JOHN MURDOCK LIMITEE v. LA COMMISSION DE RELATIONS OUVRIERES DE LA PROVINCE DE QUEBEC et Autres et LA FRATERNITE UNIE DES CHARPENTIERS MENUISIERS D'AMERIQUE, Mise en cause.[1]

QUEBEC LABOUR RELATIONS ACT — RACIAL DISCRIMINATION

The social or humanistic reasons for the appearance in any society of discrimination between people who have different coloured skins or who live in different ways are no doubt involved and difficult to determine. But when racial discrimination steps within the boundaries of the law it reduces itself to manageable proportions.

The notion of the second class person is surely the fundamental and common element in all developed examples of discrimination between races. It is to be observed at a nascent stage in the circumstances dealt with by this decision.

* * *

In a spirited judgment Mr. Justice Oscar L. Boulanger of the Superior Court at Quebec City has dealt firmly with the idea that Indians are in any way lesser people than white Canadians. The decision also deals with the question of privative clauses in provincial labour legislation, although this is of secondary interest.

The labour union which appeared in this case as mise en cause had succeeded in getting the Quebec Labour Relations Commission to say that Indian lumberjacks were not the same as white ones and did not have to be accorded the same rights. The dispute arose when the Commission, against the objections of the company, certified the union as legal bargaining agent for the company's employees. The judgment unfortunately tells us nothing of the motives of the various litigants.

In the Murdock company's woods operations there was employed a total of two hundred and ninety lumberjacks. Ninety-two of them were Indians.

A group of the men, presumably white, were members of the local of the United Brotherhood of Carpenters and Joiners of America. This group addressed itself to the Quebec Labour Relations Commission with a request that it be certified as bargaining agent for all the Murdock company employees. Although the judgment is silent on this point, the union men evidently were not purporting to speak for the Indian lumberjacks when they approached the Commission.

The request for certification was refused. The Commission gave as its reason the statement that the union men did not represent the majority of the employees of the company. The union made a second request. This time,

[1] [1956] S.C. 30.

although nothing appears to have changed, the union's request was granted and it was certified.

Both the company's protest against this decision and its request that the Commission reconsider it were refused. A writ of prohibition was accordingly obtained by John Murdock Limitée against the Quebec Labour Relations Commission ordering it to do nothing to implement the decision.

The issue in court was over the status of the Indian workers. The union argued that the Indians were inferior to the white lumberjacks and the company argued that, as far as their employment was concerned, all its workers were the same. In granting certification to the union on its second address, the Commission had reversed its previous stand and had acted on the union's argument. For it was the union's contention that when the Labour Relation Commission went to determine whether or not those seeking certification as bargaining agents constitued the majority of the workers they sought to bargain for, it should exclude Indians from its calculations.

The union gave reasons in support of this argument. It said first that the Indian workers lived on the fringe of Canadian nationality and that consequently the province's labour laws were not applicable to them. The union's second reason was that they did not live in the same way as the white lumberjacks, but in their own communities of tents, apart from the lumber camps.

The company's reply to this argument was simply that the Indians were workers like anyone else. They did the same work as the whites and under the same conditions. They received the same pay.

The spectacle of a labour union saying that because Indian workers belonged to an aboriginal race and did not sleep in the common bunkhouses they should not come within the pale of the Quebec Labour Relations Act is not a cheering one. Nor does it fit in very well with what one would have supposed to be the purpose of the Act in question; namely to improve labour relations.

The picture is even more disquieting when it is remembered that the Quebec Labour Relations Commission accepted this line of reasoning. The activities of this body are, moreover, apparently immune from outside investigation. At the time this case was decided s. 41a of the Act (1941 R.S.Q. Ch. 162A) read as follows:

> "Aucun bref de *quo warranto*, de *mandamus*, de *certiorari*, de prohibition ou d'injonction ne peut être émis contre la commission, ni contre aucun de ses membres, en raison d'une décision, d'une procédure ou d'un acte quelconque relevant de l'exercice de leurs fonctions.
>
> L'art. 50 du Code de procédure civile ne s'applique pas à la commission."

Mr. Justice Boulanger had first to find out if s. 41a was in fact "une fin de non recevoir absolue et une entrave complète au recours de la compagnie." His approach is one which may be observed in other decisions dealing with the scope of similar privative clauses. He adopts the common starting premiss that acts by the Commission which do not relate to its functions cannot

be witheld from impugnment. S. 41a will not be able to deny recourse against them.

The learned judge then examines the Labour Relations Act to find out what the functions of the Commission are. He concludes that the functions of the Commission consist in the recognition and certification of groups of workers as bargaining agents. This much is to be expected. Far more important is his finding that there is in the Act no reference whatever to the racial origin of workers, nor to their colour, beliefs, way of life or conduct outside working hours. The union's argument, then, that the Commission should not count Indians as workers when it considers certifying some of the Indians' fellow-workers, does not stand on any text of law. Yet this was the argument which the Commission adopted and acted upon when it certified the white union membes as bargaining agents for all the employees of the Murdock company, despite the fact that more than one third of those employees were Indians.

The learned judge's comment is to the point:

> "Comme tout autre organisme judiciaire, la commission doit prendre la loi comme elle est . . . elle ne peut distinguer là où la loi ne distingue pas; elle ne peut faire d'exception là où la loi n'en fait pas."[2]

What the Quebec Labour Relations Commission did here was to deny to the Indian employees of the company the benefit of the laws of the province. The Commission does not exercise its functions when it does something which the law does not authorize. In such cases it is not protected by s. 41a of the Act.

> "Cette tentative de ségrégation raciale ne peut être appuyée sur aucun texte de loi. C'est une atteinte à la liberté de travail et au droit qu'a tout salarié de faire partie ou non d'une association et de bénéficier de la législation ouvrière."[3]

The learned judge lays great stress on what this sort of conduct by a public body can lead to. He says firmly that the Quebec Labour Relations Commission cannot expand its powers under the pretext that it is dealing with a special kind of people.

Attempts to do so are possibly the most obvious way there is of abusing statutory powers. A statute is passed creating a body for the purpose of doing a special job, and giving it the powers to do that job. In this case the body could not even be brought into court. This state of affairs is abused when the body itself starts interpreting its own enabling statute. To do so will manifestly not be one of its powers.

The Quebec Labour Relations Commission was saying, in effect, that in order to do something which it was empowered to do, it was free to do something for which it had no authority. What it was empowered to do, of course, was to certify groups of workers as bargaining agents for their fellow workers, and what it had not authority to do was to say that an Indian — because he was an Indian — could not be a fellow worker .

---

[2][1956] S.C. 30, at page 35.

[3][1956] S.C. 30, at page 36.

At page 35 Mr. Justice Boulanger says of the Commission, bluntly and graphically,

> " . . . qu'elle n'aurait le droit d'exclure certains salariés, sous prétexte qu'ils sont protestants, chauves ou tchécoslovaques, qu'ils comprennent la théorie du crédit social, qu'ils se couchent en chien de fusil ou qu'ils bûchent avec la vieille hache et l'ancienne *sciotte,* au lieu de se servir d'une scie mécanique."

Judgment was accordingly rendered upholding the company's writ of prohibition, ordering the Commission not to implement its decisions and revoking the certification which it had granted to the mise en cause.

JAMES BRIERLEY*

*Third year Law student.