

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

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PART I

STATEMENT OF FACTS

PART I

STATEMENT OF FACTS

1. The Attorney General for the Province of New Brunswick takes no issue with the facts set out in the Factum of the Attorney General for the Province of Ontario and as enlarged by the parties in this appeal.

2. The Attorney General of New Brunswick filed Notice of Intervention on the 30th day of September, 1985 pursuant to the Order of the Right Honourable the Chief Justice of Canada made on the 29th day of August, 1985.

PART II

POINTS IN ISSUE

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10 3. The points in issue in this appeal are set out in the Constitutional Questions stated in the Order of the Chief Justice dated the 29th day of August, 1985 as follows:

Question 1: Is the Retail Business Holidays Act, R.S.O. 1980, c.453 within the legislative powers of the Province of Ontario pursuant to Section 92 of the Constitution Act, 1867?

20 Question 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 Sections 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?

30 Question 3: If the Retail Business Holidays Act, R.S.O. 1980, c.453, or any part thereof, infringes or denies in any way Sections 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 Section 1 of the Canadian Charter of Rights and Freedoms and thereby rendered not inconsistent with the Constitution Act, 1982?

PART II

POINTS IN ISSUE

4. The Attorney General of New Brunswick wishes to restrict his intervention in this matter to address two issues:

10 a) Whether or not the provincial legislature is competent to make laws with a view to providing for uniform days of rest from general commercial activity in the local community, and

20 b) Whether or not such legislation might provide exemptions so as to lessen or remove the burden that might otherwise have been placed upon an individual's constitutional rights or freedoms.

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PART III

ARGUMENT

PART IIIARGUMENT

10 5. It is submitted that the issues involved in this appeal require at the outset a two-stage inquiry:

First, the traditional inquiry into the distribution of governmental power under Sections 91 and 92 of the Constitution Act, 1867.

20 Second, whether the particular legislative scheme places any or any unreasonable burden upon an individual's rights or freedoms entrenched in the Charter of Rights and Freedoms.

Purpose of Act

30 6. In keeping with the approach recently taken by this Court in Her Majesty the Queen v. Big M Drug Mart Ltd. (1985) 1 S.C.R. 295, what must be identified is the real object, purpose or intent of the impugned legislation.

0 7. In the Big M Drug Mart case this court concluded after such an inquiry that the federal Lord's Day Act was directed towards the maintenance of public morals and

therefore within the exclusive authority of Parliament.
At p. 355 of the Report Dickson, J. (as he then was)
comments:

10 It should be noted, however, that this conclusion as to the federal Parliament's legislative competence to enact the Lord's Day Act depends on the identification of the purpose of the Act as compelling observance of Sunday by virtue of its religious significance. Were its purpose not religious but rather the secular goal of enforcing a uniform day of rest from labour, the Act would come under s. 92(13), property and
20 civil rights in the province and, hence, fall under provincial rather than federal competence: In the Matter of Legislative Jurisdiction Over Hours of Labour, [1925] S.C.R. 505; Attorney-General for Canada v. Attorney-General for Ontario, [1937] A.C. 326 (P.C.).

30 8. It is submitted that adopting this traditional pith and substance approach, an examination of the legislative history of the Retail Business Holidays Act of Ontario reveals that the Act was expressly secular in purpose and intent and that the Court of Appeal of Ontario was correct in so concluding. In such circumstances the Province was properly authorized to so legislate pursuant to its constitutional authority in s. 92(13) and (16).
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PART III

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10 9. Once the Court concludes that the dominant purpose of the legislative scheme was to regulate the hours of work in certain commercial spheres with a view to achieving uniform days of rest from work, it matters not that some incidental aspect of it (such as the inclusion of days of historical religious significance) was not directly within provincial competence. Ritchie, J. in Lieberman v. The Queen (1963) S.C.R. 643 at 648 makes the point:

20 I^a is not to be lightly assumed that any part of the by-law is directed to a purpose beyond the legislative competence of the enacting authority and I do not think that the inclusion of Sunday in the hours of closing of these businesses necessarily carries with it any moral or religious significance.

30 10. Nor should that moral or religious significance be imposed upon the Act simply because it includes an exemption that attempts to lessen any burden upon those espousing religious beliefs. It is submitted that such exemptions should be seen as supporting the goal of the Act rather than transforming the Act into one with "religious" intent.

Charter Implications

40 11. Once the Court concludes its examination of legislative competency, it is submitted that the scheme must then be measured against the "new yardstick" of the Charter

PART III

ARGUMENT

of Rights. This again involves a two-stage inquiry:

First, as to the content and scope of the Charter right alleged to be infringed, and

Second, as to whether the scheme unreasonably burdens that Charter right.

11. In examining the nature of the guarantee of freedom of conscience and religion under the Charter in the Big M Drug Mart case, Dickson, J. (as he then was) suggested (at page 350 of the report) that

In my view, the guarantee of freedom of conscience and religion prevents the government from compelling individuals to perform or abstain from performing otherwise harmless acts because of the religious significance of those acts to others. The element of religious compulsion is perhaps somewhat more difficult to perceive (especially for those whose beliefs are being enforced) when, as here, it is non-action rather than action that is being decreed, but in my view compulsion is nevertheless what it amounts to.

And again at p. 351, he concludes that the Charter

...mandates that the legislative preservation of a Sunday day of rest should be secular, the diversity of belief and non-belief, the diverse socio-cultural backgrounds of Canadians make it constitutionally incompetent for the Federal Parliament to provide legislative preference for any one religion at the expense of those of another religious persuasion.

13. Because the fundamental freedoms set out in Section 2 are expressed in very general language they are clearly not absolute. Accordingly, in examining the content and scope of the freedoms in s.2(a) of the Charter the comments of Wilson, J. in the Operation Dismantle case, as she examined the scope of other entrenched rights, are particularly appropriate:

In my view, even an independent, substantive right to life, liberty and security of the person cannot be absolute. For example, the right to liberty, which I take to be the right to pursue one's goals free of governmental constraint, must accommodate the corresponding rights of others. The concept of "right" as used in the Charter postulates the inter-relation of individuals in society all of whom have the same right.

...

The rights under the Charter not being absolute, their content or scope must be discerned quite apart from any limitation sought to be imposed upon them by the government under S.1.

Operation Dismantle Inc. et al v. Her Majesty the Queen (1985) S.C.R. 441 at 488, 489.

14. It is submitted that it is consistent with an inquiry into the scope of the particular freedoms here claimed to inquire of the objector at least whether or not the objection is based upon a sincerely held belief or lifestyle dictated by his conscience or religion. Lawrence Tribe in his American Constitutional Law at p. 859 states:

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One who objects on free exercise grounds to a regulation or requirement must ground the objection upon a sincerely held religious belief. Such a showing is necessary if the concept of required accommodation is not to become a limitless excuse for avoiding all unwanted legal obligations.

15. It is submitted that this court appears to have had just such a consideration in mind in the Big M Drug Mart case when Dickson, J. (as he then was) was dealing with the issue of standing. He concluded that where the very purpose of the law was inconsistent with constitutional rights anyone might attack its validity. However, quite different considerations would apply where the law was valid on its face but allegedly inconsistent in its incidental impact upon individual rights. He comments at p.315 of the report:

...(I)f the legislation under review had a secular purpose and the accused was claiming that it interfered with his religious freedom, the status of the accused and the nature of his belief might be relevant: It is one thing to claim that the legislation is itself unconstitutional, it is quite another to claim a "constitutional exemption" from otherwise valid legislation, which offends one's religious tenets.

(emphasis added)

16. This approach also was taken in the United States Supreme Court in the series of cases to which this Court made reference in the Big M Drug Mart case (at p.329 of the report) when it concluded that the goal of providing a uniform day of rest was a legitimate governmental goal despite some incidental burdens on those exercising certain religious beliefs.

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10 17. In Braunfeld v. Brown 366 U.S. 599 (1961), for example, Chief Justice Warren writing for four members of the Court, found that the particular Sunday closing laws placed a severe burden on Sabbatarian retailers but balanced that burden against the State's interest. Nevertheless the plaintiff had to show that the legislative scheme placed a real burden upon the exercise of their religious beliefs.

20 18. In another American case, Sherbert v. Verner 374 U.S. 398 (1963) the U.S. Supreme Court held that the State employment benefits could not be denied to a Seventh Day Adventist because she refused to work on Saturday due to her religious beliefs. The plaintiff had to show a substantial burden upon the practice of her religion as she had to choose between State benefits or following her beliefs. The Court found that the State could not demonstrate that the denial of benefits was necessary to promote a compelling interest. In the result, the State was required to exempt such workers from its requirement that they be available for work on Saturdays thereby being entitled to unemployment benefits.

40 19. It is submitted, therefore, that the Court of Appeal of Ontario in this case quite properly concluded that a law otherwise valid cannot be said to infringe on the individual's freedom of conscience or religion before the question is put as to whether that individual does espouse particular religious tenets or dictates of conscience. Tarnopolsky, J., for the Court, put the matter thus:

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In my view, where one claims exemption on grounds of religion or conscience to a particular government regulation or requirement, one must be prepared to show that the objection is based upon a sincerely held belief based upon a lifestyle required by one's conscience or religion. Otherwise, S.2(a) of the Charter might become a limitless excuse for avoiding all unwanted legal obligations.

Case on Appeal, Vol. 2, at 285.

20. In Lawson Hunter et al v. Southam Inc. (1984) 2 S.C.R. 145 at 169 this Court made the point that the courts must not "fill in the details" of the legislation to ensure compliance with the Charter; the legislation itself must contain appropriate standards:

...While the courts are guardians of the Constitution and of individuals' rights under it, it is the legislature's responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution's requirements. It should not fall to the courts to fill in the details that will render legislative lacunae constitutional.

21. It is submitted that the exemptions contained in the legislative scheme not only indicate the extent or nature of the goal of the rest or respite from commercial activity, but also set the standards to ensure Charter consistency. Section 3 of the Ontario Retail Business Holidays Act and s. 4(3) and s. 7(1)(c) of the New Brunswick Days of Rest Act are examples of this.

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10 22. If the legislative scheme providing uniform days of rest is considered to be valid provincial legislation, to contend that it is inconsistent with undefined general religious freedoms, would be tantamount to recognizing such freedoms as absolute thereby preventing the government from regulating hours and conditions of labour at all.

20 23. Alternatively, the legislature would have to pursue its goal of establishing uniform days of rest by choosing times when no one might be religiously or in conscience adversely affected. The United States Supreme Court considered this possibility and concluded that such a result would in fact be hostile to the public welfare and would not promote the separation of the church and the state. It is submitted that such a contention would further give substance to any argument that the legislation was religious in intent.

Nowak, Rotunda and Young: Constitutional Law, 885, 886.

24. This Court has described the balance that must be struck in measuring the impugned legislative scheme against the alleged Charter right. Dickson, J. (as he then was) in Lawson Hunter et al v. Southam, supra, at p. 159 indicated that:

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10 ...(A)n assessment must be made as to whether
in a particular situation the public's interest
in being left alone by government must give
way to the government's interest in intruding on
the individual's privacy in order to advance its
goals....

20 25. It is submitted that that balancing requires
a consideration of the individual's claim to being burdened
by the law: If the legislative exemption removes that
burden or compulsion then the protected right has not been
infringed.

Section 1 of the Charter

30 26. Finally, it is submitted that whereas the purpose
of the federal Lords Day Act was found by this Court to
compel religious observance thereby making any claim that it
was a "reasonable limitation" under S. 1 of the Charter
virtually impossible, it is respectfully submitted that the
overwhelming secular intent of provincial uniform days of
rest legislation such as the Retail Business Holidays Act of
Ontario permits of an inquiry as to "reasonable limitations".
40 under S.1. Although the situation in respect of the
protection of freedom of religion under the American
Constitution is somewhat different, S. 1 of the Charter
clearly recognizes that constitutional rights expressed in
general language are not absolute, may be subject to

qualification and limits and therefore giving rise to an assessment or balancing of the government's interest and that of the individual's particular rights.

27. Subject to their submissions in relation to exemptions made at paragraphs 116-118 of their Factum the Attorney General for New Brunswick respectfully supports the position of the Attorney General for the Province of Ontario in relation to the application of s. 1 of the Charter.

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PART IV

ORDER REQUESTED

PART IV

ORDERED REQUESTED

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28. In light of the restricted nature of his intervention, the Attorney General for the Province of New Brunswick seeks an order in relation to the first and third constitutional questions only and submits that these questions should be answered in the affirmative.

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All of which is respectfully submitted this 10th day of December, 1985.

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Bruce Judah

Of Counsel for the
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PART V

AUTHORITIESLIST OF AUTHORITIES

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3. <u>Lawson Hunter et al v. Southam Inc.</u> (1984) 2 S.C.R. 145	10
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CHAPTER D-4.2

CHAPITRE D-4.2

Days of Rest Act

Loi sur les jours de repos

Assented to June 27, 1985

Sanctionnée le 27 juin 1985

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick, décrète:

1 In this Act

1 Dans la présente loi

"Board" means the Board designated by the Lieutenant-Governor in Council under section 6;

«commerce au détail» désigne la location ou l'offre de location, la vente ou l'offre de vente au détail de marchandises, de chattels ou de services;

"Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant-Governor in Council and includes a person designated by him under section 3 to act on his behalf;

«commission» désigne la commission désignée par le lieutenant-gouverneur en conseil en vertu de l'article 6;

"municipality" means any incorporated city, town or village;

«jour de repos prescrit» désigne

"national park" means a national park established and maintained under the *National Parks Act*, chapter N-13 of the Revised Statutes of Canada, 1970;

"prescribed day of rest" means

(a) New Year's Day,

(b) Good Friday,

(c) Victoria Day,

a) le jour de l'an;

b) le vendredi saint;

c) le jour de Victoria;

d) la fête du Canada;

e) la fête du Nouveau-Brunswick;

f) la fête du Travail;

g) le jour de l'action de grâces;

h) le jour du Souvenir;

- (d) Canada Day,
- (e) New Brunswick Day,
- (f) Labour Day,
- (g) Thanksgiving Day,
- (h) Remembrance Day,
- (i) Christmas Day,
- (j) Boxing Day, and

(k) any day appointed by any Statute in force in the Province or by Proclamation of the Governor General or Lieutenant-Governor as a general holiday within the Province;

"provincial park" means a provincial park as defined under the *Parks Act*;

"retail business" means the renting or offering for rent, selling or offering for sale any goods, chattels or services by retail;

"weekly day of rest" means Sunday.

2 It is hereby recognized and declared that

(a) it is necessary to provide for days of rest from work, and

(b) it is desirable to provide, as much as is practicable, that such days of rest be uniform.

3 The Minister shall administer and enforce this Act and may designate persons to act on his behalf.

4(1) Subject to subsection (3), no person shall, on the weekly day of rest,

(a) rent or offer for rent, sell or offer for sale or purchase any service, goods, chattels or any real estate,

i) le jour de Noël;

j) le lendemain de Noël; et

k) tout jour déclaré jour férié public dans la province par une loi en vigueur dans la province ou par proclamation du gouverneur général ou du lieutenant-gouverneur;

«jour de repos hebdomadaire» désigne le dimanche.

«Ministre» désigne le membre du Conseil exécutif à qui le lieutenant-gouverneur en conseil confie l'application de la présente loi et s'entend également d'une personne que le ministre désigne en vertu de l'article 3 pour le représenter;

«municipalité» désigne une cité, une ville ou un village constitués en corporation;

«parc national» désigne un parc national créé et entretenu en application de la *Loi sur les parcs nationaux*, chapitre N-13 des Statuts révisés du Canada de 1970;

«parc provincial» désigne un parc provincial défini dans la *Loi sur les parcs*.

2 Il est par la présente loi reconnu et déclaré

a) qu'il est nécessaire d'accorder des jours de repos du travail, et

b) qu'il est souhaitable d'accorder autant que possible des jours de repos uniformes.

3 Le Ministre est chargé de l'application et de l'exécution de la présente loi et peut désigner des personnes pour le représenter.

4(1) Sous réserve du paragraphe (3), nul ne doit, le jour hebdomadaire de repos

a) louer ou offrir de louer, vendre ou offrir de vendre ou d'acheter des services, de marchandises, des *chattels* ou des immeubles,

(b) carry on or transact for gain any business of his ordinary calling or in connection with such calling, or

(c) do any work, business or labour for gain or employ or engage any other person to do so.

4(2) Subject to subsection (3), no person shall, on a prescribed day of rest,

(a) carry on retail business, or

(b) admit the public to any premises where a retail business is carried on.

4(3) Any person may, on the weekly day of rest or on a prescribed day of rest, engage in an activity that is prohibited under subsection (1) or (2) in respect of the following:

(a) sporting, recreational, entertainment or amusement activities including the operation of cinemas, theatres and exhibitions of an educational, artistic or cultural nature,

(b) the transportation of persons and goods, including the operation of any toll or draw bridge, ferry or boat being part of the normal transportation system of the Province,

(c) commercial fishing and marine farming activities,

(d) farming activities including processing plants incidental to and the delivery of milk for domestic use,

(e) processing plant activities handling farm produce or products of the sea,

b) exercer ou effectuer pour quelque gain un commerce dans le cadre ordinaire de ses affaires ou qui y est relié; ou

c) exécuter un travail, exercer un commerce ou exécuter un ouvrage pour quelque gain ou employer ou engager une autre personne pour ce faire.

4(2) Sous réserve du paragraphe (3), nul ne doit, un jour de repos prescrit,

a) exercer un commerce au détail, ou

b) admettre le public à des lieux où s'exerce un commerce au détail.

4(3) Une personne peut, le jour de repos hebdomadaire ou un jour de repos prescrit exercer des activités prohibées aux paragraphes (1) ou (2) se rapportant

a) au sport, à la récréation, à l'amusement ou au divertissement incluant l'exploitation de cinémas, de lieux de spectacles et d'exposition de caractère éducatif, artistique ou culturel,

b) au transport de personnes et d'objets comprenant l'exploitation de ponts à péage ou de ponts-levis, de traversiers ou de bateaux faisant partie du système normal de transport de la province,

c) à la pêche commerciale et à l'aquiculture,

d) aux activités agricoles comprenant les usines de traitement qui s'y rattachent et la livraison de lait pour usage domestique,

e) aux usines de traitement des produits agricoles ou des produits de la mer,

- (f) greenhouse and garden supply center activities and the operation of a seasonal stand from which farm produce, dairy products, seafood or horticultural products are sold,
- (g) the operation of restaurants, canteens and other establishments selling meals and food products for consumption on or near the premises,
- (h) the operation of hotels, motels and other places of lodging,
- (i) the operation of retail businesses wherein normally not more than three persons, including the owner or proprietor, are employed in the usual conduct of the business and whose inventory wholly or chiefly consists of
- (i) food products,
 - (ii) newspapers, magazines, periodicals or other publications,
 - (iii) tobacco or other articles required for the use of tobacco, or
 - (iv) confectionery,
- (j) the operation of drug stores,
- (k) the operation of garages or motor vehicle service stations selling gasoline, motor oil or fuel oil,
- (l) any necessary or customary activity in connection with religious worship,
- (m) any activity without the doing of which electric current, light, heat, cold air, water or petroleum product cannot be continuously supplied for lawful purposes,
- f) au centre d'approvisionnement d'articles de serre ou de jardin et à l'exploitation d'un étalage saisonnier pour la vente de produits agricoles, de produits laitiers, de poissons ou de fruits de mer ou de produits horticoles,
- g) à l'exploitation de restaurants, de cantines et d'autres établissements vendant des repas et des produits alimentaires pour être consommés sur place ou près de ces locaux,
- h) à l'exploitation d'hôtels, de motels et d'autres lieux d'hébergement,
- i) à l'exploitation de commerces au détail dont le fonctionnement est assuré par trois personnes au plus, y compris le propriétaire, et dont le stock est composé uniquement ou principalement
- (i) de produits alimentaires,
 - (ii) de journaux, revues, périodiques ou autres publications,
 - (iii) de tabac ou des objets requis pour l'usage du tabac, ou
 - (iv) de confiseries,
- j) à l'exploitation de pharmacies,
- k) à l'exploitation de garages ou stations-services pour véhicules à moteur vendant de l'essence, de l'huile à moteur ou du mazout,
- l) à l'activité nécessaire ou habituelle se rapportant au culte religieux,
- m) au travail sans l'exécution duquel, il ne saurait être fourni d'une manière continue de courant électrique, de lumière, de chaleur, d'air froid, d'eau ou de produits pétroliers pour des fins légitimes.

- (f) greenhouse and garden supply center activities and the operation of a seasonal stand from which farm produce, dairy products, seafood or horticultural products are sold,
- (g) the operation of restaurants, canteens and other establishments selling meals and food products for consumption on or near the premises,
- (h) the operation of hotels, motels and other places of lodging,
- (i) the operation of retail businesses wherein normally not more than three persons, including the owner or proprietor, are employed in the usual conduct of the business and whose inventory wholly or chiefly consists of
- (i) food products,
 - (ii) newspapers, magazines, periodicals or other publications,
 - (iii) tobacco or other articles required for the use of tobacco, or
 - (iv) confectionery,
- (j) the operation of drug stores,
- (k) the operation of garages or motor vehicle service stations selling gasoline, motor oil or fuel oil,
- (l) any necessary or customary activity in connection with religious worship,
- (m) any activity without the doing of which electric current, light, heat, cold air, water or petroleum product cannot be continuously supplied for lawful purposes,
- f) au centre d'approvisionnement d'articles de serre ou de jardin et à l'exploitation d'un étalage saisonnier pour la vente de produits agricoles, de produits laitiers, de poissons ou de fruits de mer ou de produits horticoles,
- g) à l'exploitation de restaurants, de cantines et d'autres établissements vendant des repas et des produits alimentaires pour être consommés sur place ou près de ces locaux,
- h) à l'exploitation d'hôtels, de motels et d'autres lieux d'hébergement,
- i) à l'exploitation de commerces au détail dont le fonctionnement est assuré par trois personnes au plus, y compris le propriétaire, et dont le stock est composé uniquement ou principalement
- (i) de produits alimentaires,
 - (ii) de journaux, revues, périodiques ou autres publications,
 - (iii) de tabac ou des objets requis pour l'usage du tabac, ou
 - (iv) de confiseries,
- j) à l'exploitation de pharmacies,
- k) à l'exploitation de garages ou stations-services pour véhicules à moteur vendant de l'essence, de l'huile à moteur ou du mazout,
- l) à l'activité nécessaire ou habituelle se rapportant au culte religieux,
- m) au travail sans l'exécution duquel, il ne saurait être fourni d'une manière continue de courant électrique, de lumière, de chaleur, d'air froid, d'eau ou de produits pétroliers pour des fins légitimes,

(n) any unavoidable activity in the preparation of the morning edition of a daily newspaper,

(o) the operation of hospitals and any activity necessary to save property or lives in cases of emergency or where such property or lives are in imminent danger of destruction or serious injury, including the activities of fire fighting, police, ambulance and other like services, and for the relief of sickness and suffering generally,

(p) the operation of any retail business located within the boundaries of a provincial or national park,

(q) mining, concentrating or smelting activities,

(r) oil refining activities,

(s) sugar refining activities,

(t) the operation of automatic laundry facilities,

(u) sugar bush operations, and

(v) telecommunication activities.

5(1) Notwithstanding subsection 4(1) or (2), a municipality may by by-law permit all retail businesses to operate within the boundaries of the municipality

(a) on the weekly day of rest throughout the year,

(b) on the weekly day of rest during a specified period, or

(c) on a prescribed day of rest as is specified by the by-law.

5(2) Notwithstanding subsection 4(1) or (2), a municipality may by by-law designate certain areas within its boundary within which it may permit all

n) au travail inévitable dans la préparation de l'édition du matin d'un journal quotidien,

o) à l'exploitation d'hôpitaux et de cliniques médicales et à toute activité nécessaire à la sauvegarde des vies et des biens en cas d'urgence ou quand la propriété est en danger imminent de destruction ou d'avarie grave, y compris les activités du service des incendies, de police, d'ambulance et autres services semblables et pour le soulagement de la maladie et de la souffrance en général,

p) à l'exploitation d'un commerce au détail dans un parc provincial ou national,

q) à l'exploitation minière, aux travaux de concentration et de fusion,

r) au raffinage de l'huile,

s) au raffinage du sucre,

t) à l'exploitation d'établissements de buanderie automatique,

u) à l'exploitation d'une érablière, et

v) aux activités de télécommunication.

5(1) Nonobstant le paragraphe 4(1) ou (2), une municipalité peut par arrêté permettre que tous les commerces au détail soient exploités dans les limites de la municipalité

a) le jour de repos hebdomadaire durant toute l'année,

b) le jour de repos hebdomadaire durant une période déterminée, ou

c) un jour de repos prescrit indiqué à l'arrêté.

5(2) Nonobstant le paragraphe 4(1) ou (2), une municipalité peut par arrêté désigner certaines régions à l'intérieur de son territoire où elle peut

retail businesses to operate on the weekly day of rest and on other prescribed days of rest during a specified tourist season.

autoriser l'exploitation de commerces au détail le jour de repos hebdomadaire et les autres jours de repos prescrits durant une saison touristique donnée.

6 The Lieutenant-Governor in Council may designate a board for the purposes of this Act.

6 Le lieutenant-gouverneur en conseil peut désigner une commission pour l'application de la présente loi.

7(1) Upon application the Board may issue a permit exempting from the application of this Act

7(1) Lorsque demande lui en est faite, la commission peut délivrer une autorisation exemptant de l'application de la présente loi

(a) the operation of a part of a retail business carried on in relation to the sale of

a) l'exploitation d'une partie d'un commerce au détail se rapportant à la vente

(i) food products,

(i) de produits alimentaires,

(ii) newspapers, magazines, periodicals or other publications,

(ii) de journaux, revues, périodiques ou autres publications,

(iii) tobacco or other articles required for the sale of tobacco,

(iii) de tabac ou des objets requis pour l'usage du tabac,

(iv) confectionery,

(iv) de confiseries,

(v) meals and food products to be consumed on or near the premises,

(v) de repas et produits alimentaires pour être consommés sur place ou près des locaux,

(vi) prescription drugs, proprietary or patent medicine, medical and surgical appliances or any other pharmaceutical or hygienic products, or

(vi) des médicaments sur ordonnance, des spécialités pharmaceutiques ou médicaments brevetés, des instruments de médecine et de chirurgie ou tous autres produits pharmaceutiques ou hygiéniques, ou

(vii) greenhouse or garden supply goods,

(vii) d'articles de serre ou de jardin,

where that part of the retail business referred to in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi) and (vii) is carried on in a separate and partitioned area of the business premises and all other areas are separated and partitioned off from that area by ropes, signs or other means so that no goods, services or chattels within those other areas can be offered for sale or rent to the public,

lorsque cette partie du commerce au détail mentionnée aux sous-alinéas (i), (ii), (iii), (iv), (v), (vi), (vii) est exercée dans une section et séparée et cloisonnée et où toutes les autres sections sont séparées et cloisonnées de cette section par des cordes, écriteaux ou autres moyens afin que d'autres marchandises, services ou effets personnels se trouvant dans ces autres sections ne puissent être offerts en vente ou en location au public,

(b) the operation of any business or industry where, in the opinion of the Board, the business or industry is, by necessity, engaged in a continuous operation,

(c) any person who is prohibited under this Act from working or operating a business or industry on the weekly day of rest and who wishes to work or operate a business or industry on that day because he could not work or operate a business or industry on one of the other days of the week due to the dictates of his conscience or religion, or

(d) the operation of a retail business located outside a municipality,

subject to the conditions prescribed by regulation.

7(2) A permit issued under paragraph (1)(a) may exempt from the application of this Act not more than three persons including the owner or proprietor of the retail business.

7(3) When the Board grants an exemption under paragraph (1)(d), it shall take into consideration

(a) any by-law made by a municipality contiguous to the area in which the applicant operates a retail business, and

(b) the purposes of this Act.

8(1) A person who violates any provision of this Act or a condition of an exemption granted under section 7 commits an offence and is liable on summary conviction to a fine of not less than two hundred dollars and not exceeding one thousand dollars and in default of payment to imprisonment in accordance with subsection 31(3) of the *Summary Convictions Act*.

b) le fonctionnement de tout commerce ou de toute industrie lorsque, de l'avis de la commission, le commerce ou l'industrie est par nécessité en activité continue,

c) une personne à qui la présente loi interdit de travailler ou d'exploiter un commerce ou une industrie le jour de repos hebdomadaire et qui désire le faire ce jour parce qu'il ne pouvait ni travailler ni exploiter le commerce ou l'industrie l'un des autres jours de la semaine pour raison de conscience ou de religion, ou

d) l'exploitation d'un commerce au détail situé à l'extérieur d'une municipalité,

sous réserve des conditions prescrites par règlement.

7(2) L'autorisation délivrée en vertu de l'alinéa (1)a) peut accorder l'exemption de l'application de la présente loi à trois personnes au plus, y compris le propriétaire du commerce au détail.

7(3) Lorsque la commission accorde une exemption en vertu de l'alinéa (1)d), il doit prendre en considération

a) tout arrêté établi par une municipalité limitrophe à la région dans laquelle le requérant exploite le commerce au détail, et

b) les buts de la présente loi.

8(1) Quiconque contrevient à une disposition de la présente loi ou à une condition de l'exemption accordée en vertu de l'article 7 commet une infraction et est passible sur déclaration sommaire de culpabilité d'une amende d'au moins deux cents dollars et d'au plus mille dollars et, à défaut de paiement, de la peine d'emprisonnement conformément au paragraphe 31(3) de la *Loi sur les poursuites sommaires*.

8(2) In addition to the penalty imposed under subsection (1), upon conviction of a second violation of this Act, any permit issued by the Board under section 7 shall be cancelled by order of the convicting judge.

9 A person who violates any provision of this Act or a condition of an exemption granted under section 7 commits a separate offence on each day he violates the provision or a condition of the exemption issued under section 7.

10(1) Where a person has been convicted of an offence under this Act the Minister may apply by way of notice of application to a judge of The Court of Queen's Bench of New Brunswick for an order enjoining such person from continuing such violation.

10(2) The judge in his discretion may make such order and the order may be enforced in the same manner as any other order or judgment of The Court of Queen's Bench of New Brunswick.

11 The Lieutenant-Governor in Council may make regulations

(a) respecting the manner of making an application under section 7,

(b) respecting conditions of an exemption granted under section 7,

(c) respecting forms to be used under this Act and the regulations,

(d) prescribing the fee payable for a permit issued under section 7, or

(e) prescribing activities or the operation of businesses or industries that are exempt from the application of this Act.

8(2) En plus de la peine imposée en vertu du paragraphe (1), sur déclaration de culpabilité d'une deuxième infraction à la présente loi, l'autorisation délivrée par la commission en vertu de l'article 7 doit être annulée par le juge qui prononce la déclaration de culpabilité.

9 Une personne qui contrevient à une disposition de la présente loi ou à une exemption accordée en vertu de l'article 7 commet une infraction distincte pour chaque journée où il contrevient à cette disposition ou à une condition de cette exemption accordée en vertu de l'article 7.

10(1) Le Ministre peut par avis de requête demander à la Cour du Banc de la Reine du Nouveau-Brunswick une ordonnance enjoignant une personne déclarée coupable d'infraction à la présente loi de cesser cette contravention.

10(2) Le juge à sa discrétion peut rendre cette ordonnance, laquelle peut être exécutée de la même manière qu'une autre ordonnance ou autre jugement de la Cour du Banc de la Reine du Nouveau-Brunswick.

11 Le lieutenant-gouverneur en conseil peut établir des règlements

a) concernant la manière de faire une demande en vertu de l'article 7,

b) concernant les conditions d'une exemption accordée en vertu de l'article 7,

c) concernant les formules à utiliser en vertu de la présente loi et des règlements,

d) prescrivant le droit payable pour la délivrance d'une autorisation en vertu de l'article 7, ou

e) prescrivant des activités ou l'exploitation de commerces ou d'industries qui seront exemptées de l'application de la présente loi.