Three Recent Decisions of the Supreme Court on the Control of Administrative Bodies by the Courts

Hon. George Montgomery *

In Canada, as elsewhere, there is an unceasing struggle between, on the one hand, individuals who feel themselves prejudiced by decisions of the executive branch of government, federal or provincial, and who desire to obtain redress through the courts and, on the other hand, representatives of the executive who feel they should be free to exercise their discretionary authority untrammelled by judicial control. The courts try to strike a balance between these conflicting interests, but the task is not easy. This is illustrated by three recent decisions of our Supreme Court, on appeals from Quebec: *Guay* v. *Lafleur*,[1] *Gagnon* v. *Commission des Valeurs Mobilières du Québec*[2] and *Violi* v. *Superintendent of Immigration*.[3] In none of these cases was the decision unanimous, and in all three a majority decision of our Court of Queen's Bench (Appeal Side) was reversed. The facts in these cases being quite different, they illustrate three different facets of the problem.

Guay v. Lafleur

The question here was the right of the Department of National Revenue to make an inquiry into the affairs of a taxpayer unimpeded by the presence of the taxpayer or his lawyer.

In December 1960 the Minister of National Revenue authorized Mr. Guay, under Sec. 126 of the Income Tax Act,[4] to make an inquiry into the affairs of Mr. Lafleur, a resident of the Province of Quebec, and of certain other individuals and corporations that seem to have been associated with him. Guay was an officer of the Department of National Revenue and seems to have acted throughout in accordance with instructions received from his superiors. If there was anything unfair in the manner in which he conducted the inquiry, it was at no time suggested that he was personally to blame. The inquiry started in January, 1961, and Guay had examined several

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* Of the Court of Queen's Bench (Appeal Side) of the Province of Quebec.

1 [1965] S.C.R. 12.

2 [1965] S.C.R. 73.

3 [1965] S.C.R. 232.

4 R.S.C. 1952 c. 148.

witnesses, under oath, when lawyers representing Lafleur, who had neither been summoned to attend the inquiry nor officially advised of it, appeared before Guay and asserted the right to be present. This was refused, and they applied to the Superior Court for an injunction. Guay then suspended the inquiry. This made an interlocutory injunction unnecessary, and the proceedings were heard as an application for a final injunction.

In February 1961, Brossard, J.[5] issued a final injunction in the following terms:[6]

> ... ordonne que les séances du défendeur agissant en sa qualité d'enquêteur nommé par le sous-ministre du Revenu National en date du 28 décembre 1960 et en vertu des dispositions de l'article 126, paragraphe 4, de la Loi de l'impôt sur le revenu soient suspendues jusqu'à ce que le demandeur ait obtenu du défendeur l'autorisation d'y être présent et d'y être représenté par ses avocats;

In a long and carefully reasoned judgment, he gave his answer to three questions. He held that the Superior Court had jurisdiction and that an injunction was an appropriate remedy. On these points, his judgment was not challenged on appeal. He then turned to the substantive question: whether Lafleur had the right to insist on being represented at the inquiry.

Brossard, J. was careful to draw attention to the difference between an inquiry under Section 126 and a trial. Any finding or recommendation that Guay might make as the result of his inquiry would be binding on no one, and the Minister would be free to disregard it. He concluded on this point as follows:[7]

> En conséquence, le tribunal est d'accord avec les avocats du demandeur que le défendeur n'est tout au plus qu'une « persona designata » chargée de fonctions spéciales en vertu de la Loi de l'impôt sur le revenu.
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> Il est vrai que, pour les fins de son enquête, certains pouvoirs de caractère judiciaire lui sont accordés en vertu de l'article 126, paragraphe 8, de la Loi de l'impôt sur le revenu et des articles 4 et 5 de la Loi sur les enquêtes.[8] Ce sont ceux d'assigner des témoins, de leur enjoindre de rendre témoignage sous serment et de produire les documents et choses jugés nécessaires et, en particulier, ceux dont sont revêtues les Cours d'archives en matière civile pour contraindre certains témoins à rendre témoignage (les procédures au cas d'outrage au tribunal). Ces pouvoirs conférés par les articles 126, paragraphes 8, et 4 et 5 susdits, ne créent pas et ne confèrent pas la juridiction du défendeur; ils ne font que lui donner certains pouvoirs spéciaux destinés à l'aider dans l'exercice de sa juridiction qui est essentiellement et exclusivement celle de recueillir des faits, et à rendre cet exercice possible et efficace.

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[5] Since appointed to the Court of Queen's Bench (Appeal Side).

[6] *Lafleur* v. *Guay*, [1962] S.C. 254, at p. 272.

[7] At p. 258.

[8] R.S.C. 1952 c. 154.

He went on to review the jurisprudence relating to the conduct of administrative inquiries. Up to that time, the leading Canadian case on this matter, to which frequent reference was made at all levels, was *St. John* v. *Fraser*,[9] a decision of the Supreme Court on an appeal from British Columbia regarding an investigation under the Security Frauds Prevention Act.[10] The plaintiffs were the underwriter of a company under investigation and the underwriter's principal officer, St. John, but the investigation was not nominally directed against them. St. John was examined at the investigation and was then assisted by counsel, but other sessions were held without notice to him and without his being present. He and the underwriter applied for an injunction to halt the investigation. An interim injunction was granted but later set aside, and plaintiffs' appeals were dismissed. This case may be distinguished because the Security Frauds Prevention Act contained a provision banning injunctions and because the plaintiffs, while clearly interested, were not the direct object of the investigation.

Brossard J. distinguished the previous jurisprudence on various grounds, but particularly because it antedated the Canadian Bill of Rights.[11] He relied on paragraphs (d) and (e) of section 2, which reads in part as follows:

> Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the "Canadian Bill of Rights", be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to
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> .....
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> (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;
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> (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
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> .....

He considered that these two paragraphs should be read together and that the inquiry was one that could affect Lafleur's rights and obligations within the meaning of paragraph (e). After referring to the wide discretion conferred by the Income Tax Act upon the Minister to take action against suspected tax evaders, he stated:[12]

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[9] [1935] S.C.R. 441.
[10] B.C. (1930) c. 64.
[11] 8-9 Eliz. II c. 44.
[12] At p. 272.

> Le législateur a, en 1960, par sa Loi sur la déclaration canadienne des droits, eu l'intention admirable de mettre fin à des abus et de protéger la liberté des sujets contre certaines lois dont l'application et l'interprétation ont pu, dans le passé, constituer une atteinte à cette liberté; d'autre part, certaines dispositions de la Loi de l'impôt sur le revenu et l'interprétation qu'on suggère constituent, de l'avis du tribunal, une telle atteinte à la liberté. Peuvent s'appliquer à ces lois administratives les directives d'interprétation souvent appliquées en droit canon: dans le cas de la Loi sur la déclaratiou, celles de l'adage: "favores ampliendi"; dans le cas de la Loi de l'impôt, celles de l'adage: "odiosa restringenda".

On appeal,[13] the granting of the injunction was upheld, by a 3-2 majority. Bissonnette and Rinfret JJ. adopted the reasons of Brossard J. but went somewhat further, suggesting that the inquiry was of a semi-judicial nature. Bissonnette J.[14] cited the decision of the Supreme Court in *Alliance des Professeurs Catholiques de Montréal* v. *Labour Relations Board of Quebec*,[15] the leading Canadian case on the application of the maxim *audi alteram partem* to administrative tribunals, where it was held that the Board could not deprive a union of its certification without a hearing. Owen J. concurred in the result but doubted whether the Bill of Rights or the maxim *audi alteram partem* applied to an administrative inquiry such as this. The basis of his opinion is set forth in the following paragraph:[16]

> In my opinion Guay is obliged to permit Lafleur to be present and to be represented by counsel at the inquiry in virtue of a fundamental principle of justice which has been recognized and enforced by our courts prior to the passage of the Bill of Rights. According to this fundamental principle an inquiry or investigation, even if it is purely administrative must be conducted fairly and impartially.

The dissenting judges, Hyde and Montgomery would have quashed the injunction on the ground that this was a mere administrative inquiry that could be held in private. They pointed out that if, as the result of this inquiry, the Minister saw fit to proceed against Lafleur, he would then be entitled to his day in court. Hyde J. assimilated such an inquiry to the *ex parte* hearing before a justice who has received an information under Section 440 of the Criminal Code.[17]

The Supreme Court recognized the importance of the question by having the appeal heard by the full bench of nine but found

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[13] *Guay* v. *Lafleur*, [1963] B.R. 623.

[14] At p. 635.

[15] (1953), 2 S.C.R. 140.

[16] At p. 631.

[17] 2-3 Eliz. II c. 51. The daily press has recently carried accounts of such a hearing before Lagarde, J., at which a number of witnesses testified, on an information that one Sicotte had been beaten by the police.

comparatively little to add. The appeal was maintained by a majority of eight to one. Abbott J. expressed the majority opinion, though Cartwright and Spence JJ. added reasons of their own. He adopted the views of Hyde and Montgomery JJ., concluding as follows:[18]

> The fact that a person authorized to make an investigation on behalf of the Minister is given certain limited powers of compelling witnesses to attend before him and testify under oath, does not, in my opinion, change the nature of the enquiry. That view was admirably expressed by Mr. Justice Hyde whose words I adopt:
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> As a purely administrative matter where the person holding the inquiry neither decides nor adjudicates upon anything, it is not for the Courts to specify how that inquiry is to be conducted except to the extent, if any, that the subject's rights are denied him. The taking of sworn statement is a common everyday occurrence. The deponent is frequently examined in subsequent Court proceedings where the interests of another may be affected by the statements of that witness. I know of no requirement in law that any person likely to be affected in such a way is entitled to be present with counsel when such a sworn statement is originally made, and I see little distinction from the proceeding in issue.

Dissenting, Hall J. shared the opinion of Owen J.

The Supreme Court's decision was distinguished by Dorion C.J. in *Pouliot* v. *Pickersgill.*[19] Pouliot was a pilot whose license had been suspended following a preliminary inquiry under Section 555 et seq. of the Canada Shipping Act.[20] He applied for a writ of *certiorari*, alleging that he had been denied the right to be present at the inquiry. The Chief Justice ordered the issue of the writ, holding that the officer holding the inquiry was acting in a quasi-judicial capacity in suspending the license and that the alleged refusal to permit the pilot to attend was a violation of the Canadian Bill of Rights.

Gagnon v. Commission des valeurs mobilères du Québec

This case demonstrates that the desire to operate with a minimum of public scrutiny is by no means confined to agencies of the Federal Government. In other respects, the facts are quite different from those in the case considered above.

This case had its origin in a dispute as to the ownership of the contents of a safety deposit box. One of the claimants was Gagnon, acting as liquidator of a mining company. The contents were also claimed by the estate of a man in whose name the box was regis-

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[18] At p. 17.
[19] [1965] P.R. 51, at pp. 54-55.
[20] R.S.C. 1952 c.29.

tered. His estate being bankrupt, Gagnon took proceedings against the trustee in the Superior Court sitting in bankruptcy.

In an effort to establish his claim, Gagnon examined the secretary of the Quebec Securities Commission and asked him to produce a certain letter allegedly addressed to the Commission nearly five years previously. The witness refused, and at the suggestion of Hannen J., the presiding judge, Gagnon made a petition to compel him, which was granted,[21] although the Commission had appeared on the petition and had produced a letter to its chairman from the Attorney-General, the Honourable G. E. Lapalme. After giving in the heading a reference to the case in question, the letter stated as follows:[22]

> Il est d'intérêt public que les faits et documents recueillis au cours des enquêtes faites par la Commission des Valeurs Mobilières du Québec ne soient pas divulgués.
>
> Vous êtes en conséquence autorisé à vous prévaloir des dispositions de l'article 332 du Code de Procédure Civile de la Province de Québec, amendé par 6-7 Elizabeth II, chapitre 43, article 2.

Article 332 of the Code of Civil Procedure (1897), to which the Attorney-General referred, read as follows:

> He cannot be compelled to declare what has been revealed to him confidentially in his professional character as religious or legal adviser, or as an officer of state where public policy is concerned.
>
> The same shall apply to any member, officer or employee of a commission, board or other body the members of which are appointed by the Lieutenant-Governor in Council, whenever the Attorney-General or Solicitor-General of the Province certifies, by a writing in the possession of the witness, who must produce the same, that public order is involved in the facts concerning which it is desired to examine him.

It has been superseded by Article 308 of the 1965 Code, which is in different terms, so that insofar as the decisions in this case merely interpret the wording of Article 332 they are now of little interest, but the discussion of principles remains of value. It was recognized throughout that Article 332 was applicable, notwithstanding that the proceedings were being conducted under the Bankruptcy Act,[23] because of Section 36 of the Canada Evidence Act,[24] which makes applicable provincial rules of evidence not inconsistent with Federal legislation.

Hannen J. found that the Attorney-General's letter did not satisfy the requirements of Article 332. He commented as follows:[25]

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[21] *In re Mercier*, (1963), 5 C.B.R. (N.S.) 153.
[22] At p. 156.
[23] R.S.C. 1952 c. 14.
[24] R.S.C. 1952 c. 307.
[25] At pp. 158-59.

> In the first place, if the Minister's letter means what I understand, then I should say it is very presumptuous in simply saying casually — and I do not belittle the most laudable and vital work of the respondent Commission — that "everything" done by the Commission, in effect, is of such "intérêt public" as not to be divulged. And if the debtor intended to refer only to the Mercedes matter, I say it is still presumptuous in giving no reasons or details, or in offering none in confidence to judge, as to why the production of the five-year-old letter in question — if it exists — could harm the national interest, particularly as it allegedly came to the Commission voluntarily — not being found on a search-warrant etc.; and why the Commission might not, in utter safety to the state, say — not as petitioner asks, "how" it received this letter, which might conceivably be too confidential if there are or may yet be proceedings in court on the subject — but, whether it received the letter from Mr. J. Antoine Mercier and when, where and how.

The Commission's appeal was maintained by a 2-1 majority.[26] Badeaux J. referred to the Supreme Court's decision in *R.* v. *Snider*,[27] where the Minister of National Revenue was obliged to produce the income tax returns of certain accused persons. He distinguished this on the ground that the court was there dealing with criminal proceedings. Taschereau J. agreed and referred to the decision of the House of Lords in *Duncan* v. *Cammell, Laird & Co.*[28] This was an action in damages against a naval contractor arising from the sinking of the submarine *Thetis* on a trial dive. There was an affidavit made by the First Lord of the Admiralty stating that, for reasons of public policy, certain documents that had passed between the Admiralty and the contractor ought not to be produced. Viscount Simon L. C., with whom his colleagues concurred, held that the opinion of the responsible minister should be regarded as conclusive. He commented adversely[29] upon the Privy Council's decision in *Robinson* v. *State of South Australia (No. 2)*.[30] In that case the defendant was the State, which was being sued because of allegedly negligent acts of its agents in the operation of a wheat-marketing scheme. The Attorney General declared that the disclosure of various documents relating to this scheme would be contrary to public policy. The Privy Council held, reversing the decision of the Supreme Court of South Australia, that this was not conclusive and remitted the case to the Supreme Court so that it might consider the documents individually.

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[26] *Commission des Valeurs Mobilières* v. *Gagnon*, [1964] B.R. 349. It was heard as an interlocutory appeal before three judges under Art. 1227*a* C.C.P.

[27] [1954] S.C.R. 479.

[28] [1942] A.C. 624.

[29] At p. 641.

[30] [1931] A.C. 704.

Hyde J., dissenting, would have dismissed the appeal. He based his opinion upon his interpretation of Article 332. In the Supreme Court six of the seven judges who heard the appeal shared this view. Fauteux J., who expressed the opinion of the majority, also commented on *Duncan* v. *Cammell, Laird & Co.* and on a more recent decision of the English Court of Appeal, *Re Grosvenor Hotel, London.*[31] This was a dispute between a private company and the British Railways Board regarding the lease of a hotel, and the company sought the production of correspondence between the Board, the Minister of Transport and other officials. The Minister made an affidavit stating that on grounds of public interest these documents ought to be withheld. The three judges in appeal refused to consider themselves bound by this, though they concluded that, on the facts before them, they should not order production of the documents. Lord Denman M.R.[32] was critical of Viscount Simon's opinion in the *Duncan* case and preferred to follow the Privy Council's decision in *Robinson* v. *State of South Australia.* (As pointed out by him, the *Duncan* case was decided in time of war, when there is a tendency to favour the safety of the state over the rights of the individual.) Leave to appeal to the House of Lords was refused.

Commenting on this jurisprudence, Fauteux J. says:

> En substance, le Maître du Rôle, avec le concours de ses collègues, a rappelé que ce sont les juges qui sont les gardiens de la justice et, a-t-il ajouté, si la confiance qu'on met en eux a un sens et doit avoir une portée, ils doivent pouvoir raisonnablement s'assurer que l'intérêt de l'Etat l'emporte sur celui du justiciable, ou à tout le moins que l'objection ministérielle n'est pas déraisonnable comme c'est le cas, évidemment, lorsqu'il s'agit, par exemple, de documents concernant des secrets militaires, échanges diplomatiques, "cabinet papers" ou décisions politiques prises en haut lieu. Sans doute, les juges useront-ils d'une grande prudence et hésiteront-ils avant d'exercer ce pouvoir résiduaire de revision: mais le fait que celui-ci leur est attribué implique nécessairement que, si rares qu'ils soient, il se présentera des cas où naîtra le devoir de l'exercer. Et il va de soi que, dans chaque cas, varieront les faits invoqués pour le justifier; chacun devant être jugé à son mérite.

Abbott J., alone dissenting, based himself on Quebec jurisprudence relating to Article 332.

The new Code of Civil Procedure replaces Article 332 by Article 308, which, in those parts that apply to this problem, reads as follows:

> Similarly, the following persons cannot be obliged to divulge what has been revealed to them confidentially by reason of their status or profession:
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> .....

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[31] (1964) 3 All E.R. 354.

[32] At pp. 360-62.

> 3. Government officials, provided that the judge is of the opinion, for reasons set out in the affidavit of the minister or deputy-minister to whom the witness is answerable, that the disclosure would be contrary to public order.

This appears to bring the text of the Code into harmony with the views above expressed by Fauteux J.

Violi v. Superintendent of Immigration

The above two cases the courts were primarily concerned with rights of property. In the *Violi* case a question of personal freedom was involved.

Giuseppe and Rocco Violi were brothers who came from Italy as immigrants in December 1958. Before they could be naturalized, each was in trouble with the law. In July 1960 Rocco was sentenced to six months' imprisonment for assault, and in December 1961 Giuseppe was fined for failing to stop after an automobile accident. These convictions rendered them subject to deportation under Section 19(1)(e)(ii) of the Immigration Act.[33] Each was ordered deported after an inquiry under section 26 of the Act. Each appealed under sections 30 & 31, but the appeals were dismissed by Immigration Appeal Boards. It was not suggested that there was any irregularity in the proceedings up to this point, nor was it questioned that the Violis could have been immediately deported after the dismissal of their appeals.

The Violis were not, however, immediately deported. Instead, they received letters from the Immigration Department staying their deportation. The authority of the officers who signed these letters was not clearly established, but the Minister never repudiated them, and the Supreme Court held that it could be presumed that they were written with the Minister's authority and in the exercise of his discretion, under section 31(4) of the Act, to review a decision of an Immigration Appeal Board and to stay execution of a deportation order pending his review.

In the case of Rocco, the letter was dated 24th February, 1961, and read as follows:

> In his letter of February 24, 1961, the Appeal Clerk, General Board of Immigration Appeals, informed you that your appeal against the order of of deportation made at Montreal, Quebec, on February 1, 1961, had been carefully considered and dismissed.
> This letter is to inform you that it has been decided to defer deportation proceedings for a period of 12 months to give you a chance to demonstrate that you can rehabilitate yourself.

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[33] R.S.C. 1952 c. 325. This was new legislation, printed in the supplement to the Revised Statutes and replacing chap. 145.

> The local immigration office will be required to submit a report on your circumstances in one year and I would therefore ask you to keep them informed of your address. I would also like to advise you that any unfavourable reports could mean the carrying out of the deportation order.

In Giuseppe's case, the letter was dated 10th December, 1962, and in the following terms:

> On November 26, 1962, you were informed by the Appeal Clerk of the Immigration Appeal Board that your appeal, taken from a deportation order made against you at Montreal on October 16, 1962, had been dismissed. I have been directed to advise you that the deportation proceedings are being suspended for a period of six months provided no unfavourable report is received during that period. A further study of this case will be made in six months' time.
>
> I wish to make it clear to you that should a further unfavourable report be received, consideration will be given to proceeding immediately with your deportation to Italy...

A further letter was sent to him on 28th May, 1963, as follows:

> This is to inform you that your case has been reviewed and it has been decided that it will not be necessary for you to report to this office as you have been doing in the past; however, it will be necessary for you to present yourself at this office on May 15, 1964.
>
> Meanwhile, it will be necessary for you to inform us of any change of address.

On 31st March, 1964, they were arrested and taken to the Montreal Jail. Letters dated 1st April were sent to them there notifying them that it had been decided to execute the orders of deportation. No explanation of these decisions seems to have been given at any time, either to them or to the courts, the Department taking the stand that no explanation was required.

A third brother then obtained a writ of *habeas corpus*. It is doubtful whether this writ was directed against the proper person, but the officers of the Department conceded that they had received notice of it and very properly declined to invoke any technical defence, seeking a decision on the right to enforce the original deportation orders.

The writ was quashed on 13th May, 1964, by Martel J., in the Superior Court,[34] and his judgment was affirmed on appeal by a 3-2 majority.[35] An appeal to the Supreme Court was heard by the full bench of nine. By a majority of 6-3, they maintained the appeal, declared the Violis' detention to be illegal and recommended that the Minister pay Appellant's costs throughout.

The basic discretion of the Minister to order deportation not being challenged, the decision turned on the interpretation to be

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[34] S.C. No. 638,795, apparently unreported.

[35] [1965] B.R. 81.

given to certain sections of the Immigration Act, particularly section 33, which reads as follows:

> 33. (1) Unless otherwise provided in this Act, a deportation order shall be executed as soon as practicable.
>
> (2) No deportation order becomes invalid on the ground of any lapse of time between its making and execution.

There appeared to be no relevant jurisprudence under the present Act, which came into force in 1953, and the courts found the jurisprudence under the earlier legislation of limited utility. Rivard J., of the Court of Queen's Bench, with whom Bissonnette and Choquette JJ. concurred, found nothing in the Act enabling the courts to restrict the Minister's discretion to execute at any time a deportation order validity made, saying: [36]

> Si le ministre n'exécute pas l'ordonnance d'expulsion le plus tôt possible, il peut encourir les blâmes ou les reproches de ceux-là qui ont compétence pour critiquer les actes administratifs du ministre, et cela ne relève pas de la compétence des tribunaux.

In the Supreme Court, Abbott J., with whom Taschereau C.J. and Judson J. concurred, was of the same opinion, saying: [37]

> In my view the exercise of that power by the Minister requires positive action on his part and is not to be inferred from circumstances such as delay in the execution of the deportation order.
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> Execution of the deportation order against Rocco Violi was deferred for some three years and that against Giuseppe for some eighteen months. Even if such a delay were relevant to the continuing validity of the orders (which in my opinion it was not) deferment for such periods was not in my view unreasonable in the circumstances.

The dissenting judges in the Appeal Court, Hyde and Montgomery JJ., and the majority in the Supreme Court refused to accept that Parliament had intended to authorize the Minister to play a cat and mouse game with an immigrant subject to deportation. Hyde J. expressed this idea as follows: [38]

> The statute does not envisage the placing of an immigrant in a position where every knock on the door may presage an arrest when he has been advised that his deportation is deferred to give him a chance to demonstrate that he can rehabilitate himself.

He suggested that the contrary interpretation of the Act was inconsistent with paragraph (a) of section 2 of the Canadian Bill of Rights as authorizing "the arbitrary detention, imprisonment or exile" of an immigrant. Montgomery J. agreed and drew attention to the special procedure established by section 8 of the Immigration Act, which provides that the Minister may by temporary permit,

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[36] At pp. 85-86.
[37] At pp. 235-36.
[38] At p. 88.

subject to cancellation at any time, permit any person to remain in Canada. The Minister is required to submit to Parliament an annual report giving particulars of all such permits, and in the case of the Violis there was no suggestion that he was attempting to exercise his powers under this section.

It was held that, while because of section 33 (2) deportation orders could not become invalid by mere lapse of time, they had in effect been cancelled by the terms of the letters staying execution coupled with the lapse of time. Martland J., who expressed the opinion of the majority in the Supreme Court, put it this way: [39]

> The question in issue is whether, following the expiration of those stipulated periods, the Minister can thereafter hold the deportation orders in suspense and require their enforcement at any time he chooses, at his own discretion. I do not think he can. Having exercised his power of review, under s. 31 (4), his decision is, by the terms of that subsection, final. This decision was to grant to each of the persons involved a probationary period. The probationary periods expired and no steps were then taken to enforce the orders. The Minister did not, thereafter, have power to make a further review and to decide to extend the probationary period for an additional time. Nothing has been said on behalf of the respondent to establish the existence of any authority given to the Minister to adopt such a course.

He held that the position was the same as if the Minister had allowed the appeals from the decisions of the Immigration Appeal Boards.

CONCLUSION

In the above three cases our Supreme Court has reaffirmed the right and duty of the courts to exercise some measure of control over the executive branch of government, while recognizing that the intent of the Legislature has in many cases been to confer wide discretionary powers upon administrative officers and boards.

In the *Lafleur* case, while the Supreme Court held that great latitude should be given to an officer holding a purely administrative inquiry to conduct it as he may see fit, the courts generally reaffirmed the duty of an administrative officer performing quasi-judicial functions to act judicially. In the *Gagnon* case the Court reaffirmed the right to exercise a measure of control over the refusal of a minister to produce documents. The *Violi* case decided that an immigrant legally admitted to Canada cannot be arrested or deported unless it be in strict compliance with the law. More generally, this latter case is authority for the proposition that an administrative officer who has a decision to make should make it within a reasonable time, that in special circumstances his decision may be inferred from

[39] At p. 242.

his acts, or his inaction, and that, once made, the decision may be treated as final and not subject to revision by him.

It is gratifying to observe that counsel representing the executive presented their cases fairly, indicating a desire to obtain the courts' decisions on questions of principle without invoking legal technicalities. It is further gratifying to note that the Quebec Legislature, when subsequent to the decision in the *Gagnon* case revised the Code of Civil Procedure, it did so in such a way as to affirm the right of control by the court.[40]

The Canadian Bill of Rights proved to be of little assistance to the subject in these cases. In the *Lafleur* case the majority of the judges held it did not apply, and in the *Gagnon* case it was not invoked. In the *Violi* case, Hyde J. cited it in support of his decision, but the notes of the judges in the Supreme Court do not mention it, and it seems probable that the final decision would have been the same had it not been enacted.

[40] For examples of the reverse tendency, see R. Dussault, *Legislative Limitations on the Courts' Power to Review Administrative Action in Quebec*, (1967) 13 McGill L.J. 23.