

**SUPREME COURT OF CANADA**

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| **Citation:** Chagnon*v.* Syndicat de la fonction publique et parapublique du Québec, 2018 SCC 39, [2018] 2 S.C.R. 687 | **Appeal Heard:** March 15, 2018  **Judgment Rendered:** October 5, 2018  **Docket:** 37543 |

Between:

Jacques Chagnon, in his capacity as President of the National Assembly of Québec

Appellant

and

Syndicat de la fonction publique et parapublique du Québec

Respondent

- and -

Honourable Serge Joyal, P.C., and Speaker of the Legislative Assembly of Ontario

Interveners

**Official English Translation:** Reasons of Côté and Brown JJ.

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 58) | Karakatsanis J. (Wagner C.J. and Abella, Moldaver, Gascon and Martin JJ. concurring) |
| **Concurring Reasons:**  (paras. 59 to 75) | Rowe J. |
| **Joint Dissenting Reasons:**  (paras. 76 to 165) | Côté and Brown JJ. |

Chagnon *v.*Syndicat de la fonction publique et parapublique du Québec, 2018 SCC 39, [2018] 2 S.C.R. 687

Jacques Chagnon, in his capacity as President

of the National Assembly of Québec Appellant

v.

Syndicat de la fonction publique et parapublique du Québec Respondent

and

Honourable Serge Joyal, P.C., and

Speaker of the Legislative Assembly of Ontario Interveners

**Indexed as:** Chagnon ***v.*** Syndicat de la fonction publique et parapublique du Québec

2018 SCC 39

File No.: 37543.

2018: March 15; 2018: October 5.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for quebec

*Constitutional law — Parliamentary privilege — Scope of privilege — Security guards dismissed by President of National Assembly of Québec — Union grieving dismissals before labour arbitrator — President objecting to grievances on basis that decision to dismiss guards immune from review because of parliamentary privilege over management of employees and parliamentary privilege to exclude strangers — Whether President has established that either parliamentary privilege is necessary for National Assembly to discharge legislative mandate and therefore dismissals should be immune from arbitrator’s review — Act respecting the National Assembly, CQLR, c. A‑23.1, ss. 110, 120.*

Three security guards employed by the National Assembly of Québec were dismissed by the President of the National Assembly for using their employer’s cameras to observe activities inside nearby hotel rooms. Their union grieved their dismissals before a labour arbitrator. The President objected to the grievances on the basis that the decision to dismiss the guards was immune from review because it was protected by the parliamentary privilege over the management of employees and the parliamentary privilege to exclude strangers from the legislative assembly. The arbitrator concluded that the dismissals were not protected by either parliamentary privilege, and therefore that the grievances could proceed. The reviewing judge agreed with the arbitrator’s reasoning with regards to the privilege to exclude strangers, but found that the decision to dismiss the security guards was protected from review by the privilege over the management of employees. A majority of the Court of Appeal held that the arbitrator had correctly concluded that the dismissals were not protected by parliamentary privilege.

Held (Côté and Brown JJ. dissenting): The appeal should be dismissed.

*Per* Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon and Martin JJ.:The dismissals are not protected by parliamentary privilege and therefore are not immune from external review under the applicable labour relations regime. Although the President is entitled to exercise his management rights and dismiss security guards for a just and sufficient cause, parliamentary privilege does not insulate the President’s decision from review under the labour regime to which the guards are subject.

Legislative bodies in Canada, including provincial legislative assemblies, have inherent parliamentary privileges that flow from their nature and function in a Westminster model of parliamentary democracy. Inherent parliamentary privileges help preserve the separation of powers and promote the proper functioning of representative democracy, by protecting some areas of legislative activity from external review. However, the inherent nature of parliamentary privilege means that its existence and scope must be strictly anchored to its rationale. It is the role of the courts to determine whether a category of parliamentary privilege exists and to delimit its scope, whereas it is for the legislative assemblies to determine whether in a particular case the exercise of the privilege is necessary or appropriate. The scope of parliamentary privilege is delimited by the purposes it serves, and extends only so far as 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. Because courts cannot review the exercise of parliamentary privileges, even on *Canadian Charter of Rights and Freedoms* grounds, they must ensure that the protection provided by a privilege does not exceed its purpose. Therefore, a purposive approach must be taken when assessing parliamentary privilege claims. Such an approach helps to reconcile the privilege with the *Charter*, by ensuring that it is only as broad as is necessary for the proper functioning of a constitutional democracy.

The party seeking to rely on the immunity from external review conferred by parliamentary privilege bears the burden of establishing its necessity, that is, to demonstrate that the scope of the protection it claims is necessary in light of the purposes of parliamentary privilege. The necessity test demands that the sphere of activity over which the privilege is claimed be more than merely connected to the legislative assembly’s functions. The immunity that is sought from the application of ordinary law must also be necessary to the assembly’s constitutional role.

In this case, the standard of review applicable to the decision of the arbitrator is correctness. The arbitrator correctly concluded that the President’s decision to dismiss the security guards is not subject to parliamentary privilege. First, the President has failed to establish the necessity of a parliamentary privilege over the management of the guards. Admittedly, the guards perform some important tasks that are connected to the constitutional functions of the National Assembly, including protecting it from security threats and helping to maintain decorum in the chamber. However, the National Assembly does not require immunity from outside scrutiny of the general management of the security guards in order to discharge its constitutional functions. The management of the guards could be dealt with under ordinary law without impeding the National Assembly’s security or its ability to legislate and deliberate. Permitting the enforcement of basic employment and labour protections for the guards would not undermine the independence required for the National Assembly to fulfil its constitutional mandate with dignity and efficiency.

The question of necessity can be addressed without looking to the *Act respecting the National Assembly* (“*ARNA*”). However, while nothing in the legislation abrogates parliamentary privilege, the *ARNA* establishes that all employees of the National Assembly are managed in accordance with general law. Sections 110 and 120 of the *ARNA* provide that the employees of the National Assembly are members of the civil service and, as such, are generally subject to a labour relations regime unless they are exempted by regulation. As there is currently no regulatory exemption for the security guards, this demonstrates that the National Assembly does not appear to view exclusive control over their management to be necessary to its autonomy.

As for the parliamentary privilege to exclude strangers, while the existence of this privilege has long been recognized, it is not necessary to a legislative assembly’s ability to perform its constitutional functions that the scope of the privilege be drawn so broadly as to include the decision to dismiss employees who implement it on the president or speaker’s behalf. Such an immunity would impact persons who are not members of the legislative assembly, and undermine their access to the labour regime negotiated in accordance with their s. 2(*d*) *Charter* rights. The President has not shown that the application of general labour law to those persons would jeopardize the autonomy, dignity and efficiency required for the fulfilment of the National Assembly’s legislative mandate. Accordingly, the privilege to exclude strangers does not protect the decision to dismiss employees who exercise the privilege from review.

*Per* Rowe J.: There is agreement that the standard of review is correctness and agreement with the majority that the appeal should be dismissed but for different reasons. Whatever the scope of privilege for management of employees, the *Act respecting the National Assembly* (“*ARNA*”) resolves this case. When a legislative body subjects an aspect of privilege to the operation of a statute, it is the provisions of the statute that govern. While those provisions remain operative, a legislative body cannot reassert privilege so as to do an end-run around the statute whose very purpose is to govern the legislature’s operations. Parliamentary privilege should not be invoked to bypass the application of a statute enacted by the legislature to govern its own operation. It is not an impediment to the functioning of the legislature for it to comply with its own enactments, and it cannot be regarded as an intrusion on the legislature’s privilege.

The relationship between statute and privilege is determined through ordinary principles of statutory interpretation. In this case, in the *ARNA*, the National Assembly has defined how the management of its employees is to be carried out under the public service employment scheme. If the National Assembly wants a group of employees to be removed from this scheme, it can do so through the derogation procedure referred to in s. 120 of the *ARNA*. Privilege would then again operate, provided that the employees fell within the scope of privilege.

As the derogation procedure under s. 120 has not been exercised in this case with respect to the security guards, the President cannot now reassert privilege as to the management of the guards, and thereby insulate the decision to dismiss them from the scrutiny of the grievance arbitrator. It would be contrary to the decision of the National Assembly set out in the *ARNA* for the President to exercise authority over the management of employees on a case by case basis, nominally in the exercise of privilege. Accordingly, the arbitrator did not err in determining that he could hear the grievances.

*Per* Côté and Brown JJ. (dissenting): There is agreement with the majority that the applicable standard of review is correctness because the existence and scope of parliamentary privileges raise a question of general law that is both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise. The correctness standard also applies because the existence and scope of parliamentary privileges raise a constitutional issue.

However, there is disagreement with the majority’s disposition of this appeal. The parliamentary privileges at issue defeat the grievance arbitrator’s jurisdiction. The appeal should therefore be allowed and the grievances dismissed.

The jurisdiction of the courts with respect to parliamentary privileges is narrow — they can only ascertain the existence and scope of such privileges. They must give considerable deference to the view taken by legislative assemblies and their speakers or presidents of the scope of autonomy they consider necessary to fulfill their functions. The courts must rely on the necessity test to ascertain the existence and scope of privileges. This test is concerned with a sphere of the legislative body’s activity that will be excluded from the ordinary law. The onus is on the legislative assembly to 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 that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency. In the analysis of the necessity test, the sphere of activity must not be carved up — the analysis must not focus on each employee’s specific tasks, but rather on the sphere of activity and the category of employees. Once the courts have found that the sphere of activity and the category of employees are necessary to the proper functioning of the legislative assembly, the inquiry ends, since the privilege has been established. There is thus no need to consider whether grievance arbitration may interfere with the proper functioning of the assembly or jeopardize the dignity of the institution.

Security is one of the spheres of activity necessary to proceedings in an assembly. In a parliamentary democracy, there can be no free debate without security. In order for any legislative assembly to perform its constitutional functions with dignity and efficiency, it is essential that it operate in a secure environment. Security is therefore a sphere of activity that is protected by absolute parliamentary privileges. All decisions relating to security fall within this sphere of activity, including all tasks performed by an assembly’s security guards.

This case lies at the intersection of the two privileges claimed. All of the tasks performed by the security guards employed by the Assembly fall within a sphere of activitythat is necessary to the proper functioning of the Assembly, namely security. This is enough in itself to establish the management privilege. In addition, the guards exercise, in particular, the privilege to exclude strangers on the President’s behalf. Employees to whom the exercise of a recognized parliamentary privilege is delegated necessarily perform a function that is closely and directly connected with the Assembly’s activities. The connection required to ground a management privilege will therefore be established where it is shown that a category of employees exercises or participates in exercising a parliamentary privilege that is recognized and necessary. Accordingly, the labour relations of such employees fall within the scope of the privilege over the management of employees, and a decision concerning their dismissal is made in the exerciseof this privilege. The dismissal of an employee to whom a privilege has been delegated is the ultimate exercise of the management privilege. To preserve the integrity of the privileges of the Assembly and its members, the President must be able to manage the employees who exercise these privileges without having his or her decisions called into question. The courts cannot dictate to the Assembly how it must go about ensuring the security of its members within its walls by forcing it to employ people the President no longer trusts. If a grievance arbitrator could review the President’s decision to terminate the guards’ employment, this would mean that part of the exercise of the President’s own duties becomes *de facto* reviewable by a court or tribunal and therefore that the Assembly would lose control over decisions concerning its security.

The privileges claimed in this case were not abolished with the coming into force of the *ARNA*, and the Assembly did not waive its privilege in relation to the employees concerned by enacting this statute. The courts must respect the view taken by a speaker or president of a statute dealing with the internal affairs of a legislative assembly. The interpretation proposed by the President of the Assembly must therefore be given predominant weight in determining whether the Assembly intended to limit its privileges.

The *ARNA* governs the internal affairs of the Assembly, which are outside the scope of the courts’ jurisdiction. The preamble to the *ARNA* recognizes that the Assembly must protect its proceedings from all interference. Section 110 of the *ARNA* states that the Assembly shall continue to be managed within the scope of the Acts, regulations and rules applicable. Except in cases where the Assembly has expressly provided otherwise, the Acts, regulations and rules of the ordinary law have never applied to a sphere of activity that is subject to parliamentary privileges. The ordinary law that continues to apply to the Assembly is thus necessarily defined by privilege, which has been a constant in Canada’s constitutional history.

Section 120 of the *ARNA* deals with the power of the Office of the Assembly to exclude categories of employees from the personnel of the civil service and with the management powers granted to the Secretary General, but it does not mention the President’s privileges. It is not clear that this provision implicitly abolishes the privilege over the management of the Assembly’s employees by incorporating them into the public service or that it partially withdraws the privilege to exclude strangers from the President. Given that the Court has recognized that parliamentary privileges have constitutional status, the statute must be interpreted in such a way that it does not implicitly abrogate these privileges. It is undesirable to adopt an interpretation to the effect that the Assembly implicitly considers a privilege unnecessary, thereby denying its existence. More is needed to abrogate a constitutional privilege. Without requiring express language in the *ARNA*, the modern approach to statutory interpretation does require clear, unequivocal legislative intent to abolish or modify parliamentary privileges that are still necessary. In the end, the *ARNA* does not have the effect of limiting the privileges held by the President, who may assert them when deemed necessary, and courts and tribunals cannot assume jurisdiction without a clear indication that the Assembly has conferred it on them. Interference by courts or tribunals would be inconsistent with the Assembly’s sovereignty.

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By Karakatsanis J.

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By Rowe J.

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By Côté and Brown JJ. (dissenting)

*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895; *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667; *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*,[1993] 1 S.C.R. 319; *Nova Scotia (Workers’ Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504; *Stockdale v. Hansard* (1839), 9 Ad. & E. 1, 112 E.R. 1112; *Case of the Sheriff of Middlesex* (1840), 11 Ad. & E. 273, 113 E.R. 419; *Bradlaugh v. Gossett* (1884), 12 Q.B.D. 271; *Kielley v. Carson* (1842), 4 Moo. 63, 13 E.R. 225; *Landers v. Woodworth* (1878), 2 S.C.R. 158; *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876; *President of the Legislative Council v. Kosmas*, [2008] SAIRC 41, 175 I.R. 269; *Thompson v. McLean* (1998), 37 C.C.E.L. (2d) 170; *Payson v. Hubert* (1904), 34 S.C.R. 400; *Telezone Inc. v. Canada (Attorney General)* (2004), 69 O.R. (3d) 161; *Association des juristes de l’État v. Québec (Procureur général)*, 2013 QCCA 1900; *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661.

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*Canadian Charter of Rights and Freedoms*, s. 2(*b*), (*d*).

*Constitution Act, 1867*, preamble, s. 92(1).

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*Public Service Act*, CQLR, c. F‑3.1.1, ss. 16, 17, 37, 64.

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APPEAL from a judgment of the Quebec Court of Appeal (Chamberland, Morin and Bélanger JJ.A.), 2017 QCCA 271, 20 Admin L.R. (6th) 93, [2017] AZ‑51367748, [2017] J.Q. no 1274 (QL), 2017 CarswellQue 1071 (WL Can.), setting aside a decision of Bolduc J., 2015 QCCS 883, [2015] AZ‑51156941, [2015] J.Q. no 1752 (QL), 2015 CarswellQue 1786 (WL Can.), allowing an application for judicial review of an arbitrator’s decision, 2014 QCTA 696, [2014] AZ-51104370. Appeal dismissed, Côté and Brown JJ. dissenting.

François LeBel, Siegfried Peters and Ariane Beauregard, for the appellant.

Geneviève Baillargeon‑Bouchard and Pascale Racicot, for the respondent.

*Serge Joyal* and *David Taylor*, for the intervener the Honourable Serge Joyal, P.C.

Catherine Beagan Flood, Emily Hazlett and Christopher DiMatteo, for the intervener the Speaker of the Legislative Assembly of Ontario.

The judgment of Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, and Martin JJ. was delivered by

Karakatsanis J. —

1. Overview
2. Legislative bodies in Canada have inherent parliamentary privileges which flow from their nature and function in a Westminster model of parliamentary democracy. By shielding some areas of legislative activity from external review, parliamentary privilege helps preserve the separation of powers. It grants the legislative branch of government the autonomy it requires to perform its constitutional functions. Parliamentary privilege also plays an important role in our democratic tradition because it ensures that elected representatives have the freedom to vigorously debate laws and to hold the executive to account.
3. However, inherent privileges are limited to those which are necessary for legislative bodies to fulfil their constitutional functions. The inherent nature of parliamentary privilege means that its existence and scope must be strictly anchored to its rationale. Because courts cannot review the exercise of parliamentary privilege, even on *Canadian Charter of Rights and Freedoms* grounds, they must ensure that the protection provided by privilege does not exceed the purpose of this doctrine. This case illustrates the importance of taking a purposive approach when assessing parliamentary privilege claims.
4. The appellant, the President of the National Assembly of Québec, submits that his decision to dismiss three security guards employed by the National Assembly is protected by parliamentary privilege; an arbitrator therefore has no jurisdiction to hear the grievances brought by the respondent union to contest the dismissals. The President says that these employees’ dismissals are immune from external review because they fall within the scope of the parliamentary privilege over the management of employees and the privilege to exclude strangers from the National Assembly.
5. I conclude that the dismissals are not protected by parliamentary privilege. The President has failed to demonstrate that the management of the security guards is so closely and directly connected to the Assembly’s constitutional functions that the Assembly requires immunity from the applicable labour relations regime in order to fulfil these functions. Moreover, the *Act respecting the National Assembly*, CQLR, c. A-23.1 (*ARNA*), provides that the employees of the National Assembly are members of the civil service and, as such, they are generally subject to a labour relations regime unless they are exempted by regulation under the *Public Service Act*, CQLR, c. F-3.1.1, s. 64. There is currently no regulatory exemption for the guards or any of the Assembly’s other employees. The *ARNA* thus demonstrates that the Assembly does not need exclusive, unreviewable authority over the management of its security guards in order to perform its constitutional role with dignity and efficiency. Further, while the exclusion of strangers is protected by parliamentary privilege, the Assembly’s ability to carry out its constitutional mandate does not require the scope of this privilege to extend so far as to protect the decision to terminate employees who assist in excluding strangers. The President has not established that the immunity he claims is necessary.
6. For the reasons that follow, I would dismiss the appeal.
7. Background
8. Three security guards employed by the National Assembly of Québec were dismissed by the appellant, the President of the National Assembly, for using their employer’s cameras to observe activities inside nearby hotel rooms. Their union, the respondent, grieved their termination before a labour arbitrator.
9. The President objected to the grievances on the basis that the decision to dismiss the guards was immune from review because it was protected by the parliamentary privilege over the management of employees and the parliamentary privilege to exclude strangers from the National Assembly.
   1. Arbitral Tribunal, 2014 QCTA 696, [2014] AZ-51104370
10. The arbitrator, Pierre A. Fortin, found that the security guards’ dismissals were not protected by parliamentary privilege, and thus that the grievances could proceed.
11. He held that the scope of the privilege to exclude strangers from the National Assembly did not protect the decision to terminate the security guards. He rejected the President’s argument that the privilege to exclude strangers includes the ability to dismiss employees who implement this privilege. In any case, he found that the security guards do not have the authority to exclude strangers. If a security issue arises, they can signal the issue but cannot otherwise intervene.
12. Further, the arbitrator found that the guards’ dismissals fell outside the scope of the parliamentary privilege over the management of employees. He noted that the verification and surveillance tasks performed by the guards are linked to maintaining the security of the National Assembly. However, unlike other members of the security team, such as police officers and special constables, the guards cannot intervene when issues arise, do not perform acts that could affect proceedings, and are not in contact with members of the Assembly. He concluded that the guards’ functions are not closely and directly connected to the Assembly’s constitutional functions. As such, their management was not protected by parliamentary privilege.
    1. Quebec Superior Court, 2015 QCCS 883 (Bolduc J.)
13. Bolduc J. allowed the President’s application for judicial review and held that the arbitrator did not have jurisdiction to decide the grievances.
14. Although he agreed with the arbitrator’s reasoning with regards to the privilege to exclude strangers, he found that the decision to dismiss the security guards was protected from review by the privilege over the management of employees.
15. The reviewing judge concluded that the arbitrator erred in his assessment of the evidence and gave too little weight to the tasks performed by the guards. He found that the guards are essential to ensuring the security of the parliamentary precinct because they supervise and verify the identity of visitors, and are present in the public gallery during question period. Therefore, he held that the guards’ duties are closely and directly connected to the National Assembly’s legislative and deliberative functions. Decisions about their management are protected by parliamentary privilege and, as such, are not subject to external review.
    1. Quebec Court of Appeal, 2017 QCCA 271, 20 Admin. L.R. (6th) 93 (Chamberland and Bélanger JJ.A., Morin J.A. dissenting)
16. The majority of the Court of Appeal allowed the union’s appeal. Bélanger J.A., writing for the majority, held that the arbitrator had correctly concluded that the dismissals of the security guards were not protected by parliamentary privilege. The majority agreed with the arbitrator that the guards do not have the power to exclude strangers. Furthermore, the majority held that the privilege over the management of employees did not apply to the guards because their tasks are not closely and directly connected to the National Assembly’s deliberative and legislative functions. The majority recognized that preserving the security of the Assembly was of great importance, and that the security guards play a significant role in this endeavour. However, it concluded that it was not necessary for the President to have unreviewable authority over the management of the guards in order to ensure the Assembly’s work proceeds with efficiency and dignity. It added that the Assembly has set out the parameters of the independence it requires to discharge its constitutional mandate in the *ARNA*, and that this statute does not limit the ability of the guards to grieve their dismissals.
17. Morin J.A., dissenting, would have dismissed the appeal. In his view, the termination of the security guards fell within the scope of the privilege over the management of employees. He reasoned that the guards provide front-line security services, without which the Assembly could not carry out its constitutional mandate with dignity and efficiency. He also found that parliamentary privilege supersedes and cannot be limited by the *ARNA*.
18. Issues
19. The issue in this appeal is whether the arbitrator can decide the grievances, or whether the dismissals of the security guards are protected by parliamentary privilege. The parties have asked this Court to determine: (1) whether the decision to dismiss the guards is protected by a parliamentary privilege over the management of employees; and (2) whether it is protected by the parliamentary privilege to exclude strangers. As I shall explain, I would answer that it is not. I agree with the arbitrator and the majority of the Quebec Court of Appeal that this decision is not subject to parliamentary privilege.
20. Analysis
21. As a preliminary point, the applicable standard of review in this case is correctness. The majority reasons of the Court of Appeal below were written without the benefit of our Court’s reasons in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230 *(CHRC)*. It suffices to state that the existence and scope of parliamentary privilege is a question of central importance to the legal system and outside the expertise of the arbitrator (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 60; *CHRC*, at paras. 28 and 42). Labour arbitrators do not have specialized expertise in relation to parliamentary privilege. Moreover, while this appeal involves only the National Assembly of Québec, the conclusions regarding parliamentary privilege will affect all other legislative bodies.
    1. Parliamentary Privilege: A Purposive Approach
22. Legislative assemblies in Canada, including provincial legislative assemblies, received “certain very moderate [parliamentary] privileges” through the common law as an inherent and necessary component of their legislative function, and by virtue of the preamble of the *Constitution Act, 1867* (*New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, at p. 377, citing R. M. Dawson, *The Government of Canada* (5th ed. 1970), at p. 338; see also *New Brunswick Broadcasting*, at pp. 345 and 374-81; *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667, at para. 29(3); J. P. J. Maingot, *Parliamentary Immunity in Canada* (2016), at pp. 13 and 19).
23. Parliamentary privilege is defined as “the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions” (*Vaid*, at para. 29(2)). These privileges, immunities, and powers exceed those afforded to the general population (*Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (24th ed. 2011), by M. Jack, at p. 203). Therefore, parliamentary privilege “is an exemption from some duty, burden, attendance or liability to which others are subject” (Maingot, at p. 13). Decisions falling within the scope of parliamentary privilege cannot be reviewed by an external body, including a court (*Stockdale v. Hansard* (1839), 9 Ad. & E. 1, 112 E.R. 1112 (Q.B.), at p. 1168; *New Brunswick Broadcasting*, at pp. 350 and 382-84; *Vaid*, at para. 29(9)).
24. Many countries afford special protections to the legislative branch of government. For instance, numerous civil law and common law jurisdictions guarantee the immunity of elected representatives from liability for speech that relates to their legislative work.[[1]](#footnote-1) Legislative immunities ensure the proper functioning of a representative democracy. They cultivate a space in which the voices of the people, including those who hold potentially unpopular opinions, can be heard and considered.[[2]](#footnote-2)
25. Legislative privileges also allow legislative bodies to fearlessly hold the executive branch of government to account. They thus help preserve the separation and balance of power between the different branches of government (see e.g. *Gravel v. United States*, 408 U.S. 606 (1972), at p. 616; R. S. Mehta, “Sir Thomas’ Blushes: Protecting Parliamentary Immunity in Modern Parliamentary Democracies” (2012), 17 *E.H.R.L.R.* 309, at p. 309).
26. In the U.K., the doctrine of parliamentary privilege developed through the struggle of the House of Commons for independence from the other branches of government (*New Brunswick Broadcasting*, at p. 344 and 379; P. Doherty, “What is this ‘Mysterious Power’? An Historical Model of Parliamentary Privilege in Canada” (2017), 11 *J.P.P.L.* 383, at p. 390). Historically, “the Crown and the courts showed no hesitation to intrude into the sphere of the Houses of Parliament” (*New Brunswick Broadcasting*, at p. 344). Members of the House of Commons were arrested by the sovereign if he disagreed with the Members’ conduct or speech in Parliament. Members opposed these arrests, asserting that they were inconsistent with their privileges (Canada, House of Commons, *House of Commons Procedure and Practice* (2nd ed. 2009), by A. O’Brien and M. Bosc, at p. 64). Parliamentary privilege was partly confirmed in statute in the *Bill of Rights* (Eng.), 1 Will. & Mar. Sess. 2, c. 2 (*New Brunswick Broadcasting*, at p. 345). Article 9 states that “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”. However, parliamentary privilege in the U.K. extends beyond the protection of free speech (*Erskine May*, at p. 206). Therefore, parliamentary privilege has played a particularly important role in guaranteeing the separation of powers in the U.K. It ensures that democratically-elected members of the House of Commons can voice their concerns and independently represent the interests of their constituents (see also U.K., House of Lords, House of Commons, Joint Committee on Parliamentary Privilege, *Parliamentary Privilege:* *Report of Session 2013-14* (July 3, 2013), at p. 7; *A. v. the United Kingdom*, No. 35373/97, ECHR 2002-X, at paras. 66 and 77).
27. In Canada, parliamentary privilege is grounded in the preamble of the *Constitution Act, 1867*, which provides Canada with “a Constitution similar in Principle to that of the United Kingdom”. It is an inherent and necessary component of the Westminster model of parliamentary democracy. As in the U.K., the inherent privileges of Canadian legislative bodies are a means to preserve their independence and promote the workings of representative democracy. It is meant to enable the legislative branch and its members to proceed fearlessly and without interference in discharging their constitutional role, that is, enacting legislation and acting as a check on executive power (*New Brunswick Broadcasting*, at p. 354; *Vaid*, at paras. 21 and 41). It guarantees “an independent space for the citizens’ representatives to carry out their parliamentary functions; the freedom to debate and decide what laws should govern, and the unfettered ability to hold the executive branch of the State to account” (S. R. Chaplin, “*House of Commons v. Vaid*: Parliamentary Privilege and the Constitutional Imperative of the Independence of Parliament” (2009), 2 *J.P.P.L.* 153, at p. 154).
28. When tethered to its purposes, parliamentary privilege is an important part of the public law of Canada (see *Vaid*, at para. 29(3)). The insulation from external review that privilege provides is a key component of our constitutional structure and the law that governs it. Judicial review of the exercise of parliamentary privilege, even for *Charter* compliance, would effectively nullify the necessary immunity this doctrine is meant to afford the legislature (*New Brunswick Broadcasting*, at pp. 350 and 382-84; *Vaid*, at para. 29(9)). However, while legislative assemblies are not accountable to the courts for the ways in which they exercise their parliamentary privileges, they remain accountable to the electorate (Chaplin, at p. 164).
29. Yet, while the independence of the legislature is a necessary aspect of our constitutional structure and is wholly part of our law, so are its limits. The inherent nature of parliamentary privilege means that its existence and scope must be strictly anchored to its rationale. Notably, it creates a sphere of decision-making immune from judicial oversight for compliance with the *Charter*. It may also impede persons who are not members of the legislature from accessing recourses available under ordinary law (*Vaid*, at para. 30). As this Court explained in *Vaid*, “[c]ourts are apt to look more closely at cases in which claims to privilege have an impact on persons outside the legislative assembly than at those which involve matters entirely internal to the legislature” (para. 29(12); see also para. 4).
30. The history of parliamentary privilege in the U.K. demonstrates the importance of defining its scope in accordance with its purpose. Indeed, for a time after the passage of the U.K. *Bill of Rights* of 1689, members of the House of Commons sought to use the protection of privilege in their private lives (Doherty, at p. 391; see also O’Brien and Bosc, at p. 65; *Stockdale*, at pp. 1116-17). Such an appeal to privilege is improper as the protection sought does not help preserve the separation of powers and promote the proper functioning of representative democracy. The scope of parliamentary privilege in the U.K. has thus narrowed over time (Canada, Senate Standing Committee on Rules, Procedures, and the Rights of Parliament, *A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century* (June 2015) (online), at pp. 6-7; O’Brien and Bosc, at p. 67; see also U.K. Joint Committee Report (2013), at p. 8).
31. Thus, in Canada, the scope of parliamentary privilege is delimited by the purposes it serves (see e.g. *Vaid*, at paras. 41-46). It inheres to the nature and functions of legislative assemblies as a separate branch of government. The reach of inherent privilege extends only so far as 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” (*Vaid*, at para. 41; see also *New Brunswick Broadcasting*, at pp. 381-85). Otherwise, it would unjustifiably trump other parts of the Constitution.
32. Where the privilege that is claimed could undermine the *Charter* rights of people who are not members of the legislative assembly, a purposive approach helps to reconcile parliamentary privilege with the *Charter*. Neither the *Charter* nor parliamentary privilege “prevails over the other” (*Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, at para. 69). They “enjo[y] the same constitutional weight and status” (*Vaid*, at para. 34 (emphasis deleted)). Accordingly, when conflicts between the *Charter* and parliamentary privilege arise, “the proper approach is not to resolve the conflict by subordinating one principle to the other, but rather to attempt to reconcile them” (*Harvey*,at para. 69). No doubt it will sometimes be challenging to reconcile these two constitutional imperatives (see e.g. C. Robert and D. Taylor, “Then and Now: Necessity, the Charter and Parliamentary Privilege in the Provincial Legislative Assemblies of Canada” (2012), 80 *The Table* 17, at pp. 19 and 42-43; M.-A. Roy, “Le Parlement, les tribunaux et la *Charte canadienne des droits et libertés*: vers un modèle de privilège parlementaire adapté au XXIe siècle” (2014), 55 *C. de D.* 489, at pp. 512 and 521-22). In *Harvey*, McLachlin J. sought to reconcile them by adopting a narrower interpretation of s. 3 of the *Charter* so it was consistent with parliamentary privilege, and limiting the scope of the privilege at issue in light of the *Charter* (paras. 70 and 74). A purposive approach to parliamentary privilege recognizes the *Charter* implications of parliamentary privilege. It strives to reconcile privilege and the *Charter* by ensuring that the privilege is only as broad as is necessary for the proper functioning of our constitutional democracy.
33. In order to fall within the scope of parliamentary privilege, the matter at issue must meet the necessity test: it must be “so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body . . . that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency” (*Vaid*, at para. 46).
34. The necessity test thus demands that the sphere of activity over which parliamentary privilege is claimed be more than merely *connected* to the legislative assembly’s functions. The *immunity* that is sought from the application of ordinary law must also be necessaryto the assembly’s constitutional role. In other words, “[i]f 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, then immunity would be unnecessary and the claimed privilege would not exist” (*Vaid*, at para. 29(5)).
35. Previously recognized categories of parliamentary privilege serve as examples of matters meeting this requirement. Take, for instance, the immunity of members of the legislative assembly for their speech insofar as it relates to their mandate, the legislative assembly’s autonomy in controlling its debates or proceedings, its “power to exclude strangers from proceedings”, and its authority to discipline its members as well as “non-members who interfere with the discharge of parliamentary duties” (*Vaid*, at para. 29(10)). That said, given its rationale, the necessity of a privilege must be assessed in the contemporary context. Even if a certain area has historically been considered subject to parliamentary privilege, it may only continue to be so if it remains necessary to the independent functioning of our legislative bodies today (*New Brunswick Broadcasting*, at p. 387; see also *Vaid*, at para. 29(6)).
36. The party seeking to rely on the immunity from external review conferred by parliamentary privilege bears the burden of establishing its necessity. It must demonstrate that the scope of the protection it claims is necessary in light of the purposes of parliamentary privilege. It is the role of the courts to determine whether a category of parliamentary privilege exists and to delimit its scope. Though the courts “give considerable deference to [the legislative body’s] view of the scope of autonomy it considers necessary to fulfill its functions”, their role is nonetheless 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” (*Vaid*, at paras. 40 and 29(11)). But once the category and its scope are established, “it is for Parliament, not the courts, to determine whether in a particular case the *exercise* of the privilege is necessary or appropriate” (*Vaid*, at para. 29(9) (emphasis in original); see also paras. 47-48). Admittedly, “[t]he distinction between defining the scope of a privilege, which is the function of the courts, and judging the appropriateness of its exercise, which is a matter for the legislative assembly, may sometimes be difficult to draw in practice” (*Vaid*, at para. 47). Yet this distinction strikes a compromise between the fundamental purposes served by parliamentary privilege in our constitutional structure, and the need to ensure that the autonomy afforded through privilege does not belie its purposes (see *New Brunswick Broadcasting*, at pp. 348-50 and 382-84).
    1. Parliamentary Privilege Over the Management of Employees
37. Relying on statements in *Vaid*, both parties acknowledge the existence of a parliamentary privilege over the management of some employees. Their disagreement concerns the scope of this privilege. The appellant President submits that the National Assembly holds a privilege over the management of the security guards because there is both a “sufficient” and “a close and direct”connection between the tasks they perform and the Assembly’s constitutional functions. The security guards play a key role in ensuring security. They provide a first level of defence and are involved in 80 to 90 percent of the Assembly’s security work. Security promotes the effectiveness of the Assembly’s activities. The respondent union argues that the tasks performed by the security guards are not sufficiently connected to constitutional functions of the Assembly for their management to be subject to privilege. The security guards have no real power to intervene if an issue arises and primarily support the work of the special constables and police officers.
38. In *Vaid*, the Speaker of the House of Commons asserted a sweeping privilege over the management of all employees of the House, which would have immunized the decision to dismiss his chauffeur from external review (para. 52). The Court noted that, if the privilege claimed by the Speaker existed, its scope would include the management of “service employees (such as catering staff) who support MPs in a general way, but play no role in the discharge of their constitutional functions” (para. 47). It concluded that the appellants had failed to establish the existence of this broad privilege, which had not been shown to satisfy the necessity test (paras. 75-76).
39. Although the Court stated in *Vaid* that privilege “no doubt . . . attaches to the House’s relations with some of its employees”, *Vaid* itself does not establish the existence of any form of privilege over the management of employees (para. 75 (emphasis deleted); see also para. 62). The Court concluded that “[t]he definition of a more limited category of privilege . . . must await a case in which the question truly arises for a decision” (para. 101; see also para. 76). Notably, U.K. courts have not yet recognized the management of any parliamentary employees to be protected by privilege, and some authors suggest that “management functions relating to the provision of services in either House are only exceptionally subject to privilege” (*Vaid*, at para. 61 (emphasis deleted), citing U.K., Joint Committee on Parliamentary Privilege, vol. 1, *Report and Proceedings of the Committee* (1999), at para. 248; see also G. F. Lock, “Labour Law, Parliamentary Staff and Parliamentary Privilege” (1983), 12 *Indus. L.J.* 28, at p. 29; *Erskine May*, at p. 240).
40. Thus, *Vaid* did not determine whether a parliamentary privilege over the management of some employees exists. As in *Vaid*, we do not need to decide whether this privilege exists, as the management of the security guards — including their dismissals — would fall beyond the scope of any such privilege. As I shall explain, the tasks performed by the guards are important, but subjecting their management to ordinary law would not hamper the autonomy which the National Assembly requires to discharge its constitutional mandate.
41. The present case highlights the difficulty with trying to recognize a category of privilege that includes *all aspects* of the management of a group of employees and decisions with regards to *all* functions these employees perform (see E. Fox-Decent, “Parliamentary Privilege, Rule of Law and the Charter after the Vaid Case” (2007), 30:3 *Can. Parl. Rev.* 27, at p. 31). The requirements of the necessity test may be more easily fulfilled where the scope of autonomy that is claimed pertains to control and oversight over certain functions performed by some parliamentary employees, or certain aspects of their employment relationship. That said, the parties have not framed this case in that way. The President asserts a parliamentary privilege over the management of the security guards as a category of employees. This privilege would immunize not only their dismissals, but all of their employment conditions (from salary to seniority) from review on any grounds.
42. The security of the National Assembly is undoubtedly important. An assembly cannot function without maintaining its security. As the President states, [translation] “a parliament cannot deliberate without a secure setting” (A.F., at para. 84). Secure legislative precincts support an assembly in discharging its constitutional functions.
43. The tasks performed by the security guards support the National Assembly in fulfilling its constitutional mandate. The arbitrator found that the tasks performed by the security guards include the surveillance of the National Assembly’s buildings, controlling access to them, and verifying the identity of people inside them. Thus, the security guards play a key role in protecting the National Assembly from security threats. Additionally, the guards are sometimes stationed in the chamber and help maintain decorum.
44. However, many employees support legislative bodies in performing their constitutional functions. Considered broadly, many staff play a role in ensuring that a legislative assembly can fulfil its mandate. But merely demonstrating that a category of employees performs important tasks that promote the ability of the assembly to discharge its functions does not suffice to establish that decisions about their management must be protected by parliamentary privilege.
45. The close and direct connection between the tasks performed by the employees and the legislative assembly’s constitutional functions is only part of the equation. The necessity test also requires that the immunity that is sought from the executive and judicial branches of government — here a privilege over the management of the security guards — be necessary, in that “outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency” (*Vaid*, at para. 46).
46. The necessity test is stringent because, as discussed above, parliamentary privilege has the potential to shield parliamentary decision-making from judicial oversight, including for *Charter* compliance. Here, the privilege sought affects employees who are not members of the National Assembly. Further, the privilege claimed by the appellant may undermine the right of the security guards to meaningfully associate in the pursuit of collective workplace goals, guaranteed under s. 2(*d*) of the *Charter* (*Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3, at para. 67). It is thus particularly important to keep the purposes underlying privilege in mind in assessing whether the necessity test is met. The sphere of immunity that is sought must be necessary for the legislative body to have sufficient independence from the other branches of government in order to perform its constitutional functions.
47. In short, the question we must answer in this case is this: is the management of the security guards “so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body . . . that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency” (*Vaid*, at para. 46)? In other words, does the National Assembly require unreviewable authority over the management of security guards in order to maintain its “sovereignty as a legislative and deliberative assembly” (*Vaid*, at para. 72 (emphasis added), citing the British Joint Committee Report (1999), at para. 247)?
48. I agree with the majority of the Court of Appeal that the President has failed to establish the necessity of the immunity it claims, that is, a parliamentary privilege over the management of the security guards. Admittedly, the guards perform some important tasks that are connected to the constitutional functions of the National Assembly. They contribute to the security of the Assembly and to maintaining order and decorum in the part of the Assembly’s chamber that is accessible to the public during question period. That said, immunity from outside scrutiny in the general management of the security guards is not such that, without it, the Assembly could not discharge its functions (*Vaid*, at para. 72). The management of the guards could be dealt with under ordinary law without impeding the Assembly’s security or its ability to legislate and deliberate (*Vaid*, at para. 29(5)). Permitting the enforcement of basic employment and labour protections for the security guards would not undermine the independence required for the Assembly to fulfil its mandate with dignity and efficiency.
49. Of course, as the appellant suggests, order and decorum in the chamber is important to a legislative body’s ability to discharge its functions (*New Brunswick Broadcasting*, at p. 398; A.F., at paras. 84 and 106; transcript, at pp. 25-27 and 29). Hence, it may be necessary, to maintain order in the National Assembly’s chamber itself, for the President to have the absolute right to oversee certain *functions* exercised by a given group of employees or certain *aspects* of their employment relationship. But it does not necessarily require the recognition of a broad privilege over their management. Employees often perform diverse duties and many aspects of managing their employment relationship would have no bearing on the protection of the Assembly’s constitutional role. Unreviewable authority over all functions and absolute power over all aspects of how this group of employees is managed is not necessary in light of the purpose of inherent legislative privileges.
50. The question of necessity can, therefore, be addressed without looking to the *ARNA.* However, consideration of the *ARNA* does not detract from the above analysis of the necessity test. While nothing in the legislation abrogates inherent parliamentary privilege, the *ARNA* does establish that, unless the Office of the National Assembly indicates otherwise by regulation, all of its employees are managed in accordance with general law.
51. Section 110 of the *ARNA* reads:

Subject to this Act, the [National] Assembly shall continue to be managed within the scope of the Acts, regulations and rules applicable.

The Office [of the National Assembly] may, however, by regulation, derogate from the applicable Acts, regulations and rules by specifically indicating the provisions derogated from and the provisions that are to apply in their place and stead.

1. Section 120 para. 1 states:

Every member of the personnel of the Assembly, except a casual employee, is a member of the personnel of the civil service, whether appointed under the Public Service Act (chapter F-3.1.1) or by derogation by virtue of the second paragraph of section 110, unless, in the latter case, the Office excludes him therefrom.

1. Employees of the National Assembly (except for casual employees) are members of the civil service (*ARNA*, s. 120). Unless they fall within one of the exceptions set out in s. 64 of the *Public Service Act*, they are members of the respondent union. Their working conditions are negotiated by the respondent and the Conseil du trésor (*Public Administration Act*, CQLR, c. A-6.01, s. 36; *ARNA*, s. 110.2).
2. The Office of the National Assembly, which is composed of the President, five government members, and four opposition members, has not exercised its rights under s. 110 of the *ARNA* to exclude the management of any of the Assembly’s employees, including the security guards, from the applicable general law (see also *ARNA*, ss. 87 and 88). It could have done so if it believed that the Assembly’s ability to fulfil its constitutional functions required it to have exclusive control over the guards’ management. Thus, as reflected in the *ARNA*, the Assembly does not appear to view exclusive control over the management of its security guards to be necessary to its autonomy.
3. In short, even if a privilege over the management of some parliamentary employees exists, the management of the security guards would fall outside its scope. Moreover, if the President had only claimed a parliamentary privilege over the *dismissals* of all security guards, I would still conclude that the necessity test was not met. Despite the important functions performed by the security guards, the President has not shown that it requires the unreviewable authority to dismiss this category of employees in order for the Assembly to be able to fulfil its constitutional duties with efficiency and dignity.
   1. Parliamentary Privilege to Exclude Strangers
4. The appellant submits that the security guards’ dismissals are also subject to the parliamentary privilege to exclude strangers. Before this Court, he does not submit that the security guards are strangers to the National Assembly. His argument is that this privilege includes the President’s right to determine who can implement it on his behalf. Because the guards exercise the privilege to exclude strangers when they control access to and within the legislative assembly, the President’s decision to terminate their employment is protected from review. If arbitrators and courts were entitled to review the dismissals of the security guards, they could interfere with the President’s determination of who has delegated authority to exclude strangers and, by implication, interfere with the exercise of this parliamentary privilege.
5. While the respondent does not dispute the existence of the parliamentary privilege to exclude strangers, it submits that this privilege does not apply to the decision to dismiss the security guards. The broad manner in which the President has construed this privilege overshoots its underlying purpose and could significantly affect the rights of people who are not members of the Assembly.
6. The inherent privilege of legislative assemblies in Canada to exclude strangers from their proceedings and precincts has deep historic roots. The absolute right to eject strangers from Parliament has been upheld as a matter of privilege in the U.K. for centuries (*New Brunswick Broadcasting*, at pp. 385-87 and 389; *Erskine May*, at pp. 14-15). In Canada, this privilege was recognized as early as 1904, in *Payson v. Hubert* (1904), 34 S.C.R. 400. The existence of this privilege was confirmed in *New Brunswick Broadcasting*, where this Court found it necessary to ensure that elected representatives are able to effectively debate and carry out their legislative functions uninhibited and undisturbed (pp. 387-88). The decision of a legislative assembly to remove or exclude strangers is thus immune from external review.
7. While the existence of the parliamentary privilege to exclude strangers is not in question, this Court must apply the necessity test to determine whether its scope includes the dismissals of employees who implement it on the President’s behalf. The issue here is not whether the President has the power to delegate the exercise of the inherent parliamentary privilege to exclude strangers to the Assembly’s employees. Rather, it is whether the dismissals of employees who implement this privilege on the President’s behalf must be immune from external review for the Assembly to be able to discharge its legislative mandate (see *Vaid*, at para. 56).
8. I conclude that it is not necessary to a legislative assembly’s ability to perform its constitutional functions that the scope of its privilege to exclude strangers be drawn so broadly as to include the decision to dismiss employees who implement this privilege. This unnecessary sphere of immunity would impact persons who are not members of the legislative assembly, and undermine their access to the labour regime negotiated in accordance with their s. 2(*d*) *Charter* rights. The appellant has not shown that the application of general labour law to employees who implement this privilege would jeopardize the autonomy, dignity, and efficiency required for the fulfilment of the Assembly’s legislative mandate (see *Vaid*, at para. 29(5)). It is true that allowing the union to grieve the dismissals of these employees may delay the finality of these decisions. Yet these delays would not impede the Assembly’s legislative activities.
9. The privilege to exclude strangers does not protect the decision to dismiss employees who exercise this privilege from review.
10. Conclusion
11. Obviously, the President is entitled to exercise his management rights and dismiss security guards for a just and sufficient cause. However, parliamentary privilege does not insulate the President’s decision from review under the labour regime to which the security guards are subject pursuant to the *ARNA* and the *Public Service Act*. I would therefore dismiss the appeal with costs throughout. As a result, the decision of the labour arbitrator stands.

The following are the reasons delivered by

Rowe J. —

1. Overview
2. I accept Justice Karakatsanis’ statement of the facts, her summary of the judgments below and her conclusion as to the standard of review. I also concur with her in the result, albeit for different reasons. In my view, whatever the scope of parliamentary privilege for management of employees, the National Assembly of Québec’s governing statute, the *Act respecting the National Assembly*, CQLR, c. A-23.1 (“*ARNA*”), resolves this case. When a legislative body subjects an aspect of privilege to the operation of statute, it is the provisions of the statute that govern. While the relevant statutory provisions remain operative, a legislative body cannot reassert privilege so as to do an end-run around an enactment whose very purpose is to govern the legislature’s operations. Thus, for the reasons that follow, I would dismiss the appeal and remit the matter to the grievance arbitrator for a determination on the merits.
3. Analysis
   1. Preliminary Question
4. The power of provincial legislatures to define their privileges was recognized by the Judicial Committee of the Privy Council which held that, by means of s. 92(1), “the British North America Act itself confers the power (if it did not already exist) to pass Acts for defining the powers and privileges of the provincial legislature” (*Fielding v. Thomas*, [1896] A.C. 600, at p. 610). The *Constitution Act, 1982* repealed s. 92(1) of the *British North America Act, 1867* (when it was renamed the *Constitution Act, 1867*), which had provided the legislature of a province with authority to amend “the Constitution of [a] province”. This was replaced by s. 45 of the *Constitution Act, 1982*, to somewhat similar effect. It would seem to follow that what provincial legislatures could formerly do under s. 92(1) they can now do under s. 45, including defining their privileges.
5. The jurisprudence on this point, however, is not entirely clear. In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*,[1993] 1 S.C.R. 319, at p. 384, McLachlin J. held that parliamentary privileges “are part of the fundamental law of our land, and hence are constitutional”. Sopinka J. commented that by rooting inherent parliamentary privileges in the preamble of the *Constitution Act, 1867*, “these privileges would arguably not be subject to provincial legislation and any change would require an amendment to the Constitution of Canada pursuant to s. 43, or indeed s. 38, of the *Constitution Act, 1982*”(*New Brunswick Broadcasting*, at p. 396). For Sopinka J., the consequence of McLachlin J.’s analysis is that the provinces would no longer have the legislative powers over privilege recognized in *Fielding*.
6. In *obiter*, I would be inclined to agree with the view expressed by some commentators that s. 45 of the *Constitution Act, 1982*, as did s. 92(1) before it, includes the power to enact laws in relation to the privileges of a provincial legislature (see P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at pp. 1-16 and 4-34; H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at p. 326). This view is supported by comments made by this Court which suggest that s. 45, as the successor to s. 92(1), covers the same subject matter (see *OPSEU v. Ontario (Attorney General)*,[1987] 2 S.C.R. 2, at p. 33; *Reference re Senate Reform*,2014 SCC 32, [2014] 1 S.C.R. 704, at paras. 47-48).
7. This issue is not dealt with by the parties in this appeal; I refer to the issue as it may arise in the future, including if the National Assembly or another provincial legislature seeks to amend its privileges. In the facts of this case, the management of employees of the National Assembly was dealt with by statute prior to patriation in 1982 (see *Legislature Act*,R.S.Q. 1964, c. 6, s. 55). It seems clear to me that such an enactment in 1964 was authorized by s. 92(1) (see *OPSEU*,at p. 33).
   1. Parliamentary Privilege and Statutory Enactments
8. As noted above, I agree with Karakatsanis J. that the standard of review is correctness, both for the reasons she gives, and because the scope of parliamentary privilege is a constitutional question. I would adopt the analysis set out by Côté and Brown JJ. in paras. 86-88 of their reasons.
9. Parliamentary privilege is “one of the ways in which the fundamental constitutional separation of powers is respected” (*Canada (House of Commons) v. Vaid*,2005 SCC 30, [2005] 1 S.C.R. 667, at para. 21). It supports the exercise of parliamentary sovereignty to ensure that a legislature is safeguarded a due measure of autonomy from the other two branches of the state, the executive and the judiciary. Parliamentary privilege protects the operation of the legislature from outside interference, where such interference would impede the fulfilment of its constitutional role. As described in *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*:

Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.

((24th ed. 2011), by M. Jack, at p. 203)

1. Parliamentary privilege should not, however, be invoked to bypass the application of a statute enacted by the legislature to govern its own operation. In that regard, I endorse the comments of Charles Robert, now Clerk of the House of Commons:

The fundamental purpose of any parliamentary or legislative privilege is to provide protection against outside interference that is unwarranted and intrusive, or that would impede the Legislative Assembly in controlling its debates or proceedings. Therefore, it seems unreasonable to invoke privilege to disable, and render meaningless, a law which the Assembly itself adopted relating to its administrative operations.

(C. Robert, “Falling Short: How a Decision of the Northwest Territories Court of Appeal Allowed a Claim to Privilege to Trump Statute Law” (2011), 79 *The Table* 19, at pp. 25-26)

In other words, expecting a legislature to comply with its own legislation cannot be regarded as an intrusion on the legislature’s privilege. It is not an impediment to the functioning of a legislature for it to comply with its own enactments. Accordingly, when a legislature has set out in legislation how something previously governed pursuant to privilege is to operate, the legislature no longer can rely on inherent privilege so as to bypass the statute. Thus, I would distance myself from Stephen J.’s views in *Bradlaugh v. Gossett* (1884), 12 Q.B.D. 271, at p. 278, to the effect that “the House of Commons is not subject to the control of Her Majesty’s Courts in its administration of that part of the statute-law which has relation to its own internal proceedings”.

1. Rather, this Court has stated that the relationship between statute and privilege is determined through ordinary principles of statutory interpretation. This approach differs from the approach adopted at common law, the rule in *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661, which holds that privilege was not “struck at unless by express words in the statute” (p. 668). This Court has held that this presumption of non-displacement of privilege is “out of step with modern principles of statutory interpretation accepted in Canada” (*Vaid*,at para. 80; see also *Reference re the Final Report of the Electoral Boundaries Commission, Re*, 2017 NSCA 10, 411 D.L.R. (4th) 271, at paras. 116-19).
2. Notwithstanding this, Professors Brun, Tremblay and Brouillet have argued that [translation] “[a]lthough it was qualified in *Vaid* . . . the rule of interpretation referred to here [the rule in *Duke of Newcastle*] can still apply in appropriate cases” (*Droit constitutionnel*,at pp. 328-29). The Quebec Court of Appeal viewed ss. 110 and 120 of the *ARNA* as being such an appropriate case in *Association des juristes de l’État v. Québec (Procureur général)*, 2013 QCCA 1900. Relying on the comments of Professors Brun, Tremblay and Brouillet, it held that [translation] “sections 110 and 120 of the ARNA did not have the effect of implicitly abrogating the parliamentary privilege over the management of employees of the National Assembly of Québec” (para. 26 (CanLII); see also paras. 27-30). (See to a similar effect *Québec (Procureur général) v. Confédération des syndicats nationaux*,2011 QCCA 1247, at para. 30 (CanLII); *Michaud v. Bissonnette*, 2006 QCCA 775, at para. 59 (CanLII).)
3. I am inclined to agree with Professors Brun, Tremblay and Brouillet that the rule in *Duke of Newcastle* can still operate in certain circumstances. Such circumstances, however, do not arise in the face of the legislature’s organizing statute. The *ARNA* sets out the administrative structure through which the National Assembly is to operate. To the extent that it is an enactment that “determine[s] the composition, powers, authority, privileges and duties of the legislative [branch]” (*OPSEU*, at p. 39), it bears “on the operation of an organ of the government of the Province” (*Attorney General of Quebec v. Blaikie*,[1979] 2 S.C.R. 1016, at p. 1024), and is constitutional in nature within the meaning given in *OPSEU*, at p. 40. Further, the National Assembly must be presumed to have had its inherent privileges in mind when enacting the *ARNA*. Accordingly, I would not apply the rule in *Duke of Newcastle* requiring express language to derogate from privilege when dealing with the *ARNA*.
   1. Operation of the ARNA
4. In the *ARNA*, the National Assembly has defined how the management of its employees is to be carried out. Section 120 qualifies personnel of the National Assembly as civil servants unless they are appointed by regulation derogating from the *Public Service Act*, CQLR, c. F-3.1.1, and excluded from its membership. This gives to all employees (save those so excluded) the same rights and obligations as members of the civil service. Section 120 also vests in the Secretary General the powers and responsibilities of a deputy minister for the purposes of the *Public Service Act*. Under that Act, a deputy minister is responsible for management of the employees of the National Assembly (*Public Service Act*,s. 37).Sections 16 and 17 of the *Public Service Act* grant a deputy minister the authority to discipline employees, including through dismissal, for a contravention of the standards of ethics and discipline.
5. In this case, the letters of dismissal by the Secretary General dated July 17, 2012, are an exercise of this power. The dismissals were based on breaches of the security guards’ obligations under the *Public Service Act* and its *Regulation respecting ethics and discipline in the public service*,CQLR, c. F-3.1.1., r. 3. The grievances that followed were brought by virtue of the rights of the guards pursuant to this legislative scheme. All of this follows from the choice made by the National Assembly when it enacted s. 120 of the *ARNA*.
6. If the National Assembly wants a group of employees to be removed from this scheme, it can do so through the derogation procedure referred to in s. 120 of the *ARNA*. The management of this group of employees would then no longer be subject to the same rules as those applicable to the civil service. Privilege would again operate, provided that the employees fell within the scope of privilege.
7. As the derogation procedure under s. 120 has not been exercised with respect to the employees in question, I do not see by what authority the President of the National Assembly can now reassert privilege as to the management of the guards. The President cannot rely on privilege to ignore the *ARNA*, and thereby insulate the Secretary General’s decision to dismiss the guards from the scrutiny of the grievance arbitrator. The National Assembly set out in the *ARNA* that the management of its employees is to be carried out under the public service employment scheme; it also provided the Office of the National Assembly a mechanism to exclude categories of employees from that scheme. It would be contrary to the decision of the National Assembly set out in the *ARNA* for the President to exercise authority over the management of employees on a case by case basis, nominally in the exercise of privilege. Accordingly, the grievance arbitrator did not err in determining that he could hear the grievances.
8. I would add a final perspective. In my analysis, I look to the *ARNA* and find there the basis to resolve the appeal. I do not address the extent of parliamentary privilege; this is deliberate. In my view, one should have regard to constitutional questions only when necessary. Better to decide matters, where one properly can, by reference to “the ordinary law”. Parliamentary privilege, derived from centuries of conflict and diverse experience, should be circumscribed with great caution and after careful reflection. It is difficult sometimes to see the connections between what is necessary for the autonomy and proper functioning of the legislature and the extent of parliamentary privilege. The legislature is not like a department or a regulatory agency; it is the central pillar of representative democracy. Profound deference should be shown as to how it chooses to operate.
9. Conclusion
10. I would dismiss the appeal. The grievance arbitrator had jurisdiction to hear this matter on the merits. I would remit the matter back to him to do so.

English version of the reasons delivered by

Côté and Brown JJ. (dissenting) —

1. Introduction
2. On May 8, 1984, Denis Lortie, a member of the armed forces, set in motion a plan to kill the members of the sovereignist government led by René Lévesque. Three people were shot down in cold blood, and thirteen others were wounded in the Parliament Building where the National Assembly of Québec (“Assembly”) sits. However, the actions of the Sergeant‑at‑Arms and the entire security staff undoubtedly saved the lives of many others.
3. The day after those tragic events, the Premier of Quebec gave a speech in the Assembly to express his thoughts and honour the security staff, especially the Sergeant‑at‑Arms, the police officers and the security officers who had been on the front lines:

[translation] Mr. President, yesterday, which was an inconceivably tragic day and which those present in this Parliament Building especially had to endure, has taken a very heavy toll, of which we are unfortunately all too aware. First of all, I too would like — and I’m sure I speak for all of us, as well as for myself personally — to extend our deepest condolences to the families, friends and colleagues of Camille Lepage, Georges Boyer and Roger Lefrançois, the innocent victims of this unprecedented and senseless violence. I also want to offer our best wishes for a full and speedy recovery to all those who were injured, some of whom are still in hospital in serious condition. We had gotten to know these men and women, some of whom worked here at the National Assembly for a long time, by interacting with them on a regular basis. They helped us do our work as members. They were among those who contribute daily to the proper functioning of the central institution of our democratic system. There is not a single person in this Parliament, or in the government, of course, who does not feel affected by what happened to them and who does not join in the sorrow or worry felt by their loved ones.

Among these people in Parliament, among the involuntary players in this drama, as you just mentioned — but I think it can be said again; in fact, it will be repeated for a long time — was our Sergeant‑at‑Arms, Mr. Jalbert, who has been with us for a decade now. We were already well aware of his efficiency, tact and courteousness, and also his humour on occasion, but yesterday he showed us some truly heroic qualities. The word has been used, it is not too strong, and everyone is unanimous in recognizing it. Through his presence of mind, his absolutely extraordinary composure, his sense of duty and responsibility, and a solicitude going beyond the normal performance of the job of protecting others, he changed the course of this incident. He no doubt averted an even greater tragedy. The National Assembly is unanimous — as we saw just moments ago — in saluting Mr. Jalbert’s exemplary courage and in thanking him on behalf of everyone for what he did for his fellow citizens. I am also certain that we will be unanimous in finding a more meaningful and lasting way to express our feelings for him soon.

I also note, as you did, Mr. President, that among those who deserve our recognition as well for their bravery and efficiency, it is important to point out the remarkable work done by the regular officers and the tactical squad of the Sûreté du Québec as well as by the city’s police officers. It must also be recognized that, given the circumstances, the Assembly’s security officers did everything they could to carry out their duty, and we know how difficult and trying that must have been.

. . .

This inevitably leads me for a moment to the issue that keeps coming back to haunt us each time a parliamentary institution is disrupted by acts of violence, namely the issue of security. It is clear — you said it yourself yesterday, Mr. President — that no democratic parliament, at least as far as we are aware, has yet found a solution that is truly fail‑safe, if it must at the same time remain democratic. But one thing is certain: while the lives of parliamentarians and the people around them are absolutely as invaluable as those of all other citizens, Parliament, as the very symbol of democracy, must be able to count on having sufficient protection to fulfil its role with the greatest possible serenity. Clearly, this balance is never an easy one to strike. In fact, this is simply a reminder of our fundamental duty to build a society that is increasingly — and ever more firmly — based on respect for others and on non‑violence. I say “build” because it has already been said and it still remains true.

Real democracy can never be taken for granted; it must be earned and, in a way, re‑earned and strengthened every day; it must also be respected. Let us hope, in any case, that yesterday has made us more aware of the futility, absurdity and inhumanity of violence as a means of expression in a civilized society. [Emphasis added.]

(National Assembly of Québec, *Journal des débats*, vol. 27, No. 90, 4th Sess., 32nd Leg., May 9, 1984, at pp. 6021‑23)

1. This historical aside underscores a fact that we must bear in mind in our analysis: in order for any legislative assembly to perform its constitutional functions with dignity and efficiency, it is essential that it operate in a secure environment. A legislative assembly that works under the threat of violence is neither dignified nor efficient. In fact, no legislative assembly whose proceedings are conducted under duress can truly claim to be democratic. This fundamental imperative ensures that members of the Assembly are able to debate freely in a respectful manner, without violence. Ensuring the Assembly’s security is the responsibility of its President (the term used in Quebec for the speaker), who is free to make any decisions deemed appropriate, including decisions as to who it is that will carry out security measures. This process is protected by absolute parliamentary privileges. It follows that decisions relating to security cannot be challenged in or reviewed by a court or tribunal.
2. In the constitutional framework of British‑style parliamentary democracies, parliamentary privileges effect a *modus vivendi* between the legislative branch of government and the other two branches, giving the former the legal tools it needs to perform its constitutional functions free from any interference: M. Groves and E. Campbell, “Parliamentary Privilege and the Courts: Questions of Justiciability” (2007), 7 *O.U.C.L.J.* 175, at pp. 189‑90, citing D. McGee, “The Scope of Parliamentary Privilege”, [2004] *N.Z.L.J.* 84, at p. 84. As we will explain below, these privileges have deep historical roots. They made it possible to strike the necessary balance for sustaining democracy in the United Kingdom and later in its colonies. Parliamentary privileges are therefore not an *exception* to the rule of law, but rather a distinct pillar in Canada’s constitutional architecture.
3. In the instant case, we are of the opinion that these privileges defeat the grievance arbitrator’s jurisdiction. Security guards exercise an essential part of the privilege conferred onto the President. Their employment is therefore closely and directly connected with proceedings in the Assembly. Moreover, these constitutional privileges were not abolished with the coming into force of the *Act respecting the National Assembly*,CQLR, c. A‑23.1 (“*ARNA*”). Interference by courts or tribunals would therefore be inconsistent with the Assembly’s sovereignty.
4. Facts
5. In July 2012, three of the Assembly’s security guards were dismissed on the ground that they had surreptitiously used surveillance cameras to look inside the rooms of the adjacent hotel and that the relationship of trust with their employer had therefore been severed. Grievances were filed in which the guards, represented by the Syndicat de la fonction publique et parapublique du Québec (“Union”), sought reinstatement in their respective positions and reimbursement of the benefits they had lost. The President of the Assembly, Jacques Chagnon (“President”), challenged the arbitrator’s jurisdiction by way of a preliminary exception. He relied on two parliamentary privileges: the privilege over the management of employees and the privilege to exclude strangers from the Assembly’s precincts.
6. The arbitrator dismissed the preliminary exception and found that he had jurisdiction to decide the grievances: 2014 QCTA 696, [2014] AZ‑51104370. The Superior Court allowed the President’s application and set aside the arbitrator’s decision: 2015 QCCS 883. The majority of the Court of Appeal allowed the appeal and restored the arbitrator’s decision: 2017 QCCA 271, 20 Admin. L.R. (6th) 93.
7. Standard of Review
8. The President puts three questions to this Court:

(1)  Do the duties of the security guards employed by the Assembly fall within a sphere of activity covered by the privilege over the management of employees? What is the applicable test when this privilege is claimed?

(2)  Did the general reference to the *Public Service Act*, CQLR, c. F‑3.1.1,in s. 120 of the *ARNA* have the effect of implicitly abolishing the Assembly’s parliamentary privileges?

(3)  Does the implementation of [translation] “control over access to parliamentary precincts”, as part of the privilege to exclude strangers from the Assembly and its precincts, give the President the power to determine who exercises this privilege, including the right to dismiss a person who no longer exercises it?

(See A.F., at pp. 6‑8.)

1. The Union submits that the Court must defer to the arbitrator’s findings that the guards’ duties do not fall within the scope of the privilege over the management of employees and that the guards do not exercise the privilege to exclude strangers on the President’s behalf. According to the Union, these questions relate to the assessment of the facts in this case, which means that the applicable standard is reasonableness.
2. We cannot accept this argument. In our view, the questions submitted by the President are merely three aspects of the same question, namely the scope of the parliamentary privileges in issue. Moreover, the evidence relating to the tasks performed by the guards is not contested. Therefore, what we are concerned with is not characterizing the role of the guards at the Assembly, but rather defining the scope of the parliamentary privileges — that is clearly a question of law.
3. We agree with Justice Karakatsanis that the applicable standard of review is correctness because the existence and scope of parliamentary privileges raise a question of general law “that is both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise”: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 60, citing *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 62; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at para. 26. Like Justice Karakatsanis, we recognize that grievance arbitrators do not have specific expertise in relation to parliamentary privileges. We also recognize that while this appeal involves only the National Assembly of Québec, the conclusions regarding parliamentary privileges could affect other legislative assemblies. The broad and general scope of such a question is clear. It raises the issue of “basic consistency in the fundamental legal order of our country”: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 22; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at paras. 26‑27. “Because of their impact on the administration of justice as a whole, such questions require uniform and consistent answers”: *Dunsmuir*, at para. 60.
4. We would add that the existence and scope of parliamentary privileges also raise a constitutional issue. This Court has previously recognized the constitutional nature of parliamentary privileges: *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667, at para. 30; *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, at p. 379. It is well established that the standard of review applicable to “other constitutional” issues is correctness “because of the unique role of . . . courts [mentioned in s. 96 of the *Constitution Act, 1867*] as interpreters of the Constitution”: *Dunsmuir*, at para. 58; *Nova Scotia (Workers’ Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504. In *Vaid*, the Court noted the importance of the issue relating to the privilege over the management of employees, stating that “[t]here are few issues as important to our constitutional equilibrium as the relationship between the legislature and the other branches of the State on which the Constitution has conferred powers, namely the executive and the courts”: *Vaid*, at para. 4. The same can be said of issues relating to the Assembly’s inherent, historical privilege to exclude strangers from its precincts, as well as the impact of the *ARNA* on parliamentary privileges. Since all of these issues concern the separation of powers among state institutions, they are constitutional in nature, and the correctness standard must apply.
5. However, we prefer to refrain from expressing any opinion on the justification put forward by the majority of the Court of Appeal, which found that the correctness standard applied because the case also involved a true question of jurisdiction (paras. 33 and 35). Given that the Court will soon be considering the nature and scope of judicial review — possibly including the concept of “true question of jurisdiction” as used in *Dunsmuir*, at para. 59 — we do not think it appropriate to address this issue. Nor is it essential to do so, since the reasons stated above are more than sufficient to justify the application of the correctness standard.
6. Analysis
7. Since the origins of parliamentary privileges date back to the beginnings of British parliamentary democracy, we believe it will be helpful to start with a historical overview of the legal principles that underlie our reasoning. We will therefore consider the privileges being claimed, which will lead us to conclude that security is a privileged sphere of activity. Since the security guards’ tasks fall entirely within this sphere, and since the guards exercise the privilege to exclude strangers on the President’s behalf, they are covered by the management privilege. Moreover, the *ARNA* does not reveal any clear intention by the Assembly to restrict or waive these parliamentary privileges. Allowing the grievance arbitrator to rule on the merits of the dismissal would therefore be tantamount to authorizing interference with the exercise of parliamentary privileges.
   1. Historical Roots of Parliamentary Privileges
      1. Origins of the Privileges of the Parliament at Westminster
8. The precise origins of parliamentary privileges remain uncertain. The assertion of these privileges certainly caused many conflicts, sometimes violent in nature, between the Parliament at Westminster, the Crown and the courts: *New Brunswick Broadcasting*,at p. 344 (concurring reasons of Lamer C.J.); see also S. Pincus, *1688: The First Modern Revolution* (2009), at p. 28.
9. In the early years of the Westminster system of parliamentary democracy as we know it today, the speaker of the House of Commons asked the monarch to recognize the privileges necessary to the proper functioning of the House on the opening day of Parliament, in accordance with feudal tradition. The representatives of the Lower House — that is, the knights of the shires and the burgesses — met and chose a speaker to represent them before the monarch. That representative went before the Upper House, where the lords, their authorized representatives, the princes, the barons, the archbishops, the bishops and certain abbots sat. The monarch was usually seated above them in the Upper House and was assisted by a chancellor, who spoke on the monarch’s behalf. In the centre of the room were the judges of the realm, the master of the rollsand the secretaries of state: W. Stubbs, *The Constitutional History of England in Its Origin and Development* (3rd ed. 1884), vol. III, at pp. 486‑88.
10. Once in the Upper House, the speaker of the House of Commons began by praising the monarch. The chancellor thanked the Commons for choosing a speaker and called upon the representatives to debate laws*.* The speaker then asked for recognition of the Commons’ privileges so that its members could debate freely without their words being called into question or offending the monarch. He asked that, should such offence occur, the Lower House be permitted to judge and punish the offender itself. The speaker promised not to abuse these powers, and the chancellor then agreed on behalf of the monarch: Stubbs, at pp. 486‑88.
11. We note that, from the start, it was customary for certain parliamentary privileges to protect the servants of members of Parliament as well. The protection extended from the 40th day before the start of each session until the 40th day after the end of each session. The privileges served primarily as a *shield* against attacks by the monarch, which typically took the form of wrongful imprisonment. They therefore also prevented collateral attacks against employees of members of the Parliament at Westminster with respect to all matters except treason, felony or situations endangering public safety: Stubbs, at pp. 514‑15.
12. Around 1400, both Houses of Parliament began to avail themselves of the services of a sergeant‑at‑arms to enforce their privileges. The sergeant‑at‑arms was responsible for protecting the speaker of the House. It is interesting to note that one of the original functions of the sergeant‑at‑arms was to act as doorkeeper, a role similar to that of the three employees dismissed in this case: E. Campbell, *Current Issue Paper #68 — The Sergeant‑at‑Arms: Historical Origins and Contemporary Roles* (1987), at pp. 3‑5.
13. The Parliament at Westminster gradually began to assert its privileges in a more forceful manner. At first, the House of Commons began to exercise its powers of arrest, trial and imprisonment. Later, with the assistance of the sergeant‑at‑arms, it was able to fight for the recognition of its privileges, especially against the courts, since it now had the coercive power to enforce its independence: P. Marsden, *The Officers of the Commons 1363‑1978* (1979), at p. 79; *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (24th ed. 2011), by M. Jack, c. 17.
14. Privileges were asserted against the common law courts in several phases. Initially, both Houses of Parliament claimed exclusive jurisdiction to judge the existence and scope of their privileges because of their historical status as part of the High Court of Parliament of medieval England: Groves and Campbell, at p. 177.[[3]](#footnote-3) With the growth of parliamentary law, known as *lex parliamenti*, the Houses argued in particular that this law was separate from the common law and that the courts therefore had no jurisdiction to decide disputes relating to privileges: Groves and Campbell, at p. 177. Until the 19th century, the courts respected this assertion by Parliament and expressed very few doubts about it. Note that the jurisdiction of the common law courts at the time was not as broad as it is today. They did not decide matters relating to equity or ecclesiastical law: Groves and Campbell, atp. 177 and fn. 9. The argument was therefore not as ambitious as it might seem today.
15. The courts subsequently assumed jurisdiction over cases in which the privilege being claimed had an impact on the rights exercised outside Parliament: Groves and Campbell, at pp. 177‑78 and fn. 10.
16. A turning point in development of privileges was the famous case of *Stockdale v. Hansard* (1839), 9 Ad. & E. 1, 112 E.R. 1112 (Q.B.). In that case, Mr. Stockdale, who had published a medical book that was found in the possession of a prisoner in Newgate, brought an action for libel against Messrs. Hansard, printers to the House of Commons. In a report prepared by the prison inspector, Mr. Stockdale’s book was described as “disgusting and obscene”. The report was later printed by Messrs. Hansard under the authority of the House of Commons and sold to members of the public. In response to the lawsuit, the House of Commons asserted its parliamentary privileges by resolving as follows:

That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional functions of Parliament, more especially of this House, as the representative portion of it. That by the law and privilege of Parliament, this House has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion for decision before any court or tribunal elsewhere than in Parliament, is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon: That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either House of Parliament thereon, is contrary to the law of Parliament, and is a breach and contempt of the privileges of Parliament. [Emphasis added.]

(United Kingdom, House of Commons, *Parliamentary Debates*, 3rd ser., vol. 49, August 1, 1839, col. 1074‑75; see also C. G. Post, *Significant Cases in British Constitutional Law* (1957), at pp. 28‑29.)

1. However, the Court of Queen’s Bench denied the existence of the claimed privilege. In his reasons, Lord Denman C.J. began by rejecting the argument that the House of Commons was the sole and conclusive judge of the existence and scope of its own privileges. For one thing, he found it illogical that the House of Commons and the House of Lords, which together formed Parliament, could claim privileges that might be inconsistent: *Stockdale*, at p. 1154; see also Post, at p. 31. He also noted that the argument that Parliament had *incommunicable* knowledge of its privileges was ludicrous. Clearly, the courts at the time were trying to determine the jurisdictional boundaries of parliamentary privileges. A claim of privilege was not enough to dispose of a case: *Stockdale*, at pp. 1154‑56; see also Post, at pp. 31‑32.
2. In the end, Lord Denman C.J. found that it was for the Court of Queen’s Bench to decide the matter, holding that it “is no longer optional with me to decline or accept the office of deciding whether this privilege exist[s] in law”: *Stockdale*, at p. 1169; see also Post, at pp. 33‑34.
3. The saga surrounding the case gave rise to seven separate proceedings and led to the imprisonment of Mr. Hansard, members of his family and certain legal advisors. This dispute concerning the courts’ jurisdiction with respect to privileges caused quite a stir in British society. It was even suggested that there would be armed conflict if tensions escalated: Groves and Campbell, at p. 184.
4. In fact, some have speculated that in *Case of the Sheriff of Middlesex* (1840), 11 Ad. & E. 273, 113 E.R. 419 (Q.B.), the courts were cautious in order to avoid exacerbating the conflict that had deeply divided the public: Groves and Campbell, at p. 184. In that case, the Sheriff of Middlesex attempted to execute the judgment rendered in *Stockdale*. The House of Commons considered this a breach of parliamentary privileges, and its Sergeant‑at‑Arms imprisoned the two men who held the sheriff position. Those men sought to free themselves by seeking a court order for *habeas corpus*. In his reasons, Lord Denman C.J. recognized the power of the Sergeant‑at‑Arms to imprison individuals who were guilty of contempt of Parliament *on the basis that the Houses of Parliament could not function without the power of protecting themselves*:

It is unnecessary to discuss the question whether each House of Parliament be or be not a Court; it is clear that they cannot exercise their proper functions without the power of protecting themselves against interference. The test of the authority of the House of Commons in this respect, submitted byLord Eldonto the judges in *Burdett v. Abbot* (5 Dow, 199)*,* was, whether, if the Court of Common Pleas had adjudged an act to be a contempt of Court, and committed for it, stating the adjudication generally, the Court of King’s Bench, on a habeas corpus setting forth the warrant, would discharge the prisoner because the facts and circumstances of the contempt were not stated. A negative answer being given, Lord Eldon,with the concurrence of Lord Erskine(who had before been adverse to the exercise of jurisdiction), and without a dissentient voice from the House, affirmed the judgment below. And we must presume that what any Court, much more what either House of Parliament, acting on great legal authority, takes upon it to pronounce a contempt, is so. [Emphasis added.]

(*Sheriff of Middlesex*, at p. 426; see also Post, at pp. 35‑36.)

1. Lord Denman C.J. was unable to find any precedent or legal rule that would make it possible to order the Sheriff’s release. The new powers of review conferred on the courts in *Stockdale* were thus rather innocuous if, in the same case, Parliament could still exercise its power of imprisonment following a finding of contempt: Groves and Campbell, at p. 184.
2. Forty years later, the scope of parliamentary privileges was still a point of contention, as evidenced by *Bradlaugh v. Gossett* (1884), 12 Q.B.D. 271. In 1883, Charles Bradlaugh was elected to represent the riding of Northampton in the House of Commons. The law required him to swear an oath before he could take his seat. In May 1883, Mr. Bradlaugh asked the Speaker of the House to call him to the table because he wanted to comply with the law and take the oath. The Speaker refused, presumably because Mr. Bradlaugh was a professed atheist. In July 1883, the House of Commons adopted a resolution commanding the Sergeant‑at‑Arms to exclude Mr. Bradlaugh until he agreed not to further disturb its proceedings. Mr. Bradlaugh brought an action against the Sergeant‑at‑Arms seeking, among other things, a declaration that the resolution was void and an injunction to prevent the Sergeant‑at‑Arms from enforcing it: Post, at p. 37.
3. In *Bradlaugh*, Stephen J. refused to interfere in the internal affairs of Parliament even though, in principle, the *Parliamentary Oaths Act, 1866* (U.K.), 29 Vict., c. 19, authorized Mr. Bradlaugh to take the oath. In his reasons, he explained that he had to show deference. The House of Commons had the exclusive power to interpret that statute because the statute governed its internal proceedings:

This Act requires the plaintiff to take a certain oath. The House of Commons have resolved that he shall not be permitted to take it. Grant, for the purposes of argument, that the resolution of the House and the Parliamentary Oaths Act contradict each other; how can we interfere without violating the principle just referred to? Surely the right of the plaintiff to take the oath in question is “a matter arising concerning the House of Commons,” to use the words of Blackstone. The resolution to exclude him from the House is a thing “done within the walls of the House,” to use Lord Denman’s words. It is one of those “proceedings in the House of which the House of Commons is the sole judge,” to use the words of Littledale, J. It is a “proceeding of the House of Commons in the House,” and must therefore, in the words of Patteson, J., “be entirely free and unshackled.” It is “part of the course of its own proceedings,” to use the words of Coleridge, J., and is therefore “subject to its exclusive jurisdiction.” These authorities are so strong and simple that there may be some risk of weakening them in adding to them. Nevertheless, the importance of the case may excuse some further exposition of the principle on which it seems to me to depend.

The Parliamentary Oaths Act prescribes the course of proceedings to be followed on the occasion of the election of a member of Parliament. . . . Whatever may be the reasons of the House of Commons for their conduct, it would be impossible for us to do justice without hearing and considering those reasons; but it would be equally impossible for the House, with any regard for its own dignity and independence, to suffer its reasons to be laid before us for that purpose, or to accept our interpretation of the law in preference to its own. It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly. [Emphasis added.]

(*Bradlaugh*, at pp. 279‑81; see also Post, at pp. 39‑40.)

1. In short, since the decision concerned *a statute dealing with the internal affairs of Parliament and with what happened within its walls*, the courts had no jurisdiction to rule on it.
   * 1. Parliamentary Privileges in Canada
2. In the North American colonies, the issue of parliamentary privileges was relegated to the background as a result of the absence of responsible government and dependency on the Imperial Parliament: M.‑A. Roy, “Le Parlement, les tribunaux et la *Charte canadienne des droits et libertés*: vers un modèle de privilège parlementaire adapté au XXIe siècle” (2014), 55 *C. de D.* 489, at p. 498. Even though the Imperial laws establishing the first legislative assemblies did not expressly provide for parliamentary privileges, the Judicial Committee of the Privy Council ultimately held that the assemblies had such privileges because the privileges were part of the common law.
3. In *Kielley v. Carson* (1842), 4 Moo. 63, 13 E.R. 225 (P.C.), Mr. Kielley argued that the Newfoundland House of Assembly did not have the parliamentary privileges required to arrest and imprison him over a conflict with Mr. Kent, a member of the House, that had arisen outside its precincts. The issue of whether privileges applied in relation to non‑members was therefore raised very early in the history of the legislative assemblies of the North American colonies. Although the Judicial Committee of the Privy Council held that the Newfoundland House of Assembly had no power to imprison strangers, it did accept that the House had the inherent privileges that were necessary to its proper functioning. Specifically, it stated that “we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding”: p. 234.
4. Since Confederation, parliamentary privileges have been entrenched in the *Constitution Act, 1867*, whose preamble provides for “a Constitution similar in Principle to that of the United Kingdom”. The preamble had the effect of incorporating British constitutional principles into our law, including those required for the establishment and proper functioning of a British‑style parliamentary system, like the privileges held by legislative assemblies: *New Brunswick Broadcasting*, at p. 375. To that end, the *Constitution Act, 1867* broadened the scope of the parliamentary privileges recognized prior to Confederation: Roy, at p. 499.
5. In addition, in 1878, the principles laid down in *Stockdale* were adopted by the Supreme Court of Canada. In *Landers v. Woodworth* (1878), 2 S.C.R. 158, at p. 196, Richards C.J. wrote that “the mere affirmance by that body [the House of Commons] that a certain act is a breach of their privileges will not oust the courts from enquiring and deciding whether the privilege claimed really exists”: cited by Lamer C.J. in *New Brunswick Broadcasting*, at p. 350. This led to the general rule that Canadian courts will inquire into the existence and scope of parliamentary privileges, but not their exercise.
6. This is borne out by the subsequent case law, particularly the recent decisions in *New Brunswick Broadcasting*, *Harvey v. New Brunswick (Attorney General)*,[1996] 2 S.C.R. 876, and *Vaid*. These decisions confirmed the constitutional nature of parliamentary privileges and sought to define their scope in light of Canada’s modern constitutional architecture, especially since the advent of the *Canadian Charter of Rights and Freedoms*. We will consider them in greater detail, since they emphasize the fact that parliamentary privileges rest on solid historical foundations and are part of a long constitutional tradition inherited by Canada and the provinces.
   * 1. The Modern Approach to Parliamentary Privileges: *New Brunswick Broadcasting*, *Harvey* and *Vaid*
7. In *New Brunswick Broadcasting*, New Brunswick Broadcasting Co. Limited made an application to the Supreme Court of Nova Scotia for an order allowing it to film the proceedings of the Nova Scotia House of Assembly with its own cameras. The application was based on s. 2(*b*) of the *Charter*, which guarantees freedom of expression, including freedom of the press. The Speaker of the House of Assembly opposed the application, relying on the privilege to exclude strangers.
8. McLachlin J., writing for the majority, found that since privileges have constitutional status, they can be neither abrogated nor limited by the *Charter*: *New Brunswick Broadcasting*, at pp. 368‑69. The preamble to the *Constitution Act, 1867* constitutionally guarantees the continuance of parliamentary governance for both the provincial legislatures and the federal Parliament: *New Brunswick Broadcasting*, at p. 375. It follows that they hold privileges that are absolute and constitutionally entrenched:

It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch. [Emphasis added.]

(*New Brunswick Broadcasting*, at pp. 378-79)

1. In McLachlin J.’s view, the case law clearly established that the scope of these privileges is determined by the test of necessity: *New Brunswick Broadcasting*, at p. 381. She cited *Stockdale*, in which it was held that “[i]f the necessity can be made out, no more need be said: it is the foundation of every privilege of Parliament, and justifies all that it requires”: *New Brunswick Broadcasting*, at p. 382. She added that

[t]he test of necessity is not applied as a standard for judging the content of a claimed privilege, but for the purpose of determining the necessary sphere of exclusive or absolute “parliamentary” or “legislative” jurisdiction. If a matter falls within this necessary sphere of matters without which the dignity and efficiency of the House cannot be upheld, courts will not inquire into questions concerning such privilege. All such questions will instead fall to the exclusive jurisdiction of the legislative body. [Emphasis added.]

(*New Brunswick Broadcasting*, at p. 383)

1. In concurring reasons, Lamer C.J. stated that the necessity test is applied in a general sense to *a category* of privilege — so as to avoid having to consider the specific exercise of the privilege:

It is important to note that, in this context, the justification of necessity is applied in a general sense. That is, general categories of privilege are deemed necessary to the discharge of the Assembly’s function. Each specific instance of the exercise of a privilege need not be shown to be necessary. [Emphasis added.]

(*New Brunswick Broadcasting*, at p. 343)

1. McLachlin J. stated that, in this area, the courts have limited jurisdiction. They can only assess whether the claimed privilege is necessary to the proper functioning of the legislature: *New Brunswick Broadcasting*, at p. 384. If so, the privilege is absolute and the courts must not review its exercise. Indeed, she rejected the argument that the courts should be able to review the exercise of the privilege to exclude strangers for the following reasons:

In my view, this privilege is as necessary to modern Canadian democracy as it has been to democracies here and elsewhere in past centuries. The legislative chamber is at the core of the system of representative government. It is of the highest importance that the debate in that chamber not be disturbed or inhibited in any way. Strangers can, in a variety of ways, interfere with the proper discharge of that business. It follows that the Assembly must have the right, if it is to function effectively, to exclude strangers. The rule that the legislative assembly should have the exclusive right to control the conditions in which that debate takes place is thus of great importance, not only for the autonomy of the legislative body, but to ensure its effective functioning.

But, it is argued, it is not necessary that the right be absolute. The courts should be given the power to monitor the exercise of this power to ensure that only those strangers who are truly disruptive are excluded. In my view, a system of court review, quite apart from the constitutional question of what right the courts have to interfere in the internal process of another branch of government, would bring its own problems. The ruling of the Assembly would not be final. The Assembly would find itself caught up in legal proceedings and appeals about what is disruptive and not disruptive. This in itself might impair the proper functioning of the chamber. This lends support to the venerable and accepted proposition that it is necessary to the proper functioning of a legislative assembly modeled on the Parliamentary system of the United Kingdom that the Assembly possess the absolute right to exclude strangers from its proceedings, when it deems them to be disruptive of its efficacious operation. [Emphasis added.]

(*New Brunswick Broadcasting*, at pp. 387‑88)

1. In her concurring reasons in *Harvey*, McLachlin J. expanded on the relationship between the *Charter* and parliamentary privileges. In that case, an elected member of the Legislative Assembly of New Brunswick had violated provisions of the *Elections Act*, R.S.N.B. 1973, c. E-3. A provision of the *Legislative Assembly Act*, R.S.N.B. 1973, c. L-3, prevented him from sitting because of that offence. He tried to have the provision struck down on the ground that it infringed his *Charter* rights.
2. Writing for the majority, La Forest J. refused to consider the argument relating to parliamentary privileges because the issue had not been seriously argued before the Court but had only been raised by an intervener: *Harvey*, at para. 20. In concurring reasons, McLachlin J., joined by L’Heureux‑Dubé J., saw no good reason to ignore the argument: *Harvey*, at para. 56.
3. This was the context in which McLachlin J. clarified the interaction between the *Charter* and parliamentary privileges, which in case of conflict must be reconciled in the following way:

Because parliamentary privilege enjoys constitutional status it is not “subject to” the *Charter*, as are ordinary laws. Both parliamentary privilege and the *Charter* constitute essential parts of the Constitution of Canada. Neither prevails over the other. While parliamentary privilege and immunity from improper judicial interference in parliamentary processes must be maintained, so must the fundamental democratic guarantees of the *Charter*. Where apparent conflicts between different constitutional principles arise, the proper approach is not to resolve the conflict by subordinating one principle to the other, but rather to attempt to reconcile them.

The necessary reconciliation of parliamentary privilege and s. 3 of the *Charter* is achieved by interpreting the democratic guarantees of s. 3 in a purposive way. The purpose of the democratic guarantees in the *Charter* must be taken to be the preservation of democratic values inherent in the existing Canadian Constitution, including the fundamental constitutional right of Parliament and the legislatures to regulate their own proceedings. Express words would be required to overthrow such an important constitutional principle as parliamentary privilege. It follows that s. 3 of the *Charter* must be read as being consistent with parliamentary privilege. [Emphasis added.]

(*Harvey*, at paras. 69‑70)

1. *Vaid* is the most recent case in which this Court considered the issue of parliamentary privileges. The former Speaker of the House of Commons was accused of constructively dismissing his chauffeur for discriminatory reasons and of engaging in workplace harassment against him within the meaning of the *Canadian Human Rights Act*, R.S.C. 1985, c. H‑6. The jurisdiction of the Canadian Human Rights Tribunal to investigate Mr. Vaid’s complaint was challenged: para. 1. The House of Commons claimed a privilege over the management of all its employees.
2. Binnie J., writing for a unanimous Court, set out a 12‑point summary of the general principles applicable to parliamentary privileges: *Vaid*, at para. 29. In particular, he reaffirmed the importance of the necessity test on the basis that necessity is the historical foundation of every parliamentary privilege: para. 29(5). Necessity is assessed by reference to the legislative body’s “sphere of activity”. In other words, parliamentary privilege attaches to a “sphere of activity” if “the dignity and efficiency of the House” require it. This will be the case if the “sphere of activity” cannot 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: para. 29(5) and (7). The necessity test is to be interpreted *broadly*: para. 29(7). Binnie J. also noted that while the recognition of a privilege means that the ordinary law of the land does not apply to the sphere of activity, it would be incorrect to say that parliamentary privilege creates a gap in the general public law of Canada; rather, it is an important part of that law, inherited from the parliamentary system of the United Kingdom by virtue of the preamble to the *Constitution Act, 1867*: para. 29(3).
3. Having affirmed the place of the necessity test in our constitutional order, Binnie J. described categories of privilege that had already been recognized by the courts and had solid historical foundations. Some of the noteworthy examples he gave were: “the power to exclude strangers from proceedings . . .; disciplinary authority over members . . .; and non-members who interfere with the discharge of parliamentary duties” (*Vaid*, at para. 29(10) (emphasis added)).
4. The issue in *Vaid* was whether a management privilege attaches to all relations between the House of Commons and its employees. Binnie J. reaffirmed the applicable test:

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 of autonomy required to enable the assembly and its members to do their work with dignity and efficiency. [Emphasis added.]

(*Vaid*, at para. 46)

1. Binnie J. stressed the importance of the view taken by the Speaker of the House of Commons regarding what is necessary to ensure a sufficient degree of autonomy for a legislative assembly, even where the exercise of powers affects non‑members. In this regard, he noted that “[o]f course . . . 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”: *Vaid*, at para. 40.
2. In reviewing the Canadian and British case law, Binnie J. was unable to find any decisions supporting a privilege for *all* parliamentary employees: *Vaid*, at paras. 55‑70. However, he did state that he had no doubt that privilege covers *some* employees: para. 75. The issue is whether “those categories of employees have any connection (or nexus) with [the House’s] legislative or deliberative functions, or its role in holding the government accountable”: *Vaid*, at para. 70; see also para. 62.
3. As mentioned, once a claim to privilege is made out, the Court need not inquire into the merits of its exercise. At para. 48 of *Vaid*, Binnie J. sounded a note of caution that is very relevant in the instant case:

Once the issue of scope is resolved, it will be for the House to deal with the categories of employees who are covered by the privilege, and the courts will not enquire into its *exercise* in a particular case. The limitation is of great practical importance. If the courts below were correct about a “human rights exception”, for example, any person dealing with the House of Commons could circumvent the jurisdictional immunity conferred by privilege simply by alleging discrimination on grounds contrary to the *Canadian Human Rights Act*. Such a rule would amount to an invitation to an outside body to review the reasons behind the exercise of the privilege in each particular case. This would effectively defeat the autonomy of the legislative assembly which is the *raison d’être* for the doctrine of privilege in the first place. [Emphasis added; emphasis in original deleted.]

* + 1. Summary

1. In our opinion, this historical overview highlights the following principles that guide our analysis of the present case:
2. Since 1867, parliamentary privileges have been entrenched in the Constitution. They are absolute. Because they have equivalent constitutional status, the *Charter* must be read as being consistent with them and not as limiting or abrogating them;
3. Because parliamentary privileges flow from the fundamental principles of our constitutional system, the fact that the ordinary law does not apply to them is not in any way inconsistent with the rule of law;
4. The jurisdiction of the courts with respect to parliamentary privileges is narrow — they can only ascertain the existence and scope of such privileges. Even then, they must give considerable deference to the view taken by legislative assemblies and their speakers or presidents of the scope of autonomy they consider necessary to fulfill their functions;
5. Only legislative assemblies have jurisdiction over the exercise of their privileges. Furthermore, where a statute appears to limit the exercise of a privilege within a protected sphere, the interpretation proposed by the speaker or president must be given predominant weight in the analysis;
6. The courts must rely on the necessity test to ascertain the existence and scope of privileges. The onus is on the legislative assembly to 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 of autonomy required to enable the assembly and its members to do their work with dignity and efficiency;
7. The necessity test is concerned with a “sphere of activity” of the legislative body that will be excluded from the ordinary law. Within a sphere, each specific instance of the exercise of a privilege need not be shown by the legislative assembly to be necessary;
8. It is well established that legislative assemblies have the privilege to exclude strangers from their proceedings. This privilege is necessary for them to protect themselves from any impediment to their proper functioning. The sergeant‑at‑arms has historically played an important role in the exercise of this privilege and represents the coercive power required to enforce the independence of a legislative assembly;
9. Though legislative assemblies do not have any privilege over the management of all their employees, a privilege undoubtedly attaches to an assembly’s relations with *some* of its employees, namely those who have a connection with its legislative or deliberative functions.
10. Having identified the applicable principles, we turn to a discussion of the case before us.
    1. The Guards Were Dismissed in the Exercise of the Assembly’s Parliamentary Privilege
11. In this Court, the President relied on two privileges to ground his jurisdiction: the privilege over the management of employees and the privilege to exclude strangers. In our view, this case lies at the intersection of these two privileges.
12. We begin by acknowledging that there is some overlap among the different types of privilege. In addition, the privileges claimed in this case are unwritten constitutional principles, which gives them a considerable degree of flexibility. They are subject to just one rule: necessity.
13. Our position is simple. All of the guards’ tasks fall within a *sphere of activity* that is necessary to the proper functioning of the Assembly, namely security. In particular, the guards exercise the privilege to exclude strangers on the President’s behalf. In our view, employees to whom the exercise of a recognized parliamentary privilege is delegated necessarily perform a function that is closely and directly connected with the Assembly’s activities. As a result, their labour relations fall within the scope of the privilege over the management of employees. We are therefore of the opinion that a decision concerning their dismissal is made in the *exercise* of this privilege — and that it is not reviewable by a court or tribunal.
14. As we have seen, the cases clearly establish that parliamentary privilege attaches to a *sphere of activity* that is necessary to the proper functioning of the Assembly.
15. In light of the fact that both the Assembly and the Parliament of Canada have been the victims of armed attacks in our recent history, we have no difficulty concluding that security is essential to the proper functioning of legislative assemblies. In a parliamentary democracy, there can be no free debate without security. Security is one of the spheres of activity necessary to proceedings in an assembly. This view is not controversial. Indeed, it is shared by our colleague Karakatsanis J. (para. 38), the majority of the Quebec Court of Appeal (para. 79) and Morin J.A., dissenting (paras. 101-2). It should be borne in mind that the coercive power of the Assembly, which has historically been vested in the sergeant‑at‑arms, has been recognized by the courts as being essential to its functioning. The guards’ tasks therefore fall within a *sphere of activity* “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 of autonomy required to enable the assembly and its members to do their work with dignity and efficiency”: *Vaid*, at para. 46.
16. Only by carving up this sphere of activity have the majority of the Court of Appeal and our colleague Karakatsanis J. been able to find that the guards’ employment is not covered by parliamentary privileges. In particular, Karakatsanis J. states that it might be easier to satisfy the necessity test if the management privilege could protect a limited part of the functions performed by a category of employees: para. 37. This proposition is unworkable and unrealistic: see *President of the Legislative Council v. Kosmas*, [2008] SAIRC 41, 175 I.R. 269, at para. 31. *Vaid*, a recent decision of this Court, indicates that the analysis must focus on the “sphere of activity” and “categories of employees”, not on each employee’s specific tasks (para. 29(5) and (6) and para. 62). In any event, *all* of the guards’ tasks relate to the sphere of security. Since security is a “necessary sphere of matters without which the dignity and efficiency of the House cannot be upheld” (*New Brunswick Broadcasting*, at p. 383), courts and tribunals have no jurisdiction over it.
17. Morin J.A., dissenting in the Court of Appeal, also noted that the majority of that court had artificially carved up the relevant sphere of activity. He wrote:

[translation] Even though the guards are not armed and have no power of arrest, they clearly help ensure the security of the National Assembly. It is true that special constables and officers of the Sûreté du Québec are also involved in providing security services. However, this sphere of activity cannot be carved up, as the arbitrator did, in an attempt to play down the importance of the duties performed by the National Assembly’s guards, at the risk of undermining the coherence and efficiency of the security system established by the Assembly. [Emphasis added; para. 101.]

1. The coherence and efficiency of security in general are essentially a matter falling within the exercise of the President’s privilege to ensure the security of the Assembly’s precincts. The decisions made on the front lines are often the most important ones.
2. Not only is the sphere of activity, which includes all of the guards’ tasks, necessary to the proper functioning of the Assembly — which would be enough in itself to establish the management privilege — but the guards also exercise one of the President’s parliamentary privileges: the privilege to exclude strangers. This is a conclusive reason why the President should succeed; it does not “merely demonstrat[e] that a category of employees performs important tasks that promote the ability of the assembly to discharge its functions”: reasons of Karakatsanis J., at para. 40. This category of employees does far more than simply *promote* the Assembly’s ability to discharge its functions; it *exercises, on the President’s behalf*, a privilege that is essential to the Assembly’s sovereignty. Karakatsanis J. errs in disregarding this distinction.
3. It is essential that the Assembly be able to perform its constitutional functions with dignity and efficiency, without any disturbance of its proceedings. Both members of the public and parliamentarians themselves may, through their misbehaviour, interfere with the orderly conduct of proceedings. This is why the Assembly has the parliamentary privilege to exclude strangers and the exclusive power to discipline its members and *non‑members* who interfere with the discharge of its duties. For this purpose, the President may order any person to maintain order and decorum. This inherent privilege was recognized by this Court in *New Brunswick Broadcasting* and *Vaid.* These functions, historically performed by the sergeant‑at‑arms, are closely and directly connected with proceedings in the Assembly; they are essential to the expression of its sovereignty: H. Cauchon, *Le privilège parlementaire de gestion du personnel des assemblées législatives au Canada* (2008) (online), at p. 83; see also *Thompson v. McLean* (1998), 37 C.C.E.L. (2d) 170 (Ont. C.J. (Gen. Div.)), at paras. 39‑41.
4. In our view, there is no doubt that the connection required to ground a management privilege (*Vaid*,at paras. 70 and 75) will be established if it is shown that a category of employees exercises or participates in exercising, in whole or in part, a parliamentary privilege that is both recognized and *necessary*. The reason is obvious. The President cannot exercise the Assembly’s privileges alone. For example, the exercise of the privilege to exclude strangers and to maintain discipline within parliamentary precincts was historically delegated to the sergeant‑at‑arms. However, as shown by *Payson v. Hubert* (1904), 34 S.C.R. 400, at pp. 416‑17, where a speaker or president orders that someone be removed, the order can be carried out by another person, such as a doorkeeper. In exercising a parliamentary privilege, that person comes within a protected sphere of activity and therefore has the immunity conferred by the privilege to exclude strangers. Conversely, the speaker or president — who has the last word within this protected sphere of activity — can at any time revoke this delegation and prevent a guard from exercising this privilege on his or her behalf.
5. Karakatsanis J. argues that it is irrelevant that the employees exercise a delegated privilege in the performance of their duties, since the issue here is whether “the dismissals of employees who implement this privilege on the President’s behalf must be immune from external review for the Assembly to be able to discharge its legislative mandate”: para. 55 (emphasis added). This distinction disregards the jurisdictional aspect of the issue. In our view, the dismissal of an employee to whom a privilege has been delegated is the ultimate exercise of the management privilege. Otherwise, the delegation of a privilege would automatically mean its extinction, since the President would lose *effective* control of it — that is, control over the identity of the employees responsible for obeying the orders and instructions given by the President for the benefit of parliamentarians.
6. To preserve the integrity of the privileges of the Assembly and its members, the President must be able to manage the employees who exercise these privileges without having his or her decisions called into question. The courts cannot dictate to the Assembly how it must go about ensuring the security of its members within its walls by forcing it to employ people the President no longer trusts. It would be a subversion of parliamentary privileges to make them subject to judicial discretion.
7. If the President no longer trusts a guard, for whatever reason, and claims privilege, an arbitration tribunal cannot force the President to rely on such an individual to exercise a privilege. In the present case, the employees concerned are seeking reinstatement. This decision directly affects the *exercise* of the President’s privilege over the management of employees and indirectly affects the President’s privilege to exclude strangers. It has a direct impact on the exercise of the President’s absolute privilege to determine the identity and conduct of security staff and the manner in which they ensure that parliamentary proceedings are not unduly interrupted or disturbed. After all, responsibility for the security of the Assembly’s precincts rests squarely on the shoulders of its President: s. 116 of the *ARNA*. All decisions relating to security — including decisions concerning the employees to whom the exercise of privileges is delegated — therefore fall within this “sphere of activity”.
8. Once the courts have found that the sphere of activity and the category of employees are necessary to the proper functioning of the Assembly, the inquiry ends, since the privilege has been established. There is thus no need to consider, as Karakatsanis J. does, whether grievance arbitration — a procedure for reviewing a decision that unquestionably concerns the exercise of privilege — may interfere with the proper functioning of the Assembly: para. 4. This is a serious jurisdictional error that distorts the test laid down in *Vaid.*
9. Furthermore, Karakatsanis J. does not focus her analysis on the existence of a privilege with respect to a category of employees or a sphere of activity, as required by this Court’s decisions: *New Brunswick Broadcasting*,at p. 383; *Vaid*, at paras. 29(5), (6), (7), (9) and (10) and paras. 62 and 70. She erroneously considers whether grievance arbitration may jeopardize the dignity of the institution, even though this question has nothing to do with the necessity test itself. Grievance arbitration as a dispute resolution mechanism is certainly not *undignified*.In truth, this reasoning could always justify interference by a court or tribunal with the labour relations of *all* of the Assembly’s employees, regardless of whether their functions are directly connected with its proceedings.
10. In practice, if a grievance arbitrator could review the President’s decision to terminate the guards’ employment, this would mean that part of the exercise of the President’s own duties becomes *de facto* reviewable by a court or tribunal. The Assembly would therefore lose control over decisions concerning its security. Courts and tribunals may not interfere in the Assembly’s internal affairs in this manner. The sphere of activity relating to security, and most certainly the category of employees that includes the guards, are subject to an absolute privilege. The Assembly is sovereign in this regard, and it is not the role of a court or tribunal to assess the exercise of the privilege over the management of employees once it is claimed.
11. We explicitly reject the other grounds that appear to underlie Karakatsanis J.’s narrow interpretation of parliamentary privileges.
12. Karakatsanis J. relies on the concurring reasons of McLachlin J. in *Harvey* to adopt a narrow interpretation of these privileges on the basis that they might undermine the guards’ rights under s. 2(*d*) of the *Charter* (paras. 28 and 56). However, this was not the position taken by McLachlin J. Rather, she stated that since the *Charter* and parliamentary privilege are both part of the Constitution, “[n]either prevails over the other”, and it is the *Charter* that “must be read as being consistent with parliamentary privilege”: *Harvey*, at paras. 69‑70. Yet the argument that a privilege repeatedly recognized as full and absolute must have its *scope* determined in light of the *Charter* subordinates parliamentary privileges to the *Charter.* To be clear, the necessity test is entirely unrelated to *Charter* rights.
13. Karakatsanis J. readily justifies her narrow analysis of privilege on the basis of the impact that recognizing a privilege over non‑members of the Assembly would have: paras. 25 and 56. While it is true that courts are apt to look “more closely” at cases in which privilege has an impact on non‑members of a legislative assembly, this statement is of little assistance: *Vaid*, at para. 29(12). Because such issues are especially important to the balance struck by our constitutional system, close scrutiny is required in every case.
14. As we have already stated, the fact that parliamentary privileges may exclude a sphere of activity from the application of the ordinary law does not make them an exceptionto the rule of law; they are a distinct and undeniably important pillar in Canada’s constitutional architecture. Binnie J. put this as follows in *Vaid*:

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 to the *Constitution Act, 1867* and in the case of the Canadian Parliament, through s. 18 of the same Act (*New Brunswick Broadcasting*, at pp. 374‑78; *Telezone Inc. v. Canada (Attorney General)* (2004), 69 O.R. (3d) 161 (C.A.), at p. 165; and *Samson Indian Nation and Band v. Canada*, [2004] 1 F.C.R. 556, 2003 FC 975).

(*Vaid*, at para. 29(3))

1. In fact, the rule of law is upheld by recognizing that courts and tribunals do not have jurisdiction over the exercise of parliamentary privileges, not by creating exceptions that limit the sovereignty of a legislative assembly and by negating constitutional principles.
2. We therefore have no choice but to conclude that the guards’ employment falls within a privileged sphere of activity, that they were dismissed in the exercise of a parliamentary privilege and that, as a result, courts and tribunals have no jurisdiction to interfere.
   1. Impact of the ARNA
3. Having found that the President has a privilege in relation to the employees concerned, we must now consider the impact of the *ARNA* and determine whether the Assembly waived its privilege by enacting this statute. In our view, it did not.
4. First, it is important to note the specificity of the *ARNA* of Quebec as legislation governing the internal affairs of the National Assembly, which are outside the scope of the courts’ jurisdiction. It bears repeating that in *Bradlaugh*, the Court of Queen’s Bench held that the House of Commons “has the exclusive power of interpreting the [*Parliamentary Oaths Act*], so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly”: pp. 280‑81 (emphasis added). In the same case, Stephen J. found that the “House of Commons is not subject to the control of Her Majesty’s Courts in its administration of that part of the statute‑law which has relation to its own internal proceedings”: p. 278; see also Post, at p. 38. In its report entitled *Parliamentary Privilege: Report of Session 2013‑14* (July 3, 2013), to which Karakatsanis J. refers, the House of Lords and House of Commons Joint Committee on Parliamentary Privilege expressed the view that this statement “holds true to this day and should do so in perpetuity”: p. 8, para. 18 (emphasis added).
5. Though not a definitive answer to the question, the interpretation proposed by the President must certainly be given predominant weight in determining whether the Assembly intended to limit its privileges. As Binnie J. recognized in *Vaid*, the courts must respect the view taken by a speaker or president of a statute dealing with the internal affairs of a legislative assembly: para. 40; *Telezone Inc. v. Canada (Attorney General)* (2004), 69 O.R. (3d) 161 (C.A.), at para. 32. In any event, we come to the same conclusion, namely that the *ARNA* does not have the effect of limiting the privileges held by the President, who may assert them when deemed necessary.
6. The necessary starting point in interpreting the *ARNA* is undoubtedly its preamble, which recognizes that the Assembly must, among other things, protect its proceedings from all interference:

WHEREAS the people of Québec have a deep attachment to democratic principles of government;

Whereas the National Assembly is, through the elected representatives who compose it, the supreme and legitimate organ by which those principles are expressed and applied;

Whereas it behooves this Assembly, as the guardian of the historical and inalienable rights and powers of the people of Québec, to defend it against any attempt to despoil it of its rights and powers or to derogate from them;

Whereas it is befitting, therefore, that the perdurance, the sovereignty and the independence of the National Assembly be affirmed, and that its proceedings be protected against all interference,

1. Upon reading this preamble, we must consider the scope given by the Union to ss. 110 and 120 of the *ARNA*. These sections are worded as follows:

**110.** Subject to this Act, the Assembly shall continue to be managed within the scope of the Acts, regulations and rules applicable.

The Office may, however, by regulation, derogate from the applicable Acts, regulations and rules by specifically indicating the provisions derogated from and the provisions that are to apply in their place and stead.

**120.** Every member of the personnel of the Assembly, except a casual employee, is a member of the personnel of the civil service, whether appointed under the Public Service Act (chapter F‑3.1.1) or by derogation by virtue of the second paragraph of section 110, unless, in the latter case, the Office excludes him therefrom.

The Secretary General has, in respect of the personnel of the Assembly, the powers vested in a deputy minister by the Public Service Act.

1. We have two comments on these provisions. First, s. 110 states that the Assembly “shall continue to be managed within the scope of the Acts, regulations and rules applicable”. In our view, this means that the ordinary law that continues to apply to the Assembly is necessarily defined by privilege, which has been a constant in Canada’s constitutional history. It seems clear to us that, except in cases where the Assembly has expressly provided otherwise, the Acts, regulations and rules of the ordinary law have never applied to a sphere of activity that is subject to parliamentary privileges.
2. Second, s. 120 of the *ARNA* deals with the power of the Office of the Assembly to exclude categories of employees from the personnel of the civil service, *but it does not mention the privileges of the President*, the person who holds and exercises privileges on the Assembly’s behalf. Did the Assembly thus implicitly abolish the privilege over the management of employees *entirely* by incorporating its employees into the public service, even those who have a direct and necessary connection with its legislative and deliberative functions? Section 120 of the *ARNA* also deals with the management powers granted to the Secretary General. Did this delegation just as implicitly have the effect of partially withdrawing the privilege to exclude strangers from the President? It must be acknowledged that the wording of the *ARNA* is not clear. Moreover, the Union did not identify any parliamentary debates or proceedings showing that the members had parliamentary privileges in mind when they were studying the provisions of the *ARNA* dealing with employees’ conditions of employment. In contrast, when the British House of Commons studied a bill that would apply labour legislation to its employees, the Deputy Speaker stated: “I have to call the attention of the House to the fact that privilege is involved in these amendments”: United Kingdom, House of Commons, *Parliamentary Debates*, 5th ser., vol. 898, October 29, 1975, col. 1693‑99. The amendments in question clearly indicated that “(3) Nothing in any rule of law or the law or practice of Parliament shall prevent proceedings under any enactment applied by subsection (1) or (2) above being instituted before an industrial tribunal”: *Employment Protection Act 1975* (U.K.), 1975, c. 71, s. 122(3).
3. This Court has recognized that parliamentary privileges have constitutional status. Logically, therefore, the statute must be interpreted in such a way that it does not implicitly abrogate some of these privileges: *New Brunswick Broadcasting*, at pp. 391‑92. Conversely, it is undesirable to adopt an interpretation to the effect that the Assembly *implicitly* considers a privilege unnecessary, thereby denying its existence. Yet this is what Karakatsanis J. does. She gives with one hand and takes with the other. This criticism also applies to the reasons of Justice Rowe, who finds that the *ARNA* must take precedence in this case, even in respect of privileges that are otherwise *necessary*. In his view, the fact that the Assembly’s employees are members of the public service and that powers to manage employees have been delegated to the Secretary General means that the management privilege and part of the privilege to exclude strangers have been *implicitly* abrogated.
4. Considered as a whole, the material before us leads us to adopt the interpretation proposed by the President. In our opinion, more is needed to abrogate a constitutional privilege. In his reasons, Rowe J. argues that ss. 110 and 120 of the *ARNA* are also constitutional in nature because they are part of the constitution of the province: paras. 68‑69. In our view, that conclusion has no bearing on the analysis. As in *New Brunswick Broadcasting*, it is necessary to reconcile constitutional rights rather than subordinating one to the other. The *ARNA* governs labour relations in the event that the Assembly does not assert its privileges. As a result, neither privilege nor the provisions of the *ARNA* are rendered meaningless.
5. The Court of Appeal therefore did not err in its decision in *Association des juristes de l’État v. Québec (Procureur général)*, 2013 QCCA 1900. While it is true that Levesque J.A. cited with approval Brun, Tremblay and Brouillet, who themselves cited *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661 — a decision criticized by Binnie J. in *Vaid —* he did not err in interpreting the *ARNA* in light of constitutional principles of interpretation:

[translation] These authors clearly illustrate their thinking when they add:

Finally, a parliamentary privilege prevails over laws that do not specifically contradict it: *Duke of Newcastle v. Morris* (1870), L.R. 4 H.L. 661. This is why, under the general provisions of the *Act respecting public inquiry commissions*, R.S.Q., c. C‑37, a member cannot be forced to testify while Parliament is in session. Similarly, general labour legislation was found to be inapplicable to employees of the Legislative Assembly in *M.G.E.A. v. Manitoba (Legislative Assembly Management Commission)* (1990), 63 Man. R. (2d) 37 (Q.B.), and *House of Commons v. Canada Labour Relations Board*, [1986] 2 F.C. 372 (C.A.), at p. 384. Also, the Ontario *Human Rights Code* could not be used to challenge the recital of a prayer every day the Legislative Assembly met, as provided for in its Standing Orders: *Ontario (Speaker of the Legislative Assembly) v. Ontario (Human Rights Commission)* (2001), 201 D.L.R. (4th) 698 (Ont. C.A.). Although it was qualified in *Vaid*, at pp. 703 and 713‑15, the rule of interpretation referred to here can still apply in appropriate cases, in our view.

In short, to say that parliamentary privileges prevail over labour legislation does not necessarily mean that sections 110 and 120 of the ARNA have been stripped of all effect. All aspects of labour relations within the precincts of the National Assembly that are not covered by the parliamentary privilege over the management of employees remain subject to these provisions. It is necessary here to adopt an interpretation that is consistent with the application of constitutional principles. [Emphasis added.]

(paras. 30‑31 (CanLII))

1. Contrary to what Rowe J. argues, it is not a matter here of requiring *express language* in the *ARNA*; rather, it is a matter of requiring clear, unequivocal legislative intent. Such a requirement is not a retreat from the modern approach to statutory interpretation. In our view, the fact that the employees are members of the public service and that management of the Assembly’s day‑to‑day business has been delegated to the Secretary General is not enough to abolish or modify parliamentary privileges that have such deep historical roots and that are still *necessary*. In fact, the interpretation adopted by Rowe J. implies that an express provision in the *ARNA* would be required to preserve the Assembly’s privileges. In addition, it should be noted that Rowe J. deals only with the management privilege and disregards the impact of his interpretation on the exercise of the inherent privilege to exclude strangers, an aspect that affects the employment of the security guards.
2. In the end, the *ARNA* did not abolish any parliamentary privileges. Moreover, in view of the real ambiguity in ss. 110 and 120 of the *ARNA*, it is preferable to adopt the interpretation proposed by the President. The National Assembly of Québec is sovereign. Courts and tribunals cannot assume jurisdiction without a clear indication that the Assembly has conferred it on them.
3. Conclusion
4. Over the centuries, parliamentary privileges have gradually taken their place within the broader principle of sovereignty of legislative assemblies. Indeed, the assertion of parliamentary privileges, defended on Parliament’s behalf by a sergeant‑at‑arms, among others, has enabled Parliament to achieve a degree of independence from the other branches of government. Parliamentary privileges are not a tool for *protecting* the independence and sovereignty of legislative assemblies, but are in fact what has allowed them to exist. It was the assertion of privileges that ensured the development of a model in which the various branches acquired some independence from one another. Recognition of the fact that parliamentary privileges are an expression of the Assembly’s sovereignty makes it all the more necessary to respect the Assembly’s jurisdiction.
5. For these reasons, we are of the opinion that the grievance arbitrator had no jurisdiction to hear the matter. The appeal should be allowed and the grievances dismissed.

*Appeal dismissed with costs throughout,* Côté *and* Brown JJ. *dissenting.*

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1. See e.g. the United Kingdom *Bill of Rights* (Eng.), 1 Will. & Mar. Sess. 2, c. 2, art. 9; the United States Constitution, art. I, § 6(1); the Constitution of France, art. 26; the Constitution of India, arts. 105 and 194; the Constitution of Italy, art. 68; and New Zealand (see e.g. D. McGee, *Parliamentary Practice in New Zealand* (4th ed. 2017), by M. Harris et al., at pp. 722-24). [↑](#footnote-ref-1)
2. See e.g. *Jerusalem v. Austria*, No. 26958/95, ECHR 2001-II, at para. 36; R. S. Mehta, “Sir Thomas’ Blushes: Protecting Parliamentary Immunity in Modern Parliamentary Democracies” (2012), 17 *E.H.R.L.R.* 309, at pp. 309 and 318; République française, Sénat, Direction de l’initiative parlementaire et des délégations, *L’immunité parlementaire*, Étude de législation comparée no 250 (June 2014) (online), at p. 8; Council of Europe, European Commission for Democracy Through Law (Venice Commission), *Report on the Scope and Lifting of Parliamentary Immunities*, Study No. 714/2013 (May 14, 2014) (online), at paras. 36-37. [↑](#footnote-ref-2)
3. It should be noted that this English constitutional feature virtually disappeared with the reform that led to the creation of the Supreme Court of the United Kingdom and to the elimination of the House of Lords’ role as a court of appeal: M.‑A. Roy, “Le Parlement, les tribunaux et la *Charte canadienne des droits et libertés*: vers un modèle de privilège parlementaire adapté au XXIe siècle” (2014), 55 *C. de D.* 489, at pp. 495‑96; *New Brunswick Broadcasting*,at pp. 347‑48. [↑](#footnote-ref-3)