

1964-53-57-67

EXHIBIT COPY

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 OF  
PROVINCE OF NEWFOUNDLAND  
INTERVENOR

FILED  
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DU CANADA  
PRODUIT



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FACTUM OF THE ATTORNEY GENERAL OF  
THE PROVINCE OF NEWFOUNDLAND

INTERVENOR

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PART I - STATEMENT OF FACTS

1. The Attorney General of Newfoundland adopts the Statement of Facts contained in the Factum of the Crown represented by the Attorney General for the Province of Ontario.

PART II - POINTS IN ISSUE

2. The Attorney General of Newfoundland intervenes with leave of this Honourable Court in support of the Attorney General of Ontario, and desires to make submissions on the Questions as set out in the factum of the Attorney General of Ontario at paragraphs 21.- 25.

PART III - ARGUMENT

3. Newfoundland is a jurisdiction in which there is legislation regulating the closing of certain shops on holidays. That legislation is The Shops Closing Act, S.N. 1977, c. 107 and is similar to The Retail Business Holidays Act, R.S.O. c. 453.

Reference:

The Shops Closing Act, S.N. 1977, c. 107.

4. With respect to Question 1, the Attorney General of Newfoundland adopts the arguments of the Attorney General of Ontario in support of the validity of the Ontario Act.

Reference:

Crown's Factum, paragraphs 25 - 44.

5. The Attorney General of Newfoundland adopts the arguments of the Attorney General of Ontario with respect to Question 2.

Reference:

Crown's Factum, paragraphs 45 - 104.

6. It is respectfully submitted that The Retail Business Holidays Act and similar Acts in other jurisdictions do not offend the freedom of conscience and religion guaranteed by section 2(a) of the Charter. The Acts have a secular purpose and declare as "holidays" certain days of the week and year, some of which by necessity have a religious connotation, but the majority of which have no religious connotation.

7. It is respectfully submitted that The Retail Business Holidays Act and similar acts in other jurisdictions do not contravene section 7 of the Charter. It is submitted that the "right" to open a place of business on a day declared a holiday by legislation is not a right guaranteed by section 7 of the Charter.

8. Wilson, J. points out at page 55 of her decision in Operation Dismantle Inc. et al v. Canada et al (1985) 59 N.R., "even an independent, substantive right to life, liberty and security of the person cannot be absolute". Madame Justice Wilson states as follows at page 55:

"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 section 1. As was

pointed out in Re Federal Republic of Germany and Rauca (1983), 41 O.R. (2d) 225 at page 244:

The Charter was not enacted in a vacuum and the rights set out therein must be interpreted rationally having regard to existing law ...

There is no liberty without law and there is no law without some restriction of liberty."

9. With respect to the application of section 15(1) of the Charter, the Attorney General of Newfoundland adopts the argument of the Attorney General of Ontario.

Reference:

Crown's Factum, paragraphs 99 - 104.

10. It is submitted that the purpose of the the Charter, including section 15, is to protect and enhance substantive rights relating to equality of opportunity. Not all different treatment of individuals by the law is prohibited by section 15 of the Charter. The Charter does not prohibit all distinction that the legislator sees fit to make in its various laws. Section 15 specifies clearly certain types of discrimination which are forbidden, and without giving a detailed list, it is discrimination based on "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

11. It is respectfully submitted that the Retail Business Holidays Act and similar legislation in other jurisdictions does not offend section 15 of the Charter.

12. It is respectfully submitted that, in the event that a prima facie infringement of an asserted Charter right is found, then the Retail Business Holidays Act and similar legislation is justified under section 1 of the Charter.

13. If it should be determined that the Retail Business Holidays Act and similar legislation or any part thereof, does violate section 2(b), 7 and 15 of the Charter, the Attorney General of Newfoundland submits that the Act or part thereof, is nevertheless saved by section 1 of the Charter which provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

14. It is submitted that the "prescribed by law" component of section 1 is met: the Retail Business Holidays Act and

similar legislation are laws enacted by the Provincial Legislatures.

15. It is conceded that the words "demonstrably justified" place the onus on the Government to demonstrate that the limits it seeks to impose on the rights protected by the Charter are reasonable limits.

16. It is submitted that the phrase "reasonable limits" is the crucial phrase in section 1 of the Charter. The phrase requires defending the limit to offer reasons to support the validity of the limits it imposes on the rights protected in the Charter.

17. The Attorney General of Newfoundland adopts the arguments of the Attorney General of Ontario in his factum to the effect that to the extent the legislation infringes the Charter it is 'a reasonable limit prescribed by law and demonstrably justified in a free and democratic society.

Reference:

Crown's Factum, paragraphs 105 - 121.

PART IV - NATURE OF THE ORDER REQUESTED

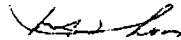
18. It is respectfully submitted that the appeals of the Appellants Edwards Books and Art Ltd., Longo Brothers Fruit Markets Ltd. and Paul Magder should be dismissed and the appeal by the Attorney General for the Province of Ontario against the acquittal of the Respondent Nortown Foods Ltd. should be allowed and the conviction restored.

19. It is further respectfully 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.



ALL OF WHICH is respectfully submitted by



LESLIE R. THOMS  
Of Counsel for the Attorney  
General of Newfoundland

LIST OF AUTHORITIES

1. Operation Dismantle Inc. et al v. Canada (1985) 59 N.R.
2. Quebec Association of Protestant School Boards v. A. G. Quebec (1983) 140 D.L.R. (3d) 33.