

CANADA / JUDGMENT

Maltais et al. v. The Queen

[1978] 1 SCR 441**COURT**

Supreme Court of Canada

DECIDED

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Maltais et al. v. The Queen Collection Supreme Court Judgments Date 1977-04-04 Report

[1978] 1 SCR 441 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 Quebec Subjects Criminal law Decision Content Supreme Court of Canada Maltais et al. v. The Queen, [1978] 1 S.C.R. 441 Date: 1977-04-04 Marcel Maltais et al. Appellants; and Her Majesty The Queen Respondent. 1977: March 16; 1977: April 4. Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ. ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC Criminal law—Theft of a telecommunication service—Definition of “telecommunication”—Criminal Code, R.S.C. 1970, c. C-34, s. 287. During a labour dispute, appellants took over a radio station to air their grievances. They were charged with mischief and with theft of a telecommunication service. At trial, they were convicted of mischief but acquitted of the theft charges. The Court of Appeal unanimously upheld the guilty verdicts on the mischief charges and, by majority decision, entered convictions on the charges of theft of a telecommunication service. The appeals to the Supreme Court concerned the definition of the word “telecommunication”. Broadcasts by the radio station were carried by wire from the station to a transmitting tower and thence by Hertzian waves to the receiving sets of listeners. The majority on the Court of Appeal held that transmission partly by wire or cable was enough to make s. 287 of the Criminal Code applicable. Held: The appeals should be allowed. Section 287 of the Criminal Code (as it was worded at the time of the alleged offences) extends only to transmission by wire or cable (such as telephone, telegraph or cablevision transmissions), but not to transmission by Hertzian waves, as in radio. The accused are consequently acquitted of the charge of theft of a telecommunication service. APPEALS from a judgment of the Court of Appeal of Quebec[1] in which the accused were convicted of theft of a telecommunication service. Appeals allowed: acquittal. Guy Bertrand, for appellants. Rémi Bouchard, for respondent. The judgment of the Court was delivered by DICKSON J.—The accused were charged with fraudulently, maliciously or without colour of right illegally obtaining a telecommunication service on May 15, 1972, committing thereby a theft of the value of \$400, contrary to s. 287 of the Criminal Code. The narrow legal question before the courts

of Quebec and before this Court is whether the accused could be said to have obtained a “telecommunication service”, as defined in s. 287(1)(b) at the material time. Section 287(1)(b) then read:

- (1) Every one commits theft who fraudulently, maliciously, or without colour of right,
 - (b) uses any telecommunication wire or cable or obtains any telecommunication service. The word “telecommunication” was then defined in s. 287(2) in these words:
- (2) In this section, “telecommunication” means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire or cable. The point taken on behalf of the accused, which found favour in the court of first instance and in the dissenting judgment in the Court of Appeal, is that transmission of signals by a radio station is not transmission “by wire or cable.” The facts are bizarre. In May, 1972, during the strike of the Common Front, the accused, all of whom are teachers, were minded to take over a radio station and, literally, to air their grievances. To that end they, and others like-minded, assembled outside radio station C.F.L.S. at Lévis at four o'clock one afternoon. At that hour the station was closed to the public. At about five o'clock a door at the rear of the premises was opened to admit two station employees; seven or eight persons took advantage of this opportunity to enter; about thirty other persons followed shortly thereafter. Some of the entrants surrounded the manager of the station. They told him they wanted to take over the air waves. They then spread throughout the building to the reception area, to the studio, to the news room and to the discothèque. At the time of entry the station was functioning in a regular manner. An announcer was on duty at the microphone in the studio. The intruders, however, relieved him of the microphone. One of their number seated himself at the microphone and regaled the listening audience with propaganda in support of the strike and with criticism of sundry politicians. The proceedings were enlivened by musical selections. At the end of two hours the arrival of police brought an end to the extempore programme and put to flight most of the mischief-makers. A number were apprehended, including the appellants. Radio station C.F.L.S. is a commercial enterprise, operating under licence from the Canadian Radio-Television and Telecommunications Commission. Broadcasts are carried by wire from the station to a transmitting tower, a mile distant, and thence by Hertzian waves to the radio receiving sets of listeners in homes, automobiles and elsewhere. None of these receiving sets is connected by wire or cable to the radio station. The accused were charged not only with theft but also with creating a mischief. At trial the theft charges were dismissed and a guilty verdict entered on the mischief counts. On appeal the latter verdicts were upheld but a majority of the Quebec Court of Appeal (Casey and Mayrand JJ.A., Bernier J.A. dissenting) reversed the “not guilty” verdicts on the theft counts and entered convictions. Mayrand J.A. held that a wire or cable between the station and the transmitting tower was sufficient to support conviction. He said: “A mon avis, il y a eu émission et transmission de sons par fil sur une certaine distance et cela suffit.” With respect, I have come to a different conclusion. The word “telecommunication” can be widely defined. In Robert, Dictionnaire de la langue française, 1964, T.VI, at p. 675, it is defined as

“l'ensemble des procédés de transmission d'informations à distance”. The word “tele” in Greek means “far”. Telecommunications systems, in a general sense, are devices and techniques employed for the transmission of signs, signals, writing, images, sounds or data of any nature by wire, radio or other electromagnetic equipment. Parliament in s. 287(2) of the Criminal Code has defined the word “telecommunication” more narrowly. The forerunner to s. 287(1)(b) was s. 273(b) of the 1959 Criminal Code which read: Every one commits theft who fraudulently or maliciously

- (b) uses a telephone or telegraph line or obtains telephone or telegraph service. The obvious intent of that section was to stigmatize as criminal any act whereby a person through tapping a line or like means was enabled to obtain telephone or telegraphic service without payment. The growth of community television services using coaxial cable would appear to have occasioned a 1960-61 amendment of the Criminal Code (1960-61 (Can.), c. 43, s. 6) which adopted the present wording quoted earlier in these reasons. The effect of the amendment was to extend the section not only to telephone and telegraph service but to any telecommunication service transmitting or emitting by wire or cable. The effect was also to exclude any transmission by air waves. “Telecommunication service” as defined, in my opinion, extends to telephone, telegraph or cablevision transmission, but not to radio transmission. Radio is the radiation and detection of signals propagated through space as electromagnetic waves. The definition contained in s. 287 implicitly makes a distinction between two means of transmission (i) wire or cable and (ii) Hertzian waves. The same distinction appears in the definition of “telecommunication” found in the Canadian Overseas Telecommunication Corporation Act, R.S.C. 1970, c.C-11, s. 2:
- ...“telecommunication” means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual or other electromagnetic system. and in almost the same language in the Radio Act, R.S.C. 1970, c. R-1, s. 2. It might be observed in passing that ss. 287(1)(b) and 287(2) of the Criminal Code were further modified and enlarged in 1975 to read as follows:

- (1) Every one commits theft who fraudulently, maliciously, or without colour of right,
- (b) uses any telecommunication facility or obtains any telecommunication service.
- (2) In this section and in section 287.1, “telecommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by radio, visual, electronic or other electromagnetic system. It is helpful also, I think, to refer to the Broadcasting Act, R.S.C. 1970, c. B-11 in conformity with which radio station C.F.L.S. operates. In that Act at s. 2 “radiocommunication” is defined as: ...“radiocommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3,000 Gigacycles per second propagated in space without artificial guide; In defining “telecommunication” for the purposes of s. 287 of the Criminal Code in a manner limiting transmission to wire and cable, Parliament, I think, must be taken to have excluded transmission by electromagnetic waves through space without artificial guide, that is to say,

to have excluded radio transmission. Contrary to the majority view in the Quebec Court of Appeal, s. 287 of the Code in my opinion does not sustain a distinction between transmissions which are partly by wire or cable and those which are entirely by wire or cable, a subtlety too recondite for recognition by the criminal law. The section is concerned with a more fundamental distinction between transmission or emission of signals utilizing wire and cable and transmission or emission of signals by means other than wire or cable, that is to say, by the Hertzian waves of radio. The transmission service of radio station C.F.L.S., being by Hertzian waves, was not a telecommunication service as defined in s. 287(2) of the Criminal Code. I would allow the appeals, set aside the convictions on the theft charges and direct verdicts of acquittal on those charges. Appeals allowed. Solicitors for the appellants: Bertrand, Richard & Associés, Quebec. Solicitor for the respondent: Maurice Lesage, Quebec.

[1] [1975] C.A. 686.

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