

Re Vantel Broadcasting Co.

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Commentary

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RE VANTEL BROADCASTING CO.—ADMINISTRATIVE LAW—REVIEW OF FEDERAL TRIBUNALS — MULTIPLE JURISDICTION — The recent decision of the British Columbia Court of Appeal in *Re Vantel Broadcasting Co.*,¹ once again raises a problem that hitherto has gone without an entirely satisfactory solution—that is, whether or not a provincial Supreme Court has jurisdiction to review the acts of a federal administrative agency. The problem has been recently dealt with by Professor H. W. Arthurs² which was written a few months prior to the British Columbia court's decision. Thus, this note becomes a sequel with, of course, the added benefit of the Court of Appeal decision in *Vantel*.

The facts of the *Vantel* case lend themselves to a neat, simplified statement of the problem. Vantel Broadcasting Co. carried on a broadcasting business in British Columbia and all of Vantel's employees were resident in British Columbia. The Canada Labour Relations Board, a federal administrative agency with its head office in Ottawa, Ontario, issued three certificates, each certifying a union to be the bargaining agent for a group of employees of Vantel. Vantel Broadcasting Co. then applied to the Supreme Court of British Columbia for a writ of certiorari to bring up and quash the three certificates. The writ was refused on a preliminary objection taken by counsel for the Board—that the Supreme Court of British Columbia had no authority over a Federal Board located in the Province of Ontario. On an appeal from this decision to the B.C. Court of Appeal consisting of five judges, the appeal was allowed in a unanimous decision. Sheppard J.A., concurred in by three of the other sitting judges,³ held that since the matter affected the rights of people only in British Columbia:

the matter would be a matter within the administration of justice within the province and within the jurisdiction of the court as conferred by the Legislature under 92(14).⁴

In reaching this conclusion, the Court of Appeal reversed the judgment of Brown, J.⁵ who had relied on two earlier decisions⁶ which had held in effect that since the Supreme Court could not enforce its writ of certiorari against a Federal Board, outside the province, then it should and would decline jurisdiction. This, then, was an application of "the personal amenability to process" test.

¹ *Re Vantel Broadcasting Co. Ltd., and Canada Labour Relations Board et al.* (1962) 35 D.L.R. (2d) 620. The problem was possibly first perceived by Cameron C.J.C.P. in *Re Bell Telephone Co.*, (1885) 9 O.R. 339 at 346 when he said ". . . it can hardly be said that Provincial Courts created by local legislatures have inherently power to reverse the decisions of Courts created by the Parliament of the Dominion. To so determine, however is not essential to this application and I do not therefore intend to decide it."

² (1962) 39 C.B.R. 505.

³ Bird, Norris, Wilson J.J.A. Both Norris J.A. and Wilson J.A. gave their own reasons in addition.

⁴ *Supra*, footnote 1 at p. 635.

⁵ (1961) 37 W.W.R. 345 (B.C.S.C.).

⁶ *McGuire v. McGuire and Desordi* [1953] O.R. 328. *In re Bence* (1955) 22 C.P.R. 1 this latter case was decided by Davey J.

For example, in the *Bence* decision,⁷ the British Columbia Supreme Court refused to issue a writ of prohibition against the Restrictive Trade Practices Commission, on the ground that, though they were conducting hearings in B.C., they were not amenable to the B.C. court because they had adjourned to Ottawa to deliberate.

In refuting the Board's argument that the court should decline jurisdiction because of the extra-provincial unenforceability Davey J.A. said:

It is unthinkable that the Dominion Government would tolerate one of its Board's disobeying an order of a provincial court.⁸

He went on to say:

The truth of the matter is that the effectiveness of judgments and orders of the Courts against Governments and Government Boards depends on the traditional respect that the Governments pay to the Courts and not upon legal sanctions for disobedience.⁹

In dealing with the same argument, Sheppard J.A. began by distinguishing the issue of the jurisdiction of a provincial court from the altogether different issue of the extra-territorial enforcement of a judgment and then continued:

. . . a judgment thus obtained in respect of a breach of a contract wherever made — committed in the province may not be recognized extra-provincially, but that does not prevent the Court from assuming jurisdiction. In any event, those cases enunciating the rule for enforcement of a foreign judgment have no application to the case at bar as no other province will be asked to enforce the order for certiorari in that the rights of the applicant that are to be protected and the infringement thereof are wholly within the Province of British Columbia.¹⁰

When the facts of the *Vantel* case are borne in mind, it is evident that this was a fair and equitable result, for the certificates were granted to local unions within the province of British Columbia, affecting employees and an employer within the province and the contracts of employment were to be performed entirely within the province.

However, because this case was comparatively uncomplicated, all the rights concerned being confined to British Columbia, both Sheppard J.A. and Davey J.A. were able to confine their remarks to the particular facts of the case. By confining their judgments, certain practical questions were raised and left unanswered. For example, Davey J.A. speaks of reluctance of the Dominion Government to allow a Federal Board to disobey an order of a provincial court. What would be the result if there were two conflicting decisions of two different provincial courts on the same issue? Which order would the Dominion Government "allow" its Board to obey? In addition, Sheppard J.A. indicated in the *Vantel* case that no other provincial court will be asked to enforce the order of certiorari

⁷ *Ibid.*

⁸ *Supra*, footnote 1. pp. 629-630.

⁹ *Ibid.*, 630.

¹⁰ *Ibid.*, 638.

issued because the rights of the applicant and the infringement of those rights took place entirely within British Columbia. Again, what would the result be if there *were* rights and an infringement of those rights in more than one province?

An example may serve to bring these questions into focus more clearly. Suppose that rather than being a local broadcasting company Vantel were instead a national, privately owned television network with employees in each of the ten provinces. Assume also that the Canada Labour Relations Board had issued a certificate certifying a union as the bargaining agent for a group of employees in each of the provinces. Lastly, assume that the company sought to quash these proceedings. On the basis of the *Vantel* decision, the company could bring proceedings in any one of the ten provinces in the Dominion. This follows from the fact that the matter would be in relation to rights of employers and employees within each province and with regard to contracts of employment, to be performed entirely within the province and therefore would be administration of justice within the province.¹¹

Carrying the hypothetical example further, suppose that the company brought proceedings in B.C. and that court refused to issue a writ of certiorari. Following this, suppose the company applied in the Ontario court for the same writ. We have now arrived at the question left open by Sheppard J.A.—namely, must the Ontario court recognize the order of the B.C. court or can it hear the application on its merits? Here we *do* have a situation where another province *will* be asked to enforce this order of the B.C. court since the rights and infringement of those rights arise in another province.¹² Must the Ontario court now enforce it? An answer to this dilemma was provided by the *Fish Inquiry* litigation¹³ that immediately preceded the *Vantel* case. There, the Restrictive Trade Practices Commission was investigating an alleged conspiracy to enhance the price of raw fish in British Columbia. A question arose as to the propriety of disclosure of certain evidence by the Chairman of the Commission. This disclosure was contested by the parties to the investigation and an injunction was sought, but the B.C. court refused to grant it. However, in subsequent proceedings in the Ontario court, the injunction was granted.¹⁴ Both courts assumed jurisdiction on the basis that the Board was amenable to its jurisdiction; the B.C. court because the Board was conducting its hearings in B.C. and the Ontario court because the Board's base of operation was Ottawa, Ontario. In the Ontario decision, the court did not

¹¹ *Supra*, footnote 4.

¹² *Supra*, footnote 10.

¹³ *Canadian Fishing Co. Ltd. et al v. Smith et al* (1961) 28 D.L.R. (2d) 41 (B.C.S.C.).

¹⁴ *British Columbia Packers Ltd. et al v. Smith, MacDonald and A.G. of Canada* (1961) 28 D.L.R. (2d) 711 (O.H.C.).

refer at all to the prior B.C. decision.¹⁵ Thus it appears that one provincial court will not be bound and need not enforce the decision of another provincial court in matters pertaining to prerogative writs.

Assuming that the courts in the hypothetical case would come to different conclusions, reference should now be made to the comments of Davey J.A.¹⁶ where he suggests that the Dominion Government would be reluctant to allow a Federal Board to disobey an order of a provincial court. Obviously these remarks do not fit the hypothetical case as there would be two decisions involving the Board on identical issues. What would the Board do with these decisions? Which one must it obey in deference to the other? It is clear then that the personal amenability test, or the "administration of Justice" test of Sheppard J.A.¹⁷ present two serious difficulties. Firstly, they give a very unsatisfactory test for jurisdiction in these matters and afford an opportunity for a "shopping plaintiff."¹⁸ From the standpoint of uniformity and stability alone, this is a wholly unhealthy situation. Citizens involved in these proceedings "are entitled to protection effective not merely within a province but throughout the Dominion."¹⁹ But how is one to obtain this protection if ten different courts have the jurisdiction to hear the same matter? Secondly, and more obvious is the practical matter of the conflicting decisions themselves. As suggested previously, this presents an irreconcilable problem to any Federal Board. It should obey the decisions of the provincial courts, but which *one* is it to obey?

Assuming these decisions to be constitutionally correct; what then is the solution to this unsatisfactory state of affairs? One solution was suggested by Davey J.A. in the closing line of his judgment when he said that each court should pay respect to the other court's orders.²⁰ Perhaps this should have been followed in the *Fishing* litigation, the Ontario court respecting the B.C. order. However, is this a fair result where the parties affected are also in Ontario? Why should the B.C. court have the right to determine the question merely because it was the first court to hear the proceedings? (It seems also that this is an unsatisfactory test because it will lead to confusion as to the exact "considerations" the court is to balance.)

¹⁵ In interlocutory proceedings in Ontario, Ayles J. (1959) 22 D.L.R. (2d) 156 at p. 160, expressed his doubts as to the Ontario Court having jurisdiction but this was not mentioned in the trial decisions.

¹⁶ *Supra*, footnote 8.

¹⁷ *Supra*, footnote 10.

¹⁸ *Supra*, footnote 2 at p. 506.

¹⁹ *Supra*, footnote 2 at p. 509.

²⁰ *Supra*, footnote 1 at 632 Davey J.A. said "When a Dominion Board . . . is dealing with affairs extending over provincial boundaries several provincial courts may have jurisdiction over it through prerogative writs. In such a case each court should pay respect to the others and decide on a balance of consideration whether it ought to exercise jurisdiction or leave the matter to one of the other courts."

Professor Arthurs suggests an alternative solution to the multiple jurisdiction problem:

To ask whether the federal official is personally amenable to the provincial process is to mis-state the issue. The true question is: "What forum could most appropriately adjudicate litigation arising out of the federal administrative process?"²¹

It is obvious that a more practical solution would be to confer jurisdiction on one court whose decisions would be final and binding throughout Canada. Professor Arthurs went on to conclude that the Exchequer Court would be the most "appropriate forum" to review federal administrative action and suggested that the Exchequer Court Act be amended accordingly. The difficulty of accessibility to the Exchequer Court that exists in provinces other than Ontario could be solved by appointing a local Judge of the Provincial Supreme Court concerned to hear the proceedings in relation to the prerogative writs as is done in Admiralty²² and Bankruptcy proceedings.²³

This suggestion is a meritorious one in that it solves the two-fold problem presented by the "personal amenability" or "administration of justice" tests. It would reserve jurisdiction in these matters in the Exchequer Court exclusively. Its decision would be final and binding throughout Canada, except for an appeal to the Supreme Court of Canada. (This would solve the embarrassing decisions that heretofore have been rendered.) It would avoid also the embarrassment of conflicting decisions and fix on the Board one decision to follow.

However, there are difficulties in extending the jurisdiction of the Exchequer Court. The most obvious and most practical problem is of the inaccessibility of the Exchequer Court to those provinces outside Ontario. As suggested previously, this problem could be met by the appointment of a local Judge of the Supreme Court of the Province as the Exchequer Court Judge.

It has been suggested also, that the extension of the jurisdiction of the Exchequer Court would lead to specialization of the court system and procedure. This problem, however, could be solved by simply adopting the provincial court rules pertaining to prerogative writ proceedings in the new court. These proceedings are not as complex as Admiralty or Bankruptcy proceedings and would not require their own procedure.

Another argument raised against the extension is that because the Supreme Court of Canada can finally determine these disputes there really is never any actual problem of conflicting decision. But this ignores the need for the prompt and expeditious disposition of

²¹ *Supra*, footnote 2 at p. 509.

²² R.S.C. 1952 c. 1.

²³ R.S.C. 1952 c. 14.

matters of utmost importance in such fields as Labour Relations and Immigration Proceedings. In addition, appeals to the Supreme Court of Canada involve considerable additional expense to the parties concerned.

Finally, it is suggested that the extension of the jurisdiction of the Exchequer Court would tend to multiply and duplicate the jurisdiction, exactly what the British North America Act sought to avoid. This theory of a simplified court structure is a sound and enviable one and should not be destroyed. However, in 1867 the economic machinery was much less complex than it is today. It is to cope with this complexity that the federal government has seen fit to create the many tribunals and administrative agencies which exist today. If our complicated economy requires a minor duplication of courts to cope with its problems, then the advantages of their duplication far outweighs the disadvantages. It is submitted then, that the present system although it may be constitutionally²⁴ valid, it does not afford the uniform protection required.

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