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THE CANADIAN FISHING COMPANY LIMITED, ERNEST FREDERICK PIPER, ROGER THOMPSON HAGER, DONOVAN FRANCIS MILLER and GEORGE BEAN McKAY, BRITISH COLUMBIA PACKERS LIMITED, EDMUNDS & WALKER LIMITED, J. H. TODD & SONS LTD., JOHN MURDOCH BUCHANAN, EDWARD LOY HARRISON and DONALD ROBERT RUSSELL, THE ANGLO-BRITISH COLUMBIA PACKING COMPANY LIMITED, RICHARD BELL-IRVING, PETER TRAILL and IAN M. BELL-IRVING, QUEEN CHARLOTTE FISHERIES LIMITED and ANDERSON & MISKIN LIMITED, NELSON BROS. FISHERIES LIMITED, ANGUS C. FINDLAY, RICHARD NELSON and WILLIAM LORNE WHITTAKER (*Plaintiffs*) .....APPELLANTS;

AND

C. RHODES SMITH, A. S. WHITELY and PIERRE CARIGNAN (*Defendants*) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Combines—Restrictive Trade Practices Commission—Inquiries by Director of Investigation and Research—Allegations of breaches of Combines Investigation Act included in statement of evidence—Application for full disclosure of all evidence and documents—Power of Commission to furnish material—Combines Investigation Act, R.S.C. 1952, c. 314, s. 18.

The Director of Investigation and Research under the Combines Investigation Act, R.S.C. 1952, c. 314, as amended, conducted inquiries into the operations of certain companies and individuals in relation to the production, purchase and sale of raw fish in British Columbia. After obtaining oral and documentary evidence, as authorized by the Act, the director prepared a statement of evidence of the nature referred to in s. 18(1). Included in this statement were a series of allegations based upon the evidence considered alleging various breaches of the Act by the appellants and by certain other individuals and organizations. Different portions of the allegations referred to different parties. One of the parties who had been investigated, and who, as required by the Act, had been supplied with a copy of the director's statement of evidence, applied to the Restrictive Trade Practices Commission for

PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

a full disclosure of all the evidence and documents that had been examined by the director. In response to this request the Commission gave a direction to make all the material available.

The appellant companies brought actions in the Supreme Court of British Columbia in each of which an injunction was asked restraining the defendants (the chairman and members of the Commission) from making this material available to any person except to members of or employees of the Commission or to the Minister of Justice or any person acting in an official capacity under his direction. In addition, the appellant companies asked a declaration that publication of the material to any member of the public or to any of the persons named in the allegations was unlawful. The British Columbia Courts held that the Commission had power to direct that the material be supplied. In a similarly constituted case in Ontario the trial judge came to the opposite conclusion; there was an appeal pending from that decision to the Court of Appeal. Appeals from the decision of the Court of Appeal for British Columbia were brought to this Court.

Held (Taschereau, Fauteux, Abbott and Judson JJ. dissenting): The appeals should be allowed in part.

Per Kerwin C.J. and Locke, Martland and Ritchie JJ.: While the chairman of the Commission had informed the appellants of his intention to make available the transcript of the evidence and all of the documents to the party who had requested this material, after an injunction was granted in the Ontario proceedings he informed them that he proposed to hold a hearing to hear argument as to whether this should be done. The matter was thus reopened and in the circumstances the appellants were not entitled to an injunction.

The appellants were, however, entitled to a declaration that upon the true construction of s. 18 of the Act the director, and in this case, the Commission are required to furnish to each person against whom an allegation is made in the statement of evidence a copy of the evidence taken at the instance of the director, only in so far as such evidence relates to the allegations made against such person, and copies of only such of the documents taken from the possession of the appellant companies as are relevant to the allegations made against him.

Per Cartwright, Martland and Ritchie JJ.: The duty imposed on the Commission by s. 19(1) of the Act to make a report to the Minister in which it must review the evidence, appraise the effect on the public interest of arrangements disclosed in the evidence, and contain recommendations as to the application of remedies provided in the Act or other remedies is not limited to a review of the statement of evidence alone. It contemplates a consideration of the evidence and material on which the statement of evidence is based, together with such further or other evidence or material as the Commission has deemed it advisable to consider pursuant to s. 18(3).

The Commission, interposed as an impartial tribunal between the director and those against whom he makes allegations, and charged with the duty of giving full opportunity to be heard, has by necessary implication the power to furnish to one against whom an allegation is made the relevant evidence and documents on which the allegation is based, but it has no further power of disclosure.

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The decision as to what further information, if any, in addition to that contained in the statement of evidence was necessary in this case was committed to the Commission subject to the limitations set out in the declaration directed to be made.

Per Taschereau, Fauteux, Abbott and Judson JJ., *dissenting in part*: There was no express statutory power authorizing disclosure of all the evidence and documents. Nothing in the Act gave the Commission any express power over documents except in the event of a further inquiry under s. 22. Neither could the power of disclosure be found by implication in the duty to afford the applicant a full opportunity to be heard under s. 18. Whether full opportunity to be heard involves a right to this sort of production had been decided, adversely to the applicant, in *Advance Glass & Mirror Co. Ltd. v. Attorney-General of Canada & McGregor*, [1949] O.W.N. 451, and *Re The Imperial Tobacco Co. and McGregor*, [1939] O.R. 627. Nor could the power to order disclosure of documents be read into s. 18(3).

This was not a preliminary inquiry in a criminal prosecution nor anything in the nature of a preliminary inquiry. It was merely a hearing for the purpose of determining what kind of report was to be made to a Minister of the Crown. A full opportunity to be heard in these circumstances did not require and did not justify all this elaboration of procedure and discovery. There was no statutory authorization for it and there was risk of frustration of the whole purpose of the Act, which is directed solely to investigation and research. The right to be heard should be applied in this context.

APPEALS from a judgment of the Court of Appeal for British Columbia[1], dismissing appeals from the judgment of Sullivan J. Appeals allowed in part.

J. J. Robinette, Q.C., and *J. G. Alley*, for the plaintiffs, appellants.

D. S. Maxwell, Q.C., and *G. W. Ainslie*, for the defendants, respondents.

The judgment of Kerwin C.J. and of Locke, Martland and Ritchie JJ. was delivered by

LOCKE J.:—These are appeals from a judgment of the Court of Appeal for British Columbia[1] brought pursuant to leave granted by this Court. The judgment appealed from dismissed appeals of the present appellants from the judgment of Sullivan J. at the trial.

The respondents, the defendants in the action, are the members of the Restrictive Trade Practices Commission appointed under the provisions of s. 16 of the *Combines Investigation Act*, R.S.C. 1952, c. 314.

[1] (1961-62), 36 W.W.R. 456, 30 D.L.R. (2d) 581.

The facts necessary to be considered are, in my opinion, as follows:

In consequence of an application made to the Director of Investigation and Research, Mr. T. D. McDonald, appointed under the provisions of s. 5 of the said Act, the director conducted inquiries into the operations of the appellant companies, the United Fishermen and Allied Workers' Union and certain other associations and organizations, to be hereinafter referred to in relation to the production, purchase and sale of raw fish on the West Coast of British Columbia.

During the months of July and August 1956, representatives of the director, after obtaining a certificate of the nature referred to in subs. (3) of s. 10 of the Act, took from the premises of the appellant corporations, of the union and certain of such associations certain letters, copies of letters, reports, memoranda and other documents, as authorized by subs. (1) of s. 10. During the months of October and November 1957 some officers and employees of the appellant companies, including all of the individual appellants, were examined on oath before a member of the Board in private by the director or his authorized representatives pursuant to subs. (1) of s. 17.

Thereafter the director prepared a statement of the evidence of the nature referred to in s. 18(1) of the Act. This statement contains a summary of the oral evidence taken and of the contents of some of the documents seized and concluded with a series of allegations based upon the evidence considered, alleging various breaches of the *Combines Investigation Act* by the parties appellant, certain individuals and certain organizations, some of which are not parties to these proceedings.

This statement of evidence forms part of the Case in these matters and is some 565 pages in length. As required by s. 18(1) copies of this document were submitted to the Commission. On the assumption that this section required that it be done, copies of the entire statement were supplied to each of the persons against whom an allegation was made. The statement contains copious extracts from the evidence taken on the hearings which, in each case, were held in private and includes a large number

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of references to some of the documents seized as aforesaid. With these exceptions, none of the evidence which, as the record indicates, is some 3,000 pages in extent, and none of the documents were disclosed to any of the parties concerned.

The statement of the evidence and the allegations signed by the director bears the date May 27, 1959. Following the delivery of this document to the parties, Mr. Homer Stevens, the secretary-treasurer of the United Fishermen and Allied Workers' Union (hereinafter referred to as the Union) wrote to the respondent Smith on June 11, 1959, saying, *inter alia:*

> Your "Statement of Evidence" is only a partial summary of evidence submitted by other organizations and individuals connected with the fishing industry. We naturally want to know everything that was said or submitted, in order to prepare our defense against what appears to be a one-sided and extremely illogical set of allegations. Will you therefore send us a copy of the full transcript of evidence submitted by the persons listed in Appendix A, pages 583 to 592 inclusive, excepting of course the transcript of evidence by the writer which we already have received? Will you also send us copies of all the documents listed in Appendix B and Appendix C, pages 593 to 595 inclusive, except those obtained from Union files which we have in our possession.

The pages of the transcript referred to included the evidence of a considerable number of witnesses who were officials or employees of the appellant companies and the documents referred to included a large number taken from the files of the Fisheries Association of B.C., of which the appellant companies were members, and seven of the packing companies who are parties appellant.

On September 14, 1959, the union wrote to the chairman repeating the request of Stevens for the material referred to in the letter of June 11 above mentioned. To this the respondent Smith replied on September 21, 1959, saying that copies of the transcript of the evidence of the witnesses and of all the documents listed in Appendices B and C of the statement of evidence, other than those taken from the union files, were being prepared and would be forwarded shortly. On the same date the chairman wrote the appellant Canadian Fishing Co. Ltd. informing that company of the proposed action, and similar notices were given to the other appellant companies.

The appellant Canadian Fishing Co. Ltd., by letter dated October 2, 1959, informed the chairman that it objected to the delivery of the transcript or any of the documents, and similar objections were made on behalf of the other companies. Mr. Smith considered these objections and rejected them, setting out the Commission's reasons in a letter addressed to the solicitors for the appellant B.C. Packers Ltd. dated October 9, 1959, and wrote similar letters to the other appellant companies or their solicitors.

The appellant companies thereupon commenced an action in the Supreme Court of Ontario against the respondent Smith, the director, and the Attorney General of Canada, for an order restraining the delivery of the evidence or of the documents, and obtained an interim injunction from the local judge of that Court in Ottawa on October 22, 1959. The injunction was continued by an order of Aylen J. until the trial. That action came on for trial before the late Mr. Justice Danis on March 26, 1960, and judgment was reserved. At the trial the restraining order made by Aylen J. was amended so that it restrained the delivery of the transcript and of the documents:

except to the extent that the said Restrictive Trade Practices Commission after the commencement of its public hearing to be heard pursuant to s. 18(2) of the said Act with respect to the said statement of evidence orders or directs the disclosure of the said material in whole or in part.

Danis J. died before delivering judgment and the case was then heard and decided by Parker J. whose judgment[1] granting the plaintiffs the relief asked was delivered on May 30, 1961, after the institution of the present proceedings. The defendants appealed to the Court of Appeal and that appeal is now pending in that Court.

No further steps had been taken by the respondents in British Columbia following the institution of the action in Ontario but on May 24, 1960, after the terms of the interim injunction granted in those proceedings had been altered in the manner above stated, the respondent Smith wrote to the appellant companies, referring to the Ontario proceedings and saying in part:

In order to comply with the terms of the injunction the Commission has fixed 10 a.m. on the morning of Monday, the 25th day of July, 1960, in the City of Vancouver, British Columbia, as the time and place at which the hearing before the Commission will be held.

[1] [1961] O.R. 596, 28 D.L.R. (2d) 711.

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It is anticipated that the only matter that will be dealt with at that time is the request of certain parties to the proceedings for a copy of the transcript and of the documents upon which the Director has relied in the preparation of the Statement of Evidence, and that the hearing will then be adjourned to a subsequent date.

The Commission proposes that the subsequent date for resuming the hearing will be Monday, November 7th 1960. Argument may be presented on this point at the hearing in July.

This appears to have been a clear intimation that the decision of the Commission referred to in the letter of October 9, 1959, was to be reconsidered.

At the request of counsel for the appellant corporations, the date of the preliminary hearing referred to was changed to September 29, 1960.

On September 28, 1960, the writs were issued in the present actions and interim orders of injunction restraining the respondents from delivering the transcript or the documents until the trial of the actions obtained by the various plaintiffs.

No order for consolidation had been made but, by consent, the five actions were tried together. The case of the appellant Canadian Fishing Co. Ltd. was first presented, the evidence consisting of the matters disclosed in an agreed statement of facts, various documents and portions of the examination for discovery of the respondents Whiteley and Smith. No oral evidence was given. Certain of the other plaintiffs tendered further evidence relating to their own cases and all adopted that given on behalf of the Canadian Fishing Co. Ltd. Notwithstanding the fact that paragraph 8 of the statement of claim of that company alleged that the director or his representatives:

> entered into the premises of the Plaintiff company and took away, inspected and copied statements, documents and letters, many of a confidential nature, disclosing the plaintiff company's methods of business and operation, some of which were written by the individual plaintiffs acting as officers of the Plaintiff company.

and notwithstanding that the allegation that the documents taken were of a confidential nature disclosing the plaintiff company's method of business and operation had been put in issue by paragraph 2 of the statement of defence, no evidence was given on the issue so raised and the only information as to the nature of the documents in this record is such as is given in the statement of evidence prepared by the director.

The expression "combine" is defined in s. 2 of the *Combines Investigation Act*. Section 32 declares that any person who is a party or privy to or knowingly assists in the formation or operation of a combine is guilty of an indictable offence.

When an application is made to the director in the manner required by s. 7 as amended, the director is required to conduct an inquiry whenever he has reason to believe that s. 32 or 34 of the Act or s. 411 or 412 of the *Criminal Code* has been or is about to be violated, or whenever directed so to do by the Minister of Justice. Section 18 of the Act as amended reads:

18. (1) At any stage of an inquiry,

(*a*) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 411 or 412 of the *Criminal Code*, and

(*b*) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2).

Section 19(1) reads:

The Commission shall as soon as possible after the conclusion of proceedings taken under section 18, make a report in writing and without delay transmit it to the Minister; such report shall review the evidence and material, appraise the effect on the public interest of arrangements and practices disclosed in the evidence and contain recommendations as to the application of remedies provided in this Act or other remedies.

This section further provides that, following the transmission of this report to the Minister, the director shall deliver all documents taken by him to those from whom they were taken, unless required to retain them by the Attorney General of Canada.

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The inquiry conducted by the director was directed to the activities of the appellants, the Fisheries Association of B.C., the following organizations: United Fishermen and Allied Workers' Union, Native Brotherhood of British Columbia, Fishing Vessel Owners' Association of British Columbia, B.C. Fishermen's Independent Co-Operative Association, Prince Rupert Fishermen's Co-Operative Association, Prince Rupert Fishing Vessel Owners' Association, the Deep Sea Fishermen's Union, and of Stevens and other persons who were officers of certain of these organizations. The inquiry was directed to these activities in connection with the production, purchase and sale of raw fish in the four principal fisheries of British Columbia, namely, the salmon, herring, halibut and trawl fisheries.

Of these various organizations other than the appellant companies and the Fisheries Association of B.C. those most actively engaged in the operations which were considered were the two co-operative associations and the Native Brotherhood. Of the individuals named, the secretary-treasurer of the union appears to have taken the leading part.

With minor exceptions, the fishermen are not employees either of the packing companies by whom the larger part of the catch is purchased, or of the Fisheries Association which represented them in some of the negotiations. The arrangements under which the fishermen are generally remunerated in the salmon industry is by the division of the proceeds of the catch between the vessel owners, the crew and the fishermen. While the union represented the majority of the shore workers of the members of the Fisheries Association and, presumably, as their bargaining agent negotiated wage agreements on their behalf since the relationship of employer and employee did not exist between the fishermen and the companies, they being joint venturers with the vessel owners, the status of the union as regards the fishermen was not that of a trade union to which the *Labour Relations Act,* 1954 (B.C.), c. 17, or the *Trade-unions Act,* R.S.B.C. 1948, c. 342, applied. It was apparently as a voluntary association representing the fishermen that written agreements were signed by this union which determined the prices to be paid for the various types of salmon and regulated in various respects the

manner in which the vessels were to be operated. The director's report on this branch of the industry covers the period from 1945 to 1958.

The facts elicited in this branch of the inquiry are summarized by the director at p. 575 of the statement of evidence, the director alleging that during the period 1947 to 1958 the appellants: the Anglo-British Columbia Packing Company, British Columbia Packers Ltd., the Canadian Fishing Co. Ltd. and Nelson Brothers Fisheries Ltd. were parties or privies to or knowingly assisted in arrangements designed to have the effect of fixing prices and otherwise preventing or lessening competition in the production, purchase, sale or supply of raw salmon in British Columbia unduly or to the detriment or against the interests of the public. It was further alleged that during the said period Alexander L. Gordon, William Rigby, Homer J. Stevens, shown to have been officers of the union, the Native Brotherhood of British Columbia and the Fishing Vessel Owners' Association, respectively, were parties to arrangements of the same nature. In addition, it was alleged that during the period 1949 to 1958 Gordon, Rigby, Stevens and the Native Brotherhood were parties or privies to such arrangements.

The director asserted in this portion of his statement that the fish packing or canning companies in effect operated as one unit through the Fisheries Association in fixing prices or minimum prices to be paid for fish.

In the herring fishery the director found that the fishermen were joint venturers in the fishing and not employees and that the stoppages of work in this and in the other fisheries referred to as strikes were not labour disputes within the meaning of the provincial legislation. The agreement between the union representing the fishermen and the Fisheries Association representing the companies fixed prices and provided for the limitation of the number of vessels fishing and the director asserted that the result of the agreement was to prevent or lessen competition unduly, within the meaning of the statute. Between the years 1953 to 1957, both inclusive, he alleged that the Anglo-British Columbia Packing Co. Ltd., British Columbia Packers Ltd., the Canadian Fishing Co. Ltd., Nelson Brothers Ltd., Gordon, Rigby and Stevens were parties or privies to these

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arrangements. He further asserted that in the years 1952 and 1953 and 1957 and 1958 Rigby and Stevens were parties or privies or knowingly assisted in arrangements having this effect in the herring industry.

In the halibut fishery the director said that the large majority of the longline vessels are owned by the companies who are members of the Fisheries Association and individuals who are members of the Fishing Vessel Owners' Association and the members of the Prince Rupert Fishing Vessel Owners' Association. There are no price agreements, minimum or otherwise. There are agreements as to the distribution of the proceeds of the catch between the union representing the fishermen and the Fishing Vessel Owners' Association and the Prince Rupert Fishing Vessel Owners' Association and the Deep Sea Fishermen's Union. The object of the agreements between the unions and the vessel owners is alleged to be to prevent non-union or non-association members from engaging in the longline halibut fishery, and thus restricting the facilities for producing, supplying or dealing in raw halibut. It is further asserted that rules designed to curtail the catch of halibut in the years 1956 and 1957 were adopted by the union, the Native Brotherhood and the Fishing Vessel Owners' Association and others. This portion of the report deals also with certain of the operations of the Vancouver Fishing Exchange where part of the catch of halibut is sold. Of the appellant companies, the Canadian Fishing Co. Ltd. and Edmunds and Walker Ltd. are members, the latter a subsidiary of the B.C. Packers, and it is said that the exchange was so operated as to substantially prevent and lessen competition.

In this fishery the director alleged that the Fishing Vessel Owners' Association and Wm. H. Brett, the secretary-treasurer of the Deep Sea Fishermen's Union, Stevens and Matthew H. Waters, the secretary of the Fishing Vessel Owners' Association, were between the years 1951 and 1957 parties to arrangement designed to have the effect of limiting facilities for producing, supplying and dealing in raw halibut unduly or to the detriment or against the interests of the public. Similar allegations are made against the Fishing Vessel Owners' Association and Gordon, Rigby and Stevens during the years 1956 and 1957 and against

the Canadian Fishing Company and Edmunds and Walker Ltd. during the period 1955 to 1957, regarding the operations of the Vancouver and New Westminster halibut exchange.

In the trawl fishery the majority of the vessels are owned by individuals, only a very few being owned by the companies. About one-third of the vessels are owned by members of the Fishing Vessel Owners' Association and a somewhat smaller proportion by the members of the B.C. Co-Operative. There is no employer-employee relationship between the companies, the vessel owners and the fishermen, and the only formal agreement is that made by the union with the Fishing Vessel Owners' Association referred to in connection with the halibut fishery. There are no minimum or specific price agreements. In 1947 and 1952 the fishermen refused to work during periods of varying length, these stoppages being described as strikes, and it is the steps taken on behalf of the union at these times which were the basis for the allegations made by the director.

As to this the director alleged that Rigby and Stevens were in the year 1947 parties or privies or knowingly assisted in arrangements having or designed to have the effect of preventing, limiting or lessening production of trawl or bottom fish unduly or to the detriment or against the interests of the public. Similar allegations are made against Gordon, T. Parkin and Stevens as to the stoppage in 1952.

No allegations were made against the appellants J. H. Todd and Sons, Queen Charlotte Fisheries Ltd. and Anderson and Miskin Ltd. and it is admitted that the director removed from the premises of these companies certain of their documents of the nature referred to in paragraph 9 of the statement of claim of the first mentioned of these companies, though their confidential nature was denied.

Sullivan J. considered that the statement of the evidence referred to in s. 18 included the documents referred to in it. That learned judge said in part:

> The difficulty of this case arises out of the unusual circumstance that the basis of the Director's allegations against sundry competing firms and the employees of some of them is contained in his one Statement of Evidence, some portions of which affect one of them and other portions of which refer only to others.

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Considering that the Commission had a discretionary power to decide as to the material to be given to the various parties, he dismissed the action.

The appeals in the five actions were consolidated in the Court of Appeal. Desbrisay C.J.B.C. considered they should be dismissed and gave no written reasons. O'Halloran J.A. agreed that the statement of evidence referred to included all the evidence taken and documents referred to in it. He considered that while the duty to supply this material was imposed upon the director by s. 18 of the *Combines Investigation Act* it rested also on the Commission by necessary implication and that the Commission should direct that this be done.

Sheppard J.A. agreed that the Commission was vested with the power to supply the documents and held that it was for that body to determine what documents are fairly required in the case of such person against whom an allegation is made in the exercise of its powers under s. 18(3).

The disposition to be made of this matter depends, in my opinion, upon the interpretation which should be placed upon the language of subs. (1)(*b*) of s. 18, in so far as it relates to a person against whom an allegation is made by the director. The statement of evidence to be submitted to the Commission must, of necessity, be the evidence and the documents relating to all of the allegations made. But where, as in this case, there are allegations of conduct contrary to the statute against four of the companies, in respect of arrangements said to have been made *inter se* in relation to the salmon fishery with which Stevens and the other union officials are not concerned, and allegations of such conduct against Rigby, Stevens, Gordon and Parkin in relation to the trawl fishery with which none of the appellants are concerned, is it intended that nonetheless all the evidence taken on all the inquiries made and the relevant documents are to be supplied to persons other than those against whom the allegations are made?

The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention of the Parliament which passed them. Section 15 of the *Interpretation Act*, R.S.C. 1952, c. 158, which applies to this Act declares that every Act shall be deemed remedial and shall accordingly receive such fair, large and

liberal construction and interpretation as will best ensure the attainment of the object of the Act, according to its true intent, meaning and spirit.

Subsection (1)(*b*) is to be read together with subss. (2) and (4) of s. 18 which makes the purpose of the requirement perfectly clear, that being to enable such person to advance before the Commission, at the hearing to be held, such arguments as he may be advised against the allegations made against him.

As pointed out by Mr. Justice Sullivan, the difficulty has arisen by reason of the fact that the director prepared but one statement of evidence obtained by him in the course of several inquiries. Had a separate statement been prepared in respect of the alleged activities of the companies *inter se* and of those of the Trade union officials against whom the allegations are made in respect of the trawl fishery, no such question could have arisen. In my opinion, the construction to be placed upon the subsection should not be affected by the fact that the summary of the evidence taken during all of the inquiries was included in the one document.

Where the usual meaning of the language falls short of the whole object of the legislature, a more extended meaning may be attributed to the words if they are fairly susceptible of it (*Maxwell,* 10th ed. p. 68). It was this principle that was applied in the House of Lords in construing the *Workmen's Compensation Act* in *Lysons v. Andrew Knowles & Sons Limited*[1]. As it was said by Lindley L.J. in *The Duke of Buccleuch*[2], you are not to attribute to general language used by the legislature a meaning that would not only not carry out its object but produce consequences which, to the ordinary intelligence, are absurd. It was said in the Court of Appeal in *Holmes v. Bradfield Rural District Council*[3]:

> the mere fact that the results of applying a statute may be unjust or even absurd does not entitle this court to refuse to put it into operation. It is, however, common practice that if there are two reasonable interpretations, so far as the grammar is concerned, of the words in an Act, the courts adopt that which is just, reasonable and sensible rather than one which is, or appears to them to be, none of those things.

[1] [1901] A.C. 79, 70 L.J.K.B. 170. [2] (1889), 15 P.D. 86 at p. 96.
[3] [1949] 2 K.B. 1, 1 All E.R. 381.

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It would, in my opinion, be manifestly unjust in this matter to require that the evidence and the documents relating to the allegations against the four companies in respect of the agreements *inter se* should be delivered to parties entirely unconcerned with the allegations made against them or, on the other hand, to supply to the appellant companies the evidence and the union or associations' documents seized which may be relevant to the allegations made against the four individuals.

In my view, it is not to be assumed that Parliament required this unless the language employed will not bear any other interpretation. In the present case it appears to me clear that what was intended was that the person referred to in subs. (1)(*b*) should receive only copies of the evidence taken and the documents referred to in the statement, so far as they are relevant to the allegations made by the director against such person.

The prayer for relief in the various actions asks an injunction restraining the defendants from furnishing or making available to any person a transcript of the evidence given by the officers or employees of the various appellant companies in the course of the inquiry, or any of the documents seized at the instance of the director, the property of the plaintiff company, except to members of or employees of the Commission or to the Minister of Justice or any person acting in an official capacity under his direction. In addition, the appellant companies ask a declaration that the furnishing or making available at any time by the defendants or any of them of all or any part of the said transcript or the said documents to any member of the public or to any of the persons named in the allegations made in the statement of evidence is unlawful. A claim of this nature is permitted by Marginal Rule 285 of the Rules of the Supreme Court of British Columbia.

As I have pointed out, while the chairman of the Commission had informed the appellants of his intention to make the transcript of the evidence and all of the documents available to Stevens in response to his request, after the judgment in the Ontario action he informed them that he proposed to hold a hearing to hear argument upon the question as to whether this should be done. The matter was thus reopened and in the circumstances the appellants are not, in my opinion, entitled to an injunction.

The appellants are, however, in my opinion, entitled to a declaration that upon the true construction of s. 18 of the *Combines Investigation Act* the director, and in this case, the Commission are required to furnish to each person against whom an allegation is made in the statement of evidence a copy of the evidence taken at the instance of the director, only in so far as such evidence relates to the allegations made against such person, and copies of only such of the documents taken from the possession of the appellant companies as are relevant to the allegations made against him. To this extent, I would allow the appeals.

In view of the fact that success is divided on these appeals there should, in my opinion, be no order as to costs in this Court or in the Courts below and the judgments at the trial and in the Court of Appeal should be amended accordingly.

The judgment of Taschereau, Fauteux, Abbott and Judson JJ. was delivered by

JUDSON J. (*dissenting in part*):—The *Combines Investigation Act* as it now stands contemplates a division of responsibility between the Director of Investigation and Research, whose office is constituted by s. 5, and the Restrictive Trade Practices Commission, which is set up by s. 16(1). It is the director's duty to conduct an inquiry by examination of witnesses and investigation of documents, and he is given broad powers of compulsion and seizure. The purpose of his inquiry is to prepare a statement of evidence for submission to the Commission, and upon receipt of this statement the Commission conducts a hearing at which any person against whom an allegation has been made in the director's report must be allowed "full opportunity to be heard in person or by counsel".

After conducting this hearing the Commission must make a report in writing to the Minister. The report must review the evidence, appraise the effect on the public interest of the arrangements disclosed in the evidence, and contain recommendations as to the application of remedies provided in the Act or other remedies.

It is at once apparent that the functions which were once combined in one person, who was called the Commissioner under prior legislation, are now divided between the director and the Commission. They were vested in the Commissioner when *Proprietary Articles Trade Association v.*

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Attorney General for Canada[1]; *O'Connor v. Waldron*[2]; and *Re The Imperial Tobacco Co. Ltd. et al. and McGregor*[3], were decided, but there has been no change in the sum total of the function, and its characterization in these cases is still applicable. The combination of exercise of powers under this Act even today results in no more than a recommendation by the Commission to the Minister. The analysis made in *O'Connor v. Waldron,* at p. 82, is still accurate when applied to the present Act. Speaking of the commissioner under the old Act, the judgment says:

> His conclusion is expressed in a report; it determines no rights, nor the guilt or innocence of any one. It does not even initiate any proceedings, which have to be left to the ordinary criminal procedure.

This action is brought by certain companies and individuals whose activities have been investigated by the director, who has delivered to the Commission a statement of evidence containing 640 pages. One of the parties who has been investigated, The Allied Fishermen & Workers' Union, has applied to the Commission for a full disclosure of all the evidence and documents that have been examined by the director. There are, I understand, more than 9,000 documents as well as the transcripts of the oral hearings. The applicant union has been supplied with a copy of the director's statement of evidence. The Act requires this. But the applicant goes further and says that it must have all the material. The Commission has given a direction to make all this material available. The British Columbia Courts have held that the Commission has power to direct that this material be supplied. In a similarly constituted action in Ontario[4], Parker J. has come to the opposite conclusion.

The question is whether the Commission has power to furnish anyone with this material. These plaintiffs object to the transcripts of the examinations of their officers and their documents being placed in the hands of the applicant and they seek an injunction to restrain such disclosure. All the inquiries made by the director, as required by s. 28 of the Act, have been conducted in private. The hearing under s. 18, pursuant to a ruling already given by the Commission, is to be held in public.

[1] [1931] A.C. 310.
[2] [1935] A.C. 76.
[3] [1939] O.R. 213, affirmed [1939] O.R. 627.
[4] [1961] O.R. 596, 28 D.L.R. (2d) 711.

There is, in my opinion, no express statutory power authorizing this disclosure. Part I of the Act deals with the director's powers of investigation and research and I will deal with these only to the extent that they deal with the gathering of information. Section 9 requires any person to give information under oath or affirmation, as called for by a notice in writing from the director. Section 10 authorizes him to enter any premises for the purpose of obtaining evidence. He may examine and take away any documents and make copies. If he takes away documents for copying, provision is made for the return of the originals within a certain time. Section 11(1) provides that "All books, papers, records or other documents obtained or received by the Director may be inspected by him and also by such persons as he directs." What the precise scope of this section is, I do not know. It is enough to say that it does not authorize the disclosure which the Commission proposes to make in this case. Section 12 requires any person, pursuant to notice in writing, to give evidence upon affidavit or written affirmation. This section seems to overlap s. 9 referred to above but this does not affect the question in this litigation.

In Part II, s. 16 sets up the Commission. Section 17 provides for oral examination. A member of the Commission may order this on his own motion or on the *ex parte* application of the director. It also provides for compelling the attendance of witnesses and the production of documents. The director has custody of these documents and must return them within 60 days. Up to this point in the Act, all documents, whether originals or copies, are in the hands of the director.

Then follows s. 18, which I set out in full:

> 18. (1) At any stage of an inquiry,
>
> (*a*) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 498 or 498A of the *Criminal Code*, and
>
> (*b*) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.
>
> (2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

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(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2).

This section authorizes the director to submit only a statement of evidence. He has done this in the two volumes above referred to and comprising 640 pages. The director may submit argument in support of his statement of evidence and other interested parties must be given a full opportunity to be heard. But it is the director who has possession of the documents and there is nothing in the Act, until proceedings for a further inquiry under s. 22 are taken, which gives the Commission any power over any documents. The hearing under s. 18 is preparatory to the report of the Commission under s. 19. It is this report which is to "review the evidence and material, appraise the effect on the public interest of the arrangements and practices disclosed in the evidence and contain recommendations as to the application of remedies provided in this Act or other remedies."

If the Commission, after the hearing provided for in s. 18 is unable effectively to appraise the effect on the public interest, it makes an interim report giving its reasons. It then has power to require the director to make a further inquiry and only at this stage does it obtain any power over documents. By s. 22(2)(*c*) it may require the director to submit to the Commission copies of any books, papers, records or other documents obtained in such further inquiry. This gives only a very limited power over documents, restricted to those obtained in such further inquiry. Even if proceedings were going on under s. 22—and they are not—there would be no authority for the wide disclosure directed in this case. This case has not yet reached the stage provided for in s. 18, which is the hearing before the Commission. If a report is made under s. 19(1), it is significant that s. 19(2) imposes a duty on the director to return all documents, not already returned unless the Attorney General of Canada certifies that they are to be retained by the director for purposes of prosecution. My

conclusion, therefore, is that there is nothing in the Act which gives the Commission any express power over documents except in the event of a further inquiry under s. 22.

The next question is whether the power may be found by implication in the duty to afford a full opportunity to be heard under s. 18. I am satisfied that the applicant could not compel the disclosure, on the ground that, without it, it would be deprived of its statutory right. The applicant can come to this hearing with full knowledge of the allegations made against it and with full knowledge of the evidence against it as contained in the depositions (if any) of its own officers and the documents taken from its possession by the director. It is in a position to say that nothing coming from it justifies the director's statement of evidence, or that the statement should be modified in a certain way, or that the allegations made against it are unwarranted. It should be ready to say that the report to be made by the Commission to the Minister should or should not contain any criticism of the union. It should also be prepared to argue what, as far as it is concerned, should be contained in the report. There is no need of all the other material. What other people may have said, either under oral examination or in documents, is at this stage of no concern to the applicant. It is not bound by these statements, if there are any, and at this stage there is no question of the application of s. 41 of the Act. This only applies when there is a prosecution under the Act or the *Criminal Code.*

Whether full opportunity to be heard involves a right to this sort of production has been decided, adversely to the applicant, in *Advance Glass and Mirror Company Ltd. et al. v. Attorney-General of Canada and McGregor*[1] and *Re The Imperial Tobacco Company et al. and McGregor*[2]. I respectfully agree with these decisions and would apply them here. If there is no right on the part of the applicant, I can find no discretion on the part of the Commission, in the absence of statutory authorization.

Nor do I think that the power can be found in subs. (3) of s. 18, which directs the Commission to consider the statement submitted by the director together with "such

[1] [1949] O.W.N. 451.

[2] [1939] O.R. 213 (Hogg J.), affirmed [1939] O.R. 627, *per* Gillanders J.A. at p. 646.

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further or other evidence or material as the Commission considers advisable." There is plenty of scope for this subsection without reading into it the power to order disclosure of documents. Any interested person has the right to submit anything that is relevant to his case but this does not enable the Commission to get the documents from the director and give them to any party.

I am therefore of the opinion that the Commission in this case has misconceived its function. This is not a preliminary inquiry in a criminal prosecution nor anything in the nature of a preliminary inquiry. It is merely a hearing for the purpose of determining what kind of report shall be made to a Minister of the Crown. A full opportunity to be heard in these circumstances does not require and does not justify all this elaboration of procedure and discovery. There is no statutory authorization for it and there is a serious risk of frustration of the whole purpose of the Act, which is directed solely to investigation and report. The right to be heard must be applied in this context.

I would allow these appeals with costs both here and in the courts below and order that the injunctions issue in the terms sought by the appellants.

The judgment of Cartwright, Martland and Ritchie JJ. was delivered by

CARTWRIGHT J.:—The relevant facts and the terms of the *Combines Investigation Act,* hereinafter referred to as "the Act", are set out in the reasons of my brother Locke and those of my brother Judson, both of which I have had the advantage of reading. I find myself in substantial agreement with the reasons of my brother Locke and would dispose of the appeals as he proposes; I wish to add only a few observations.

In view of the fact that the director has already delivered a copy of the two-volume "Statement of Evidence" to each person against whom an allegation is made therein, nothing would be gained by considering whether each of those persons was entitled to receive the whole of the statement or only those portions thereof having relevance to the allegation made against him; but the circumstance that a person has in fact received the whole statement cannot

entitle him to receive copies of those portions of the evidence or of the documents therein referred to which are not relevant to the allegation made against him.

The powers given by the Act to the Commission and to the director are very wide, including as they do the power to compel persons to testify on oath and the power to take possession of documents which are private property. I think it clear that if it is asserted that the Commission or the director has power to give copies of the transcript of testimony given or copies of documents seized to business competitors or other persons who may have interests adverse to those of the person giving testimony or to whom the seized documents belong, the power asserted must be found in the terms of the Act.

The power is not given expressly and the question is whether it arises by necessary implication from the provisions of subs. (2) of s. 18, which require that at the hearing contemplated by the section "persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel", and from the provisions of subs. (4) of s. 18 which forbid the Commission to make a report under ss. 19 or 22 "against any person unless such person has been allowed full opportunity to be heard as provided by subs. (2)."

The duty which lies on any body to which the maxim, *audi alteram partem,* applies has been stated in many cases. In *University of Ceylon v. Fernando*[1], Lord Jenkins says:

> From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in *DeVerteuil v. Knaggs* [1918] A.C. 557 at p. 560:
>
> > Their Lordships are of the opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.

I find myself unable to agree with the view of my brother Judson that unless the director chooses to produce them at the hearing provided for by s. 18 the Commission has no power over the documents seized by the director. By subs. (3) of s. 18 the duty laid upon the Commission is to consider not only the statement submitted by the

[1] [1960] 1 All E.R. 631 at p. 638.

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director but also "such further or other evidence or material as the Commission considers advisable". In my opinion, the Commission, should it consider it advisable to do so, could require the director to produce at the hearing under s. 18 any or all of the documents in his possession and the complete transcript of the evidence taken before him. By s. 19(1) a statutory duty is imposed on the Commission to make a report to the Minister in which it "shall review the evidence and material, appraise the effect on the public interest of arrangements and practices disclosed in the evidence and contain recommendations as to the application of remedies provided in this Act or other remedies". The duty imposed by this subsection is not limited to a review of the "Statement of Evidence" alone; it contemplates a consideration of the evidence and material on which the "Statement of Evidence" is based, together with such further or other evidence or material as the Commission has deemed it advisable to consider pursuant to s. 18(3).

An essential part of the duty to give a full opportunity to be heard is to inform the person against whom an allegation is made of the substance of the relevant evidence, oral or documentary, on which the allegation is based; the imposition of the duty to give this information by necessary implication confers the power to give it. Nowhere in the Act can I find any other implied power to make the disclosure which the plaintiffs seek to prevent.

It is true that when the cases of *Re The Imperial Tobacco Company et al. and McGregor*[1], and *Advance Glass and Mirror Company Ltd. et al. v. Attorney-General of Canada and McGregor*[2], were decided, the commissioner was under the duty imposed by s. 13 of the *Inquiries Act*, R.S.C. 1927, c. 99, which read:

> 13. No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel.

But, as was pointed out by Mr. Maxwell, there has been a substantial change in the scheme of the applicable legislation since the decisions referred to, in that the present

[1] [1939] O.R. 213, affirmed [1939] O.R. 627.
[2] [1949] O.W.N. 451.

Act has interposed an impartial tribunal between the director and those against whom he makes allegations. I cannot think that the tribunal so interposed and charged with the duty of giving full opportunity to be heard is without the power to furnish to one against whom an allegation is made the relevant evidence and documents on which that allegation is based. I have already indicated my opinion that the Commission has no further power of disclosure.

We are not, in the case at bar, called upon to consider how a person against whom an allegation is made should proceed to obtain the information if it were denied to him. The question before us is as to the relief to which the plaintiffs are entitled when they have been advised by the Commission that it proposes to give information the disclosure of which is beyond the implied power referred to above.

In my opinion the plaintiffs have claimed the appropriate relief. For the reasons given by my brother Locke I agree with his conclusion that injunctions are not now necessary in view of the fact that the Commission has reopened the question as to what information it will disclose and will no doubt decide that question in accordance with the declaration proposed by my brother Locke and which I agree should be made.

It may well be, as my brother Judson suggests, that the information contained in the "Statement of Evidence" already delivered will, in the case at bar, prove sufficient to give to each person against whom an allegation is made a fair opportunity "to correct or controvert any relevant statement brought forward to his prejudice" and that there will be no necessity of supplying any further information; but, in my respectful opinion, the decision as to what further information, if any, is necessary is committed to the Commission subject to the limitations set out in the declaration which our judgment directs to be made.

I would dispose of these appeals as proposed by my brother Locke.

Appeals allowed in part, Taschereau, Fauteux, Abbott *and* Judson JJ. *dissenting.*

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