T. D. 15/ 88

Decision rendered on November 17, 1988

THE CANADIAN HUMAN RIGHTS ACT (S. C. 1976- 77, C. 33 as amended)

HUMAN RIGHTS TRIBUNAL

BEFORE: PERRY SCHULMAN

BETWEEN:

CANADIAN PARAPLEGIC ASSOCIATION Complainant

- and

ELECTIONS CANADA - THE OFFICE OF THE CHIEF ELECTORAL OFFICER OF CANADA RETURNING OFFICER - WINNIPEG- NORTH CENTRE RETURNING OFFICER - WINNIPEG- ST. JAMES RETURNING OFFICER - WINNIPEG- FORT GARRY RETURNING OFFICER - BRANDON- SOURIS Respondents

COUNSEL FOR THE HUMAN RIGHTS COMMISSION Rene Duval, Esq., Ms. Patricia Lindsey Peck

COUNSEL FOR THE RESPONDENTS E. William Olson, Q. C., Ms. Viviane E. Rachlis

Pursuant to Exhibit "T1" I have been appointed to hear and determine nine complaints which comprise Exhibit "HRC1". All of the complaints arise from events which are alleged to have taken place during the Federal Election which was held on September 4, 1984. The complaints may be summarized as follows:

1. COMPLAINT NUMBER P04310 This complaint is made against the Chief Electoral Officer and not against any of the Respondent Returning Officers. It alleges that members of The Manitoba Division of The Canadian Paraplegic Association, each of whom is a mobility-impaired resident of Manitoba were discriminated against because a significant number of polls and in some cases advance polls for the election were not accessible to mobility- impaired individuals in violation of Section 5 of The Canadian Human Rights Act.

2. COMPLAINT NUMBER P04573 This complaint is made against Elections Canada - The Office of the Chief Electoral Officer of Canada and the Returning Officer for the Brandon-Souris Electoral District and alleges that a named individual, who is a wheelchair reliant quadriplegic, attended at a poll for the purpose of exercising his right to vote. Upon entering the premises the man’s wife discovered that the polling booth was located on the second floor of the building, which necessitated climbing two flights of steps. The poll was not accessible to a wheelchair, the Returning Officer refused to bring out the ballot box and he left without being able to vote.

3. COMPLAINT NUMBERS P04567, 68, 69, 70, 71, 72 and 74 These seven other complaints are against Elections Canada and the Returning Officer for one or other of four constituencies. In these cases, it is alleged that the person in question was able to vote, but because of difficulties encountered or differentiation in treatment from other voters, there has been a breach of Section 5 of The Human Rights Act.

Pursuant to Notice which was given to the parties, a date for a hearing of these complaints on the merits was set for November 30, 1988. However, Counsel for the Respondents gave Notice of Motion to quash the complaints on the grounds that his clients are not subject to the provisions of The Canadian Human Rights Act or the jurisdiction of this Tribunal. Consequently, we convened on November 2, 1988 at a Pre- Hearing Conference to receive submissions from the parties on the preliminary issue.

Counsel for the Respondents takes the position that the scheme of Legislative and Parliamentary history in Canada is such as to indicate that Parliament has reserved to itself the right to supervise elections and the officers who conduct elections, and has through a legislative framework made its election officers responsible directly to Parliament. He urges that the conduct of the Respondents is not reviewable by any Court or Tribunal. They are answerable to no one but to Parliament. As such they are not answerable to The Human Rights Commission of Canada or to this Tribunal and this Tribunal is without jurisdiction to hear the complaints.

An assessment of the Respondents' submission must begin with a consideration of powers and responsibilities of the Respondents. These are set out in The Canada Elections Act, R. S. C. 1970, c. 14 (1st Supp.). I deal first with the position of The Chief Electoral Officer whose position can be gleaned from Sections 3 and 4 of The Act. These sections are as follows:

"Chief Electoral Officer and Staff 3. (1) The Chief Electoral Officer shall exercise and perform all of the powers and duties specified in this Act as exercisable and performable by him.

(2) The Chief Electoral Officer shall rank as and have all the powers of a deputy head of a department, shall devote himself exclusively to the duties of his office and shall not hold any office under Her Majesty or engage in any other employment.

(3) The Chief Electoral Officer shall communicate with the Governor in Council through such members of the Queen's Privy Council for Canada as is designated by the Governor in Council for the purposes of this Act.

(4) The Chief Electoral Officer shall be paid a salary equal to the salary of a judge of the Federal Court of Canada, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travelling and living expenses while absent from his ordinary place of residence in the course of his duties.

(5) The Chief Electoral Officer shall be deemed to be a person employed in the Public Service for the purposes of the Public Service Superannuation Act and is to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made pursuant to Section 7 of the Aeronautics Act.

(6) Any sums payable to the Chief Electoral Officer shall be paid out of any unappropriated moneys forming part of the Consolidated Revenue Fund.

(7) The Chief Electoral Officer ceases to hold office as Chief Electoral Officer upon attaining the age of Sixty- five years but, until he attains that age, he shall be removable only for cause by the Governor General on address to the Senate and House of Commons.

(8) Where there is a vacancy in the office of Chief Electoral Officer, the vacancy shall be filled by resolution of the House of Commons.

(9) Where, while Parliament is not sitting, the Chief Electoral Officer dies or neglects or is unable to perform the duties of his office, a substitute Chief Electoral Officer shall, upon the application of the member of the Queen's Privy Council designated pursuant to subsection (3), be appointed by the Chief Justice of Canada or, in his absence, by the senior judge of the Supreme Court of Canada then present in Ottawa.

(10) Upon his appointment, a substitute Chief Electoral Officer shall exercise the powers and perform the duties of the Chief Electoral Officer in his place until fifteen days after the commencement of the next following session of Parliament unless the Chief Justice of Canada, or the judge by whom the order appointing him was made, sooner directs that such order be rescinded.

(11) In the absence of the Chief Justice of Canada and of the judge of the Supreme Court of Canada by whom a substitute Chief Electoral Officer has been appointed, the order appointing the substitute may be rescinded by any other judge of that Court.

(12) The remuneration of a substitute Chief Electoral Officer may be fixed by the Governor in Council. R. S., c. 14 (1st Supp.), s. 3; R. S., c. 10(2nd Supp.), s. 65; 1980- 81- 82- 83, c. 50, s. 25.

4. (1) The Chief Electoral Officer shall (a) exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Act;

(b) issue to election officers such instructions as from time to time he may deem necessary to ensure effective execution of the provisions of this Act; and

(c) execute and perform all other powers and duties assigned to him by this Act.

(2) Where, during the course of an election, it appears to the Chief Electoral Officer that, by reason of any mistake, miscalculation, emergency or unusual or unforeseen circumstances, any of the provisions of this Act do not accord with the exigencies of the situation, the Chief Electoral Officer may, by particular or general instructions, extend the time for doing any act, increase the number of election officers or polling stations or otherwise adapt any of the provisions of this Act to the execution of its intent, to such extent as he considers necessary to meet the exigencies of the situation.

(3) The Chief Electoral Officer shall not exercise his discretion pursuant to subsection (2) in such a manner as to permit a nomination paper to be received by a returning officer after two o'clock in the afternoon on nomination day or to permit a vote to be cast before or after the hours fixed in this Act for the opening and closing of the poll on ordinary polling day or on the days on which the advance poll is held.

(4) Notwithstanding subsection (3), where (a) a returning officer informs the Chief Electoral Officer that, by reason of accident, riot or other emergency, it has been necessary to suspend voting at any polling station during any part of the ordinary polling day, and

(b) the Chief Electoral Officer is satisfied that, if the hours of voting at the polling station are not extended, a substantial number of electors who are qualified to vote at the polling station will be unable to vote thereat, the Chief Electoral Officer may extend the hours of voting at the polling station to allow votes to be cast on the ordinary polling day after the hour fixed by or pursuant to this Act for the closing of the poll at the polling station, but shall not, in so doing, permit votes to be cast at the polling station during an aggregate period of more than eleven hours.

(5) Subject to section 103, the Chief Electoral Officer may authorize the Assistant Chief Electoral Officer or any other officer on the staff of the Chief Electoral Officer to exercise and perform any of the powers and duties assigned to the Chief Electoral Officer by this Act. R. S., c. 14 (1st Supp.), s. 4; 1977- 78, c. 3, s. 2."

I conclude from these sections, in particular Section 3(2) which says "... shall not hold any office under her majesty..." that The Chief Electoral Officer is not an employee of the Crown except for the purposes set out in Section 3(5) and that he is an employee of Parliament by virtue of the fact that he is appointed and may be removed for cause by Parliament pursuant to sub- sections 7 and 8 of Section 3.

The position of the Respondent Returning Officers is less clear than that of The Chief Electoral Officer. Provision for their appointment is set out in Section 7 as follows:

"Returning Officers and Election Clerks 7. (1) The Governor in Council may appoint a returning officer for any new electoral district and a new returning officer for any electoral district in which the office of the returning officer becomes vacant, within the meaning of subsection (2).

(2) The office of a returning officer is not vacant unless he dies, or, with prior permission of the Chief Electoral Officer, resigns, or unless he is removed from office for cause within the meaning of subsection (3).

(3) The Governor in Council may remove from office, as for cause, any returning officer who

(a) has attained the age of sixty- five years; (b) ceases to reside in the electoral district for which he is appointed; (c) is incapable, by reason of illness, physical or mental infirmity or otherwise, of satisfactorily performing his duties under this Act; (d) has failed to discharge competently his duties, or any of his duties, under this Act; (e) has, at any time after his appointment, been guilty of politically partisan conduct, whether or not in the course of the performance of his duties

under this Act; or (f) has failed to complete the revision of the boundaries of the polling divisions in his electoral district as instructed by the Chief Electoral Officer pursuant to subsection 10(1).

(4) The name, address and occupation of every person who is appointed as a returning officer, and the name of the electoral district for which he is appointed shall be communicated to the Chief Electoral Officer and he shall publish in the Canada Gazette, between the 1st and 20th days of January in each year, a list of the names, addresses and occupations of the returning officers for every electoral district in Canada.

(5) Where the office of returning officer for an electoral district becomes vacant, the appointment of a returning officer for that electoral district pursuant to subsection (1) shall be made within sixty days from the date on which the Chief Electoral Officer has been informed of the vacancy.

(6) Subject to section 103, the returning officer for an electoral district may authorize the election clerk appointed under subsection 8(1) for that electoral district and any election clerk appointed by the returning officer under subsection 8(11) to exercise and perform any of the powers and duties conferred or imposed on the returning officer by this Act, except the powers and duties conferred or imposed on him by sections 6, 19, 23 to 26, 53, 54, 56, 58 and 101.

(7) Where an election clerk appointed under subsection 8(11) is authorized pursuant to subsection (6) to exercise and perform powers and duties, he shall exercise and perform those powers and duties only in respect of the area for which he is appointed.

(8) An authorization under subsection (6) shall be in writing signed by the returning officer and shall bear the date on which it is signed. R. S., c. 14 (1st Supp.), s. 7; 1977- 78, c. 3, s. 4."

In light of the provisions of Section 4 giving the Chief Electoral Officer control over performance of the duties of the Returning Officer it is my opinion that the Returning Officer is an employee of The Chief Electoral Officer and not an employee of The Crown.

The authorities which have been cited to me 1 satisfy me that over the course of the last 300 years or more it has been established as a privilege of members of The House of Commons of England and of Canada, that generally speaking they and their employees are not answerable for their conduct in fulfilling their duties to Courts or Tribunals and they are answerable only to The House of Commons. The privilege may be said to be the general rule and there are a limited number of exceptions. The general rule covers the trial of the issue of whether or not a member of Parliament is qualified to hold a seat; the trial of controverted elections petitions; supervision of the conduct of election officials during the course of elections; the conduct of recounts; the propriety of the issue of or the failure to issue a Writ for an election; and the governing of employer- employee relations with respect to employees of The House of Common and of Members of Parliament. Some of the areas which have been historically covered by the privilege have been transferred by Parliament to the Courts, for example in the passage of the Dominion Controverted Elections Act 2 and the enactment of the judicial recount provisions of the Canada Elections Act 3. However, these powers were transferred by statute and Counsel for the Respondent urges that in the absence of an express statutory provision which renders the Respondents subject to The Human Rights Act or subject to the jurisdiction of The Human

Rights Commission or of this Tribunal, the Respondents are not answerable to this Tribunal or indeed to any Court. The privilege as it relates to election officials is referred to by a number of authorities. For example in McLeod v. Noble et al 4 Boyd C. stated:

"... no jurisdiction is committed to the Provincial Courts as such to interfere with the functions and statutory duties of Dominion election officers. ... Unless provision is made by the Dominion for regulating or dealing with the contradictory commands upon the returning officer in this case, he must be left to do the best he can to observe his oath and the direction of the statute - leaving it to the House of Commons to rectify any error or miscarriage that may arise - if no redress is sought by election petition to the Judges."

There is, however, an area of activity of election officials which has been recognized as fair game for close scrutiny by our Courts. It is an area which has been the subject of considerable debate between our Courts and the House of Commons since the early 18th Century. The exception is founded on the 1703 case of Ashby v. White 5 in the judgment of Holt, C. J.. In that case, the House of Lords, sitting as the highest Court of Appeal in England approved the dissenting judgment of Holt, C. J. and sustained an action for damages, brought by a man who had the right to vote at an election for Members of Parliament and was refused vote by the Returning Officer at the election. An action against the Returning Officer was successful and a plea that the action could not be maintained in a Court because of the privileges of the House of Commons, was rejected. It is not necessary at this time to recount the history of the conflict which followed between the Courts and the House of Commons. It is appropriate to observe that the case of Ashby v. White 5 has been cited over the years as good authority by Courts in England and in Canada on several points which arose in the case. Strayer, "The Canadian Constitution and the Courts" 3rd Edition, 1988, says of Ashby v. White 6:

"The Common Law since Ashby v. White has recognized that a qualified voter has a right to his vote in the nature of a property interest. In the absence of some valid statute denying that right he would have an action for damages against those who prevented him from exercising it."

In 1979 the Ontario Court of Appeal in Bhadauria v. Board of Governors of Seneca College of Applied Arts and Technology 7 was prepared to recognize a cause of action for the tort of discrimination based primarily on the case of Ashby v. White. Although the Supreme Court of Canada reversed the judgment 8 and held that the Human Rights Code of Ontario created a comprehensive code in its administrative and adjudicative features, the Court did not detract from the validity or usefulness of Ashby v. White as an authority. Laskin, C. J. C. stated at page 203, as follows:

"The view taken by the Ontario Court of Appeal is a bold one and may be commended as an attempt to advance the common law. In my view, however, this is foreclosed by the legislative initiative which overtook the existing common law in Ontario and established a different regime which does not exclude the Courts but rather makes them part of the enforcement machinery under the Code."

Counsel for the Respondents urges that while Ashby v. White is alive and well as an authority in Canada it has no bearing on the issue which arises in this case. Firstly, he urges that in light of

the case of Tozer v. Child 9, Ashby v. White only applies where malice can be established on the part of the Defendant. Secondly, he urges that the principle in Ashby v. White can only apply where the issue arises incidentally along with another issue which is properly before a Court. Thirdly, he urged that Ashby v. White must be read in light of the context in which it was decided and the competition which developed between the Courts and the House of Commons in the early 18th century. Next he urged that in Ashby v. White a person who had the right to vote was actually denied the right to vote, and no person mentioned in the complaints which are before this Tribunal was specifically refused the right to vote. Further he urged that the Court in Ashby v. White exercised its inherent jurisdiction. This Tribunal is not a Court and has no inherent jurisdiction. He therefore urged that the case of Ashby v. White is of no assistance to the Complainant in an attempt to make an inroad on the general privilege of the House of Commons.

Counsel for the Human Rights Commission disputes the assertion that the privilege of the House of Commons precludes the Respondents from being subject to the umbrella of the Human Rights Act. He refers to Sections 4 and 5 of the House of Commons Act, as follows:

"4. The Senate and the House of Commons respectively, and the members thereof respectively, hold, enjoy and exercise,

(a) such and the like privileges, immunities and powers as, at the time of the passing of British North America Act, 1867, were held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom, and by the members thereof, so far as the same are consistent with and not repugnant to that Act; and

(b) such privileges, immunities and powers as are from time to time defined by Act of the Parliament of Canada, not exceeding those at the time of the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof respectively. R. S., c. 249, s. 4.

5. Such privileges, immunities and powers are part of the general public law of Canada, and it is not necessary to plead the same, but the same shall, in all courts in Canada, and by and before all judges, be taken notice of judicially. R. S., c. 249, s. 5."

and Section 2 of the Canadian Human Rights Act as follows: "Sec. 2. Purpose - The purpose of this Act is to extend the present laws in Canada to give effect, within the purview of matters coming within the legislative authority of the Parliament of Canada to the principle that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic original, colour, religion, age, sex, marital status, family status, disability, or conviction for an offence for which a pardon has been granted."

He submits that the former provision codifies the privilege and the latter extends it to cover the facts of this case. He urges too that there is a strong analogy between the facts in Ashby v. White and Complaint Number P04573 10.

In my view, the case of Ashby v. White 5 establishes an exception to the privilege of the House of Commons, which gives to Courts in Canada the right to scrutinize the conduct of Returning Officers in a Federal election to the extent that if a Returning Officer refuses to permit a qualified voter his right to vote, damages may be awarded against the Returning Officer by the Court. It does not matter for this purpose whether or not malice is an ingredient of the cause of action. It is sufficient for this purpose to establish that in some circumstances a Court does exercise jurisdiction over Returning Officers for their acts or omissions during the course of a Federal election. I respectfully disagree with the submissions of Counsel for the Respondents that the principle of Ashby v. White only applies where it arises incidentally along with another issue which is properly before the Court, or that there is anything about the historical context in which it was decided, that precludes it from being an authority which is relevant to the issues which have been raised before me. In McLeod v. Noble 4, Boyd, C. stated at Page 544:

For, conformable to the views set forth in the North Perth Case, 21 O. R. 538, it does not appear to me that the right to a recount and the proceedings connected therewith can be classed under the category of "civil rights." They are rights of a political character in the Dominion, in the assertion of which the individual applicant does not act for himself so much as for the body of the electorate. It is different from the right to cast a vote which, being wrongfully denied, creates a personal and individual grievance that is actionable in the ordinary Courts;..."

May, "Parliamentary Practice" 20th Edition and Maingot, "Parliamentary Privilege in Canada", 1982, both recognize the distinction between the rights of the elected and the rights of the electors. At Page 118 May states:

"But in regard to the right of the electors the cases of Ashby v. White and R. v. Paty led the House of Lords to draw a distinction between the right of electors and the right of the elected, the one being a freehold by common law, and the other a temporary right to a place in Parliament."

At Page 238 Maingot states:

"It will be seen that the courts had started to insist on examining the lex parliamenti as they would any other breach of the general or public law, albeit in the face of continued opposition from the House of Commons. What had begun as an obvious reluctance by the courts in Thorpe's case, became a strong dictum in Benyon v. Evelyn, and eventually a decision of the House of Lords sitting as a court of appeal in Ashby v. White which went a long way by holding that there was at least a concurrent jurisdiction; even though the House of Commons had jurisdiction to determine who is eligible to vote when engaged in the trial of a controverted election, the courts also had jurisdiction to determine rights (such as the right to vote) in the context of a recognizable cause of action."

I recognize that this Tribunal is exercising a statutory jurisdiction and there is no reason to say that it has inherent jurisdiction. However, it should be remembered that in the Seneca College 11 case the Supreme Court's judgment turned on its finding that the Human Rights Code of Ontario "established a different regime which does not exclude the Courts but rather makes them part of the enforcement machinery under the Code." Under Section 35(2.2) of The Canadian Human Rights Act, judges of the Federal Court are empowered to issue warrants to aid an investigator

who has been appointed pursuant to the provisions of the Canadian Human Rights Act. By virtue of Section 43 an Order of a Tribunal may, for the purpose of enforcement, be made an Order of the Federal Court of Canada and is enforceable in the same manner as an Order of that Court. In these circumstances I have no hesitation in finding that a Tribunal which is hearing a complaint under The Canadian Human Rights Act has the authority to hear a complaint made against a Returning Officer in circumstances which are analogous to those where a Court will scrutinize the conduct of a Returning Officer. Moreover, I infer from the broad purposes of the statute that Parliament intended that the "regime" which it created under the Human Rights Act to overtake the existing common law remedies, would cover the same persons, including returning officers, who were answerable under the common law to the Courts.

The limitation on Parliamentary privilege has been recognized in Section 5 of The Senate and House of Commons Act. In the case of Ontario Human Rights Commission and Theresa O'Malley 12, McIntyre, J. stated:

"There we find enunciated the broad policy of the Code and it is this policy which should have effect. It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment (see Lamer, J. in Insurance Corporation of British Columbia v. Heerspink [1982] 2 S. C. R. 145, at pp. 157- 58). and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitution but certainly more than the ordinary - and it is for the courts to seek out its purpose and give it effect. The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its effect is to impose on one person or group of persons obligations, penalties, or restrictive conditions not imposed on other members of the community, it is discriminatory." (Underlining is mine)

Considering the special nature of The Human Rights Act and the broad purposes which are spelled out in Section 2, it is my view that the Ashby v. White limitation on the privilege of the House of Commons is by virtue of Section 2 extended to bring the Returning Officers, who are Respondents in this case, within the purview of the statute.

I recognize that the seven complaints which are referred to in Paragraph 3 on Page 2 of these reasons are not as closely connected to the case of Ashby v. White as the complaint which is referred to in Paragraph 2. I am not prepared at this early stage to dismiss the complaint against the Returning Officers on that narrow basis. The complaint referred to in Paragraph 2 and the complaints referred to in Paragraph 3 will have to be tried on the merits and be assessed after hearing full argument on the meaning and purpose of a number of provisions of the Human Rights Act.

Having dealt at some length of my view of the relationship between the Human Rights Act and Returning Officers, no authority has been cited which would bring the Chief Electoral Officer

within a recognized exception to the privilege of the House of Commons. The Chief Electoral Officer is not a returning officer. I do not think that the case of Ashby v. White or the provisions of the Senate and House of Commons Act or of Section 2 of the Canadian Human Rights Act can be extended to accomplish this and in any case I am reluctant to make such an extension. Several cases have said that in order to detract from a privilege of the House of Commons it would be necessary to have express statutory provisions 13. I doubt that express provision would be required to abridge the privilege for a statute such as The Human Rights Act, but nothing which I have heard argued persuades me that such a result must necessarily follow from matters which are before me.

The privilege of the House of Commons in relation to certain aspects of election matters remain an important part of our law. It would render the conduct of an election intolerable if the myriad of decisions which are made in Federal Elections were subject to review in Court, for example, by perogative writ. There is however a very important exception to the privilege relating to the right to vote. In 1703 it was regarded as a fundamental "property" right. Today it is a fundamental principle in our democratic way of life, enshrined in Section 3 of The Charter of Rights and Freedoms. It would be surprising if the Canadian Human Rights Act could not afford a remedy for the denial of such an important right. The extent to which this Act affords a remedy for the denial and, perhaps, interference with the right to vote must be determined on the hearing of the complaints against the returning officers on the merits and in future cases.

It follows that I dismiss Complaint No. P04310, as it relates to The Chief Electoral Officer only. I dismiss the remaining eight complaints as they relate to him. The hearing of the remaining eight complaints as they relate to the Returning Officers Respondents, will proceed on November 30, 1988 pursuant to Notice which has been given in that regard.

Counsel for the Respondents also urged from the case of Re: House of Commons, et al 1, that if the preliminary motion does not succeed then the House of Commons is a necessary party to the case as it is the employer of the Respondents. It seems to me that there is nothing in the Human Rights Act which prevents a complaint from being heard against an employee even though his employer might also be made the subject of the complaint. Moreover the privilege which is referred to in these reason would bar a proceeding against the House of Commons.

I am indebted to Counsel for both parties to this proceeding for their very able, thoughtful and persuasive submissions. Their submissions have assisted me greatly in deciding these very difficult questions.

DATED this 16th day of November, 1988.

Perry. W. Schulman, Q. C.

FOOTNOTES

1. Temple v. Bulmer [1943] S. C. R. 265

The King ex. rel Tolfree v. Clark, Conant and Drew [1943] 3 D. L. R. 684 Regina ex rel Stubbs v. Steinkopf [1964] 47 D. L. R. (2d) 105 Re: House of Commons and Canada Labour Relations Board et al [1986] 27 D. L. R. (4th) 481 Re: Jackman and STollery et al [1981] 33 O. R. (2d) 589 In re: Centre Wellington Election [1879] 44 U. C. Q. B. 589

2. R. S. C. c. 28 3. R. S. C. c. 14 (1st Supp.) 4. [1897] 28 O. R. 528, 543 5. 2 Ld. Raym. 938; 92 E. R. 126 6. at page 175 7. 27 O. R. (2d) 142 8. [1981] 124 D. L. R. (3d) 193 9. [1857] 7 E. & B., 377 10. see paragraph 2on page 2 of these reasons 11. Seneca College, Footnote 8 12. [1985] 2 S. C. R. 536, 546- 7 13. See, for example, Re: House of Commons et al, Footnote 1.