

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM  
THE COURT OF APPEAL FOR MANITOBA

IN THE MATTER OF AN APPLICATION UNDER SECTION 762 OF THE  
CRIMINAL CODE OF CANADA TO STATE A CASE

-and-

IN THE MATTER OF THE MANITOBA ACT, 1870, 33 VICTORIA, C3  
(CANADA)

-and-

IN THE MATTER OF THE SUMMARY CONVICTIONS ACT, RSM 1970  
Cap S 230

BETWEEN:

ROGER JOSEPH ALBERT BILODEAU,  
APPELLANT,

-and-

THE ATTORNEY-GENERAL OF MANITOBA,  
RESPONDENT,

-and-

THE ATTORNEY-GENERAL OF CANADA,  
INTERVENANT,

-and-

THE SOCIÉTÉ FRANCO-MANITOBAINE,  
INTERVENANT,

-and-

ALLIANCE QUEBEC, ALLIANCE FOR LANGUAGE COMMUNITIES IN  
QUEBEC (FORMERLY POSITIVE ACTION COMMITTEE),  
INTERVENANT.

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FACTUM OF THE SOCIÉTÉ FRANCO-MANITOBAINE

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IN THE SUPREME COURT OF CANADA

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Factum of the Société Franco-Manitobaine  
Statement of Facts

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PART I

STATEMENT OF FACTS

1. Roger Bilodeau is a member of the French speaking community of Manitoba. On the 29th day of May, 1980 he was served with a summons issued under the Summary Convictions Act charging him with the offence of speeding contrary to the Highway Traffic Act.

2. The summons was printed only in English. The Summary Convictions Act and the Highway Traffic Act are printed and published only in English.

3. Mr. Bilodeau moved for dismissal on the grounds that the summons is invalid because the Acts pursuant to which it was issued are ultra vires for conflict with s. 23 of the Manitoba Act. The Application was dismissed. Mr. Bilodeau appealed by way of stated case to the Court of Appeal which, in a split decision, denied the appeal. Leave to Appeal to this Court was granted on the 16th day of November, 1981.

Factum of the Société Franco-Manitobaine  
Points in Issue

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PART II

THE POINTS IN ISSUE AND THE INTERVENANT'S  
POSITION WITH RESPECT THERETO

1. Are the Summary Convictions Act and the Highway Traffic Act ultra vires, invalid or inoperative by reason of the fact that they were not printed and published in both the English and French languages as required by s. 23 of the Manitoba Act, but in English only?

Intervenant's Position

The Summary Convictions Act and the Highway Traffic Act never became law, and in that sense are radically invalid. Prosecutions cannot validly be pursued under them after the date of this Court's opinion in the Manitoba Language Rights Reference.

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Argument

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PART III

ARGUMENT

1. Intervenant repeats and adopts the arguments in its factum in the Manitoba Language Rights Reference, paras. 1 - 42. In particular, intervenant adopts the submission at para. 29:

"It is submitted that the authority of entities, officers and officials deriving power to act de facto under Manitoba Legislation comes to an end with this Court's ruling of invalidity [in the Reference]".

2. Mr. Bilodeau was charged prior to this Court's decision in the Reference. He objected to the proceedings immediately, alleging invalidity of the relevant statutes.

3. De facto authority rests on submission to acknowledgement or invocation of governmental power. De facto authority cannot resist direct challenge. In Ex Parte Eliza Mainville (1898), 1 Can. Crim. Cas. 528 (Que. Q.B.) the accused challenged the qualification of the Deputy Recorder before whom she appeared. On appeal from her conviction, Wurtele, J. held that as the Deputy Recorder has not taken the oaths required by law, he was not duly qualified. Accordingly, the conviction was quashed. Prior to the decision in Mainville, Thomas Curry had appeared before the same Deputy Recorder. He had made no objection to the Deputy Recorder's qualification. One week after Mainville, Curry appealed his sentence, claiming the Deputy Recorder had not been qualified to sit. Wurtele, J. dismissed the appeal on the ground that as to Curry, the Deputy Recorder was a judge de facto. He distinguished the two cases as follows:

"In the previous case [Mainville], it appeared that the Deputy Recorder's qualification, and right and power to act were challenged at the hearing by the defendant, and that the point was raised that he was not qualified to act, in consequence of having failed to take the oath of allegiance and the oath of office or judicial oath, after his appointment. Such being the case, he ceased to occupy the position of a judge de

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Argument

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facto as regarded the defendant, and became a mere intruder in the office. His judgment, therefore, was not valid and binding as that of a judge de facto, and having been rendered by a mere intruder in the office, was illegal and null. Under these circumstances, after it having been ascertained that the oaths had really not been taken, I maintained the writ of habeas corpus, and ordered the discharge of the petitioner.

But in the present case, the Deputy Recorder's qualification was not denied, and his power to act was not challenged by the defendant. While sitting in the case, he was really a 'judge de facto,' and the sentence or judgment which he rendered is therefore valid and binding."

Ex Parte Thomas Curry (1898), 1 Can. Crim. Cas. 532, 533 (Que. Q.B.).

4. It is submitted that, as to Roger Bilodeau, Judge Gyles was not a judge de facto, as the statutory authority investing him with jurisdiction was promptly challenged. Accordingly, it is submitted that the appeal should be allowed and the conviction quashed.



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Order Sought

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PART IV

ORDER SOUGHT

1. Intervenant asks this Honourable Court to answer the constitutional question posed as follows:

The Summary Convictions Act and the Highway Traffic Act never became law, and in that sense are radically invalid.

2. Intervenant asks this Honourable Court for an order:

- (a) allowing the appeal;
- (b) quashing the conviction;
- (c) for its costs.

ALL OF WHICH IS RESPECTFULLY  
SUBMITTED

OTTAWA, Ontario  
May 20, 1984

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Manitobaine

Factum of the Société Franco-Manitobaine  
List of Authorities

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LIST OF AUTHORITIES

1. Ex Parte Eliza Mainville (1898), 1 Can. Crim. Cas. 528  
(Que. Q.B.).
2. Ex Parte Thomas Curry (1898), 1 Can. Crim. Cas. 532  
(Que. Q.B.).