

**Date: 20060512**

**Docket: T-460-06**

**Citation: 2006 FC 596**

**Ottawa, Ontario, May 12, 2006**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**ROBERT GILLES GAUTHIER cob  
THE NATIONAL CAPITAL NEWS CANADA**

**Applicant**

**and**

**The Honourable PETER ANDREW MILLIKEN, SPEAKER OF THE HOUSE OF COMMONS; ROBERT RUMSLEY WALSH, PARLIAMENTARY LEGAL COUNSEL, HOUSE OF COMMONS; The Honourable VIC TOEWS, MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA; The Honourable PETER MACKAY, MINISTER OF FOREIGN AFFAIRS CANADA; KEVIN LYNCH, CLERK OF THE QUEEN'S PRIVY COUNCIL OF CANADA AND SECRETARY TO THE CABINET; The Honourable SUZANNE HURTUBISE, MINISTER OF INDUSTRY CANADA; SHERIDAN SCOTT, COMMISSIONER OF COMPETITION; ELISABETH EID, LEGAL COUNSEL, HUMAN RIGHTS SECTION, DEPARTMENT OF JUSTICE CANADA; JOHN SIMS, DEPUTY MINISTER OF JUSTICE AND DEPUTY ATTORNEY GENERAL OF CANADA; THE CANADIAN PARLIAMENTARY PRESS GALLERY INC.; THE CANADIAN BAR ASSOCIATION; and THE LAW SOCIETY OF UPPER CANADA**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] In 1999, Mr. Gauthier obtained “views” from the Human Rights Committee of the United Nations. Earlier this year, he applied for registration, recognition and enforcement of those “views” as a foreign judgment. Prothonotary Tabib dismissed the application on two grounds. She held that the “views” were not a foreign judgment or arbitral award contemplated by Rule 326 and following

of the *Federal Courts Rules*, and that in any event the Federal Court did not have jurisdiction over Mr. Gauthier's alleged cause of action.

[2] Mr. Gauthier's complaint to the United Nations stems from the fact that the Speaker of the House of Commons failed to give him, as a newspaper publisher and reporter, the same privileged access to the precincts of Parliament enjoyed by members of the Parliamentary Press Gallery, a private association which denied him full membership. These are the reasons why I have dismissed his appeal.

### **BACKGROUND**

[3] It began when the *Ottawa Journal* ceased publication in 1982. The nation's capital was left with only one English language daily newspaper, *The Ottawa Citizen*. Mr. Gauthier thought this inappropriate and started *The National Capital News*, which he never quite managed to publish on a daily basis. It is long defunct.

[4] This case is but another episode in Mr. Gauthier's running battle with the Speaker of the House of Commons and the Parliamentary Press Gallery. It seems the Speaker extends special privileges to members of the press, but leaves the matter of accreditation to the Gallery. Mr. Gauthier was granted temporary membership from time to time, but never full membership. He believes his ability to report the news is hampered because temporary membership only gave him limited privileges. The Gallery consistently denied him full membership in the past. Now he says he would not join them even if they asked, because their standards are lower than his. He wants equal access to Parliament on the same basis as those reporters and publishers who have full membership in the Gallery.

[5] The Speaker of the House has consistently taken the position that the granting of special press access is a Parliamentary privilege and that the manner in which it is exercised is beyond the reach of the Courts. Although not before me, it appears that the Press Gallery will not give Mr. Gauthier full accreditation because he is neither an active journalist nor a publisher. In 1994, Mr. Gauthier sought a declaration from the Ontario Court (General Division) that the denial of access to the precincts of Parliament on the same terms as members of the Press Gallery infringed on his right to freedom of the press as provided in the *Charter of Rights and Freedoms*. In *Gauthier v. Canada (Speaker of the House of Commons)*, 25 C.R.R. (2d) 286, Justice Bell held that the Speaker's decision to deny him access to the facilities in the House of Commons used by members of the Press Gallery was an exercise of Parliamentary privilege and not subject to the *Charter* or to judicial review.

[6] He then took action in the Ontario Courts against the Press Gallery. He sought damages and a court order requiring it to admit him as an active member with full privileges. The Press Gallery moved for summary judgment dismissing the action. Justice Chadwick, in *Gauthier v. Canadian Parliamentary Press Gallery*, [1996] O.J. No. 10 (QL), granted the motion and dismissed the action on the basis that the privileges that Mr. Gauthier sought were privileges administered and controlled by the Speaker of the House of Commons. Undaunted, Mr. Gauthier complained to the Competition Tribunal. That claim worked its way up to the Federal Court of Appeal. In *Gauthier (c.o.b. National Capital News Canada) v. Canada (House of Commons)* 2004 FCA 27, [2004] F.C.J. No. 83 (QL), Justice Nadon, speaking for the Court, found the Competition Tribunal was correct in concluding that by reason of Parliament's privilege to control access to the House of Commons and its precincts and to regulate its internal affairs, it was without jurisdiction. He also held that the issues before the

Court were *res judicata* in that they had already been decided against Mr. Gauthier by Justice Bell in 1994, *supra*.

[7] Now Mr. Gauthier is attempting to do indirectly what he has been unable to do directly.

[8] Before the United Nations, he invoked the *International Covenant on Civil and Political Rights* and the *Optional Protocol* thereto. Canada is signatory to both. Article 19(2) of the Covenant provides:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

[9] Article 5(4) of the Protocol requires that: “The Committee shall forward its views to the State Party concerned and to the individual.”

[10] Canada responded to Mr. Gauthier’s complaint saying amongst other things that he had not exhausted domestic remedies. However, the Committee held:

14. The Human Rights Committee, acting under article 5, paragraph 4, of the *Optional Protocol to the International Covenant on Civil and Political rights*, is of the view that the facts before it disclose a violation of article 19, paragraph 2, of the Covenant.

15. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Gauthier with an effective remedy including an independent review of his application to have access to the press facilities in Parliament. The State party is under an obligation to take measures to prevent similar violations in the future.

## **ISSUES**

1. Are the “views” of the Human Rights Committee of the United Nations a judgment within the meaning of Rule 326 and following of the *Federal Courts Rules*?
2. Does the Federal Court nevertheless have jurisdiction over the subject matter of the action?

### **ANALYSIS**

[11] Mr. Gauthier advises that following the publication of the “views” of the United Nations, he met with a representative of the Speaker but nothing concrete materialized.

[12] Rule 326 and following deal with the registration of judgments or arbitral awards pursuant to four different Federal Statutes: *The Marine Liability Act*, the *Canada-United Kingdom Civil and Commercial Judgments Convention Act*, the *United Nations Foreign Arbitral Awards Convention Act*, and the *Commercial Arbitration Code*, schedule to the *Commercial Arbitration Act*.

[13] It is plain and obvious that the “views” do not fall within any of these four Statutes.

[14] Mr. Gauthier seems to accept that holding, but suggests that the “views” must be analogous. Where there is a right, there is a remedy, and surely the Federal Court, which has jurisdiction over the “Crown” has the power to make things right.

[15] Just two days before this motion in appeal of the Prothonotary’s order was heard, I heard an application by a number of parties, including the Speaker, who were named as defendants in another action taken by Mr. Gauthier for allowing the televised leadership debates leading up to the last Federal Election to be limited to the leaders of the four parties which had seats in the previous

Parliament. The motion on behalf of the Speaker to have the action dismissed for failure to disclose a cause of action was granted. I held then that the Federal Court's jurisdiction over the Crown is a jurisdiction over the executive branch of government, not Parliament (*Gauthier v. The Honourable Peter Milliken et al.* 2006 FC 570). There is no need to repeat myself.

[16] In addition there are a number of other fatal flaws. The “views” do not purport to be a judgment, the Human Rights Committee of the United Nations does not purport to be a Court. Thus, it is not necessary to consider the circumstances in which the Court might entertain an action to enforce a foreign judgment, a judgment which does not fall within the four corners of Rules 326 and following, or whether the six year time bar prescribed in Section 39 of the Act applies.

[17] In addition, the Speaker was not party to the proceedings at the United Nations.

[18] As noted by the Supreme Court in *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, once a claim to privilege is made out, the Courts will not enquire into the merits of its exercise.

47 ... If the claim of privilege were justified, no court or body external to the House of Commons could enquire into the appellant Speaker's reasons for the constructive dismissal of the respondent Vaid. Such outside bodies would have no *jurisdiction* to do so. Nevertheless the courts are required to determine the *scope* of the privilege claimed. ...

[19] It was held in *Vaid* that Parliamentary privilege did not extend to dealings with ordinary, non-legislative employees of Parliament. However, the right of the Speaker to invite strangers into the House or to exclude them is well established. If the Courts cannot interfere, neither can the United Nations. The Covenant has not been incorporated into Canadian domestic law and is not legally binding upon the Speaker. Ratification by Canada is not equivalent to incorporation into our

domestic law. See the decision of the Ontario Court of Appeal in *Ahani v. Canada (Attorney General)* (2002) 58 O.R. (3d) 107, [2002] O.J. No. 90 (QL).

[20] Mr. Gauthier has no legal remedy. Of course, he can continue to try to persuade the Speaker to change his mind. In *A.O. Farms Inc. v. Canada* (2000) 28 Admin. L.R. (3d) 315, [2000] F.C.J. No. 1771 (QL), Mr. Justice Hugessen said "...Government, when it legislates, even wrongly, incompetently, stupidly, or misguidedly is not liable in damages." The same basic concept of judicial non-interference applies to the manner in which the Speaker exercises the privileges of the House. Mr. Gauthier may think what he likes, but he is not entitled to recourse from this Court.

[21] The appeal will be dismissed with costs in favour of the "Crown" respondents.

**ORDER**

**THIS COURT ORDERS** that the appeal from the order of Prothonotary Tabib dated 18 April 2006 is dismissed with costs fixed at \$750.

"Sean Harrington"

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Judge

**FEDERAL COURT**  
**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-460-06

**STYLE OF CAUSE:** ROBERT GILLES GAUTHIER cob THE NATIONAL CAPITAL NEWS CANADA v.  
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**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** May 4, 2006

**REASONS FOR ORDER AND ORDER:** HARRINGTON J.

**DATED:** May 12, 2006



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