# Manitoba Court of Appeal

Citation: Re Apple Meadows and Manitoba
Date: 1985-04-02

Monnin C.J.M., Matas and Philp JJ.A.

Counsel:
*D'Arcy C.H. McCaffrey*, Q.C., for appellants.
*B.F. Squair*, Q.C., for respondents.



[1] MONNIN C.J.M.:—This is an appeal from a decision of Wilson J. who dismissed an application by the owners of a residential apartment complex to review and quash a decision of the Rent Appeal Panel pursuant to the *Residential Rent Regulation Act*, 1982 (Man.), c. 16 (C.C.S.M., c. R84), (hereinafter "RRR Act"), and for a declaration that the same owners are exempt from rent control for the period of time provided in the *Rent Stabilization Act*, 1976 (Man.), c. 3 (C.C.S.M., R85) (hereinafter "RS Act"). The RRR Act was proclaimed in force on August 1, 1982.

[2] In July 1980, by s. 36 of the "Act to amend the Landlord and Tenant Act and the Condominium Act", 1980 (Man.), c. 60, s. 36, the 1976 RS Act (1976, c. 3) was repealed. On June 30, 1982, by s. 26 of the "Act to amend the Landlord and Tenant Act", 1982 (Man.), c. 18, s. 128 of the *Landlord and Tenant Act*, R.S.M. 1970, c. L70, was repealed. Section 128 provided that notwithstanding the repeal of the RS Act, proceedings under the Act which had been commenced prior to its repeal could be completed in accordance with the repealed legislation (RS Act) as if not repealed. This obviously was a transitory provision.

[3] The RS Act, proclaimed in May, 1976, was the first modern rent control legislation in this province. In July, 1980, a modified form of rent review was established under the *Landlord and Tenant Act* and the *Condominium Act*, R.S.M. 1970, c. C170, and the RS Act was repealed.

[4] As of August 1, 1982, a further comprehensive rent control programme came into effect under the RRR Act and it replaced the rent review programme under the now defunct *Landlord and Tenant Act* and the *Condominium Act* and it reintroduced a cost-based rent control programme similar to that under the first legislation (the RS Act). The simple fact of deciphering these three bits of legislation is confusing, but at various times there have been three schemes of rent control in operation in this province and we are now proceeding under the latest scheme, namely, the RRR Act.

[5] I cannot improve on the expose of the case as outlined by Wilson J., and I quote it verbatim [10 D.L.R. (4th) 67 at pp. 68-9, 32 R.P.R. 220, 31 Man. R. (2d) 2]:

> Applicants are proprietors of residential apartment units built with an eye to the exemption from rent controls to be had with adoption of the *Rent Stabilization Act*, 1976 (Man.), c. 3 (C.C.S.M., c. R85). They now cry "foul" to the cancellation of those exemptions worked by repeal of that statute, and by the rules introduced by the *Residential Rent Regulation*

Thus the five-year period by this new legislation commences on January 1, 1978, and expires on December 31, 1982. These owners are therefore deprived of some exemptions for the period extending from January 1, 1983 to approximately June 1, 1984 — a period of some 18 months — and that is what hurts them and, as so ably said by Wilson J., "they cry 'Foul'". They claim that the Legislature cannot do that to them as in 1976 it granted exemptions and is not free to withdraw them in 1982.

[9] The owners in a letter to the Rent Appeal Panel dated November 16, 1983, very clearly set out their concern as follows:

> In scheduling rent levels, there was a planned and concerted effort to normalize and bring rents into market condition levels over a five year period. We were given rights under that legislation and we believe we still have that exemption prevailing notwithstanding the provisions of the existing legislation.

[10] At issue therefore is the power of the Legislature to grant a five-year exemption expiring some time in 1984 and subsequently, by further legislation, terminating all exemptions on December 31, 1982, when in the meantime the individual landlords and corporations have embarked on financial commitments relying fully on this so-called guaranteed five-year exemption. Is the Legislature so supreme that it can take away what it previously gave? If it has such power then in this case it was not so clearly expressed as to show that it really meant to withdraw from those owners the exemptions previously granted.

[11] Another way of putting the question is: did Wilson J. err in holding that the exemptions granted under the prior legislation were extinguished by the subsequent legislation?

[12] The right of the Legislature to change its mind is found in common law and in statute. In the famous Manitoba 1890 school question reference (see *Re Certain Statutes of Province of Manitoba Relating to Education* (1894), 22 S.C.R. 577), Sir Henry Strong C.J.C., at p. 655, spoke of the "strength and universality of the presumption that every legislative body has power to repeal its own laws".

[13] Sections 3(1) and 24(1) of the *Interpretation Act*, R.S.M. 1970, c. 180, read as follows:

> 3(1) Every provision of this Act extends and applies to every enactment, unless a contrary intention appears, enacted or made before or after the commencement of this Act.
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> 24(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying a power, privilege, or advantage thereby vested in, or granted to, a person.

[14] In support of the owners' claim, it is alleged that they had vested rights in these five-year exemptions and that there is a presumption on the part of the Legislature against interference with vested rights. Driedger in *The Construction of Statutes* (1974), says at p. 137:

[19] It was further argued, in the alternative, that the Legislature was estopped from changing the exemption provisions and in effect reducing them in this case from five to four years. The answer to that question is found in the words of Rand J. in *St. Ann's Island Shooting & Fishing Club Ltd. v. The King*, [1950] 2 D.L.R. 225 at p. 232, [1950] S.C.R. 211 at p. 220, where, referring to the House of Lords' decision in *Gooderham & Worts Ltd. v. C.B.C.*, [1947] 1 D.L.R. 417, [1947] A.C. 66, [1947] 1 W.W.R. 1, he said:

> It was argued that the Crown is estopped from challenging the lease, but there can be no estoppel in the face of an express provision of a statute ...

[20] Consequently the claims of the owners fail on all grounds. In the result the application for *certiorari* and for a declaration that the owners are exempt from rent controls for the period in dispute must be dismissed.

[21] Wilson J. reached the proper conclusion and the appeal is dismissed with costs in both courts.

[22] Matas J.A. concurs with Philp J.A.

[23] Philp J.A.:—Apple Meadows Limited and Fairweather Properties Limited (the owners) operate an apartment complex known as Apple Meadows in Winnipeg. They appeal the dismissal by Wilson J. of their application for an order reviewing and staying a decision of the Rent Appeal Panel (constituted under the *Residential Rent Regulation Act*, 1982 (Man.), c. 16 (C.C.S.M., c. R84) (the RRR Act)); for a declaration that they are exempted from rent control for the period provided under the *Rent Stabilization Act*, 1976 (Man.), c. 3 (C.C.S.M., R85) (the RS Act); and for an order fixing damages owed by the respondent, the Government of Manitoba, to them for breach of contract.

[24] I have concluded that Wilson J. reached the proper conclusion and the appeal must be dismissed.

[25] The RS Act, which was proclaimed in force May 15, 1976, was the first modern rent control programme in Manitoba. Certain tenancies of residential premises were exempted from the rent control provisions of the Act by s. 2(2)(c):

> 2(2) This Act does not apply
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> (*c*) for a period of 5 years from the beginning of the first tenancy thereof, to tenancies of new residential premises that are
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> (i) under construction and not occupied on January 1, 1976, or
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> (ii) constructed after January 1, 1976 ...

[26] The construction of the Apple Meadows apartment complex commenced in late 1976 and some of the residential premises in the complex were first occupied in 1977, some in 1978, and some in 1979. The owners say that the complex "would never have been started,

construction and maintenance costs of the premises in question.

[32] The owners argue that they had acquired "vested rights" under the RS Act. For its part, the Government of Manitoba says that the exemption from rent controls under s. 2(2)(*c*) of the RS Act was a "pre-existing statutory right" or "privilege", and not a "vested right". Professor Pierre A. Côté, in *The Interpretation of Legislation in Canada* (1984), comments that "(t)o attempt a definition of Vested rights' would be somewhat audacious" (see p. 113 *et seq.*). Because of the conclusion I have reached, I find it unnecessary to pursue this point.

[33] Counsel for the owners acknowledges that the right of a Legislature to change its mind is confirmed both in common law and statute: (see *Re Certain Statutes of Province of Manitoba Relating to Education* (1894), 22 S.C.R. 577 at p. 655, where Sir Henry Strong C.J. spoke of the "strength and universality of the presumption that every legislative body has power to repeal its own laws"; and s. 24(1) of the *Interpretation Act*, R.S.M. 1970, c. 180:

> 24(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying a power, privilege, or advantage thereby vested in, or granted to, a person.

[34] There is a presumption in the interpretation of statutes against interference with vested rights. That presumption is codified in s. 25(1) of the *Interpretation Act* which provides in part:

> 25(1) Where an enactment is repealed in whole or in part, the repeal does not,
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> (*b*) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder;
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> (*c*) affect a right, privilege, obligation or liability acquired, accrued, accruing, or incurred under the enactment so repealed;

But it is a presumption or a principle of construction, and, as Professor Côté points out, "non-interference with vested rights is only a presumption which can be set aside in the usual way, expressly or implicitly": *The Interpretation of Legislation, supra*, p. 113. That the application of s. 25(1) of the *Interpretation Act* is so limited is confirmed by s. 3(1) of the Act which says:

> 3(1) Every provision of this Act extends and applies to every enactment, *unless a contrary intention appears*, enacted or made before or after the commencement of this Act.

(My emphasis.)

[35] On the subject of interference with vested rights, Dickson J. (as he then was) said in *Gustavson Drilling (196k) Ltd. v. M.N.R.*, (1975), 66 D.L.R. (3d) 449 at pp. 462-3, [1977] 1 S.C.R. 271 at pp. 282-3, [1976] C.T.C. 1:

rents for the residential premises; and

(*c*) notwithstanding any judgment or decision of a court rendered before the coming into force of this Act, in respect of any proceedings relating to the increase or fixing of rent for the residential premises.

(My emphasis.)

[38] In my view, there is no ambiguity or uncertainty in the opening words of s. 2(1). The Act applies to "all residential premises in Manitoba". Counsel for the owners argues that the inclusion of cls. (*a*), (*b*) and (*c*) gives rise to the maxim of statutory interpretation known as *expressio unius est exclusio alterius.* The maxim is described in Black's Law Dictionary, 5th ed., at p. 321:

> A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another ... Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.

[39] In my view, the inclusion of the clauses does not limit the application of the general words of the section that precede them; they reinforce the general application of the Act that is intended by those words. Rather than limiting the application of the statute, the clauses confirm its general application, even to circumstances where it might otherwise be argued that intervening events (an agreement or waiver, pending litigation, or a judgment or decision of a court) prevent the application of the Act.

[40] In my view, Wilson J. was right in rejecting the *expressio unius est exclusio alterius* argument. That maxim has no application to s. 2(1).

[41] I turn then to s. 2(2)(*c*) of the RS Act and s. 2(2)(*a*) of the RRR Act, both of which are quoted above. The owners argue:

> The two exemptions are compatible. In fact, the overall intention appears similar, as both statutes expressly grant a five year exemption to new construction, recognizing the same reasonable start-up period.

[42] The Government of Manitoba argues that "an exemption privilege or benefit given under a former statute [the RS Act] was specifically altered or abridged in part by a later statute [the RRR Act] which reflected a deliberate policy concern and change for a new rent control program initiated by another government".

[43] I find no ambiguity in s. 2 of the RRR Act, nor do I find the exemption provisions in that section compatible with the exemptions provided under s. 2(2)(*c*) of the R.S. Act. By s. 2(1) of the RRR Act, that Act is clearly applicable to "all residential premises in Manitoba", which expression includes the Apple Meadows complex; and s. 2(2)(*a*) provides an exemption from

[48] A final argument put by the owners, that of estoppel, must also fail.

[49] Estoppel prevents a party from speaking against his own words or conduct. In *Moorgate Mercantile Co. Ltd. v. Twitchings*, [1975] 3 All E.R. 314 at p. 323, Lord Denning M.R. said:

> Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and of equity. It comes to this. When a man, by his words or conduct, had led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so.

[50] There is uncertainty in the law as to whether, and to what extent, estoppel binds the Crown. See the article "Estoppel and The Crown" by Sherwin Lyman, 9 Man. Law Jo. 15 (1978), where the author reviews English and Canadian authorities in which the defence of estoppel has been raised against the Crown.

[51] But does estoppel arise in the circumstances of this appeal? I cite *Attorney-General to The Prince of Wales v. Collom*, [1916] 2 K.B. 193, and *Robertson v. Minister of Pensions,* [1949] 1 K.B. 227, as examples of decisions where estoppel against the Crown has been considered. In *Collom*, Atkin J. said (at p. 204):

> A further point was raised that no estoppel binds the Crown and that this equity is based upon estoppel. There is authority for the general proposition so far as estoppel by deed is concerned. I know of no authority for the proposition as applied to estoppel in pais. But I think that it is established that equitable defences such as I consider this to be are available against the Crown...

There, estoppel was raised, based upon the conduct of an agent of the Duchy of Cornwall, the owners of property in which the Crown had a reversionary interest.

[52] In *Robertson*, Lord Denning said (at p. 231):

> The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded.

There, Lord Denning held that the Minister of Pensions was bound by a letter written to Robertson by an official in the War Office, and was estopped from denying Robertson's entitlement to a disability pension.

[53] The defence of estoppel in those cases was based on the words or conduct of an officer, agent or employee of the Crown. That is not the case in this appeal. The owners do not say that they acted in reliance upon the words or conduct of some officer, agent or employee of the Government of Manitoba; or upon assurances, representations or statements that such a person made to them. They relied upon an exemption provision in a statute duly enacted by the Legislature, and later repealed.

[54] Like the argument based on the principles of unilateral contract, I view the estoppel