

CANADA / JUDGMENT

British Columbia (Milk Board) v. Grisnich

[1995] 2 SCR 895

COURT

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DECIDED

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British Columbia (Milk Board) v. Grisnich

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Case number

23927

Judges

Lamer, Antonio; La Forest, Gérard V.; L'Heureux-Dubé, Claire; Gonthier, Charles Doherty; Cory, Peter deCarteret; Iacobucci, Frank; Major, John C.

On appeal from

British Columbia

Subjects

Administrative law

Notes

SCC Case Information: 23927

Decision Content

British Columbia (Milk Board) v. Grisnich, [1995] 2 S.C.R. 895

Milk Board Appellant

v.

Ronald Grisnich and Gilbert Grisnich Respondents

Indexed as: British Columbia (Milk Board) v. Grisnich

File No.: 23927.

Hearing and judgment: April 25, 1995.

Reasons delivered: June 22, 1995.

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Gonthier, Cory, Iacobucci and Major JJ.

on appeal from the court of appeal for british columbia

Administrative law -- Subordinate legislation -- Validity -- Milk Board collecting levies on milk production pursuant to milk market sharing orders -- Milk Board having provincial powers and delegated federal authority -- Orders not specifying source of authority exercised -- Whether orders invalid.

During the relevant period, the Milk Board was constituted under the British Columbia Milk Industry Act, which, in addition to according the Board certain powers falling within provincial jurisdiction, enables it to accept and exercise authority delegated to it pursuant to the federal Agricultural Products Marketing Act . Under a national milk marketing plan, the Board is empowered to fix and collect levies on milk production in the province. The levies are established and collected pursuant to Milk Market Sharing Orders issued by the Board. The Board commenced an action against the respondent dairy farmers to collect levies owing for over-quota production of milk at their farm during two specific time periods. The trial judge gave judgment in favour of the Board. After the trial of this action, the Court of Appeal released its judgment in British Columbia (Milk Board) v. Bari Cheese Ltd. On appeal in the instant case, the Court of Appeal held that the respondents (appellants in that court) should be permitted to rely on the conclusions reached in Bari because these conclusions concerned the validity of the Milk Market Sharing Order under which the respondents had been assessed. The effect of these conclusions, it was held, was to invalidate the applicable order on the ground that the Board had not specified on the face of the order from which of its two constitutional sources of subordinate legislative power it purported to draw its authority. The Court of Appeal consequently allowed the appeal and dismissed the action.

Held: The appeal should be allowed.

Per Lamer C.J. and Cory, Iacobucci and Major JJ.: The concern of the judiciary is to ensure that administrative tribunals of whatever kind act pursuant to their jurisdiction. There is no requirement that, in the exercise of that jurisdiction, its exact source must be specified. When an administrative agency has chosen to furnish such information a priori, this is done purely as a matter of convenience to the public, and not because of a mandatory legal requirement.

Similarly, when there are multiple sources of power, it is irrelevant which power a board exercises once it is determined that the board had the power from one source or another. The requirement of administrative specification is not only without a jurisprudential foundation, but also undesirable in terms of sound public policy. As administrative boards, tribunals and bodies continue to play a larger role in the regulation of the modern state, imposing an administrative specification requirement would lead to somewhat impractical and expensive consequences. Moreover, such a choice is largely a matter for the legislature. Although administrative accountability is an important principle, it is not the only factor to consider.

Per La Forest, L'Heureux-Dubé and Gonthier JJ.: There is no precedent for holding that an administrative body must consciously identify the source of power it is relying on, in order for the exercise of that power to be valid. Courts are primarily concerned with whether a statutory power exists, not with whether the delegate knew how to locate it. When administrative bodies act, it is to be presumed that they believe themselves to be within the bounds of their statutory authority. While discipline in administrative decision-making is to be encouraged, it does not warrant imposing the unprecedented requirement that delegates specify the source of their statutory authority. Administrative bodies such as the Milk Board are not in the business of identifying jurisdiction; their function is to regulate a specific, technical industry. The determination of jurisdiction is ultimately the function of the judiciary. An incorrect statement on the part of an administrative body such as the Milk Board as to its own subordinate jurisdiction will provoke no deference on judicial review. Imposing the requirement of specification upon such a body would unduly complicate its decision-making, requiring it to become expert in questions of jurisdiction far removed in substance from the actual daily exercise of its statutory responsibility to implement marketing orders. This requirement could lead to the invalidation of otherwise valid subordinate rules simply because of an honest mistake on the part of the agency as to the source of its jurisdiction. Rather than increasing administrative efficiency and public accountability, imposing such a requirement would run the risk of further muddying an already somewhat murky area of the law. In the case of a statutory body empowered from multiple sources, the requirement of specification would be particularly onerous to the extent that it required this body to "choose" which source of power it was relying on each time it made a new enactment, rather than exercise its multiple powers concurrently. Such an obligation would run the risk of rendering meaningless the system of joint delegation. The very reason joint federal-provincial inter-delegation schemes are necessary is because no one level of government is constitutionally empowered to regulate all aspects of intraprovincial and extraprovincial trade. If joint delegation arrangements are to be tolerated, then it must be accepted that the details of these arrangements will be implemented by marketing boards empowered from multiple sources. Citizens must look first to these boards to be accountable for their actions, and then to the two levels of government that have constituted them. Any potential loss in accountability that results in this situation is more than made up for by the benefits and practicalities of the joint delegation arrangement.

Cases Cited

By Iacobucci J.

Disapproved: *British Columbia (Milk Board) v. Bari Cheese Ltd.* (1991), 83 D.L.R. (4th) 329; referred to: *British Columbia (Milk Marketing Board) v. Bari Cheese Ltd.*, [1993] B.C.J. No. 1748 (QL); *Milk Board v. Clearview Dairy Farm Inc.*, [1987] 4 W.W.R. 279; *Milk Board v. Birchwood Dairy Farm Ltd.*, [1986] 3 W.W.R. 481; *Thorcon Enterprises Ltd. v. West Vancouver (District)* (1987), 20 B.C.L.R. (2d) 259; *Thorcon Enterprises Ltd. v. West Vancouver (District)*, [1988] B.C.J. No. 323 (QL); *Northern Telecom Ltée v. Lachine (Cité)* (1991), 52 Q.A.C. 63, leave to appeal refused, [1992] 2 S.C.R. ix.

By La Forest J.

Disapproved: *British Columbia (Milk Board) v. Bari Cheese Ltd.* (1991), 83 D.L.R. (4th) 329; referred to: *British Columbia (Milk Marketing Board) v. Bari Cheese Ltd.*, [1993] B.C.J. No. 1748 (QL); *British Columbia (Milk Board) v. Clearview Dairy Farm Inc.*, [1989] B.C.J. No. 212 (QL); *Attorney General of Nova Scotia v. Attorney General of Canada*, [1951] S.C.R. 31; *P.E.I. Potato Marketing Board v. H. B. Willis Inc.*, [1952] 2 S.C.R. 392; *Reference re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198.

Statutes and Regulations Cited

Agricultural Products Marketing Act, R.S.C., 1985, c. A-6 .

Milk Industry Act, R.S.B.C. 1979, c. 258.

Authors Cited

Keyes, John Mark. *Executive Legislation: Delegated Law Making by the Executive Branch*. Toronto: Butterworths, 1992.

La Forest, Gérard V. "Delegation of Legislative Power in Canada" (1975), 21 McGill L.J. 131.

APPEAL from a judgment of the British Columbia Court of Appeal (1993), 36 B.C.A.C. 12, 58 W.A.C. 12, 19 Admin. L.R. (2d) 88, reversing a decision of Rowan J. allowing the appellant's action against the respondents to collect levies. Appeal allowed.

Steven R. Stark and Anna Marie Laing, for the appellant.

Christopher Harvey, Q.C., for the respondents.

The judgment of Lamer C.J. and Cory, Iacobucci and Major JJ. was delivered by

1 Iacobucci J. -- I agree with the result reached by my colleague Justice La Forest but prefer to express my reasons in a more limited fashion.

2 In my mind, this appeal raises only a narrow question of administrative law: must administrative bodies with powers derived from multiple sources specify on the face of the decision they make exactly from which source and provision the authority to make that decision arose? As I see it, this question can be answered without resorting to the principles of inter-delegation and federalism.

3 The British Columbia Court of Appeal, in its decision in *British Columbia (Milk Board) v. Bari Cheese Ltd.* (1991), 83 D.L.R. (4th) 329, per Southin J.A., affirmed the existence of such a requirement of administrative specification. Given that the Bari decision was released before the British Columbia Court of Appeal heard the present appeal, and that this appeal also involved the validity of a Milk Board order, the court below felt bound by *stare decisis* to apply Bari and invalidate the orders. To this end, this appeal cannot be disposed of without regard to Bari. In that connection, I find that the record in this appeal is sufficiently complete to support a review of the statements of administrative law provided in Bari.

4 With respect, I disagree with Southin J.A.'s conclusion of law in Bari. In my view, there is no precedent or legal principle that could anchor this position. Nor can I find much in the way of policy to support it. I note that the British Columbia Court of Appeal has convened a five-member panel to reconsider the application of Bari in another case, ironically in which Bari Cheese Ltd. is once again a litigant: *British Columbia (Milk Marketing Board) v. Bari Cheese Ltd.*, on appeal from the order of Newbury J., [1993] B.C.J. No. 1748 (QL). With that in mind, I offer the following brief comments.

5 The concern of the judiciary revolves around ensuring that administrative tribunals of whatever kind act pursuant to their jurisdiction. There is no requirement that, in the exercise of that jurisdiction, any specification must be made as to its exact source. Naturally, should that jurisdiction be challenged, the administrative tribunal must not only point to but also support its source. However, this is quite another matter from requiring that every administrative order contain, *a priori*, such a specification. I add that, when an administrative agency has chosen to furnish such information *a priori*, this is purely done as a matter of convenience to the public, and not because of a mandatory legal requirement. The extent of this convenience is a matter for the legislature, not the judiciary, to decide. Similarly, when there are multiple sources of power, it is irrelevant which power a board exercises once it is determined that the board had the power from one source or another: *Milk Board v. Clearview Dairy Farm Inc.*, [1987] 4 W.W.R. 279 (B.C.C.A.); *Milk Board v. Birchwood Dairy Farm Ltd.*, [1986] 3 W.W.R. 481 (B.C.C.A.).

6 These views are expressed in the academic literature. For example, John Keyes, in *Executive Legislation: Delegated Law Making by the Executive Branch* (1992), states at pp. 138-39:

In the absence of any statutory requirement, it has generally been assumed that executive legislation need not indicate the source of its authority. . . .

. . .

To make the validity of executive legislation depend on the accurate citation of its authority will simply lead to the citation of any and all provisions that might conceivably support its validity. Rather than assisting the public, this will simply obscure the sources of authority.

In my opinion, Southin J.A. has gone too far in stating that the orders of an administrative board are unenforceable unless they specify on their face the source of their authority.

7 The respondents, in order to bolster their case, rely upon a decision of the British Columbia Supreme Court according to which, it is submitted, municipalities must identify the source of the power they purport to exercise: *Thorcon Enterprises Ltd. v. West Vancouver (District)* (1987), 20 B.C.L.R. (2d) 259, followed in *Thorcon Enterprises Ltd. v. West Vancouver (District)*, [1988] B.C.J. No. 323 (QL), per Spencer J. With respect, I prefer the reasoning of the Quebec Court of Appeal in *Northern Telecom Ltée v. Lachine (Cité)* (1991), 52 Q.A.C. 63 (leave to appeal to the Supreme Court of Canada denied, [1992] 2 S.C.R. ix), in which an issue arose as to whether a municipality had to specify on the face of a tax the exact source of the taxation power. After reviewing the relevant case law, Proulx J.A. held that there was no requirement for the legislature to indicate upon the face of its taxation regulation under which enabling legislation the business tax had actually been enacted.

8 In sum, the only requirement is to possess jurisdiction, not to specify it on the face of every order. In any event, such a specification can very well be meaningless, since jurisdiction must actually exist and not merely be stated to exist.

9 I would also add that Southin J.A.'s requirement of administrative specification is not only without a jurisprudential foundation, but it is also undesirable in terms of sound public policy. As administrative boards, tribunals and bodies continue to play a larger role in the regulation of the modern state, imposing an administrative specification requirement would considerably augment the transaction costs of government. The respondents' position would thus lead us to somewhat impractical and expensive consequences. Moreover, such a choice is largely a matter for the legislature. Although administrative accountability is an important principle, it is not the only factor to consider.

The reasons of La Forest, L'Heureux-Dubé and Gonthier JJ. were delivered by

10 *La Forest J.* -- The issue in this case is whether an administrative body with powers derived from more than one source must, when enacting a rule or order, specify on the face of that rule or order the source of the power it is purporting to exercise.

11 This is an appeal from the British Columbia Court of Appeal ((1993), 36 B.C.A.C. 12, 58 W.A.C. 12, 19 Admin. L.R. (2d) 88), in which Taylor J.A., speaking for a unanimous court, endorsed certain conclusions reached previously by a majority of that court in *British Columbia (Milk Board) v. Bari Cheese Ltd.* (1991), 83 D.L.R. (4th) 329 (B.C.C.A.) ("*Bari* (No. 1)"). The effect of these conclusions was to invalidate orders made by the appellant Milk Board for the collection of levies relating to milk production in the province. The appellant challenged Taylor J.A.'s reliance on these conclusions. The respondents defended the position taken by the Court of Appeal in *Bari*

(No. 1). In this Court, the respondents' arguments were rejected, and the Court issued judgment allowing the appeal, setting aside the decision of the British Columbia Court of Appeal and restoring the trial judgment in the amount of \$104,190.84 with costs throughout, with reasons to follow. These are my reasons for this conclusion.

12 The relevant facts need only be briefly stated. The appellant is a statutory body constituted to regulate the production and marketing of milk and milk products manufactured within the province of British Columbia. The respondents, Gilbert Grisnich and his son Ronald, are dairy farmers. During the relevant period, the appellant was constituted under the Milk Industry Act, R.S.B.C. 1979, c. 258, which, in addition to according the appellant certain powers falling within provincial jurisdiction, enables it to accept and exercise authority delegated to it pursuant to the federal Agricultural Products Marketing Act, R.S.C., 1985, c. A-6 . In this way, the appellant has been vested with both provincial and federal authority in this area. This arrangement is part of a co-operative scheme to manage the production and sale of Canadian milk and dairy products destined for both intraprovincial and extraprovincial trade. The appellant participates, along with the Canadian Dairy Commission and other provincial marketing boards, in a National Milk Marketing Plan. According to this Plan, the appellant is empowered to fix and collect levies on milk production in the province, and to use those levies for both its own purposes and expenses and for paying costs and losses incurred by the Canadian Dairy Commission in disposing of milk surplus to Canadian market requirements. The levies are established and collected pursuant to "Milk Market Sharing Orders" issued by the appellant.

13 In 1988 the appellant commenced an action against Gilbert Grisnich to collect levies owing for over-quota production of milk at the Grisnich farm during two specific time periods. In 1990 Ronald Grisnich was added as a defendant to the action on the ground that he was his father's business partner. At trial, Rowan J. of the Supreme Court gave judgment in favour of the appellant against the respondents in the amount of \$108,105.61 plus interest. It was later agreed by the parties that the trial judge should in fact have awarded \$104,190.84 plus interest.

14 After the trial of this action, the Court of Appeal released its judgment in Bari (No. 1). On appeal in the instant case, the Court of Appeal held that the respondents (appellants in that court) should be permitted to rely on the conclusions reached by Southin J.A. in Bari (No. 1) because these conclusions concerned the validity of the Milk Market Sharing Order under which the respondents had been assessed. The effect of these conclusions, Taylor J.A. held, was to invalidate the applicable order on the ground that the Milk Board had not specified on the face of the order from which of its two constitutional sources of subordinate legislative power it purported to draw its authority. The Court of Appeal consequently allowed the appeal and dismissed the action.

15 The appeal to this Court essentially involved a request by the appellant for us to revise the conclusions reached by Southin J.A. in *Bari* (No. 1). It should also be noted that many of the same issues litigated in that case have also been raised in a similar case, *British Columbia (Milk Marketing Board) v. Bari Cheese Ltd.* ("*Bari* (No. 2)"), argued before Newbury J. in the British Columbia Supreme Court in 1993, [1993] B.C.J. No. 1748 (QL). An appeal of the trial decision in *Bari* (No. 2) is currently set to be heard in the Court of Appeal in November 1995.

16 *Bari* (No. 1) was primarily a constitutional case. *Bari Cheese* challenged the constitutionality of a provision of the British Columbia Milk Industry Act in so far as it purported to empower the Milk Board to collect levies from milk producers when the milk in question was to be processed into cheese and sold on the interprovincial or export market. Southin J.A. noted that after the Court of Appeal's decision in *British Columbia (Milk Board) v. Clearview Dairy Farm Inc.*, [1989] B.C.J. No. 212 (QL), the Milk Board could no longer rely on its federal authority under the Agricultural Products Marketing Act to impose these levies, because levies under the federal statutory power were restricted in their application to the production of "milk" alone, and could not be applied to cheese. In *Bari* (No. 1), the Milk Board attempted to justify its power to impose levies on cheese producers on the basis of its provincial jurisdiction to regulate production within the province.

17 Southin J.A. held that it would be possible for the Board to justify the levies imposed on cheese producers under provincial authority, but that these levies had nonetheless to be invalidated. She reached this conclusion on the basis that the relevant Milk Market Sharing Orders imposing the levies did not state on their face from which source of statutory authority they were drawn. Southin J.A. held that only if it was known on the face of the enactment which statutory power the appellant was exercising could there be a judgment as to whether this power was being properly exercised. The citizen and the court should not be left guessing, if a dispute arose, as to what the tribunal was doing when it enacted the order, nor should they be forced to rely on ex post facto justifications on the part of the tribunal as to what it was doing at the time, unsupported by any "contemporaneous public expression of its intention" (p. 361). To hold after the fact that the Milk Board could have relied on its provincial authority, when it did not expressly do so at the time, would be to encourage "administrative excess", Southin J.A. concluded.

18 It should be emphasized that in this appeal we are solely concerned with this issue of the need for specification on the part of administrative delegates of the source of their statutory authority. No challenge was made before us to the constitutional validity of the levies imposed by the appellant under the Milk Market Sharing Orders, and I have consequently refrained from commenting on this issue. These reasons should not be taken to reflect any particular constitutional position. (I note that the constitutional issue is squarely raised in the case of *Bari* (No. 2), referred to above.)

19 It is my view that the Court of Appeal's position on the need for administrative specification must be rejected. There is no precedent for holding that an administrative body must consciously identify the source of power it is relying on, in order for the exercise of that power to be valid.

Traditionally, the primary question in reviewing the validity of subordinate legislation has been whether the delegate has authority under the empowering statute to make the impugned enactment. Any regulation, rule or order must be consistent with the purposes of the empowering statute, and cannot be designed to achieve some collateral purpose, extraneous to the statute's objectives. Provided that the subordinate legislation is within the bounds or "sphere" of statutory authority, it will be valid, and will not be reviewable on its merits.

20 There is little room in this traditional analysis for considering the mindset of the delegate itself, and I see no basis for interfering with the established approach. Courts are primarily concerned with whether a statutory power exists, not with whether the delegate knew how to locate it; see J. M. Keyes, *Executive Legislation: Delegated Law Making by the Executive Branch* (1992), at p. 138. Indeed it is well accepted that a delegate can be wrong in identifying its own jurisdiction. The mistaken identification by a delegate of a source of authority later found by the courts to be invalid will not help to support an unlawful administrative order or decision. If the specification of authority cannot assist an administrative tribunal in justifying its otherwise invalid enactments, why should the lack of specification compromise those enactments that would otherwise be valid?

21 The respondents offered two main reasons for imposing a requirement of administrative specification in the peculiar context of administrative bodies having concurrent powers from both the federal and provincial governments. The first was to encourage discipline on the part of such bodies when they enact subordinate legislation; the second was to increase their accountability to the public. For the reasons that follow, I find neither of these arguments persuasive. Though the respondents' claim respecting accountability is not without merit, it is, in my view, outweighed by the administrative efficiencies of the joint-delegation scheme.

22 When administrative bodies act, it is to be presumed that they believe themselves to be within the bounds of their statutory authority. The respondents in this case argued that to require bodies exercising powers from various sources to identify the authority they are relying on would ensure greater discipline in the decision-making of these bodies. While discipline in administrative decision-making is to be encouraged, it does not, in my view, warrant imposing the unprecedented requirement that delegates specify the source of their statutory authority. Administrative bodies such as the appellant are not in the business of identifying jurisdiction; their function is to regulate a specific, technical industry. Their members are specifically chosen because they possess expertise in this area, not because they are familiar with jurisdictional issues.

23 The determination of jurisdiction is ultimately the function of the judiciary. As I indicated above, an incorrect statement on the part of an administrative body such as the appellant as to its own subordinate jurisdiction will provoke no deference on judicial review. To the extent that such a body misstates the source of its authority, this misstatement, if challenged, will be corrected by the courts. Imposing the requirement of specification upon it would unduly complicate its decision-making, requiring it to become expert in questions of jurisdiction far removed in substance from the actual daily exercise of its statutory responsibility to implement

marketing orders. This requirement could lead to the invalidation of otherwise valid subordinate rules simply because of an honest mistake on the part of the agency as to the source of its jurisdiction.

24 The respondents argue that imposing the requirement of administrative specification on bodies exercising concurrent powers would increase the accountability of these bodies, for citizens would be aware which level of government to petition in the event that they had a complaint about the powers exercised by the administrative body. Though this argument is not without weight from a policy perspective, I do not believe it warrants the imposition of a novel and unprecedented legal requirement in this context. Rather than increasing administrative efficiency and public accountability, imposing such a requirement would, in my view, run the risk of further muddying a sometimes already somewhat murky area of the law. One danger is that in seeking to divine all the potential sources of their statutory authority, an administrative body would refer broadly and repetitively, in each of its pieces of subordinate legislation, to a long series of statutory provisions. Instead of assisting the public, such a practice would simply obscure the potential sources of authority for the enactment, serving neither to inform the public nor to increase the accountability of the administrative body in question; see Keyes, *Executive Legislation*, *supra*, at p. 139.

25 In the case of a statutory body empowered from multiple sources, the requirement of specification would be particularly onerous to the extent that it required this body to "choose" which source of power it was relying on each time it made a new enactment, rather than exercise its multiple powers concurrently. Such an obligation would run the risk of rendering meaningless the system of joint delegation, some of the advantages of which I have elsewhere outlined; see my article on "Delegation of Legislative Power in Canada" (1975), 21 McGill L.J. 131, at pp. 140-42.

26 The very point of an administrative inter-delegation scheme such as the one in the case at bar is to ensure that a provincial marketing board is possessed of the totality of regulatory power over one agricultural product. The very reason such joint federal-provincial schemes are necessary is because no one level of government is constitutionally empowered to regulate all aspects of intraprovincial and extraprovincial trade. As the respondents noted, the administrative inter-delegation scheme is a means of allowing Parliament to delegate administrative powers to a body created by the provincial legislature in a manner that avoids the rule against legislative inter-delegation established by this Court in *Attorney General of Nova Scotia v. Attorney General of Canada*, [1951] S.C.R. 31 ("Nova Scotia Inter-delegation"). The constitutionality of such arrangements has been repeatedly endorsed by this Court; see for example *P.E.I. Potato Marketing Board v. H. B. Willis Inc.*, [1952] 2 S.C.R. 392, and *Reference re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198. To require an administrative agency overseeing and implementing a national marketing scheme to "choose" between its federal and provincial authority would defeat the very *raison d'être* of the scheme.

27 The respondents, however, suggest that a system of dual, or "mirror", legislation, with both federal and provincial regulations clearly identified, could accomplish the objectives served by the current joint delegation scheme, while at the same time allowing the citizen to know more

clearly what level of government was responsible in any given situation. Not only does this proposal strike me as being duplicative and expensive, but it is also hard to understand how such a scheme would assist the individual citizen. There is a certain simplicity, and indeed a form of accountability, that results from Parliament and the provincial legislatures having empowered one expert body, with authority derived from both sources, to regulate a particular and complicated technical area of the law. Citizens affected by milk regulations benefit from a scheme that requires them to comply with the regulations of only one administrative body, rather than two. A system of dual legislation would likely only increase the number of subordinate regulations, rules and orders in this area, thus potentially contributing to greater frustration and malcontent on the part of the citizenry.

28 In his oral presentation, counsel for the respondents relied in support of his position on certain principles emphasized by this Court in the Nova Scotia Inter-delegation case. He argued that the basic principles of Parliamentary democracy and accountability that motivated the Court in reaching its decision in that case should be extended to the current situation. Just as Parliament and the provincial legislatures are obliged to frame their own legislation carefully, so that it falls squarely within a permissible head of authority under the Constitution, so too, he urged, should subordinate bodies exercise care and discipline in drafting their subordinate orders and regulations. He suggested that our constitutional order requires the imposition of this discipline on subordinate bodies, in order that the twin principles of Parliamentary democracy and accountability are met.

29 In my view, the Nova Scotia Inter-delegation case is not determinative in the present case for two reasons. First, unlike the Nova Scotia Inter-delegation case, the present case is not a legislative delegation case. We are not talking here of one level of government delegating powers over one of its areas of jurisdiction to another government. Instead, the case at bar involves an administrative inter-delegation scheme, where Parliament and provincial legislatures have both chosen to empower one subordinate body to implement the details of a national marketing strategy, the broad outlines of which they have co-operatively established. There was no question in the Nova Scotia Inter-delegation case that each level of government was free, acting within its own constitutional sphere, to delegate authority to a subordinate body. That the same subordinate body can accept and exercise powers from both levels of government is evident from the decisions of this Court in P.E.I. Potato Marketing Board and the Agricultural Products Reference referred to above.

30 Second, I do not believe the principles of Parliamentary democracy and accountability emphasized by the Court in the Nova Scotia Inter-delegation case warrant imposing on administrative bodies the kind of requirement advocated by the respondents. All that is constitutionally required of subordinate bodies -- as of federal and provincial governments -- is that they act within their jurisdiction, not that they state the source of this jurisdiction. As for the question of accountability, in the Nova Scotia Inter-delegation case, the Court was concerned with this principle at its most fundamental level. At issue was the accountability of federal and provincial governments for law-making in broad and substantive policy areas exclusively

reserved to them under the Constitution. In the present case, the appellant is responsible for filling in the details of a national scheme, already agreed to in principle by both levels of government. By nature, the appellant's orders are technical and specific. They are not designed to establish broad policy directions or strategies, for this more general course has already been set by the federal and provincial governments acting co-operatively. In so far as it may be somewhat confusing for the citizen to sort out the question of jurisdiction because two levels of government are ultimately accountable for the appellant's actions, that is the very nature of a national marketing scheme. If we are going to tolerate joint delegation arrangements -- permissible as a matter of constitutional law and desirable, in my view, as a matter of practice -- then we must accept that the details of these arrangements will be implemented by marketing boards empowered from multiple sources. Citizens must look first to these boards to be accountable for their actions, and then to the two levels of government that have constituted them. In my view any potential loss in accountability that results in this situation is more than made up for by the benefits and practicalities of the joint delegation arrangement.

Appeal allowed with costs.

Solicitors for the appellant: Peterson Stark, Vancouver.

Solicitors for the respondents: Russell & DuMoulin, Vancouver.

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