulating political speech, except speech that is criminal in nature and (2) The necessary separation of the Crown (the executive and its agencies, commissions and tribunals) and the courts from the role and functions of Members of Parliament and (3) The application of section 2(b) of the *Canadian Charter of Rights and Freedoms*, (the Charter).

[104] As I see it, this argument rests on two distinct propositions: (1) The application and scope of the doctrine of the separation of powers in Canadian democracy; and (2) The importance of free political speech and its recognized limits.

[105] In my view, these two arguments are necessarily linked to a number of elements, the first of which is the discussion about the scope and existence of Parliamentary privilege because the very purpose of Parliamentary privilege with the absolute immunity conferred from interference by the other branches of government is to provide the legislators in a Parliamentary democracy a necessary level of autonomy in order that those legislators can do their legislative work in dignity and with efficacy.

[106] Justice Binnie, in *Vaid* above, clearly stated at paragraph 21 that “each of the three branches of the State is vouchsafed a measure of autonomy”, and Parliamentary privilege is one of the ways “in which the fundamental constitutional separation of powers is respected.” In other words, as Justice Binnie stated, the immunity provided by Parliamentary privilege is designed to protect the legislative function i.e., give the legislators in a Parliamentary democracy their required independence and exclusive jurisdiction to deal with issues arising from the recognized scope of

categories of privileges based on the doctrine of necessity in order to shield the House of Commons and its members from the application of the ordinary laws governing the resolution of disputes.

[107] In this context, the Supreme Court of Canada in *Vaid* and other courts have stressed the impact which Parliamentary privilege has on strangers to the House if the application of Parliamentary privilege affects those persons. This is so because Parliamentary privilege is absolute and immunizes any relief which the ordinary law would provide to a stranger to the House who asserts to have been injured by Parliamentary conduct. In this case before me, the nine complainants would be stripped of the prohibitions against discrimination which the CHRA contains, as well as the remedies it provides if Dr. Pankiw's authorship and distribution to constituents of his October, 2003 householder breaches the statute.

[108] I add that Viscount Radcliffe in *de Livera*, above focused on the real and essential functions of a member in consideration of "the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others" and because of this "it is important to see that those liberties do not cover activities that are not squarely within a member's true functions." [Emphasis mine]

[109] Another contextual factor is the status which the *CHRA* has attained. As stated at paragraph 81 of *Vaid* above, the *CHRA* is a quasi-constitutional document and "we should affirm that any exemption from its provisions must be clearly stated", and in terms of the application of the *CHRA* to employees of Parliament, examining the language of section 2 of that *Act* there is no indication that it was not intended to extend to employees of Parliament and in the words of Justice

Binnie "there is no reason to think that Parliament "intended" to impose human rights obligations on every federal employer except itself."

[110] Finally, there is a linkage between Parliamentary privilege with its recognized category of freedom of speech and the guarantee of freedom of expression in section 2(b) of the *Charter*. In *New Brunswick Broadcasting Co*. above, the Supreme Court of Canada held "the press freedom guaranteed by section 2(b) of the *Charter* did not prevail over Parliamentary privilege which was held to be as much part of our fundamental constitution arrangements as the *Charter* itself. In matters of privilege, it would lie within the exclusive competence of the Legislative Assembly itself to consider compliance with human rights and civil liberties…" see paragraph 30 of *Vaid*, above. [Emphasis mine]

[111] Based on the contextual factors identified above, I cannot agree with the argument advanced by the counsel for the applicant and the Speaker that permitting the Tribunal to examine the complaints in respect to the contents of Dr. Pankiw's householders would infringe the principles of democracy, separation of power and freedom of expression not justified under section 1 of the *Charter* for the following reasons.

[112] First, it is settled law that Canada's constitutional democracy operates with a respectful eye to the principle of the separation of powers which, in terms of the independence of the House of Commons and its members, finds its enforcement mechanism in the recognition of the existence and scope of the Parliamentary privilege related to free speech whose manifestation was expressed, in the U.K., in the *Bill of Rights, 1689* and , in Canada, in this case, in the legislated privilege enacted

under section 7 of the *PCA* related to civil or criminal proceedings based on the publication of "any report, paper, votes or proceedings by or under the authority of the Senate or the House of Commons." I repeat my concern here that the court was not informed of the content of the householder in question or given any evidence on other householders.

[113] In my view, the doctrine of the separation of powers would not be infringed by having the Tribunal review the householder in question. I say this because I have determined there is no judicial authority recognizing the existence of Parliamentary immunity over constituent information sent by an M.P. nor would the existence of such immunity be necessary for the proper functioning of the deliberative and legislative activities of a member of Parliament.

[114] Moreover, householders are not covered by the legislated privilege created under section 7 of the *PCA.* If it had been so, the Speaker would have issued a certificate which would have stayed the Tribunal's investigation. This is the view expressed by Mr. Maingot at page 74 of his book, above.

[115] Second, having found no Parliamentary privilege to immunize the Tribunal's investigation of the householder in question, there is therefore scope for the operation of section 2(b) of the *Charter* which would not be the case if the householder had been covered by Parliamentary privilege. The question then is whether the Tribunal's jurisdiction to investigate complaints violates the guarantee of section 2(b) of the *Charter* which provides for the fundamental freedom of "thought, belief, opinion and expression, including freedom of the press and other media of communication."

[116] There can be no doubt freedom of expression is the lifeblood of a democratic constitution such as Canada's. This proposition has been recognized many times by our highest courts and I need only refer to the decision of the Supreme Court of Canada in Re *Alberta Legislation*, above, where Chief Justice Duff stated:

> "…. The statute contemplates a parliament working under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is signally true in respect of the discharge by Ministers of the Crown of their responsibility to Parliament, by members of Parliament of their duty to the electors, and by the electors themselves of their responsibilities in the election of their representatives."

[117] Having said this, there is always a balance to be achieved because there are limits to free political speech. At the same page, Chief Justice Duff continued by writing as follows:

> "The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and other conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned. In a word, freedom of discussion means, to quote the words of Lord Wright in *James* v. *Commonwealth* "freedom governed by the law" and [Emphasis Mine]

Chief Justice Duff closed with the following words:

> "Even within its legal limits, it is liable to abuse and grave abuse, and such abuse is constantly exemplified before our eyes, but it is axiomatic that the practice of this right of free public discussion of public affairs notwithstanding its incidental mischief the breath of life for Parliamentary Institutions."

[118] Our highest court, before and after the advent of the Charter, always recognized the wide scope to be given to the concept of freedom of expression particularly free political speech but always within recognized limits. I cite the following cases:

- *Switzman* v. *Elbling* [1957] SCR 285, concerning the Padlock Law enacted by the Québec Legislature. The Supreme Court of Canada found the law *ultra vires* of the legislative powers of the province under section 92 of the *British North America Act.* Several of the judges took the opportunity to comment on the importance of political expression in Parliamentary democracy and that this constitutional fact had to be balanced within certain limits. Rand, J. held "the body of discussion is indivisible apart from the incident of criminal law and civil rights and incidental effects of legislation in relation to other matters, the degree and nature of its regulation awaiting future consideration." (see page 307) and Abbott J. emphasizing the importance of political speech going so far that Parliament itself could not abrogate the right of discussion and debate and that that power of Parliament to limit it was restricted to such powers as may be exercised under its exclusive legislative jurisdiction with respect to criminal law and to make laws the for the peace, order and good government of the nation.
- *R v. Keegstra* [1990] 3 S.C.R. 697 a case involving a provision of the *Criminal Code* prohibiting the willful promotion of hatred against identifiable groups. The court held this activity was protected by section 2(b) of the *Charter* on the basis that it was an activity which conveyed or attempted to convey a meaning through a non-violent form of expression and therefore constituted expressive content and fell with the scope of the word "expression" as found in the guarantee under section 2(b) of the *Charter*. However, the *Criminal Code* prohibition constituted a reasonable limit upon the freedom of expression therefore justified under section 1 of the *Charter* meeting the three-part test in *R.* v. *Oakes* [1986] 1 S.C.R. 103.

- *Canada (Human Rights Commission)* v. *Taylor* [1990] 3 S.C.R. 892 released the same day as *Keegstra*, above. The Supreme Court of Canada upheld the constitutionality of section 13(1) of the *CHRA* prohibiting telephone messages likely to expose a person or a group of persons to hatred or contempt. It reasoned in a fashion similar to *Keegstra*, above, holding the messages fell within the meaning of the word "expression" in section 2(b) of the *Charter* but that the prohibition in subsection 13(1) constituted a reasonable limit justified in a free and democratic society.
- *R*. v. *Sharpe* [2001] 1 S.C.R. 45, a case involving an accused who was charged with two counts of possession of child pornography under a provision of the *Criminal Code*. In this case, the Crown conceded that the provision infringed section 2(b) of the *Charter* but argued the infringement was justifiable under section 1 of the *Charter*. The Supreme Court agreed and the charges were remitted for trial.
- *Harper* v. *Canada (Attorney General)* [2004] 1 S.C.R. 827 which concerned third party spending provisions under the *Canada Elections Act*. The Supreme Court was unanimous in finding that these provisions violated political speech guaranteed by section 2(b) of the *Charter*. Both the judgement written by the Chief Justice and the one written by Justice Bastarache for the majority emphasized the importance of political speech. The Chief Justice wrote that "political speech was the single most important and protected type of expression and lies at the core of the guarantee of free expression." Bastarache J. held that third party advertising was political expression and quoting the Chief Justice in *Keegstra*, above reiterated that the connection between freedom of expression and the political process was perhaps the lynch pin of the section 2(b) guarantee and the nature of this connection was largely derived from Canadian

commitment to democracy. Where the minority and majority split was whether the advertising limit was justifiable under section 1 the majority so finding.

(iii) The exclusive jurisdiction of the Board of Internal Economy

[119] I do not accept the argument put forward by counsel for the applicant and the Speaker that the exclusive authority of the Board of Internal Economy "to determine whether any previous, current or proposed use by a member of the House of Commons of any funds, goods, services or premises made available to that member for the carrying out of Parliamentary functions is or was proper" ousts the tribunal's jurisdiction over the content of householders. I reach this conclusion for the following reasons.

[120] First, the cases of *Bernier* and *Fontaine*, above, decided in the first one by the Ontario Court of Appeal and in the second one by the Québec Court of Appeal are on point. Those cases decided that the Board's exclusive jurisdiction to determine the proper use of funds did not oust the criminal jurisdiction of the courts of common law. The two courts held that the functions of the Board did not overlap with those of the court since the authority of the Board was limited to determine, from an administrative and financial perspective, whether the use of funds by an M.P. was proper in light of the Board's Bylaws. By analogy, it is clear the functions of the Tribunal is different than that of the Board. The Tribunal examines whether discrimination has occurred in certain specified situations and, if so, provides a remedy. (see, in particular, paragraph 34 in *Fontaine*, above).

[121] Second, the administrative scheme provided for under the *PCA* in terms of the Board's powers and remedies does not compare at all to the statutory scheme related to *PESRA* the Supreme Court of Canada had before it in Vaid. In particular:

> 1. The *PCA* does not confer upon the Board jurisdiction over the complainants but rather its only jurisdiction is over a member of the House of Commons and the staff of the House (see, section 52.3 of the *PCA*);
>
> 2. The *PCA* does not apply to the subject-matter of the complaints filed with the Commission and referred by it to the Tribunal. Those complaints relate to the content of Dr. Pankiw's householder and the allegation is that some or part of the content of that householder was discriminatory;
>
> 3. The Board cannot provide an adequate remedy to the complainants. If Dr. Pankiw breached the privileges of the House, and in particular, bylaw 102, it would appear the only remedy the House may provide is in respect of him as a member, (see, Appendix C, bylaw 102, paragraph 8- contravention).

[122] I conclude that the *PCA* nor the Board's Bylaws oust the investigative and dispute resolution machinery of the *Canadian Human Rights Act* on the facts of this case.

(iv) Is the sending of a householder a "service" as contemplated by the Statute?

[123] The issue of whether the distribution of a householder is a "service" under sections 5 and 14 of *CHRA* or falls within its section 12 was raised in the applicant and the Speaker's notice of motion. At the hearing of the motion, the Tribunal indicated that it would first deal with the House

of Common's arguments on privilege, separation of powers and freedom of expression and that the arguments on whether the complaints fall under sections 5, 12 or 14 would be dealt with at a later stage.

[124] I agree with counsel for the Commission, the argument put before the court by the applicant and the Speaker is premature in that there is no ruling on this issue and there is nothing for this court to review at this stage. I agree with his suggestion this argument should be dismissed on the basis of prematurity and can be raised at a subsequent stage by any of the parties before the Tribunal.

(v) Do Dr. Pankiw's activities fall within the scope of the CHRA?

[125] Dr. Pankiw did not strongly press the argument that his activities do not fall within the scope of the *CHRA*.

[126] I agree with the Tribunal's reasoning based on section 2 of the *CHRA* which provides that the purpose of that *Act* is to give effect, "within the purview of matters coming within the legislative authority of Parliament" to the principles of equal opportunity elaborated therein and that the statutory language of the *CHRA* is broad enough to encompass statements made by members in householders published and paid for by the House of Commons, pursuant to an Act of Parliament, the *PCA*.

JUDGMENT

This judicial review application is dismissed with costs payable by the applicant and the intervener to the Respondent in a manner allocated between them by agreement, or in the event of a dispute on such allocation, in a manner determined by the Court.

Judge

APPENDIX A

Canadian Human Rights Act
R.S., 1985, c. H-6

PURPOSE

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as Members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1; 1998, c. 9, s. 9.

DISCRIMINATORY PRACTICES

Denial of good, service, facility or accommodation

5. It is a discriminatory practice in the provision of goods, services, facilities or

Loi canadienne sur les droits de la personne, R.S., 1985, c. H-6

OBJET

2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.

L.R. (1985), ch. H-6, art. 2; 1996, ch. 14, art. 1; 1998, ch. 9, art. 9.

ACTES DISCRIMINATOIRES

Refus de biens, de services, d'installations ou d'hébergement

5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le

accommodation customarily available to the general public

(*a*) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(*b*) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

1976-77, c. 33, s. 5.

fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :

a) d'en priver un individu;

b) de le défavoriser à l'occasion de leur fourniture.

1976-77, ch. 33, art. 5.

Publication of discriminatory notices, etc.

12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that

(*a*) expresses or implies discrimination or an intention to discriminate, or

(*b*) incites or is calculated to incite others to discriminate

if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5

Divulgation de faits discriminatoires, etc.

12. Constitue un acte discriminatoire le fait de publier ou d'exposer en public, ou de faire publier ou exposer en public des affiches, des écriteaux, des insignes, des emblèmes, des symboles ou autres représentations qui, selon le cas :

a) expriment ou suggèrent des actes discriminatoires au sens des articles 5 à 11 ou de l'article 14 ou des intentions de commettre de tels actes;

b) en encouragent ou visent à en encourager l'accomplissement.

1976-77, ch. 33, art. 12; 1980-81-82-83, ch. 143, art. 6.

to 11 or in section 14.

1976-77, c. 33, s. 12; 1980-81-82-83, c. 143, s. 6.

Hate messages

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

(3) For the purposes of this

Propagande haineuse

13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.

Interprétation

(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.

Interprétation

(3) Pour l'application du présent article, le propriétaire

section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

R.S., 1985, c. H-6, s. 13; 2001, c. 41, s. 88.

Harassment

14. (1) It is a discriminatory practice,

(*a*) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(*b*) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

Sexual harassment

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of

ou exploitant d'une entreprise de télécommunication ne commet pas un acte discriminatoire du seul fait que des tiers ont utilisé ses installations pour aborder des questions visées au paragraphe (1).

L.R. (1985), ch. H-6, art. 13; 2001, ch. 41, art. 88.

Harcèlement

14. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;

b) lors de la fourniture de locaux commerciaux ou de logements;

c) en matière d'emploi.

Harcèlement sexuel

(2) Pour l'application du paragraphe (1) et sans qu'en soit limitée la portée générale, le harcèlement sexuel est réputé être un harcèlement fondé sur un motif de

discrimination.

1980-81-82-83, c. 143, s. 7.

distinction illicite.

1980-81-82-83, ch. 143, art. 7.

APPENDIX B

Parliament of Canada Act, R.S., 1985, c. P-1	Loi concernant le Parlement du Canada, 1985, c. P-1
Privileges, Immunities and Powers	Privilèges, immunités et pouvoirs
Definition	Nature
Parliamentary privileges, immunities and powers 4. The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise	Sénat, Chambre des communes et leurs membres 4. Les privilèges, immunités et pouvoirs du Sénat et de la Chambre des communes, ainsi que de leurs membres, sont les suivants :
(a) such and the like privileges, immunities and powers as, at the time of the passing of the Constitution Act, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and	a) d'une part, ceux que possédaient, à l'adoption de la Loi constitutionnelle de 1867, la Chambre des communes du Parlement du Royaume-Uni ainsi que ses membres, dans la mesure de leur compatibilité avec cette loi;
(b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.	b) d'autre part, ceux que définissent les lois du Parlement du Canada, sous réserve qu'ils n'excèdent pas ceux que possédaient, à l'adoption de ces lois, la Chambre des communes du Parlement du Royaume-Uni et ses membres.
R.S., c. S-8, s. 4.	S.R., ch. S-8, art. 4.
Judicial notice 5. The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general	Admission d'office 5. Ces privilèges, immunités et pouvoirs sont partie intégrante du droit général et public du Canada et n'ont pas à être

and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially.

R.S., c. S-8, s. 5.

démontrés, étant admis d'office devant les tribunaux et juges du Canada.

S.R., ch. S-8, art. 5.

Printed copy of journals

6. On any inquiry concerning the privileges, immunities and powers of the Senate and the House of Commons or of any member of either House, any copy of the journals of either House, printed or purported to be printed by order thereof, shall be admitted as evidence of the journals by all courts, justices and others, without proof that the copy was printed by order of either House.

R.S., c. S-8, s. 6.

Preuve

6. Dans le cadre d'une enquête sur les privilèges, immunités et pouvoirs du Sénat et de la Chambre des communes, ou de l'un de leurs membres, un exemplaire des journaux de l'une des deux chambres, imprimé ou réputé l'être sur ordre de l'une ou l'autre, est admis en justice comme preuve de l'existence de ces journaux, sans qu'il soit nécessaire de prouver qu'il a été imprimé sur un tel ordre.

S.R., ch. S-8, art. 6.

Publication of Proceedings

Publication de documents

Proceedings based on published report

7. (1) Where any person is a defendant in any civil or criminal proceedings that are commenced or prosecuted in a court in any manner for, on account of or in respect of the publication of any report, paper, votes or proceedings, by that person or the servant of that person, by or under the authority of the Senate or the House of Commons, that person may bring before the court or any judge thereof, after twenty-four hours notice of intention to do so given in

Poursuites fondées sur un document officiel

7. (1) Le défendeur dans une affaire civile ou pénale résultant de la procédure intentée et poursuivie de quelque façon que ce soit en relation directe ou indirecte avec la publication, par lui-même ou son préposé, d'un document quelconque sous l'autorité du Sénat ou de la Chambre des communes peut, après préavis de vingt-quatre heures donné conformément au paragraphe (2), produire devant le tribunal saisi de l'affaire — ou l'un de ses juges — outre un affidavit l'attestant, un certificat

accordance with subsection (2), a certificate

:

(a) given under the hand of the Speaker or the Clerk of the Senate or the House of Commons, and

a) signé du président ou du greffier du Sénat ou de la Chambre des communes;

(b) stating that the report, paper, votes or proceedings were published by that person or servant, by order or under the authority of the Senate or the House of Commons, together with an affidavit verifying the certificate.

b) affirmant que le document en question a été publié par le défendeur ou son préposé, sur l'ordre ou sous l'autorité du Sénat ou de la Chambre des communes.

Notice of intention
(2) The notice of intention referred to in subsection (1) shall be given to the plaintiff or prosecutor in the civil or criminal proceedings or to the attorney or solicitor of the plaintiff or prosecutor.

Préavis
(2) Le préavis prévu par le paragraphe (1) est donné à la partie adverse, directement ou par l'intermédiaire de son procureur.

Stay of proceedings
(3) On the bringing of a certificate before a court or judge in accordance with subsection (1), the court or judge shall immediately stay the civil or criminal proceedings, and those proceedings and every writ or process issued therein shall be deemed to be finally determined and superseded by virtue of this Act.
R.S., c. S-8, s. 7.

Arrêt des procédures
(3) Dès la production du certificat visé au paragraphe (1), le tribunal ou le juge arrête les poursuites; celles-ci ainsi que tous les actes de procédure y afférents sont dès lors réputés éteints ou annulés de par l'application de la présente loi.

S.R., ch. S-8, art. 7.

Proof of correctness of copy
8 (1) Where any civil or criminal proceedings are commenced or prosecuted in a court for, on account of or in

Authenticité de l'original et de la copie
8. (1) Dans les cas où la publication du document visé au paragraphe 7(1) fait

respect of the publication of any copy of a report, paper, votes or proceedings referred to in subsection 7(1), the defendant, at any stage of the proceedings, may bring before the court, or any judge thereof, the report, paper, votes or proceedings and the copy, together with an affidavit verifying the report, paper, votes or proceedings and the correctness of the copy.

directement ou indirectement l'objet d'une poursuite civile ou pénale, le défendeur peut, à tout stade, produire en justice le document original ainsi qu'un exemplaire de celui-ci accompagné d'un affidavit certifiant l'authenticité de l'original et la conformité de la copie.

Stay of proceedings

(2) On the bringing before a court or any judge thereof of any report, paper, votes or proceedings and a copy thereof with affidavit in accordance with subsection (1), the court or judge shall immediately stay the civil or criminal proceedings, and those proceedings and every writ or process issued therein shall be deemed to be finally determined and superseded by virtue of this Act. R.S., c. S-8, s. 8.

Arrêt des procédures

(2) Sur production de l'original et de la copie certifiés par affidavit, le tribunal ou le juge arrête les poursuites; celles-ci ainsi que tous les actes de procédure y afférents sont dès lors réputés éteints ou annulés de par l'application de la présente loi.

S.R., ch. S-8, art. 8.

Proof in action for printing extract or abstract

9. In any civil or criminal proceedings commenced or prosecuted for printing an extract from or abstract of any report, paper, votes or proceedings referred to in subsection 7(1), the report, paper, votes or proceedings may be given in evidence and it may be shown that the extract or abstract was published in good faith and without malice and, if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. R.S., c. S-8, s. 9.

Preuve dans le cas de publication d'extraits ou de résumés

9. Dans toute poursuite civile ou pénale occasionnée par l'impression d'un extrait ou résumé du document visé au paragraphe 7(1), le document en question peut être produit à titre de preuve, et le défendeur peut démontrer que l'extrait ou le résumé a été publié de bonne foi et sans intention malveillante; dès lors, si le jury est de cet avis, un verdict de non-culpabilité est rendu en faveur du défendeur.

S.R., ch. S-8, art. 9.

DIVISION D BOARD OF INTERNAL ECONOMY	SECTION D BUREAU DE RÉGIE INTERNE
Establishment and Organization	Constitution et organisation
Board established	Constitution
50. (1) There shall be a Board of Internal Economy of the House of Commons, in this section and sections 51 to 53 referred to as “the Board”, over which the Speaker of the House of Commons shall preside.	50. (1) Est constitué le Bureau de régie interne de la Chambre des communes, dont la présidence est assumée par le président de la chambre.
Composition of Board	Composition
(2) The Board shall consist of the Speaker, two Members of the Queen’s Privy Council for Canada appointed from time to time by the Governor in Council, the Leader of the Opposition or the nominee of the Leader of the Opposition and other Members of the House of Commons who may be appointed from time to time as follows:	(2) Le bureau est composé du président de la Chambre des communes, de deux membres du Conseil privé de la Reine pour le Canada nommés par le gouverneur en conseil, du chef de l’Opposition ou de son délégué et d’autres députés nommés de la façon suivante :
(a) if there is only one party in opposition to the government that has a recognized Membership of twelve or more persons in the House of Commons, the caucus of that party may appoint two Members of the Board and the caucus of the government party may appoint one Member of the Board; and	a) si l’Opposition ne comporte qu’un groupe parlementaire comptant officiellement douze députés ou plus, ce groupe peut nommer deux députés et le groupe parlementaire du parti gouvernemental peut en nommer un;
(b) if there are two or more parties in opposition to the government each of which has a recognized Membership of	b) si l’Opposition comporte plusieurs groupes parlementaires comptant officiellement douze députés ou

twelve or more persons in the House of Commons,

(i) the caucus of each of those parties in opposition may appoint one Member of the Board, and

(ii) the caucus of the government party may appoint that number of Members of the Board that is one less than the total number of Members of the Board who may be appointed under subparagraph (i).

plus, chacun de ces groupes peut nommer un député et le groupe parlementaire du parti gouvernemental peut en nommer un de moins que le total des membres ainsi nommés par l'ensemble de ces groupes.

(3) [Repealed, 1997, c. 32, s. 1]

(3) [Abrogé, 1997, ch. 32, art. 1]

Speaker to inform of appointments

Nominations

…

…

Oath or affirmation

…

Serment ou affirmation solennelle

…

Clerk is Secretary

Secrétaire

51. The Clerk of the House of Commons is the Secretary to the Board.

51. Le greffier de la Chambre des communes est le secrétaire du bureau.

R.S., 1985, c. P-1, s. 51; R.S., 1985, c. 42 (1st Supp.), s. 2; 1991, c. 20, s. 2.

L.R. (1985), ch. P-1, art. 51; L.R. (1985), ch. 42 (1er suppl.), art. 2; 1991, ch. 20, art. 2.

Quorum

…

Quorum

Death, disability or absence of Speaker

…

Décès, absence ou empêchement du président

…

Emergencies

…

Report of decision

Cas d'urgence

…

Rapport

…
Functions of Board
Capacity

52.2 (1) In exercising the powers and carrying out the functions conferred upon it pursuant to this Act, the Board has the capacity of a natural person and may

(a) enter into contracts, memoranda of understanding or other arrangements in the name of the House of Commons or in the name of the Board; and

(b) do all such things as are necessary or incidental to the exercising of its powers or the carrying out of its functions.

Immunity

(2) Where a Member of the Board participates in the exercise of the powers or the carrying out of the functions of the Board, the Member shall not be held personally liable for the actions of the Board.

1991, c. 20, s. 2.

Function of Board

52.3 The Board shall act on all financial and administrative matters respecting

(a) the House of Commons, its premises, its services and its staff; and

(b) the Members of the House of Commons.

…
Mission
Capacité

52.2 (1) Le bureau a, pour l’exercice des pouvoirs et l’exécution des fonctions qui lui sont attribués par la présente loi, la capacité d’une personne physique; à ce titre, il peut :

a) conclure des contrats, ententes ou autres arrangements sous le nom de la Chambre des communes ou le sien;

b) prendre toute autre mesure utile à l’exercice de ses pouvoirs ou à l’exécution de ses fonctions.

Immunité

(2) Les membres du bureau n’encourent aucune responsabilité personnelle découlant de leur participation à l’exercice des pouvoirs ou à l’exécution des fonctions du bureau.

1991, ch. 20, art. 2.

Mission

52.3 Le bureau est chargé des questions financières et administratives intéressant :

a) la Chambre des communes, ses locaux, ses services et son personnel;

b) les députés.

1991, c. 20, s. 2.

1991, ch. 20, art. 2.

Estimate to be prepared

État estimatif

52.4 (1) Prior to each fiscal year the Board shall cause to be prepared an estimate of the sums that will be required to be provided by Parliament for the payment of the charges and expenses of the House of Commons and of the Members thereof during the fiscal year.

52.4 (1) Avant chaque exercice, le bureau fait préparer un état estimatif des sommes que le Parlement sera appelé à affecter au paiement, au cours de l'exercice, des frais de la Chambre des communes et des députés.

Estimate to be included in government estimates and tabled

Adjonction au budget et dépôt

(2) The estimate referred to in subsection (1) shall be transmitted by the Speaker to the President of the Treasury Board who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

(2) Le président transmet l'état estimatif au président du Conseil du Trésor, qui le dépose devant la Chambre des communes avec les prévisions budgétaires du gouvernement pour l'exercice.

1991, c. 20, s. 2.

1991, ch. 20, art. 2.

By-laws

Règlements administratifs

By-laws

Règlements administratifs

52.5 (1) The Board may make by-laws

52.5 (1) Le bureau peut, par règlement administratif :

(a) respecting the calling of meetings of the Board and the conduct of business at those meetings;

a) régir la convocation et le déroulement de ses réunions;

(b) governing the use by Members of the House of Commons of funds, goods, services and premises made

b) régir l'utilisation, par les députés, des fonds, biens, services et locaux mis à leur disposition dans le cadre de

available to them for the carrying out of their parliamentary functions;	leurs fonctions parlementaires;
(c) prescribing the terms and conditions of the management of, and accounting for, by Members of the House of Commons, of funds referred to in paragraph (b) and section 54; and	c) prévoir les conditions applicables aux députés de gestion et de comptabilisation des fonds visés à l'alinéa b) et à l'article 54;
(d) respecting all such things as are necessary or incidental to the exercise of its powers and the carrying out of its functions.	d) prendre toute autre mesure utile à l'exercice de ses pouvoirs et fonctions.
Speaker to table by-laws	Dépôt des règlements administratifs
(2) The Speaker shall table before the House of Commons the by-laws made under this section on any of the first thirty days after the making thereof.	(2) Le président dépose les règlements administratifs pris aux termes du présent article devant la Chambre des communes dans les trente jours suivant leur adoption.
Speaker to make by-laws available	Idem
…	…
By-laws not statutory instruments	Loi sur les textes réglementaires
…	…
Opinions	
Exclusive authority	Compétence exclusive
52.6 (1) The Board has the exclusive authority to determine whether any previous, current or proposed use by a Member of the House of Commons of any funds, goods, services or premises made available to that Member for the carrying out of parliamentary functions is or was proper, given the discharge	52.6 (1) Le bureau a compétence exclusive pour statuer, compte tenu de la nature de leurs fonctions, sur la régularité de l'utilisation passée, présente ou prévue par les députés de fonds, de biens, de services ou de locaux mis à leur disposition dans le cadre de leurs fonctions parlementaires,

of the parliamentary functions of Members of the House of Commons, including whether any such use is or was proper having regard to the intent and purpose of the by-laws made under subsection 52.5(1).

et notamment sur la régularité de pareille utilisation au regard de l'esprit et de l'objet des règlements administratifs pris aux termes du paragraphe 52.5(1).

Members may apply

(2) Any Member of the House of Commons may apply to the Board for an opinion with respect to any use by that Member of funds, goods, services or premises referred to in subsection (1).

Demandes de la part des députés

(2) Les députés peuvent demander au bureau d'émettre un avis au sujet de l'utilisation par eux de fonds, de biens, de services ou de locaux visés au paragraphe (1).

1991, c. 20, s. 2.

1991, ch. 20, art. 2.

Opinion during investigation

52.7 (1) During any investigation by a peace officer in relation to the use by a Member of the House of Commons of funds, goods, services or premises referred to in subsection 52.6(1), the peace officer may apply to the Board for, or the Board may, on its own initiative, provide the peace officer with, an opinion concerning the propriety of such use.

Avis durant l'enquête

52.7 (1) Au cours d'une enquête menée par un agent de la paix relativement à l'utilisation par un député de fonds, de biens, de services ou de locaux visés au paragraphe 52.6(1), l'agent de la paix peut demander au bureau de lui fournir ou le bureau peut, de sa propre initiative, lui fournir un avis au sujet de la régularité de cette utilisation.

Opinion to be considered

(2) Where an opinion is provided to a peace officer pursuant to subsection (1) and where an application for a process is made to a judge, the judge shall be provided with the opinion and shall consider it in determining whether to issue

Prise en considération de l'avis

(2) Si, dans le cas où un avis a été transmis à un agent de la paix conformément au paragraphe (1), une demande de délivrance d'un acte de procédure est présentée à un juge, l'avis est transmis à celui-ci, qui le prend en considération

the process.	dans sa décision de délivrer ou non l'acte.
Definition of "process"	Définition d'« acte de procédure »
(3) For the purposes of this section, "process" means	(3) Pour l'application du présent article, « acte de procédure » s'entend au sens des termes ci-après visés aux articles suivants du Code criminel :
(a) an authorization to intercept a private communication under section 185,	a) article 185 : autorisation d'intercepter une communication privée;
(b) an order for a special warrant under section 462.32,	b) article 462.32 : mandat spécial;
(c) an order for a search warrant under section 487,	c) article 487 : mandat de perquisition;
(d) a restraint order under section 462.33,	d) article 462.33 : ordonnance de blocage de biens;
(e) the laying of an information under section 504 or 505,	e) articles 504 ou 505 : dénonciation;
(f) a summons or an arrest warrant under section 507, or	f) article 507 : sommation ou mandat d'arrestation;
(g) the confirmation of an appearance notice, promise to appear or recognizance under section 508 of the Criminal Code.	g) article 508 : confirmation d'une citation à comparaître, d'une promesse de comparaître ou d'un engagement.
Issuance of process by judge	Autorisation par un juge
(4) The issuance of a process referred to in paragraphs (3) (c), (e), (f) and (g) that is based on the use by a Member of the House of Commons of any funds, goods, services or premises made available to that Member for the carrying out of	(4) La délivrance d'un acte de procédure visé aux alinéas (3)c), e), f) et g) qui est fondé sur l'utilisation par un député de fonds, de biens, de services ou de locaux mis à sa disposition dans le cadre de ses fonctions parlementaires doit

parliamentary functions shall be authorized by a judge of a provincial court within the meaning of section 2 of the Criminal Code.

1991, c. 20, s. 2.

être autorisée par un juge d'une cour provinciale au sens de l'article 2 du Code criminel.

1991, ch. 20, art. 2.

General opinions

52.8 In addition to issuing opinions under section 52.6, the Board may issue general opinions regarding the proper use of funds, goods, services and premises within the intent and purpose of the by-laws made under subsection 52.5(1).

1991, c. 20, s. 2.

Avis d'ordre général

52.8 Le bureau peut en outre émettre des avis d'ordre général touchant la régularité de l'utilisation de fonds, de biens, de services ou de locaux au regard de l'esprit et de l'objet des règlements administratifs pris aux termes du paragraphe 52.5(1).

1991, ch. 20, art. 2.

Comments may be included

52.9 (1) The Board may include in its opinions any comments that the Board considers relevant.

Adjonction de commentaires

52.9 (1) Le bureau peut assortir ses avis des commentaires qu'il estime utiles.

Publication of opinions

(2) Subject to subsection (3), the Board may publish, in whole or in part, its opinions for the guidance of Members of the House of Commons.

Publication des avis

(2) Sous réserve du paragraphe (3), le bureau peut, pour la gouverne des députés, publier ses avis en tout ou en partie.

Privacy and notification

(3) Subject to subsection (4), the Board shall take the necessary measures to assure the privacy of any Member of the House of Commons who applies for an opinion and shall notify the Member of its opinion.

Confidentialité et notification

(3) Sous réserve du paragraphe (4), le bureau est tenu de prendre les mesures nécessaires pour assurer la confidentialité de toute demande d'avis présentée par un député et de lui notifier son avis.

Making opinions available

(4) For the purposes of subsection 52.7(1), the Board may, if it considers it appropriate to do so, make any of its opinions, including opinions issued under section 52.6, available to the peace officer.

1991, c. 20, s. 2.

Communication des avis

(4) Pour l'application du paragraphe 52.7(1), le bureau peut, s'il l'estime indiqué, mettre n'importe lequel de ses avis, y compris ceux qu'il a émis aux termes de l'article 52.6, à la disposition de l'agent de la paix.

1991, ch. 20, art. 2.

In case of dissolution

53. On a dissolution of Parliament, every Member of the Board and the Speaker and Deputy Speaker shall be deemed to remain in office as such, as if there had been no dissolution, until their replacement.

R.S., 1985, c. P-1, s. 53; R.S., 1985, c. 42 (1st Supp.), s. 2; 1991, c. 20, s. 2.

Dissolution du Parlement

53. En cas de dissolution du Parlement, les membres du bureau, le président et le président suppléant sont réputés demeurer en fonctions comme si la dissolution n'avait pas eu lieu, jusqu'à leur remplacement.

L.R. (1985), ch. P-1, art. 53; L.R. (1985), ch. 42 (1er suppl.), art. 2; 1991, ch. 20, art. 2.

53.1 [Repealed, 1991, c. 20, s. 2]

53.1 [Abrogé, 1991, ch. 20, art. 2]

Expenditure

54. All funds, other than those applied toward payment of the salaries and expenses of Parliamentary Secretaries, expended under Part IV in respect of the House of Commons shall be expended and accounted for in the same manner as funds for defraying the charges and expenses of the House and of the Members thereof are to be expended and

Dépenses

54. L'utilisation et la comptabilisation des fonds dépensés aux termes de la partie IV pour la Chambre des communes, à l'exclusion de ceux consacrés aux traitements et indemnités des secrétaires parlementaires, s'effectuent de la même manière que celles des fonds affectés aux frais de la chambre et des députés sous le régime de la présente section.

accounted for pursuant to this Division.

R.S., 1985, c. P-1, s. 54; 1991, c. 20, s. 2.

L.R. (1985), ch. P-1, art. 54; 1991, ch. 20, art. 2.

APPENDIX C

1. BY-LAWS OF THE BOARD OF INTERNAL ECONOMY
BY-LAW 101- DEFINITIONS

Parliamentary Functions
Means duties and activities related to the position of member of the House of Commons wherever performed and includes public and official business, and partisan matters, but does not include the private business interests of a Member of a Member's immediate family;

2. BY-LAW 102, GENERAL LIMITATION AND APPLICATION BY-LAW

Pursuant to section 52.5 of the *Parliament of Canada Act*, the Board of Internal Economy hereby makes the following by-law:	Le Bureau de régie interne, en application de l'article 52.5 de la *Loi sur le Parlement du Canada* prend le règlement administratif suivant :
Use of resources	**Utilisation des ressources**
1. The funds, goods, services and premises provided pursuant to the by-laws are to be used for the carrying out of Members' parliamentary functions or for matters which are essential or incidental thereto.	1. Les fonds, biens, services et locaux fournis dans le cadre des règlements ne doivent être utilisés que pour l'exécution des fonctions parlementaires des députés ou pour les affaires qui sont essentielles à ces fonctions ou y sont accessoires.
Principles	**Principes**
2. In applying the by-laws, the following principles of general application shall be respected:	2. Dans l'application des règlements, les principes d'application générale suivants doivent être observés :
(a) the Board is the authority that determines how the financial resources and administrative services provided by the House are to be applied and adhered to:	a) le Bureau est l'autorité compétente pour déterminer comment les ressources financières et les services administratifs fournis par la Chambre sont utilisés et appliqués;
(b) in the performance of a Member's activities and parliamentary functions, a Member is entitled to financial	b) dans l'exercice des ses activités et de ses fonctions parlementaires, le député a droit à l'utilisation des

resources and administrative services provided by the House subject to the statutory authority of the Board;

ressources financières et des services administratifs mis à sa disposition par la Chambre, sous réserve des pouvoirs conférés au Bureau par la Loi;

(c) partisan activities are an inherent and essential part of the activities and parliamentary functions of a Member;

c) les activités partisanes sont inhérentes et essentielles aux activités et aux fonctions parlementaires du député;

(d) a Member has the constitutional rights, immunities and independence applicable to that office in the performance of the activities and parliamentary functions free from interference or intimidation; and

d) le député jouit des droits, immunités et indépendance d'ordre constitutionnel applicables à sa fonction de façon qu'il puisse exercer ses activités et ses fonctions parlementaires sans ingérence ni intimidation;

(e) a Member is allowed full discretion in the direction and control of the work performed on the Member's behalf by employees and independent contractors and is subject only to the authority of the Board and the House of Commons in the exercise of that discretion.

e) le député jouit d'une discrétion absolue dans la direction et le contrôle du travail exécuté pour son compte par des employés ou des entrepreneurs indépendants et n'est soumis, dans l'exercice de cette discrétion, qu'à l'autorité du Bureau et de la Chambre des communes.

Contravention of by-law

Infraction au règlement

8. (1) If a person to whom these by-laws apply contravenes the by-laws:

(a) the Board may give written notice to the Member responsible, requiring the Member to rectify the situation, and

(b) if the situation is not rectified to the satisfaction of the Board, the Board may order any amount of money to rectify

8.(1) Dans les cas où une personne à qui les présents règlements s'appliquent contrevient à ces règlements, le Bureau peut prendre les mesures suivantes :

a) aviser le député responsable, par écrit, de devoir rectifier la situation,

b) si la situation n'est pas rectifiée à sa satisfaction, ordonner la retenue de toute somme d'argent requise pour

the situation to be withheld from any budget, allowance or other payment that may be made available to the Member under the by-laws, and

(c) if the contravention continues, or if the Board considers it necessary to protect House of Commons funds, the Board may order that any budget, allowance or other payment that may be made available to the Member under the by-laws be frozen for such time and on such other conditions as the Board considers necessary.

2. Subsection (1) does not affect any other civil remedy that may be made available to the Board.

rectifier la situation sur tout budget, indemnité, allocation ou autre paiement pouvant être mis à la disposition de député aux termes des règlements,

c) si la contravention se poursuit ou s'il l'estime nécessaire pour sauvegarder les fonds de la Chambre des communes, ordonner le blocage, pour le temps et aux conditions qu'il estime nécessaires, de tout budget, indemnité, allocation ou autre paiement pouvant être mis à la disposition du député aux termes des règlements.

2. Le paragraphe (1) n'a pas pour effet de porter atteinte aux autres recours au civil dont le Bureau dispose.

3. BY-LAW 301, MEMBERS' OFFICES BY-LAW

Purpose

The purpose of this by-law is to prescribe the resources to be provided for each Members' offices at the House of Commons and in the constituency

Objet

Le présent règlement a pour objet de déterminer les ressources devant être mises à la disposition de chaque député pour ses bureaux de la Chambre des communes et de sa circonscription.

3. Every Member shall be provided with goods and services as directed by and subject to the conditions set by the Board, including:

(d) subject to the provisions of section 3(f) printing of four householder mailings per calendar year;

3. Sont fournis au député, aux conditions fixées par le Bureau, les biens et services déterminés par ce dernier, y compris :

d) sous réserve du paragraphe 3f) l'impression de quatre envois collectifs par année civile;

(e) …

(f) printing or copying of material provided by the Member, except:
(i) solicitations of membership to any political party;

(ii) solicitations of monetary contributions for any political party;
(iii) provincial, municipal or local election campaign material, including speeches, enumerators' lists, poll activities and request for re-election support;
(iv) entire reproduction of publications available from the Postal, Distribution and Messenger Services of the House of Commons, a government department or a commercial source;
(v) work that the information Services – Printing is not technologically equipped to undertake;
(vi) a request that would infringe a copyright in the material, unless permission has been obtained from the owner of the right;
(vii) in the case of a large volume request, material has been copied previously that year for the Member.

(e) …

(f)l'impression et la reproduction des documents fournis par le député, à l'exception de ce qui suit :
(i) les demandes d'adhésion à tout parti politique
(ii) les sollicitations de contributions pécuniaires à tout parti politique;
(iii) la documentation servant aux campagnes électorales provinciales, municipales ou locales, notamment les discours, les listes des recenseurs, les listes des militants bénévoles d'un parti ou d'une circonscription, ce qui se rapporte aux activités des bureaux de scrutin et les demandes d'appui en vue d'une réélection;
(iv) la reproduction intégrale de publications qu'il est possible d'obtenir des Services postaux, distribution et messagers de la Chambre des communes, d'un ministère ou d'une enterprise commerciale;
(v) les travaux que les Services de l'information – Impressions n'est pas, sur le plan technologique, en mesure d'exécuter;
(vi) les demandes qui violeraient un droit d'auteur, à moins d'une autorisation obtenue du titulaire de ce droit; s'il s'agit d'une grosse demande, les documents qui ont déjà été reproduits pour le député au cours de la même année.

(g) the administration of the mailing privileges	g) l'application :
…	…
(ii) provided by subsection 35(3) of the *Canada Post Corporation Act* to send four mailings a calendar year to every householder in the constituency,	(ii) de la franchise postale prévue par le paragraphe 35(3) de la *Loi sur la Société canadienne des postes* pour l'expédition de quatre envois collectifs par année civile à chacun des domiciles de la circonscription.
….	….

APPENDIX D

Members' allowances and Services Manual

(a) PRINTING SERVICES

Members are provided with the following Printing Services at House Administration expense:
Consultation, planning and production of:
Householders, ten percenters, personalized stationery and business cards (maximum of 2,000); bulk photocopying, including up to 10 copies of committee transcripts; and binding.

(b) HOUSEHOLDERS

Householders are printed materials sent by Members to inform their constituents about parliamentary activities and issues. Members are entitled to print and mail up to four householders per calendar year three between January 1 and October 15, and one between October 16 and December 31 each year. There must be a 30 calendar day interval between householders submitted between January 1 and October 15. [Emphasis mine]

Unused householder allocations cannot be carried over to a subsequent period or year.

For each householder, the quantity produced at House Administration expense cannot exceed the total number of residential, rural and business householders and Canadian Armed Forces military personnel registered as electors in the Members' constituency. Members who require additional copies may have them printed and mailed as a charge to their Member's Office Budget.

Postage for additional householder mailings is subject to the preferred bulk rare set by Canada Post and is chargeable to the Member's Office Budget. This preferred rate is available to Members only when items are posted from the House of Commons Postal and Distribution Services Office. When posted elsewhere by Members, items are subject to the prevailing regular postal rates. For a list of current rates, see the Appendix: Schedule of Rates located in the Budgets chapter.

The Board of Internal Economy approves householder colors and formats. For further information, contact Printing Services.

(c) TEN PERCENTERS

Ten percenters are printed or photocopied material reproduced in quantities not exceeding 10% of the total number of householders in a Member's constituency. Quantities exceeding that amount will be considered householders and will be deducted from the Member's householder allowance.

Each ten percenter is produced in black and white and must have a 50% difference in textual content from other ten percenters produced. Each document may be printed only once per fiscal year, must originate with the Member and have the Member's name on it.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1329-05
STYLE OF CAUSE:	JIM PANKIW and CANADIAN HUMAN RIGHTS COMMISSION ET AL.
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 26 & 27, 2006
REASONS FOR JUDGMENT AND JUDGMENT:	LEMIEUX J.
DATED:	December 21, 2006

APPEARANCES:

Mr. Steven Chaplin & Ms. Melanie J. Mortensen	FOR THE APPLICANT & THE INTERVENER
Mr. Philippe Dufresne	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Office of the Law Clerk and Parliamentary Counsel, House of Commons	FOR THE APPLICANT
Canadian Human Rights Commission	FOR THE RESPONDENTS