
ERVIN ROBBINS, GEORGE SEBOK,
WILLIAM BRODA AND JAMES PUS-
KAS (*Plaintiffs*) } APPELLANTS; *¹⁹⁶⁵Mar. 18, 19
Apr. 6

AND

ONTARIO FLUE-CURED TOBACCO
GROWERS' MARKETING BOARD } RESPONDENT.
(*Defendant*)

GLEN ATKINS, WILLIAM BRODA,
RICHARD GLAHS, JONAS KARTA-
VICIUS, JAMES PUSKAS, ERVIN
ROBBINS, GEORGE SEBOK AND
CORNELIUS VANBELOIS (*Appli-*
cants) } APPELLANTS;

AND

ONTARIO FLUE-CURED TOBACCO
GROWERS' MARKETING BOARD } RESPONDENT.
(*Respondent*)

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Administrative law—Delegation of power by Farm Products Marketing
Board to Tobacco Growers' Marketing Board to make regulations.*

*PRESENT: Cartwright, Abbott, Martland, Judson, Ritchie, Hall and
Spence JJ.

1965
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 v.
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 FLUE-CURED
 TOBACCO
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providing for refusal of licences for production of tobacco and for refusal of acreage allotments or other production quotas—Validity of regulations.

APPEALS from the judgment of the Court of Appeal for Ontario¹, dismissing appeals from a judgment of Grant J., wherein he dismissed an action brought by Robbins *et al.* against the Ontario Flue-Cured Tobacco Growers' Marketing Board and an application for *mandamus* brought by Atkins *et al.* against the same board. Appeals dismissed.

C. L. Dubin, Q.C., and H. L. Morphy, for the appellants.

J. J. Robinette, Q.C., and L. S. Geiger, for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—These two appeals, the first of which is brought pursuant to special leave granted by this Court, were argued together.

The first appeal arises out of an action in which the appellants as plaintiffs claimed in the endorsement on the writ of summons, as amended:

(a) A declaration that the General Regulations 1963-64 made by The Ontario Flue-Cured Tobacco Growers' Marketing Board on May 6th, 1963, exceed the powers delegated to it by the Farm Products Marketing Board by Regulation 173 of the Revised Regulations of Ontario, 1960 as amended by Ontario Regulation 107/63, Ontario Regulation 108/63, and Ontario Regulation 125/63, made pursuant to the Farm Products Marketing Act, R.S.O. 1960, Chapter 137, as amended by Statutes of Ontario, 1961-62, Chapter 41 and Statutes of Ontario 1962-63, Chapter 45,

(b) Alternatively for a declaration that Sections 1, 2, 3, 6, 7, 8, 9, 10 and 13, either in whole or in part of General Regulations 1963-64 made by The Ontario Flue-Cured Tobacco Growers' Marketing Board on May 6th, 1963, exceed the powers delegated to it by the Farm Products Marketing Board by regulation 173 of the Revised Regulations of Ontario 1960 as amended by Ontario Regulation 107/63, Ontario Regulation 108/63, and Ontario Regulation 125/63 made pursuant to the Farm Products Marketing Act, R.S.O. 1960, Chapter 137 as amended by Statutes of Ontario 1961-62 Chapter 41 and Statutes of Ontario, 1962-63 Chapter 45.

They also claimed consequential relief by way of interlocutory and permanent injunctions. A further claim set out in the endorsement alleging that the respondent Board was not duly constituted was abandoned.

¹ [1964] 1 O.R. 653, 43 D.L.R. (2d) 413.

The second appeal arises out of an application made by the appellants by way of originating notice for an order by way of *mandamus* directing the respondent Board to:

1. Issue a licence to produce tobacco to the applicants for the year 1963;
 2. Establish and record a 1963 basic tobacco acreage to the applicants;
 3. Fix and allot 1963 quotas for the marketing of tobacco to the applicants;
- and for such further and other relief as may seem just under the circumstances.

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An application for an interlocutory injunction made in the action came on for hearing before Grant J. at the same time as the application for a *mandamus* and, with the consent of all parties, was turned into a motion for judgment. The two applications were argued together on July 30, and August 2, 1963, and judgment was reserved. On October 9, 1963, judgment was given dismissing the action and the application for *mandamus*.

Appeals taken to the Court of Appeal for Ontario were dismissed at the conclusion of the argument on February 10, 1964¹.

The appeals to this Court from the judgments of the Court of Appeal were argued together on March 18 and 19, 1965. At the opening of the argument the question was raised whether the Court should entertain the appeals in view of the circumstances that the *mandamus* asked for could not now be effective as it related to matters to be done in the year 1963 and the regulations attacked in the action have been replaced by other regulations similarly, but not identically, worded. This preliminary question was reserved and counsel for the appellants and the respondent were heard on the merits of the appeals.

Having considered the arguments of counsel and the authorities to which they referred I find myself in agreement with the conclusion and the reasons of Grant J. and also with those of the Court of Appeal. I do not think that anything would be gained by attempting to summarize or re-state those reasons and am content to adopt them.

¹ [1964] 1 O.R. 653, 43 D.L.R. (2d) 413.

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Having reached this conclusion it becomes unnecessary to give further consideration to the preliminary objection.

In the result I would dismiss both appeals with costs but, in view of the appeals having been argued together, would direct, as did the Court of Appeal, that only one counsel fee be allowed to cover the two appeals.

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Appeals dismissed with costs.

*Solicitors for the appellants: Weingust & Halman,
Toronto.*

*Solicitors for the respondent: Fleming, Harris, Kerwin,
Barr & Hildebrand, St. Catharines.*

Cartwright J.
