

CANADA / JUDGMENT

Jacmain v. Attorney General (Can.) et al.

[1978] 2 SCR 15

COURT

Supreme Court of Canada

DECIDED

30 September 1977

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Jacmain v. Attorney General (Can.) et al.

Collection

Supreme Court Judgments

Date

1977-09-30

Report

[1978] 2 SCR 15

Judges

Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Federal Court of Appeal

Subjects

Administrative law

Decision Content

Supreme Court of Canada

Jacmain v. Attorney General (Can.) et al., [1978] 2 S.C.R. 15

Date: 1977-09-30

Roland Jacmain Appellant;

and

The Attorney General of Canada and The Public Service Staff Relations Board Respondents.

1977: April 28 and 29; 1977: September 30.

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Judicial review—Public Service—Probationary employee—Rejection—Grievance—Claim that rejection was in fact disciplinary dismissal—Jurisdiction of adjudicator—Public Service Employment Act, R.S.C. 1970, c. P-32, s. 28—Public Service Staff Relations Act, R.S.C. 1970, c. P-35, s. 91.

In May 1973 appellant joined the office of the Commissioner of Official Languages as a division chief in the Complaints Service. This involved a probationary period since his previous employment in the public service had been with the Department of National Revenue. Under s. 28 of the Public Service Act, R.S.C. 1970, c. P-32, an employee on probation may be rejected and in February 1974 appellant was given notice in writing of his rejection. Appellant presented a grievance under s. 90 of the Public Service Staff Relations Act, R.S.C. 1970, c. P-35, but was unsuccessful. Then under s. 91 of the Act he referred the matter to adjudication. The employer disputed the jurisdiction of the adjudicator on the basis that rejection during the probationary period did not constitute discharge. Under s. 91(1)(b) the adjudicator had jurisdiction only if the matter involved was “disciplinary action resulting in discharge, suspension or financial penalty”. The adjudicator however held that he had jurisdiction to examine the reasons for rejection to determine whether the employer had, under the guise of rejection, taken what was in reality disciplinary action, and finally ruled that appellant was not in fact rejected during his probationary period and that he was discharged without sufficient reason. The grievance was allowed and reinstatement ordered. The employer then referred the matter to the Public Service Staff Relations Board, which found that the adjudicator had not erred in law or in jurisdiction. On further proceedings under s. 28(1)(a) of the Federal Court Act, 1970-71-72 (Can.), c. 1, the Federal Court of Appeal held that the adjudicator did not have jurisdiction to weigh the cause of rejection.

Held (Laskin C.J. and Spence and Dickson JJ. dissenting): The appeal should be dismissed.

Per Martland, Judson, Ritchie and de Grandpré JJ.: The matter was correctly decided in the Court of Appeal. The adjudicator did not have jurisdiction to set aside the employer’s decision since it was taken in good faith. The employer’s right to reject an employee during the probationary period is very broad. To use the words of s. 28 of the Public Service Employment Act it is sufficient that there be a cause, a reason. The case was not one of disciplinary action and the employee’s poor conduct, irascible attitude and unsatisfactory adjustment to his surroundings were valid reasons for his superior’s unwillingness to give him a permanent position in his service. Rejection of an employee on probation because his superior is not satisfied with him does not constitute a disciplinary action which is subject to adjudication.

The question of whether an adjudicator has jurisdiction when the rejection is clearly a disciplinary action remains open. While the employer appeared to accept it (in this Court), if the Public Service Employment Act does not give the adjudicator jurisdiction in such a case the consent of the employer cannot do so.

Per Pigeon and Beetz JJ.: As was properly conceded the right of a probationary employee to launch a grievance against disciplinary dismissal cannot be ousted by making such dismissal in the form of a rejection under s. 28 of the Act. Thus on a grievance being filed the adjudicator had jurisdiction to inquire whether the rejection was in fact a dismissal. However while the adjudicator was entitled to make such inquiry, as it was on a fact on which his jurisdiction depended his findings on it could not be regarded as conclusive and are subject to review as a matter of law. The issues in this Court were the authority of the adjudicator to review the sufficiency of the cause of rejection to decide whether it was in fact a disciplinary dismissal and, if so, whether his opinion was subject to review by the Federal Court of Appeal. The adjudicator found that there were grounds for deciding that the appellant was unsuitable but he was of the opinion that those grounds were not sufficient to justify the rejection. This he was not entitled to do as he only had jurisdiction to review a disciplinary dismissal not a rejection. Had it been held that the adjudicator could review the sufficiency of the cause of rejection it is doubted that the Federal Court of Appeal would have been held entitled to revise his decision. While it was a finding on which his jurisdiction depended, where the jurisdiction depends upon contested facts, a superior court will hesitate before reversing a finding of fact and will only do so on extremely strong grounds.

Per Laskin C.J. and Spence and Dickson JJ. dissenting: In October 1973 as a disciplinary measure the employer suspended appellant from duty for five days, but following a grievance adjudication the suspension was revoked. When in February 1974 the employer wrote to appellant giving him notice of his rejection for cause the letter contained a paragraph referring to the fact that on October 23, 1973, appellant had been informed orally of this intention. Section 28(4) of the Act provides that in cases of rejection for cause the employer shall furnish the Commission with his reasons therefor. The reasons in this case were stated in only the most general terms viz. that appellant "was not able to fulfil a function" to the employer's satisfaction. By s. 91(1)(b) of the Public Service Staff Relations Act an employee is entitled to refer a disciplinary discharge to adjudication; by s. 28(3) of the Public Service Employment Act a probationary employee has no right to refer a rejection for cause to adjudication. The issue is squarely whether the s. 91(1)(b) protection against disciplinary discharge extends to probationary employees. The answer is undoubtedly in the affirmative. The word "employee" in s. 91(1) of the Public Service Staff Relations Act does not exclude employees on probation. *Prima facie* they are protected.

The interplay of s. 28(3) of the Public Service Employment Act and s. 91(1) of the Public Service Staff Relations Act is such that rejection for cause and disciplinary discharge are separate and distinct concepts. Rejection for cause will be for reasons otherwise than disciplinary. The adjudicator held that he had jurisdiction because what occurred was, in substance, a discharge for disciplinary reasons rather than a rejection for cause. This decision of the adjudicator came

within the permissible latitude which the Courts should allow in their surveillance of the jurisdictional findings of a tribunal. Insofar as a question of fact was involved, there was substantial evidence to uphold the adjudicator's decision. Insofar as a question of law was involved there was a rational basis for his decision. An adjudicator has jurisdiction to hear cases involving disciplinary action resulting in discharge that are presented as rejection during a probationary period. In this case the "rejection" gave effect to an intention expressed by the Commissioner of Official Languages on October 23, 1973. The only grounds on October 23, 1973 were disciplinary. The adjudicator did have jurisdiction to proceed to consider the merits of the matter.

[Segal v. City of Montreal, [1931] S.C.R. 460; Bell Canada v. Office and Professional Employees' International Union, [1974] S.C.R. 335; Essex County Council v. Essex Incorporated Congregational Church Union, [1963] A.C. 808; Re United Electrical Workers & Square D Co., Ltd. (1956), 6 Lab. Arb. Cas. 289; Fardella v. The Queen, [1974] 2 F.C. 465; Re Cooper, [1974] 2 F.C. 407; Bell v. Ontario Human Rights Commission, [1971] S.C.R. 756 referred to]

APPEAL from a judgment of the Federal Court of Appeal[1] allowing an appeal by way of application for judicial review under s. 28(1)(a) of the Federal Court Act, 1970-71-72 (Can.), c. 1, from a decision of the Public Service Staff Relations Board affirming the decision of an adjudicator. Appeal dismissed, Laskin C.J. and Spence and Dickson JJ. dissenting.

Maurice Wright, Q.C., for the appellant.

André Garneau and J.-P. Malette, for the respondents.

The judgment of Laskin C.J. and Spence and Dickson JJ. was delivered by

DICKSON J. (dissenting)—In May, 1973 the appellant Roland Jacmain was appointed to the position of Chief of Division in the Complaints Branch of the Commissioner of Official Languages. In October 1973, as a disciplinary measure, the Commissioner suspended him from duty for five days, but following a grievance adjudication the suspension was revoked.

On February 25, 1974 the Commissioner wrote to the appellant giving him notice that, pursuant to s. 28(3) of the Public Service Employment Act, R.S.C. 1970, c. P-32, the Commissioner intended to reject the appellant for cause during his probationary period. The letter contained the following short paragraph: "You will recall that on October 23, 1973 I informed you orally of this intention."

Section 28(4) of the Act provides that where a deputy head gives notice that he intends to reject an employee for cause he shall furnish the Commission his reasons therefor. The Commissioner advised the Public Service Commission:

During the probationary period I have found that Mr. Jacmain was not able to fulfil a function in this office to my satisfaction.

The nature of the function which the appellant was unable to fulfil to the satisfaction of the Commissioner was not stated.

Upon receipt of the notice, the appellant, pursuant to s. 90 of the Public Service Staff Relations Act, R.S.C. 1970, c. P-35 lodged a grievance against the decision of the Commissioner, in which he said:

I have been advised by letter dated February 25, 1974 that I am to be dismissed from my position. No reasons have been given. This is contrary to Section 28(3) of the Public Service Employment Act. This is, in truth, a disciplinary dismissal.

The point is this. Section 28(3) of the Public Service Employment Act provides:

- (3) The deputy head may, at any time during the probationary period, give notice to the employee and to the Commission that he intends to reject the employee for cause at the end of such notice period as the Commission may establish for any employee or class of employees and, unless the Commission appoints the employee to another position in the Public Service before the end of the notice period applicable in the case of the employee, he ceases to be an employee at the end of that period.

Section 91(1) of the Public Service Staff Relations Act provides:

91. (1) Where an employee has presented a grievance up to and including the final level in the grievance process with respect to
- (a) the interpretation or application in respect of him of a provision of a collective agreement or an arbitral award, or (b) disciplinary action resulting in discharge suspension or a financial penalty,

and his grievance has not been dealt with to his satisfaction, he may refer the grievance to adjudication.

It will be seen that, where the grievance of an employee is with respect to disciplinary action resulting in discharge, s. 91(1)(b) of the Public Service Staff Relations Act entitles the employee to refer the grievance to adjudication. Where, however, a probationary employee ceases to be an employee because of rejection for cause, pursuant to s. 28(3) of the Public Service Employment Act, he has no right to refer the matter to adjudication.

The issue which this appeal brings squarely to the fore is whether the protection against disciplinary discharge extends to probationary employees. In terms, the answer is undoubtedly in the affirmative. The word "employee" contained in s. 91(1) of the Public Service Staff Relations Act does not exclude employees on probation. Prima facie they are protected. Yet, if the interplay of s. 28(3) of the Public Service Employment Act and s. 91(1) of the Public Service Staff Relations Act is such that rejection for cause in effect subsumes disciplinary discharge, then every case of disciplinary discharge constitutes inherently a case of rejection for cause and the protection proves to be illusory. In my view, rejection for cause and disciplinary discharge are separate and distinct concepts.

Sometimes the acts of an employee will give rise to disciplinary action which may, or may not, then or at a later date, lead to dismissal. Rejections for cause will be for reasons otherwise than disciplinary. The fact that the employer may have some cause for complaint about the employee does not, by that fact alone, transform what would otherwise be a disciplinary discharge into a rejection for cause. The dividing line between the two may be blurred, but it is a line which the adjudicator must draw and the matter is not concluded by the employer characterizing the severance as rejection for cause. At each level of the grievance procedure the appellant's grievance was answered by the statement that the discharge was not a disciplinary action, but a rejection during probation. The grievance was referred to the adjudicator, Mr. Weatherill. Counsel for the employer submitted at that time that the notice given to the appellant by the Commissioner of Official Languages defined the action as a case of rejection during a probation period and that that was the end of the matter; it prevented the adjudicator from conducting a hearing on the merits; the adjudicator did not have jurisdiction even to decide whether the action was, in fact, a rejection during a probation period, or disciplinary action. That was the contention of the employer in all earlier proceedings, but it was not pursued in argument before this Court. Counsel for the employer before this Court did not dispute that the adjudicator was entitled to inquire into the facts initially to determine whether the appellant's discharge was a disciplinary matter, or a rejection for cause during a probationary period. It is now common ground that it was, indeed, incumbent upon the adjudicator to hear evidence and decide whether the employee ceased to be an employee due to disciplinary discharge, in which event the adjudicator had jurisdiction to go on and consider the merits, or whether employment terminated as a result of rejection for cause, in which event he did not have jurisdiction.

On July 29, 1974 a hearing was held by the adjudicator at which the Public Service Alliance of Canada, for the appellant, presented evidence as to both the jurisdiction of the adjudicator to hear the grievance and the merits of the case itself. After that evidence was heard, counsel for the employer, without relinquishing his right to present evidence regarding the merits of the case, asked the adjudicator to decide the question of jurisdiction. In a reserved decision the adjudicator answered this question in the affirmative. He noted that the employer had never given the appellant any reasons for the latter's discharge. He referred to (i) the five-day suspension imposed upon the appellant by the Commissioner of Official Languages in October, 1973, which the adjudicator characterized as undeniably a disciplinary action; (ii) the advice given by the Commissioner to the appellant at that time of the intention to reject the appellant during his probationary period. The adjudicator said: "the only grounds for this notice were the disciplinary considerations cited at the time of the incident"; (iii) the statement in the Commissioner's letter of February 25, 1974 which, without mentioning any other ground for termination of employment, said: "You will remember that on October 23, 1973, I informed you verbally of this intention." The adjudicator summed up in these words:

The only cause for the grievor's rejection that can be adduced from all the evidence is the disciplinary matter that was supposed to have been settled by the adjudicator's decision.

The phrase “adjudicator’s decision” refers, of course, to the decision concerning the October, 1973 incident, favourable to the appellant.

In October and December, 1974, the adjudicator held further hearings on the merits. A decision was rendered in January, 1975 and contains the following passages:

With regard to the employer’s evidence relating to the reasons for the discharge of the grievor, it should be noted that the principal witness was Mr. Jean-Marie Morin, Deputy Commissioner of Official Languages. Mr. Morin’s testimony was certainly clear and forthright, and I accept it, [the decision was initially rendered in French, the French text reads: “Le témoignage de M. Morin était certainement clair et honnête.”] He explained that, according to reports submitted to him, the grievor made many complaints relating to the administration of the Office. It seems that he complained about the files for which he was responsible, the calibre of work of the stenographic pool, the telephone service, the records service, the distribution of the mail and even about the “landscaped” arrangement of the office. In addition, he wanted a typewriter in his own office (that is, his own office “area”), and even his own secretary.

All these complaints in themselves were not annoying; Mr. Morin listened to and considered all of them. Almost all were rejected and (although it is not the responsibility of the adjudicator to assess the quality of administration) I feel it my duty to add that the rejections were justified. The problem faced by Mr. Morin was not that Mr. Jacmain complained, but that he complained constantly, in an unpleasant manner, loudly and bitterly. All things considered, it was Mr. Jacmain’s attitude, as displayed in tactlessness and impoliteness, in outbursts and the slamming of doors, and in continual “Jeremiads”, that gave his employer cause for complaint.

Before reviewing the evidence on this point, it would be useful to examine the importance of this question of attitude (namely, the attitude of the employee as revealed through his actions and gestures). I agree that it is important for the employer to assess the attitude of an employee during his probation period, just as it is important to assess his actual work. Undoubtedly, in an office such as that of the Commissioner of Official Languages, the “attitude” of public servants towards the public and others is an important feature of their work. In the case under consideration, however, there is no evidence relating to the attitude of Mr. Jacmain in this context.

I have quoted these passages in full because the judgment of the Federal Court of Appeal, from whence comes this appeal, stresses the second paragraph. I read the paragraph as merely summarizing the evidence adduced on behalf of the employer, not as embodying findings of fact prejudicial to the appellant.

The adjudicator noted that the “cause” which would have justified the rejection of the appellant had never been specified and there was no evidence that in any way suggested what the “function,” of which the Commissioner of Official Languages spoke in his letter to the Public Service Commission, might have been. The adjudicator continued:

In fact, it has been established beyond all question that Mr. Jacmain effectively fulfilled all the duties for which he was responsible. None of his colleagues complained about him, and there were never any complaints from members of the public (according to Mr. Morin's own testimony). There is nothing to indicate that his immediate supervisor (who was not called as a witness) in any way complained of Mr. Jacmain's work.

As to the actual work of the appellant the adjudicator said this:

Now as to Mr. Jacmain's actual work, my conclusion (and the matter is not seriously in question) is that there is no reason which can justify either his rejection or his discharge.

He then spoke of "attitude": Although this issue tends to raise questions which are more of a disciplinary nature, I do recognize that the employer, even in the public service, has the right to reject an employee who cannot adjust to the everyday routine of his job. The weight of Mr. Morin's testimony was to the effect that Mr. Jacmain could not make the adjustment; that he lacked tact, courtesy and judgment.

The conclusion which the adjudicator reached was expressed in these words:

Having heard and considered all the evidence, I conclude that the behaviour of the grievor towards his colleagues, his superiors and some of his subordinates was somewhat irascible, reflecting his own personality. He did not fully adjust to the practice and atmosphere of the office, and to the requirements of his superiors. I do not, however, consider this to be sufficient reason for his discharge. No other reason has been established.

For those reasons, the grievance was allowed. On the question of jurisdiction the adjudicator added:

I have already ruled that the employer's action was substantially a disciplinary measure. Although this question was decided on August 1, my opinion has not changed.

The employer, pursuant to s. 23 of the Public Service Staff Relations Act, referred to the Public Service Staff Relations Board the question of the jurisdiction of the adjudicator. The Board found that the adjudicator had not erred in law, nor exceeded his jurisdiction in agreeing to hear the case, notwithstanding the fact that (i) the appellant was on probation at the time of the termination of his employment; and (ii) the termination purportedly was a rejection during probation.

The employer then brought an application before the Federal Court of Appeal to review and set aside the decision of the Public Service Staff Relations Board. The application was brought pursuant to s. 28(1) of the Federal Court Act, R.S.C. 1970, c. 10 (2nd. Supp.). The principal submission of the employer's counsel before the Federal Court of Appeal was that to which I have referred, namely, that since the employer had characterized the action taken as a rejection for cause this was sufficient to oust the jurisdiction of the adjudicator; that an adjudicator is not entitled to inquire into the facts of a particular case to determine whether the action taken by an employer is, in fact, a rejection for cause, or a disciplinary discharge. The Federal Court of

Appeal considered that this submission was fully answered by the decision of that Court in *Cutter Laboratories International and Cutter Laboratories Inc. v. Anti-Dumping Tribunal*[2]. With respect I agree. As usual, substance, and not form, governs. The form of the notice cannot deprive an adjudicator of jurisdiction if, on all the facts, the action taken by the employer is truly disciplinary in nature. The Federal Court of Appeal did not err in upholding the right of an adjudicator under the Public Service Staff Relations Act to determine whether or not the employer's purported rejection on probation is, in fact, an act of discipline resulting in discharge.

Although counsel for the employer confined his argument before the Federal Court of Appeal to the submission to which I have referred (which was rejected) that Court, we were advised, raised *ex proprio motu* the factual issues considered by the adjudicator and, in the result, allowed the s. 28 application and set aside the decision of the Public Service Staff Relations Board. In doing so, the Federal Court of Appeal, in my opinion, erred.

The following passages from the reasons for judgment of that Court will serve to indicate the basis upon which the Court proceeded in reversing the Public Service Staff Relations Board:

Turning now to the evidence adduced before the adjudicator, after a careful review thereof, I have concluded that the Board's decision cannot be allowed to stand and that this section 28 application must be granted. The letters of February 25, 1974 to the applicant and to the commission are clear and unequivocal in that they reject the applicant for cause within the meaning of subsections 28(3) and (4) of the Public Service Employment Act (*supra*). The evidence as to cause adduced before the adjudicator was, *inter alia*, to the effect that the applicant made many complaints relating to the administration of the office, that he complained constantly, in an unpleasant manner, loudly and bitterly, that "it was Mr. Jacmain's attitude, as displayed in tactlessness and impoliteness, in outbursts and the slamming of doors, and in continual 'jerimiads', that gave his employer cause for complaint.

...

I have no hesitation in expressing the view that the conduct complained of in this case is a classic example of behaviour which would justify rejection of an employee during a probation period (and this was conceded by the adjudicator—see Appeal Case, pages 70 and 73).

...

It is clear from the various reasons for decision of the adjudicator that he considered the action here taken by the employer to be disciplinary action camouflaged as rejection. However, the facts established before him make it quite clear that the employer had ample cause for rejection. There could only be disciplinary action camouflaged as rejection in a case where no valid or bona fide grounds existed for rejection. By the adjudicator's own admissions, that is not the factual situation in this case.

Section 28(1) of the Federal Court Act reads:

28. (1) Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis, made by or in the course of proceedings before a federal board, commission or other tribunal, upon the ground that the board, commission or tribunal
- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
 - (b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or
 - (c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. If the question before us is jurisdictional in nature, as it would appear to be, the relevant statutory provision is s. 28(1)(a) which applies when a federal tribunal is alleged to have acted beyond its jurisdiction. Section 28(1)(a) essentially is a statutory enactment of the common law doctrine of ultra vires. Section 28(1)(c) is an addition to the common law and concerns non-jurisdictional questions of fact. If a question is a jurisdictional question of either fact or of law then s. 28(1)(a) is the applicable provision. If a question is a non-jurisdictional question of law, then s. 28(1)(b) is the applicable provision. Finally, if a question is a non-jurisdictional question of fact, then s. 28(1)(c) is the applicable provision.

As is said in *Bunbury v. Fuller*[3], at p. 140 (quoted in *Wade, Administrative Law* (3d ed.) at p. 89):

It is a general rule that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limits to its jurisdiction depends.

In an article by Professor Hogg, *The Jurisdictional Fact Doctrine in the Supreme Court of Canada*, (1971), 9 *Osgoode Hall L.J.* 203, at p. 209, it is said:

In Anglo-Canadian Administrative Law the distinction between a jurisdictional fact and fact within jurisdiction is crucial. If an adjudicating tribunal makes an error as to the existence of a fact within jurisdiction the error does not affect the validity of the tribunal's decision and the decision is unreviewable by the Courts, but if the tribunal makes an error as to the existence of a jurisdictional fact the error makes the tribunal's decision invalid or void and therefore reviewable by the Courts. The theory is that in the former case the tribunal is acting within the jurisdiction conferred upon it by statute while in the latter case the tribunal is acting outside its jurisdiction.

This same point with respect to jurisdictional questions was made by Martland J. in the recent case of *Bell v. Ontario Human Rights Commission*[4]. In the *Bell* case the question was whether the accommodation of the complainant was covered by The Ontario Human Rights Code and, as Martland J. said, on the answer to that question depended the authority of the Board to inquire into the substantive merits of the matter at all. A wrong decision on it would not enable the Court

to proceed further. The question was classified as a question of jurisdictional law, but the same principle applies to a question of fact on the answer to which depends the authority of the tribunal to inquire into the substantive merits of the matter, i.e. in the present case, the question of whether what occurred was discharged for disciplinary reasons, or rejection for cause. Inhering also in the question is “an issue of law respecting the scope of operation of the Act” as it was in the Bell case, where at p. 775, this phrase is used. Here it is a question of the scope of the operation of the Public Service Staff Relations Act (s. 91(1)(b)) and the Public Service Employment Act (s. 28 (3)).

The jurisdictional fact doctrine has been heavily criticized (45 L.Q.R. 459; 47 L.Q.R. 386; 55 L.Q.R. 521; 60 L.Q.R. 250; (1960) 1 U.B.C. L. Rev. 185; 76 L.Q.R. 306; 82 L.Q.R. 263; 82 L.Q.R. 515). Although it is said (J.A. de Smith, *Judicial Review of Administrative Action* (3d ed.) 100) that in the United States the distinction between jurisdictional questions of law and fact has to a large extent been abandoned, this Court has reaffirmed the doctrine in *Metropolitan Life Insurance Company v. International Union of Operating Engineers, Local 796*[5], and in the earlier cases of *Toronto Newspaper Guild v. Globe Printing Company*[6], and *Jarvis v. Associated Medical Services*[7]: see also *Galloway Lumber Co. Ltd.*[8] Moreover, for cases arising under the Federal Court Act the existence of a doctrine of jurisdictional questions is established in clear and unmistakable language in s. 28.

The intractable difficulty is this. It is hard to conceive that a legislature would create a tribunal with a limited jurisdiction and yet bestow on such tribunal an unlimited power to determine the extent of its jurisdiction. On the other hand, if the correctness of every detail upon which the jurisdiction of the tribunal depends is to be subject to re-trial in the Courts and the opinion of a judge substituted for that of the tribunal, then the special experience and knowledge of the members of such a tribunal and the advantage they have of hearing and seeing the witnesses may be lost. The power to review jurisdictional questions provides the Courts with a useful tool to ensure that tribunals deal with the type of issues which the Legislature intended. It enables the Courts to check unlawful attempts at usurpation of power. But the Courts, in my opinion, should exercise restraint in declaring a tribunal to be without jurisdiction when it has reached its decision honestly and fairly and with due regard to the material before it. The Court should allow some latitude in its surveillance of jurisdictional findings. It should ask whether there is substantial evidence for decisions of fact and a rational basis for decisions of law, or mixed decisions of fact and law. The error must be manifest. The role of the Court is one of review, not trial de novo.

Reverting to the case at bar, the question which the Court must ask itself is whether the adjudicator was wrong in his decision that what occurred was, in substance, a discharge for disciplinary reasons, rather than a rejection for cause. In my opinion, the adjudicator was correct in classifying what occurred as a discharge for disciplinary reasons, and thus he did have jurisdiction to proceed to the question of whether there was sufficient reason for the discharge, i.e. he did have jurisdiction to consider the merits of the matter. Seen as a question of fact to be decided from conflicting evidence, there is substantial evidence to uphold the adjudicator's

decision. Seen as a question of law concerning the scope of the operation of the two Acts, there is a rational basis for the adjudicator's decision. The characterization of a particular question as one of fact, or of law, is often fraught with difficulty. The question in the present case, as in most other cases, is a mixed question of fact and law: insofar as it requires a choice between conflicting pieces of data, it is a question of fact; insofar as it requires a decision as to whether the scope of the operation of the Acts extends to cover the data chosen, it is a question of law. The two aspects of this analytic process are not distinct.

It seems to me that, in the present case, nothing turns on the distinction between fact and law; it is immaterial whether the question is classified as one of fact, or law, or a mixed question of fact and law. The key distinction is between jurisdictional questions (whether of fact, or law, or both) and non-jurisdictional questions. An answer beyond the permissible latitudes to a jurisdictional question causes the tribunal either to act beyond its jurisdiction (if it decides to consider the merits when it has no authority to do so), or to refuse to exercise its jurisdiction (if it decides that it does not have authority to consider the merits when actually it does have such authority). Thus, an error is reviewable under s. 28(1)(a) of the Federal Court Act. Only if a question is non-jurisdictional does the characterization of it as one of fact, or law, become material. If it is a question of law, s. 28(1)(b) applies and any error is subject to review. If it is a question of fact, s. 28(1)(c) applies and an error is reviewable only if it is made in a perverse or capricious manner, or without regard for the material before the tribunal.

The crucial question, therefore, to be determined may be simply stated—was the adjudicator wrong? Did his decision with respect to jurisdiction fall outside tolerable parameters? To answer this question one must first ask—what did the adjudicator decide? In his decision of August 1, 1974, in which he concluded that he had jurisdiction, the adjudicator made the following findings of fact: In October 1973, the grievor was suspended for five days—this was undeniably a disciplinary action. This action led to a grievance adjudication in which R.D. Abbott, the adjudicator, rendered his decision on March 27, 1974, File 166-2-1002. The adjudicator ordered that the suspension be revoked and (inasmuch as we are concerned) that all reference to the said suspension in official records be expunged. The adjudicator noted, however, that the employee's conduct had been reprehensible.

On October 23, 1973, the Commissioner of Official Languages gave the grievor notice of his intention to reject him during his probationary period. It seems that at this time he informed the employee that he had “no future” in the Office of the Commissioner of Official Languages. The only grounds for this notice were the disciplinary considerations cited at the time of the incident settled by the decision of adjudicator Abbott. Notwithstanding this decision, in a letter dated February 25, 1974, the Commissioner notified the grievor of his rejection during his probationary period, and without mentioning any other ground, added:

‘You will remember that on October 23, 1973, I informed you orally of this intention.’

According to the evidence, no reference was made to any other ground for rejecting the grievor....

The decision of the adjudicator then refers in some detail to the appraisal criteria listed in Chapter IX of the Staffing Manual and the failure of the employer, according to the evidence, to comply therewith. He then continued:

He was informed several times that his supervisor was satisfied with his work but—still according to the evidence—at no time was the least hint of dissatisfaction given. Furthermore, it is perhaps interesting to note that on December 11, the grievor was designated as a person employed in a managerial or confidential capacity, being, in his capacity as Division Chief, a step in the grievance process.

The shortcoming, if indeed there was one, in the above procedure serves only to indicate, for the purposes of this decision, that there was no other reason for the grievor's discharge than the matter for which he had been disciplined, and with which adjudicator Abbott dealt in his decision.

Having considered all the evidence, I conclude that the employer's rejection of the grievor during his probationary period constituted disciplinary action involving discharge. Therefore, I have jurisdiction to hear this case under section 91 of the Public Service Staff Relations Act.

There was clearly sufficient basis for the adjudicator's conclusion. The "rejection" gave effect to an intention expressed by the Commissioner of Official Languages on October 23, 1973. The only grounds on October 23, 1973 were disciplinary.

The adjudicator went on then to resolve a second question, namely, whether in any event an adjudicator has jurisdiction to hear cases involving disciplinary action resulting in discharge that are presented as rejection during a probationary period. He answered this question in the affirmative. I do not see in what possible way the adjudicator's decision of August 1, 1974 can be open to attack. For the reasons set forth in that decision he concluded that he had jurisdiction. In my opinion, the conclusion he reached came within permissible limits.

The merits of the case were then gone into in a later hearing, to which I have referred, and at that time evidence was given on behalf of the employer, respecting the appellant's "attitude." The adjudicator concluded that the appellant's behaviour was "somewhat irascible," but he did not consider this to be sufficient reason for his discharge.

As I read the judgment of Mr. Justice Heald, his reasoning appears to proceed on this basis:

1. The appellant's attitude was wrong.
2. This would justify rejection for cause.
3. There could only be discharge for disciplinary reasons when there was no valid cause for rejection.
4. Therefore, the termination of employment was a rejection for cause, and the adjudicator was without jurisdiction.

The reasoning, with respect, contains fundamental fallacies. First, it approaches the matter from the wrong end. Two questions must be distinguished: (i) was the termination of employment disciplinary discharge, or rejection for cause? (ii) was termination justified? The first is a jurisdictional question; the second goes to the merits. Mr. Justice Heald answered the second question and used the answer to resolve the first question. The proper approach is to answer the first question and then, depending upon the answer, to proceed to the second question. Second, it does not inexorably follow that, simply because there lurked in the background some cause which might justify rejection, the termination must, of necessity, be rejection and not disciplinary discharge.

I would allow the appeal, set aside the judgment of the Federal Court of Appeal and restore the decision of the Public Service Staff Relations Board. The order requested by the appellant does not include a request for costs, and therefore no order as to costs should be made.

The judgment of Martland, Judson, Ritchie and de Grandpré JJ. was delivered by

DE GRANDPRÉ J.—In May 1973 appellant joined the office of the Commissioner of Official Languages as a division chief in the Complaints Service. This involved a probationary period since his previous employment in the public service had been with the Department of National Revenue.

Under s. 28 of the Public Service Employment Act, R.S.C. 1970, c. P-32, an employee on probation may be rejected. Subsections 3 and 4 of that section read as follows:

- (3) The deputy head may, at any time during the probationary period, give notice to the employee and to the commission that he intends to reject the employee for cause at the end of such notice period as the Commission may establish for any employee or class of employees and, unless the Commission appoints the employee to another position in the Public Service before the end of the notice period applicable in the case of the employee, he ceases to be an employee at the end of that period.
- (4) Where a deputy head gives notice that he intends to reject an employee for cause pursuant to subsection (3) he shall furnish to the Commission his reason therefor.

This is in fact what occurred. On February 25, 1974 commissioner Spicer notified appellant by letter that he intended to reject him during his probationary period. This came as no surprise to appellant since this intention had been expressed orally on October 23, 1973. The Public Service Commission received a copy of the letter and was informed of the reasons for the rejection in the following term:

During the probationary period I have found that Mr. Jacmain was not able to fulfil a function in this office to my satisfaction.

Feeling himself to be aggrieved, appellant began a grievance procedure on the basis of s. 90 of the Public Service Staff Relations Act, R.S.C. 1970, c. P-35, but was unsuccessful at every level of the procedure. He then had recourse to s. 91 of the same Act and referred the matter to adjudication. In the context of the case at bar, the adjudicator has jurisdiction only if the matter involved is “disciplinary action resulting in discharge, suspension or a financial penalty” (s. 91(1)(b)).

The employer immediately disputed the jurisdiction of the adjudicator, submitting through counsel that rejection during a probationary period pursuant to s. 28 of the Public Service Employment Act does not constitute discharge, and that appellant had no recourse to adjudication under s. 91. The adjudicator dismissed this claim, which he regarded as too absolute, and held that his jurisdiction allowed him to examine the reasons for rejection in order to determine whether the employer had not, under cover of dissatisfaction, taken what was in reality disciplinary action. He ruled on this point in stages, giving three decisions dated July 16, 1974, August 1, 1974 and January 31, 1975. In my opinion, and the parties have now agreed on this point, these three decisions are parts of a whole and should be considered together.

The adjudicator’s analysis of the facts is found at the end of his last decision, that of January 31, 1975:

Having heard and considered all the evidence, I conclude that the behaviour of the grievor towards his colleagues, his superiors and some of his subordinates was somewhat irascible, reflecting his own personality. He did not fully adjust to the practices and atmosphere of the office, and to the requirements of his superiors. The adjudicator weighed these facts to determine their significance, and immediately continued:

I do not, however, consider this to be sufficient reason for his discharge.

He then concluded:

For the reasons given above, I conclude that the grievor has not in fact been rejected during his probationary period, and that he has been discharged without sufficient reason.

This then is the crux of the matter: is rejection of an employee on probation because his superior is not satisfied with him disciplinary action and therefore subject to adjudication?

The employer submitted this question to the Public Service Staff Relations Board in a referral pursuant to s. 23 of the aforementioned Public Service Staff Relations Act:

Where any question of law or jurisdiction arises in connection with a matter that has been referred to the Arbitration Tribunal or to an adjudicator ... either of the parties may refer the question to the Board ...

In the reasons for its decision dated November 7, 1975 the Board expressed its agreement with the adjudicator and dismissed the referral. The following paragraph is relevant to the point at issue:

Having regard to all of the foregoing, we do not find that the Adjudicator in the instant case erred in law or exceeded his jurisdiction by agreeing to hear the case notwithstanding that the Aggrieved Employee was on probation at the time of the termination of his employment or that the termination of his employment purportedly was a rejection during probation made pursuant to subsection 28(3) of the Public Service Employment Act. Neither do we find that the Adjudicator erred in law or jurisdiction when, having concluded that the reasons for dismissing the Aggrieved Employee were of a disciplinary nature, he heard the case as a grievance against disciplinary action resulting in discharge.

The employer then asked the Federal Court of Appeal to review this decision and set it aside. This application was made under s. 28(1)(a) of the Federal Court Act, 1970-71-72 (Can.), c. 1, since the employer continued to claim that the adjudicator had exceeded his jurisdiction. This appeal did not raise only a question of fact, alleging “an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it” (s. 28(1)(c)).

In the case at bar this distinction is unimportant since, like the Court of Appeal, I accept the adjudicator’s finding of fact and wish to consider only his conclusion of law. If necessary, the fundamental difference between paragraphs (a) and (c) of s. 28(1) will have to be given its full effect. It seems to me that when there is contradictory evidence, appeal tribunals are not bound by the limits imposed by s. 28(1)(c) in considering the facts surrounding a question of jurisdiction. They may set aside the decision without finding it perverse or capricious. See *de Smith, Judicial Review of Administrative Action* (3rd), London, 1973, at pp. 104 and 120; and *Segal v. City of Montreal*[9], especially at p. 473.

The Court of Appeal held, when the case came before it, that the adjudicator did not have jurisdiction to weigh the cause of rejection, once it was established that this cause was not frivolous and that the rejection was not for reasons based on anything other than good faith, [1977] 1 F.C. 91, at p. 98:

It is clear from the various reasons for decision of the adjudicator that he considered the action here taken by the employer to be disciplinary action camouflaged as rejection. However, the facts established before him make it quite clear that the employer had ample cause for rejection. There could only be disciplinary action camouflaged as rejection in a case where no valid or bona fide grounds existed for rejection. By the adjudicator’s own admissions, that is not the factual situation in this case.

Heald J., speaking for the Court, had previously referred to *Fardella v. The Queen*[10], and written (p. 98):

I have no hesitation in expressing the view that the conduct complained of in this case is a classic example of behaviour which would justify rejection of an employee during a probation period (and this was conceded by the adjudicator—see Appeal Case, pages 70 and 73). It might also be ground for disciplinary action even during a probationary period. However, on the facts here present, it is clear that the employer intended to reject and did in fact reject during probation and was, in my view, quite entitled so to do. That being so, the adjudicator was without jurisdiction to

consider the grievance under section 91 and erred in law in so doing.

After referring to the decision of this Court in *Bell Canada v. Office and Professional Employees' International Union*[11], Heald J. went on to emphasize this point at the end of his reasons (p. 100):

In my view, the whole intent of section 28 is to give the employer an opportunity to assess an employee's suitability for a position. If, at any time during that period, the employer concludes that the employee is not suitable, then the employer can reject him without the employee having the adjudication avenue of redress. To hold that a probationary employee acquires vested rights to adjudication during his period of probation is to completely ignore the plain meaning of the words used in section 28 of the Public Service Employment Act and section 91 of the Public Service Staff Relations Act. Mr. Jacmain clearly had the right to grieve under section 90 of the Public Service Staff Relations Act. His grievance was considered and rejected. However, not all grievors under section 90 are entitled to adjudication under section 91. The right to adjudication is restricted to those grievors bringing themselves within the four corners of section 91(1) which, on the facts here present, Mr. Jacmain has not been successful in doing.

I concur with these views of the Court of Appeal.

The employer's right to reject an employee during a probationary period is very broad. To use the words of s. 28 of the Public Service Employment Act, mentioned above, it is necessary only that there be a reason. Counsel for the appellant forthrightly acknowledged at the hearing that at first glance the legislative provision allows the employer to advance almost any reason, and that the employer's decision cannot be disputed unless his conduct was tainted by bad faith. He nevertheless submitted that by the combined effect of s. 28 of the Public Service Employment Act and s. 91 of the Public Service Staff Relations Act Parliament removed disciplinary matters from the employer's discretion. He also clearly agreed with the findings of the adjudicator and the Board that in this case the reason for the rejection was purely disciplinary.

In view of my finding on the merits, I do not have to decide whether the adjudicator has jurisdiction when the rejection is clearly a disciplinary action. The employer denied this jurisdiction before both the adjudicator and the Board but appeared to accept it in this Court. Clearly, if the Public Service Employment Act does not give the adjudicator jurisdiction in such a case, the consent of the employer cannot do so: *Essex County Council v. Essex Incorporated Congregational Church Union*[12]. The question remains open.

The case at bar is not a case of disciplinary action. The employee's poor conduct, irascible attitude and unsatisfactory adjustment to his surroundings are valid reasons for his superior's unwillingness to give him a permanent position in his Service. This seems obvious to me, but I will nevertheless cite the unanimous opinion of the arbitrators in *Re United Electrical Workers & Square D Co., Ltd.*[13], at p. 292:

An employee who has the status of being 'on probation' clearly has less job security than an employee who enjoys the status of a permanent employee. One is undergoing a period of testing, demonstration or investigation of his qualifications and suitability for regular employment as a permanent employee, and the other has satisfactorily met the test. The standards set by the company are not necessarily confined to standards relating to quality and quantity of production, they may embrace consideration of the employee's character, ability to work in harmony with others, potentiality for advancement and general suitability for retention in the company. Although it is apparent that any employee covered by the agreement can be discharged for cause at anytime, the employment of a probationer may be terminated if, in the judgment of the company prior to the completion of the probationary period, the probationer has failed to meet the standards set by the company and is considered to be not satisfactory. That case involved a discharge in the private sector. The adjudicator in the case at bar attempted to establish a distinction between the private and public sectors. This proposition was not defended in this Court and I can see no basis for it, particularly since, as I have noted, the wording of s. 28 of the Public Service Employment Act is very loose. I would think that in the public sector, as in the private sector, the employee who wants to improve his lot must still take certain risks.

Appellant maintained that the Court of Appeal had clearly erred by examining the matter in the light of the English version of the adjudicator's decision when this decision was delivered in French. Appellant claims that the difference between the two versions is substantial and would in itself be sufficient to justify allowing the appeal. The following is the French version of the disputed paragraph:

Pour ce qui est de la preuve de l'employeur quant aux motifs du congédiement de l'employé s'estimant lésé, il est à noter que le témoin le plus important était M. Jean-Marie Morin, Sous-Commissaire au Bureau du Commissaire aux langues officielles. Le témoignage de M. Morin était certainement clair et honnête.

The corresponding English paragraph reads as follows:

With regard to the employer's evidence relating to the reasons for the discharge of the grievor, it should be noted that the principal witness was Mr. Jean-Marie Morin, Deputy Commissioner of Official Languages. Mr. Morin's testimony was certainly clear and forthright, and I accept it.

Appellant claims that the underlined words led to the error by the Court of Appeal. Without referring to the Official Languages Act, R.S.C. 1970, c. 0-2, I do not see that this difference is one of substance. If the testimony of Mr. Morin was in fact clear and forthright, it seems to me that it goes without saying that it would be accepted. Neither do I see that the underlined words in the English version really played a role in the decision of the Court of Appeal. My own opinion is based purely and simply on the adjudicator's finding on the facts, and I do not have to rely on Mr. Morin's testimony at all. For all of these reasons, I agree with the Court of Appeal that the adjudicator did not have to set aside the employer's decision, since it was taken in good faith.

I would dismiss the appeal without costs.

The judgment of Pigeon and Beetz JJ. was delivered by

PIGEON J.—I had the advantage of reading the opinions written by Dickson and de Grandpré JJ. As my approach to the questions raised is somewhat different I find it necessary to express my own views.

At the hearing, counsel for the Attorney-General properly conceded that the right of a probationary employee to launch a grievance against a disciplinary dismissal could not be ousted by making such dismissal in the form of a rejection under s. 28 of the Public Service Employment Act. This means that, on a grievance being filed, the Adjudicator had jurisdiction to inquire whether the rejection was in fact a dismissal as alleged by the grievor. I therefore agree that the Public Service Staff Relations Board was right in so holding in accordance with *Fardella v. The Queen*[14]. The situation was not the same as in the case of an employee released by the Civil Service Commission under s. 31 of the Public Service Employment Act, in which case the Federal Court of Appeal held the employee's grievance could not be referred to adjudication (in *Re Cooper*[15]).

However, it appears to me that this is not the essence of the issue in the present case. While the Adjudicator was entitled to inquire whether the grievor's rejection was in fact a disciplinary dismissal, this inquiry was on a fact on which his jurisdiction depended, his findings could not therefore be considered as conclusive and was subject to review as a matter of law, (*Bell v. Ontario Human Rights Commission*[16]). The Adjudicator being of the opinion that the facts proved did not constitute sufficient reason for the discharge, held it to be disciplinary and consequently unjustified. That such was the decision of the Adjudicator is recognized in para. 12 of the Public Service Staff Relations Board where one reads:

... After reviewing the evidence relating to Mr. Jacmain's "attitude", and while acknowledging that he did not fully adjust to the practices and atmosphere of the office and to the requirements of his superior, the Adjudicator held that he did not consider this to be sufficient reason for his discharge, and no other reasons had been established. The Adjudicator, therefore, allowed the grievance.

The arbitrator's finding was treated as conclusive by the Board but, in the Federal Court of Appeal, Heald J. said, expressing the unanimous view:

It is clear from the various reasons for decision of the adjudicator that he considered the action here taken by the employer to be disciplinary action camouflaged as rejection. However, the facts established before him make it quite clear that the employer had ample cause for rejection. There could only be disciplinary action camouflaged as rejection in a case where no valid or bona fide grounds existed for rejection. By the adjudicator's own admissions, that is not the factual situation in this case.

It will be noted that, whereas the Adjudicator affirmed by the Board was of the opinion that the facts shown in support of the rejection were not “sufficient reason” for Jacmain’s discharge, the Federal Court of Appeal was of the view that they were “ample cause for rejection”. In my view this means that the true questions in this case are the following:

1. Was the Adjudicator entitled to review the sufficiency of the cause of rejection in order to decide whether it was in fact a disciplinary dismissal?
2. If so, was his opinion subject to review by the Federal Court of Appeal?

It is clear that, prior to the enactment of the Public Service Staff Relations Act, a rejection of a probationary employee under s. 28 of the Public Service Employment Act was just as final as a discharge by the Public Service Commission under s. 31. In the latter case as we have seen, the Federal Court of Appeal decided in *Re Cooper* that ss. 90 and 91 of the Public Service Staff Relations Act would not authorize a grievance when the Public Service Commission had upheld a recommendation of the deputy head that the employee be released. Although I agree that, in the case of a probationary employee rejected by the deputy head under s. 28, an adjudicator has jurisdiction to inquire whether what is in form a rejection is in substance a disciplinary dismissal, I cannot agree that this does invest the Adjudicator with jurisdiction to review the deputy head’s decision as to the suitability of the employee.

In the present case, the Adjudicator found that there were grounds for deciding that the employee was unsuitable. However, differing in that respect from the deputy head’s judgment, he was of the opinion that those grounds as established before him, were not sufficient to justify the rejection. In my view this is what he was not authorized to do because he only had jurisdiction to review a disciplinary dismissal not a rejection. On the basis on which the Adjudicator proceeded in the instant case, he would review every rejection because he would hold it to be disciplinary whenever in his opinion there was insufficient cause. Just as I cannot agree that the employer can deprive an employee of the benefit of the grievance procedure by labelling a disciplinary discharge a rejection, I cannot agree that an adjudicator may proceed to revise a rejection on the basis that if he does not consider it adequately motivated, it must be found a disciplinary discharge.

I doubt that if I held the Adjudicator could review the sufficiency of the cause of rejection, I would hold the Federal Court of Appeal entitled to revise his decision. It is true that it is a finding on which his jurisdiction depends, however it was noted in *Segal v. The City of Montreal*[17], at p. 473, that where the jurisdiction depends upon contested facts, a superior court will hesitate before reversing the inferior court’s finding of fact, and will only do so on “extremely strong” grounds.

On the whole, however, it appears to me that in this case the result of the Adjudicator's inquiry into the facts was that there were indeed some grounds for rejection of the employee as unsuitable. The decision that this was really a disciplinary discharge was based on the Adjudicator's judgment that those grounds were insufficient. This means that the Adjudicator substituted his opinion for that of the deputy head on a matter on which the law provides no appeal from the latter's decision.

I would dismiss the appeal without costs.

Appeal dismissed without costs, LASKIN C.J. and SPENCE and DICKSON JJ. dissenting.

Solicitors for the appellant: Soloway, Wright, Houston, Greenberg, O'Grady & Morin, Ottawa.

Solicitors for the respondents: The Deputy Minister of Justice, Ottawa.

[1] [1977] 1 F.C. 91.

[2] [1976] 1 F.C. 446.

[3] (1853), 9 Ex. 111.

[4] [1971] S.C.R. 756.

[5] [1970] S.C.R. 425.

[6] [1953] S.C.R. 18.

[7] [1964] S.C.R. 497.

[8] [1965] S.C.R. 222.

[9] [1931] S.C.R. 460.

[10] [1974] 2 F.C. 465.

[11] [1974] S.C.R. 335.

[12] [1963] A.C. 808.

[13] (1956), 6 Lab. Arb. Cas. 289.

[14] [1974] 2 F.C. 465.

[15] [1974] 2 F.C. 407.

[16] [1971] S.C.R. 756.

[17] [1931] S.C.R. 460.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5763/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/jacmain-v-attorney-general-can-et-al-1977>

Prepared on 26 October 2026 · Esheria