Villeneuve v. *Legislative Assembly et al*, 2008 NWTSC 41

Date: 2008 06 06
Docket: S-0001-CV-2007000237

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROBERT VILLENEUVE

Applicant

- and -

THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES, THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES BOARD OF MANAGEMENT, Hon. PAUL DELOREY as Speaker of the Legislative Assembly and Chair of the Board of Management, Hon. NORMAN YAKELEYA, M.L.A., ROBERT C. McLEOD, M.L.A., DAVID RAMSAY, M.L.A., and TOM BEAULIEU, M.L.A.

Respondents

Application by Respondents for summary dismissal.

Heard at Yellowknife, NT on May 12, 2008.

Reasons filed: June 6, 2008

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Applicant: Steven Cooper
Counsel for the Respondents: Sheila MacPherson

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REASONS FOR JUDGMENT

A) INTRODUCTION

[1] These proceedings were commenced by Robert Villeneuve, a former Member of the Legislative Assembly of the Northwest Territories (MLA). Mr. Villeneuve seeks judicial review of a decision made by the Board of Management to withhold an allowance that he would normally have been entitled to receive pursuant to the *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c.22 (the *Act*).[1]

[1] All references to the provisions of the *Act* in these Reasons are to the provisions that were in force at the material time. There have been various amendments to the *Act* since then.

[2] The Respondents ask that Mr. Villeneuve's Application be summarily dismissed. They argue that this Court does not have jurisdiction to review the Board's decision because that decision is protected by parliamentary privilege.

B) BACKGROUND

[3] The parties are in general agreement about the chronology of events that led to this dispute and are relevant to the claim of privilege.

[4] Mr. Villeneuve became a MLA on November 24, 2003. Pursuant to the *Act*, MLAs are entitled to receive certain benefits and allowances. The Board of Management is a body corporate created by the *Act*. All its members are MLAs. The *Act* gives the Board the responsibility for the general administration of MLAs' benefits:

> 41. Subject to this Act, the Board shall
>
> (a) provide the services to members that the Board of Management considers appropriate;
>
> (b) administer the indemnities, allowances, reimbursements and benefits to which members are entitled;
>
> (c) provide for the management and operation of the Office of the Legislative Assembly;
>
> (d) provide for any other financial or administrative matter that it considers appropriate in respect of the Legislative Assembly or the Office of the Legislative Assembly.

[5] The place of ordinary residence of an MLA determines his or her entitlement to certain allowances. It also has an impact on the amount of some of the allowances.

[6] On February 13, 2004, Mr. Villeneuve swore a Statutory Declaration where he declared that he resided in Fort Resolution. His allowances were calculated on that basis. These included an allowance called the Capital Accommodation Allowance, which is available only to a MLA whose residence is in a community other than Yellowknife.

[7] In August 2006, information came to the Board's attention suggesting that Mr. Villeneuve's place of residence had changed. The Board requested that Mr. Villeneuve provide an updated Statutory Declaration as to his residence. The Board terminated Mr. Villeneuve's Capital Accommodation Allowance in October 2006 because he had not provided this updated Statutory Declaration.

[8] Mr. Villeneuve appeared before the Board in December 2006 and provided information about his residency. The Board reinstated his Capital Accommodation Allowance on the condition that he provide proof of his residency by February 14, 2007. On February 14, 2007, Mr. Villeneuve swore a Statutory Declaration stating he had been a resident of Yellowknife since October 1, 2006.

[9] In June 2007, at the request of a number of MLAs, the Board caused an audit to be conducted of all MLAs' Statutory Declarations about residency. On July 30, the initial results of the audit called into question Mr. Villeneuve's residency prior to October 1, 2006. Based on this information, the Board filed a complaint with the Conflict of Interest Commissioner. A copy of the complaint is included in the materials filed by the Respondent on this Application. It stated that the Board had reasonable grounds to believe that Mr. Villeneuve had violated provisions of Paragraph 75(a) and (b) of the *Act.* Those provisions read as follows:

> 75. Each member shall
>
> (a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member;
>
> (b) refrain from accepting any remuneration, gift or benefit the acceptance of which might erode public confidence and trust in the integrity, objectivity and impartiality of the member, and in all other respects act in a manner that will bear the closest public scrutiny;
>
> (...)

[10] The gist of the complaint was that Mr. Villeneuve may have sworn Statutory Declarations that he knew or ought to have known were inaccurate.

[11] Section 75 is included in Part III of the *Act,* which sets out a comprehensive regime for the regulation of conflict of interest for MLAs. It sets out disclosure

requirements for MLAs, as well as guidelines as to conduct. It also establishes the process for the enforcement of conflict of interest rules. A complaint against a MLA is, as a first step, investigated by the Conflict of Interest Commissioner (sections 100 and 101). At the conclusion of this investigation, the Commissioner either dismisses the complaint or directs that an inquiry into the matter be held before a Sole Adjudicator (section 102). In the latter situation, the Sole Adjudicator conducts an inquiry and makes findings and, in the case of a finding of guilt, recommendations as to punishment (sections 104 to 106). The findings are tabled in the Legislative Assembly. The Assembly considers the findings and recommendations and decides whether the recommended punishment should be imposed or whether the recommendation should be rejected (section 107).

[12] The complaint against Mr. Villeneuve was made on August 14, 2007. The Conflict of Interest Commissioner filed his report on September 14, 2007, directing the holding of an inquiry before a Sole Adjudicator. On October 1, 2007, a general election was held and Mr. Villeneuve was defeated. After the election, the matter was referred to the Sole Adjudicator, who expressed the concern that he did not have jurisdiction over the matter because Mr. Villeneuve was no longer a MLA. The Board considered this and concluded that the Sole Adjudicator did not have jurisdiction to inquire into the matter.

[13] The Board then considered its options. It concluded that Mr. Villeneuve had wrongly received allowance monies during his term as a MLA. To set off a part of these sums, the Board made the decision to withhold Mr. Villeneuve's Transition Allowance. That allowance is provided for in the *Act* and is ordinarily available to MLAs who are defeated in an election.

C) ANALYSIS

[14] The sole issue on this Application is whether the Board's decision to withhold Mr. Villeneuve's Transition Allowance is protected by parliamentary privilege. If it is, this Court has no jurisdiction to entertain Mr. Villeneuve's application for a judicial review of that decision.

1. Nature of Parliamentary Privilege

[15] The parties disagree about whether parliamentary privilege applies in the circumstances of this case, but they agree about the legal principles that are engaged.

[16] In his authoritative text on this issue, J.P.J. Maingot, Q.C., defines what parliamentary privilege entails:

> Parliamentary privilege is the necessary immunity that the law provides for Members of Parliament, and for Members of the legislatures of each of the ten provinces and two territories [this edition of Mr. Maingot's text was published before the creation of the Nunavut Territory], in order for these legislators to do their legislative work. It is also the necessary immunity that the law provides for anyone while taking part in a proceeding in Parliament or in a legislature. In addition, it is the right, power, and authority of each House of Parliament and each legislative assembly to perform their constitutional functions. Finally, it is the authority and power of each House of Parliament and of each legislative assembly to enforce that immunity and to protect its integrity.
>
> J.P.J. Maingot, Q.C., *Parliamentary Privilege in Canada*, 2nd ed. 1997, at page 12.

[17] The privilege has been seen as essential to maintain the independence and function of the legislative body as a separate branch of government. The Supreme Court of Canada reiterated this recently:

> It is a wise principle that the courts and Parliament strive to respect each other's role in the conduct of public affairs. Parliament, for its part, refrains from commenting on matters before the courts under the *sub judice* rule. None of the parties to this proceeding questions the pre-eminent importance of the House of Commons as "the grand inquest of the nation". Nor is there doubt thrown by any party on the need for its legislative activities to proceed unimpeded by any external body or institution, including the courts.
>
> *Canada (House of Commons)* v. *Vaid* [2005] 1 S.C.R. 667, at para.20.

[18] The historical foundation of parliamentary privilege is necessity. Matters that are left to the exclusive jurisdiction of the legislative body, and are sheltered from review, are those without which its dignity and efficiency cannot be upheld. This is not simply a matter of respect for the legislative body: it is also about its autonomy, which in turn is crucial to its ability to carry out its functions efficiently, without interference from outsiders, including the judicial branch of government. *Canada (House of Commons)* v. *Vaid, supra*, at para. 29.

[19] When examining a claim of parliamentary privilege, courts must apply a two step test. The first step is to ascertain whether the existence and scope of the claimed privilege has been authoritatively established in relation to the Parliament of Canada or to the House of Commons at Westminster. If not, the analysis must move to the second step, and the claim of privilege must be tested against the doctrine of necessity. *Canada (House of Commons)* v. *Vaid, supra*, at paras 39-40.

2. Applicability of Privilege in the Northwest Territories

[20] In the past, it has been argued that the constitutional status of parliamentary privilege did not apply to the territories. Mr. Villeneuve does not advance this argument in this case. He does not argue that the level of privilege enjoyed by the legislature in the Northwest Territories is more limited than that enjoyed by the provincial legislatures or Parliament. He simply argues that the impugned decision does not fall in a category of decisions that falls under the scope of parliamentary privilege.

[21] I adopt earlier decisions of this Court that have found that the Legislative Assembly of the Northwest Territories enjoys the same level of parliamentary privilege as do the provincial legislatures, notwithstanding the constitutional differences between provinces and territories. *Morin* v. *Crawford* (1999), 29 C.P.C. (4th) 362; *Roberts* v. *Northwest Territories (Commissioner)* [2002] N.W.T.J. No. 81.

3. Whether Privilege Asserted by the Respondents has been authoritatively established

[22] The Respondents assert that two areas of privilege protect the Board's decision from review. First, they argue that the decision falls within the ambit of the Assembly's inherent power to discipline its own members. Next, they argue that the

administration of allowances and benefits of members are a matter of internal administration of the Assembly. The Respondents argue that, in both respects, the privileges asserted have been authoritatively established.

[23] The power of a legislature to discipline its own members is indeed a sphere of activity that has been historically recognized as one that is protected by parliamentary privilege. *Canada (House of Commons)* v. *Vaid*, *supra*, at para 29. This was specifically recognized in this jurisdiction in *Morin* v. *Crawford*, *supra*, at para. 83:

> (...) the discipline of members for misconduct (and there can be no doubt that a violation of conflict of interest rules constitutes "misconduct") is an exercise of the legislature's inherent privileges. It is a necessary aspect of the legislature's control of its internal affairs. It is something within the sphere of decision-making under the exclusive control of the legislature itself (...).

[24] It is also relatively clear that certain matters of internal administration of a legislature are protected by privilege. As the Respondents acknowledge, however, not all matters of internal administration are necessarily cloaked with privilege.

[25] An important feature of this case is that at the time the Board made its decision, Mr. Villeneuve was no longer a MLA. This, in my view, is significant in determining whether the areas of privilege asserted by the Respondents have been authoritatively established. The inherent right of a legislature to discipline its own members is one thing. The extension of that right of discipline to someone who is no longer a member is quite another. Similarly, if decisions made about the administration of MLAs' benefits and allowances are characterized as internal to the legislature, the same is not necessarily true when those decisions affect a person who is no longer a MLA.

[26] The parties agree that the circumstances that unfolded in this case are unique. The intervening election changed Mr. Villeneuve's status before the question of his residency and related issues about his conduct could fully be inquired into in accordance with the process set out at Part III of the *Act*. Counsel were unable to refer me to a case where a similar situation arose. Under the circumstances, I do not find that the areas of privilege that are being asserted have been authoritatively established. I must, therefore, turn to the second step of the analysis and examine the claim of privilege against the doctrine of necessity.

4. Necessity

[27] At its core, the foundation for all forms of parliamentary privilege is necessity. As the Supreme Court of Canada said in *Canada (House of Commons)* v. *Vaid*, *supra*, at para. 29:

> The historical foundation of every privilege of Parliament is necessity. If a sphere of the legislative body's activity could be left to be dealt with under the ordinary law of the land without interfering with the assembly's ability to fulfill its constitutional functions, the immunity would be unnecessary and the claimed privilege would not exist. [Citations omitted]

[28] The application of the doctrine of necessity requires striking a careful balance between important competing interests. Courts must be vigilant to ensure that they do not interfere with the business of the legislature. They must be equally vigilant not to extend parliamentary privilege so far as to unduly prevent judicial scrutiny where that scrutiny would not interfere with the legislature's ability to do its work.

[29] Courts are apt to look more closely at cases where a finding of privilege will have an impact on persons outside the legislature than at cases that involve matters entirely internal to the legislature. *Canada (House of Commons)* v. *Vaid*, *supra*, at para. 29.

[30] This is what the issue between the parties on this Application boils down to: Mr. Villeneuve argues that the Board's decision is not a matter purely internal to the legislature, because when the decision was made, he was no longer a part of the legislature. Mr. Villeneuve also argues that the Board's decision should be open to judicial scrutiny because the Board did not comply with the *Act* in dealing with this matter.

[31] The Respondents, by contrast, argue that decisions made about benefits and allowances of MLAs and issues related to conduct are integral to the legislature's independence and ability to control its own internal affairs. They argue that this is true even where the person affected by the decision is no longer a MLA at the time the decision is made.

[32] I will deal first with the submissions as they relate to the question of administration of allowances and benefits.

[33] Through the *Act*, the legislature has made it the Board's responsibility to administer MLAs' allowances and benefits. The evidence adduced on this Application is that the Board has developed a number of policies to deal with those issues, and spends 80% of its time carrying out this administrative role. The steps that the Board took to inquire into the question of Mr. Villeneuve's residency between August 2006 and August 2007, and the various decisions made throughout this period, are examples of the Board exercising these functions.

[34] In my view, decisions that the Board makes about MLAs allowances and benefits are truly internal to the legislature, and it is necessary that those decisions be privileged and free from review by the courts. It is necessary that the legislature, through the Board, be able to make its own decisions about benefits and allowances of its members without outside interference. How members are compensated, and what allowances they receive to enable them to do their work as MLAs, are the types of internal matters over which the legislature must have complete control and be free from outside interference, as an independent branch of government. This is subject, of course, to the Assembly's compliance with statutory provisions that it has enacted and have a bearing on the issue.

[35] The question is whether the decisions the Board made after the election, when Mr. Villeneuve was no longer a MLA, should be characterized in the same manner. In other words, are those decisions also a necessary aspect of the legislature's control of its own affairs, something in the sphere of decision making under its exclusive control that should be sheltered from outside interference? I have concluded that this question should be answered in the affirmative.

[36] In my view, the Board's decisions about what allowances Mr. Villeneuve was entitled to, whether there was an overpayment, and the withholding of his Transition Allowance to set off this overpayment, are decisions that relate to matters purely internal to the legislature. While Mr. Villeneuve was no longer a MLA when they were made, the subject matters of those decisions were inextricably linked to the period during which he served as a MLA. They related to benefits he was entitled to receive in his capacity as an MLA and only because he was a MLA.

[37] Long before the complaint was made to the Conflict of Interest Commissioner, the Board had taken steps to address the question of whether Mr. Villeneuve's entitlements should be revised as a result of a possible change in his residency. Information had been brought to the Board's attention that raised concerns; the Board had inquired into the matter; it had requested additional information from Mr. Villeneuve; it had terminated his Capital Accommodation Allowance after Mr. Villeneuve failed to provide that information; it had later reinstated the allowance on certain conditions; and finally, after having received Mr. Villeneuve's second Statutory Declaration, the Board had begun to recover certain sums.

[38] In my view, the decisions that the Board made after the election were a continuation of the process that had begun before the election. The Board is responsible for ensuring that the benefits and allowances that MLAs receive during their tenure are calculated in accordance with the *Act*. If, for whatever reason, the Board finds there has been an error in the calculation of those benefits, the responsibility to rectify the error does not end because the recipient of the benefits is no longer a MLA. Mr. Villeneuve's defeat in the election did not change the fundamental nature and characterization of the Board's actions.

[39] I find that the administration of allowances and benefits that MLAs are entitled to receive during their tenure is a matter that is purely internal to the legislature. The legislature has, through the *Act*, delegated this responsibility to the Board. I find that the fundamentally internal character of those decisions does not change even though some may be made after the recipient of the allowance or benefit is no longer a MLA. So long as the decision relates to allowances and benefits connected to the person's tenure as a MLA, the Board's decisions require the same protection as those the Board makes about benefits and allowances of persons who are MLAs.

[40] Having found the Board's decision to be privileged on that basis, I do not need to consider whether the legislature's inherent right to discipline its members extends to decision made about former members, or whether the Board's decision in this case falls within the ambit of that right.

5. Other issues raised by Mr. Villeneuve

[41] I find it important to address some of the specific submissions Mr. Villeneuve made in support of his position that the Board's decision should not be protected by privilege.

a) Impact of conflict of interest complaint;

[42] Mr. Villeneuve argues that because a conflict of interest complaint was made by the Board and the process set out in Part III of the *Act* was engaged, it was not open to the Board to take back the issue and treat it as a question of administration of benefits and allowances. With respect, I do not agree that the conflict of interest complaint had this effect.

[43] Had Mr. Villeneuve remained a MLA, the process set out at Part III of the *Act* would have had to take its course. If decisions had been made in violation of that legislated process, they may well have been open to judicial review. A legislature cannot use parliamentary privilege as a means to ignore the very rules it has enacted. Even where a subject matter, such as regulating the conduct of members, if part of an inherent privilege of the legislature, once a specific process to deal with the issue has been legislated, it must be followed. *Roberts* v. *Northwest Territories (Commissioner)*, *supra*, at paras 56-58.

[44] While the conflict of interest process was ongoing, it is true that its subject matter was intertwined with the question that the Board had been dealing with, that of which benefits and allowances Mr. Villeneuve was entitled to receive. Under those circumstances, as a legislated process was underway to investigate that matter, it may not have been appropriate for the Board to make any decisions until the process was completed.

[45] The intervening election, however, put an end to that process. Part III of the *Act* does not set out what is to happen where a person ceases to be a MLA before the inquiry into a conflict of interest complaint is completed. There is no legislated process for dealing with allegations of misconduct on the part of former MLAs. Perhaps this is because the legislature considers that its interests in the matter end once the person who is the subject of the complaint is no longer a part of the legislature. Perhaps the situation was not contemplated and there simply is a gap in the legislation.

Whatever the reason, the *Act* does not set out the process to be followed when a MLA who is the subject of a conflict of interest complaint ceases to be a MLA before the process to investigate that complaint is completed. This distinguishes the present case from the situation in *Roberts* v. *Northwest Territories (Commissioner), supra.* In that case the Court found that the legislature had essentially failed to abide by the rules it had itself established about the tenure of the Conflict of Interest Commissioner.

[46] Mr. Villeneuve argues that because the complaint was made by the Board itself, it was particularly unfair for it to later make any substantive decision on the merits. Mr. Villeneuve also argues that absent a finding of guilt on the conflict of interests allegation, the Board did not have any jurisdiction to impose a punishment such as the withholding of his Transition Allowance.

[47] I do not accept this submission, mainly because I do not agree with Mr. Villeneuve's characterization of the Board's decision. The scope of the conflict of interest process was much more broad than the question of what allowances or benefits Mr. Villeneuve was entitled to: had it taken its course, that process would have been about Mr. Villeneuve's conduct, whether he had knowingly made false declarations about his place of residence, or in other respects breached the standards that the *Act* imposes on MLAs. That process ended with Mr. Villeneuve's defeat at the general election, and a finding on the allegation of conflict of interest was never made. This did not eliminate, however, the more narrow question of what allowances and benefits Mr. Villeneuve had been entitled to during his tenure as a MLA. It was that issue that the Board examined, properly in my view, once the other, broader process came to a halt.

[48] Mr. Villeneuve argues that the Board ought to have referred that issue to the Assembly itself. But the Board is the body mandated by the *Act* to administer questions of allowances and benefits. When, how, and why it refers such matters to the Assembly is internal to the Board's processes, absent anything mandated by the statute.

[49] As I have already alluded to, had the Board violated a provision of the *Act,* or exceeded the power conferred on it by the *Act*, it could not have relied on parliamentary privilege to shelter its actions from review by the Courts. But no such thing has been demonstrated in this case. On the contrary, section 34 of the *Act* specifically gave the Board the power to do what it did.:

> 34.(1) Where a member or former member has received more than the member or former member is entitled to for an indemnity, an allowance or reimbursement for an expense under this Act, the member of former member shall reimburse the Consolidated Revenue Fund for the excess.
>
> (2) The Board of Management may set off the amount of the excess referred to in subsection (1) against any other entitlement the member or former member may have to an indemnity, an allowance or reimbursement for an expense.

b) Ramifications of finding that privilege applies;

[50] Mr. Villeneuve forcefully argued that one of the reasons the privilege should not apply in this case is that this would result in fundamental unfairness to him and others in his position. As a former MLA, he could not, at the time the Board's decision was made, avail himself of any of the internal processes available to MLAs to defend their interests. Without access to judicial review, he is left without any recourse to challenge a decision that has a significant impact on his rights. This, Mr.Villeneuve argues, is a crucial distinction between this case and what was issue in the *Morin* case, because Mr. Morin was still a MLA when the process investigating his conduct was taking place, so he had an opportunity to participate in that process.

[51] There is no doubt that one of the consequences of parliamentary privilege is to deprive interested parties from recourses that might otherwise be available to them under the law. This can have a significant impact on the rights of people and parties who are strangers to the legislature. Such was the case in *New Brunswick Broadcasting Co.* v. *Nova Scotia (Speaker of the House of Assembly)* [1993] 1 S.C.R. 319, where the broadcasting corporation wanted to challenge the decision to exclude their cameras from the legislature. Important issues of freedom of expression and freedom of the press were engaged, yet the privilege was found to apply, which precluded any judicial review of that decision.

[52] The issue also arose to an extent in *Morin* v. *Crawford*, *supra*, with respect to two of the intervenors in that case. They were individuals who were not MLAs and whose reputation had been tarnished by the process and decision under challenge. They had not been able to take an active role in the process because they were merely

witnesses. Finding that the decision was immune from judicial review meant that they had no opportunity to challenge either the process or any of the findings. Yet, the privilege was found to apply.

[53] I agree with Mr. Villeneuve that the impact and ramifications, especially the impact on people who are outside the legislature, must be considered in the analysis of whether a decision is protected by parliamentary privilege. However, those considerations are not determinative. If it were otherwise, the privilege would never apply where the party seeking to challenge the decision is external to the legislature. That is not the state of the law.

[54] In addition, the necessity analysis requires consideration of the potential ramifications of finding that a decision is *not* protected by privilege. If the Board's decision in this case were open to judicial review, it would mean that some of its decisions about benefits and allowances would be subject to review, and others would not be. For example, an issue could arise about the Board's interpretation of one its policies, and this issue could affect the benefits of several MLAs. If, before the Board resolved that issue, some of the MLAs affected resigned, were defeated in an election, or chose not to run again, the Board's decision with respect to their entitlements would not be privileged and could be reviewed, and potentially overturned, by the Courts. The same decision with respect to those who remained MLAs would be protected by privilege and sheltered from review. That, in my view, is an undesirable result. It could lead to inconsistencies and would erode the Board's ability to carry out its role free from interference. The legislature's inherent right to govern its own internal affairs requires that the body that is legislatively mandated to deal with specific issues be able to do so free from any interference from the judicial branch of government.

D) CONCLUSIONS

[55] For these reasons, I conclude that this Court does not have jurisdiction to review the decision made by the Board to withhold Mr. Villeneuve's Transition Allowance. The Respondents' Application is allowed.

[56] The parties asked for an opportunity to make submissions as to costs. Counsel should advise the Clerk of the Court of their availabilities within ten days of the filing of these Reasons so that a hearing date can be set. Counsel should also advise if they would be content proceeding on the basis of written submissions, in which case I will set timelines for the filing of those submissions.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
6th day of June 2008

Counsel for the Applicant: Steven Cooper
Counsel for the Respondents: Sheila MacPherson

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