

proper law of tort and although his remarks were purely obiter (since the case dealt with the interpretation of what is the place of a tort for the purpose of service of a Writ *ex juris*), Currie J. said, "If the opportunity is taken to apply a new doctrine, then I should prefer that the doctrine be that of the proper law of tort as propounded by Professor J. H. C. Morris."<sup>32</sup>

It is the hope of this writer that the Canadian Courts will seize this golden opportunity of pioneering the development of a new principle which is so badly needed in this important field in Private International Law.

C. H. C. EDWARDS\*

## PUBLIC INTERNATIONAL LAW

An interesting and significant judgment involving the question of the implementation of an international treaty as part of the law of the land was handed down in 1964 by Smith, J., of the Manitoba Court of Queen's Bench, in the case of *Regina v. Canada Labour Relations Board, Ex parte Federal Electric Corp.*<sup>1</sup>

In this case, to which I shall refer herein as the *Federal Electric Case*, Federal Electric Corporation was seeking an order of *certiorari* from the Manitoba Court of Queen's Bench in an endeavour to quash an order of the Canada Labour Relations Board certifying Local 2085 of the International Brotherhood of Electrical Workers as bargaining agent for a unit of employees of Federal Electric. A wide variety of arguments was urged, including jurisdictional and constitutional points, but the application for *certiorari* was ultimately dismissed. Of special interest here, however, was the contention that the Canada Labour Relations Board was precluded from hearing the application for certification on the ground that a treaty between Canada and the U.S.A. prescribed that rates of pay and working conditions were to be set in this particular situation not by the ordinary processes of bargaining but through consultation with the Department of Labour of Canada.

Federal Electric, under a contract with the United States Air Force, was to man and operate the Distant Early Warning System [D.E.W. Line] in Alaska, Canada and Greenland, and all of the work and all of the employees in the instant case were located in the Canadian Territories. The problem therefore arose of a square conflict between the provisions of an international treaty to which Canada was a party, and the provisions of a federal Canadian Statute, the

---

32. *Id.*, at p. 691.

\*Dean, Manitoba Law School.

1. (1964), 44 D.L.R. (2d) 440, 47 W.W.R. 391.

Industrial Relations and Disputes Investigation Act,<sup>2</sup> according to which statute the Canada Labour Relations Board clearly had jurisdiction to hear such an application for certification. The Board itself had held, when faced with this problem, that, as a point of law, this Treaty would require attendant legislation by the Parliament of Canada in order to exclude the operation of the federal statute. No such legislation existed.

In the Queen's Bench, the learned judge relied on one Privy Council case<sup>3</sup> in a Canadian appeal, and on one Supreme Court of Canada case,<sup>4</sup> in support of the proposition that (with the exception of matters relating to diplomatic status, certain immunities and belligerent rights) treaty provisions affecting matters within the purview of municipal law and attempting to change municipal law were incapable of effecting such change without appropriate legislative action. The treaty in the *Federal Electric Case*, having been merely tabled in the House of Commons, but not legislated upon, could not therefore abrogate rights or obligations under existing municipal law. The States concluding the treaty were of course still bound in international law towards each other.

As to the main proposition applied here by Smith, J., regarding the general requirement of legislative implementation, Federal or Provincial as the case may be,<sup>5</sup> for a "treaty which involves a change in existing law" (at p. 454), the weight of authorities seems clearly to be in support.<sup>6</sup> At p. 455, however, the learned judge quotes without comment a dictum from the *Francis Case*<sup>7</sup> in which Kerwin, C.J.C., adverted to a seeming exception to this main proposition as regards a treaty of peace. The existence of such an exception may, with respect, be considered somewhat doubtful: see, for example, the observations of Thorson, J., in *Bitter v. Secretary of State*.<sup>8</sup>

The treaty in the *Federal Electric Case* was of the type known as an exchange of notes, with the exchange taking place between the Canadian Ambassador to the U.S. and a representative of the U.S. Secretary of State, in Washington. This is a well-recognized informal method of concluding an agreement between States,<sup>9</sup> and Smith, J., while holding that this was "not a formal treaty" considered that it

---

2. R.S.C. 1952, c. 152.

3. *A.-G. Canada v. A.-G. Ontario*, [1937] A.C. 326, [1937] 1 D.L.R. 673; (1937), 31 Am.J.Int.L. 348.

4. *Francis v. The Queen*, [1956] S.C.R. 618; (1956), 3 D.L.R. (2d) 641.

5. *Cf. A.-G. Canada v. A.-G. Ontario*, *supra*, Note 3.

6. See Castel, *International Law Chiefly as Interpreted and Applied in Canada*, (1965), at pp. 851-860; Starke, *Introduction to International Law*, 5th Edition, (1965), pp. 79-86.

7. *Supra*, Note 4.

8. [1944] 3 D.L.R. 482, at 497-8.

9. Cf. Weinstein, *Exchanges of Notes*, (1952), 29 British Yearbook of International Law 205.

See also Lawford, *Canadian Practice in International Law* 1963, (1964) 2 Canadian Yearbook of International Law 271, at 301-2; and H. C. Deb. (Can.), 1963, Vol. IV, at 3028-9 and 3118-9, in connection with the executive agreement (in the form of an exchange of notes between governments) entered into by the U.S.A. and Canada concerning nuclear warheads. The Prime Minister drew a distinction between a treaty or heads of state agreement, which *would* require ratification and the prior approval of the Commons, and an executive agreement, an exchange of notes between governments, which would *not*.

had "the status of a treaty for our purposes, in the sense that it is a contract between States".

Even had the treaty been valid municipally, the learned judge was prepared to hold that its own provisions were sufficient to save the jurisdiction of the Canada Labour Relations Board in this matter. Article 6 of the treaty provided:

Nothing in this Agreement shall derogate from the application of Canadian law in Canada, provided that, if in unusual circumstances its application may lead to unreasonable delay or difficulty in construction or operation, the United States authorities concerned may request the assistance of Canadian authorities in seeking appropriate alleviation. In order to facilitate the rapid and efficient construction of the DEW System, Canadian authorities will give sympathetic consideration to any such request submitted by United States Government authorities.

In the first place, there was no evidence that the proviso, *i.e.*, all of the cited extract except the first fourteen words, had ever been invoked. Thus, in view of those opening words, the Court felt that there could not have been any intention that the treaty should abrogate rights or obligations created for employees and employers by the federal statute mentioned *supra*.

This case, then, provides us with an interesting illustration of how an international agreement might have to be considered in connection with domestic legal arrangements, and of the ways in which principles relating to international law find their practical applications in our municipal courts.<sup>10</sup>

S. J. LANGER\*

## CONTRACTS

Let us start at the beginning, with Offer and Acceptance. Two recent decisions illustrate the application both of well known, and of less familiar, principles governing the formation of a contract. It is generally assumed that acceptance of an offer is ineffective unless communicated to the offeror,<sup>1</sup> but authority for this assumption is scanty, and scarcely modern.<sup>2</sup> In *Parkette Apartments Ltd. v. Masternak*,<sup>3</sup> the High Court of Ontario was able to apply the rule on the following facts. Plaintiff was attempting to make a deal with the defendant for the purchase of the defendant's property. An offer of \$64,000 was "accepted" by the defendant, but as she introduced certain material alterations into the terms of the offer, the "acceptance" was in law a counter-offer. One of the changes was to set a deadline of January 31st. The plaintiff initialled the defendant's alterations, but made an alteration of his

---

10. Cf. Vanek, *Is International Law Part of the Law of Canada*, (1949-50), 8 University of Toronto L.J. 251. \*Assistant Professor, Manitoba Law School.

1. Subject to exceptions in the case of mailed acceptance, and the so-called unilateral contracts.

2. Principally *Powell v. Lee*, 99 L.T. 284 (K.B. Divisional Ct.), Cf. *Felthouse v. Bindley* (1862), 11 C.B.-N.S., 869, 142 E.R. 1037; *affd.* (1863) 7 L.T. 835.

3. (1965) 50 D.L.R. 2d 577 (Ont.).