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Labour Legislation
Have Arbitrators Jurisdiction to Decide on the Methods of Law Employed in the Course of Arbitration by One of the Parties ?

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Labour legislation

Have arbitrators jurisdiction to decide on the methods of Law employed in the course of arbitration by one of the parties ?

In a brochure on "Labour Legislation" taken from the "Revue du Barreau" of February 1948 [1] Maitre Marie-Louis Beaulieu, advocate of the Quebec Bar makes certain reflexions on the jurisdiction of arbitrators in matters of law, union certification and the functioning of our double system of collective agreement — whether a "gentleman's agreement" or an agreement with extension — reflexions suggested by a typical case of arbitration where he himself acted as arbitrator.

This litigation was a dispute arising between the United Packinghouse Workers of America, and the *Association of Retail Merchants of Canada Inc.* (Québec Section), on the occasion of the negotiation of a collective agreement destined to remain a "gentleman's agreement".

Maitre Beaulieu analyses here particularly the legal aspect of the following problem: have arbitrators competence to decide on the legal means presented, in the course of arbitration, by one of the parties? — On this occasion the *Association of Retail Merchants of Canada Inc.*

The author admits, at once, that in accordance with existing jurisprudence "It does not pertain to the arbitrators" to pronounce on the question of whether or not the question involved should have been submitted to them.

Would this signify that the arbitrators cannot decide questions of law *if they have the competence to do so?* He adds that such is not the case. And it is to the study of this aspect of the question that Maitre Beaulieu thereupon applies himself.

He bases his argument on the fact that our Quebec Trade Disputes Act (1901), which treats of the composition of Councils of Arbitration and the choosing of its members, is based on a New Zealand Act (The Industrial Conciliation and Arbitration Act). Now in that country, the Arbitration Council taking as a basis an article of the law where "equity and good conscience" are cited, has always decided questions of law. It follows in saying that in the Province of Quebec while the same words are included in our Quebec Trade Disputes Acts (s. 24), the question is to know if whether in order to state that the Arbitrators cannot decide legal points, when they are competent to do so, the obligation which devolves upon them to decide the dispute "following equity and good conscience" is invoked.

Maitre Beaulieu affirms then that it is by deciding in *equity and good conscience* that the Council of Arbitration judges the litigation which is submitted to it as much under their legal aspects as on the facts — the economic, professional or other problems.

To answer those who interpret the text under examination, as imposing on the arbitrators the obligation to decide disputes "in disregarding the laws" Me Beaulieu is led to study what we understand to-day in English law (considering the origin of our law) by the word "equity".

In a rapid review of the past he gives the historical record of the appearance of "equity" in English law, the evolution of its application in the English judicial system up to our day, and the growing importance of the part it plays. He says, drawing from a citation of Lord Talbot, that "equity is a moral virtue which qualifies, moderates and reforms the vigour, hardness and edge of the law, and is a universal truth; it does also assist the law when it is defective and weak in the constitution (which is the life of the law) and defends the law from crafty evasions, delusions and new subtleties, invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless; and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of the law. Equity therefore does not destroy the law, nor create it, but assist it". Me Beaulieu concludes that there are only legal aspects of the dispute that the arbitrators should decide "following equity and good conscience". This is all the dispute. The text applies then, according to him, to questions of law as to questions of fact, to problems of an economic, professional etc. order such as salaries, hours of labour, vacations, union security.

Me Beaulieu not content with this exposé, to strengthen his case invokes the Labour Relations Act and the Public Services Employees Disputes Act.

He recalls then the interpretation of article 4 of this last law which two Benches of the Court of Appeal have given in the case of the "Association catholique des Institutrices du district no 16 Inc." vs the School Commissioners for the municipality of St. Athanase [2]. Me Beaulieu treats of this case and picks out the most interesting legal points. The author cites profusely from the notes of the Honorable Mr. Justice Pratte, known as an authority in the matter.

In the light of all the principles evoked in these considerations, Me Beaulieu analyses then the dispute which he proposed considering at the beginning of his study. He seeks the effect of union recognition in the aforesaid case. He states that, in the case "the obligation to negotiate devolved only upon the Association (of the Retail Merchants), and not on the employers themselves. But this obligation he says, *can be different for each of its members*, it can even exist for such and such a member and not for such and such other member. Thus, the Association is not obliged to negotiate for those members whose employees have no union recognition". This very interesting statement brings us to a new point of view in the interpretation of labour laws on the subject.

The reading of this study should be of great use for all those who are interested in labour legislation because as we have already pointed out, the author here presents remarks of great value on the Council of Arbitration, the role of the arbitrators in matters of law, equity and good conscience in the interpretation of our labour laws, union recognition, the collective agreement and the distinctions to be made between the ordinary collective agreement and the decree.

We would like to be able to read more often the methodic and clear exposés of this author in the important legal problems involved in the labour relations of our province.

Jean GAGNÉ

(1) The brochure can be purchased from the author, 111, Mountain Hill, Québec.

(2) 1947, B.R. 703.