

IN THE SUPREME COURT OF CANADA

(On Appeal from the Court of Appeal for the Province of Ontario)

BETWEEN:

EDWARDS BOOKS AND ART LIMITED

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

AND BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

NORTOWN FOODS LIMITED

Respondent

AND BETWEEN:

LONGO BROTHERS FRUIT MARKETS LIMITED,
THOMAS LONGO, JOSEPH LONGO,
carrying on business as LONGO BROTHERS
FRUIT MARKET

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

AND BETWEEN:

PAUL MAGDER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

FACTUM OF THE ATTORNEY GENERAL
FOR THE PROVINCE OF MANITOBA

INTERVENER

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PART I

STATEMENT OF FACTS

1. The Attorney General of Manitoba adopts the facts as set out in the Factum of the Crown represented by the Attorney General for the Province of Ontario.

POINTS IN ISSUE

1. The issues in this appeal are the Constitutional Questions stated by this Honourable Court, as follows:

- 10 (1) Is the Retail Business Holidays Act, R.S.O. 1980, c. 453 within the legislative powers of the Province of Ontario pursuant to s. 92 of the Constitution Act, 1867?
- (2) Does the Retail Business Holidays Act, R.S.O. 1980, c. 453 or any part thereof, infringe or deny the rights and freedoms guaranteed by ss. 2(a), 7 and/or 15 of the Canadian Charter of Rights and Freedoms and, if so, to what extent does it infringe or deny these rights?
- 20 (3) If the Retail Business Holidays Act, R.S.O. 1980, c. 453, or any part thereof, infringes or denies in any way ss. 2(a), 7 and/or 15 of the Canadian Charter of Rights and Freedoms, to what extent, if any, can such limits on the rights protected by these sections be justified by s. 1 of the Canadian Charter of Rights and Freedoms and thereby rendered not inconsistent with the Constitution Act, 1982?

2. It is the position of the Attorney-General of Manitoba that the Retail Business Holidays Act is within the legislative powers of Ontario pursuant to section 92 of the Constitution Act, 1867, that the Retail Business Holidays Act does not infringe or deny any of the rights and freedoms guaranteed by sections 2(a), 7 or 15 of the Canadian Charter of Rights and Freedoms, and that if the Retail Business Holidays Act does infringe or deny any of these rights and freedoms, the limitations would be reasonable and justified under section 1 of the Charter.

PART III

ARGUMENT

1. In Manitoba The Retail Businesses Holiday Closing Act, Chapter R 120, C.C.S.M., regulates the closing of certain retail business establishments on a holiday.

(Appendix A)

10 2. The Manitoba legislation is similar to the Retail Business Holidays Act of Ontario, which is the subject matter of the constitutional questions before this Court.

3. The Attorney-General of Manitoba adopts the arguments of the Attorney-General of Ontario as set out in the Crown's Factum.

PART IV

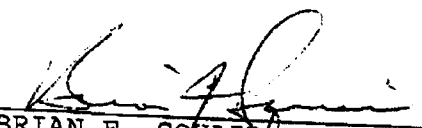
NATURE OF THE ORDER REQUESTED

1. It is submitted that the Constitutional Questions should be answered, as follows:

1. The Retail Business Holidays Act is within the legislative powers of the Province of Ontario.
2. The Retail Business Holidays Act does not infringe or deny the rights and freedoms guaranteed by the Charter.
3. If there is an infringement of the rights and freedoms guaranteed by the Charter, the limits on the rights and freedoms are justified by section 1 of the Charter.

10

ALL OF WHICH IS RESPECTFULLY SUBMITTED.


BRIAN F. SQUAIR, Q.C.
Counsel for the Attorney-General
of Manitoba

"Appendix A"

CHAPTER R120

THE RETAIL BUSINESSES HOLIDAY CLOSING ACT.

(Assented to June 18, 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1

In this Act,

- (a) "holiday" means New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Christmas Day and Sunday;
- (b) "municipality" means a city, including The City of Winnipeg, town, village or a local government district;
- (c) "retail business establishment" means the premises or place in which or from which a retail business is carried on.

S.M. 1977, c. 26, s. 1.

Retail business prohibited on holidays.

2

No person who owns or operates a retail business in a retail business establishment shall admit members of the public therein or sell or offer for sale any goods or services therein, on a holiday.

S.M. 1977, c. 26, s. 2.

Employees prohibited from selling on holidays.

3

No person employed by or acting on behalf of a person who owns or operates a retail business in a retail business establishment shall

- (a) sell or offer for sale any goods or services therein by retail; or
- (b) admit members of the public therein;

on a holiday.

S.M. 1977, c. 26, s. 3.

Optional opening on Sundays.

4 (1)

Notwithstanding sections 2 and 3 but subject to subsection (2), a person who owns or operates a retail business establishment may elect to sell or offer for sale goods or services therein on a retail basis on Sundays; but where he elects to do so he shall close the establishment for business on Saturdays.

SEPTEMBER, 1978

Election by person owning more than one establishment.

4 (2) Subsection (1) applies to a person who owns or controls and operates more than one retail business establishment; except that where he makes an election under that subsection, he shall operate all the establishments owned or operated by him on Sundays and shall close all the establishments on Saturdays.

S.M. 1977, c. 26, s. 4.

Exceptions.

5 Sections 2, 3 and 4 do not apply

- (a) to a person carrying on business as a tobacconist, fruiterer, confectioner, news-agent, hotel, inn, tavern, victualling house or refreshment house, within the meaning of The Shops Regulations Act;
- (b) to the retail sale of liquor under the authority of a licence or permit issued under The Liquor Control Act;
- (c) to the operation of a retail business that is governed or regulated by a special Act of the Legislature or any regulations made thereunder;
- (d) to a retail business establishment where the number of persons including the owner, employed for the sale of goods or services on the holiday, does not exceed 4;
- (e) to a pharmacy where the principal business carried on is the dispensing of drugs upon prescription and the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or the cosmetic purposes and no other goods are sold or offered for sale except as sundries;
- (f) to a retail business establishment where gasoline or motor oil and, in conjunction therewith, other goods or services are sold or offered for sale for consumption in the operation of a motor vehicle;
- (g) to the retail sale of nursery stock or flowers, and in conjunction therewith, garden supplies and accessories;
- (h) to the retail sale of goods or services permitted under the Lord's Day Act (Canada) or The Lord's Day (Manitoba) Act;
- (i) to the operation of laundromats and other coin-operated services incidental thereto;
- (j) to the rental, servicing or repair of motor vehicles or boats;
- (k) to the admission of the public to premises for educational, recreational or amusement purposes or in respect of the sale or offering for sale of goods or services incidental thereto; and
- (l) to the operation of tourism and recreational facilities including summer and winter resorts.

S.M. 1977, c. 26, s. 5; Am. S.M. 1978, c. 8, s. 1.

Special exemption permit.

6 Where the Lieutenant Governor in Council or a member of the Executive Council designated by the Lieutenant Governor in Council for the purpose, is of the opinion that the closing of a certain retail business establishment in accordance with sections 2, 3 and 4, will work a hardship on the public, he may, on application therefor, issue a permit exempting the establishment from the application of sections 2, 3 and 4, subject to such terms and conditions as he considers advisable.

S.M. 1977, c. 26, s. 6.

RETAIL BUSINESS HOLIDAY CLOSING

S.M. 1977, c. 26 — Cap. R120

Exception from Lord's Day Act (Canada).

7 It is lawful for any person not prohibited by this Act to sell, offer for sale or purchase any goods, chattels or other personal property or to employ any other person in connection therewith on the Lord's Day where to do so would, but for this Act, be unlawful under section 4 of the Lord's Day Act (Canada).

S.M. 1977, c. 26, s. 7.

Powers of municipalities.

8 Any provision of any other Act empowering a municipality to regulate the closing or the hours of operation of a retail business does not include the power to permit the carrying on of the retail business on a holiday where to do so is prohibited by this Act, but nothing in this Act shall be construed to affect any power conferred on a municipality to prohibit the carrying on of a retail business on a day when the carrying on of the retail business is not prohibited by this Act.

S.M. 1977, c. 26, s. 8.

Offence and penalty.

9 Any person who violates the provisions of this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000.00 or more than \$5,000.00.

S.M. 1977, c. 26, s. 9.

Regulations.

10 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law.

S.M. 1977, c. 26, s. 10.

Place in Continuing Consolidation.

11 This Act may be referred to as chapter R120 of the Continuing Consolidation of the Statutes of Manitoba.

S.M. 1977, c. 26, s. 11.

Commencement of Act.

12 This Act comes into force on the day it receives the royal assent.

S.M. 1977, c. 26, s. 12.

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