Whatever Happened To . . . *Roncarelli v. Duplessis*

Peter Bowal

> [A]ction dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signalize the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure. – *Roncarelli v. Duplessis*, [1959] S.C.R. 121, per Rand J. at page 142.

Introduction

The rule of law is such a foundational principle of our legal system that it is enshrined in the Preamble to the *Canadian Charter of Rights and Freedoms*.[1] It is an abstract concept, not easily defined. It means that "we are governed by laws, not by people," that we are all equally subject to the law regardless of our wealth and political power.

Therefore, government action must not be arbitrary, but must be rooted in law. Every law has a purpose and it must be applied according to that purpose, and not to achieve extraneous objectives, such as punishing government and political opponents. Every public official may only act under authority of specific law.

The rule of law may be hard to define precisely but, like obscenity laws, it is easy to recognize a case that violates it. In Canada, the rule of law found its footing in 1959, in the case of *Roncarelli v. Duplessis*. It is interesting to note that this case happened a generation *before* the *Charter of Rights* and its Preamble.

Frank Roncarelli was a successful restaurateur in Montreal. His restaurant, Quaff, was in a busy section of the city and had been passed down to him by his father. The restaurant had received a liquor licence for every one of the last 34 years. Roncarelli was well-educated and enjoyed a very good reputation for running a popular high-end restaurant.

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He was also a Jehovah's Witness. Members of that religion were good at rattling the established Roman Catholic church in Quebec in the 1950s, the largest social influence in the province at the time. As Justice Rand describes, at page 131:

> The first impact of their proselytizing zeal upon the Roman Catholic church and community in Quebec, as might be expected, produced a violent reaction. Meetings were forcibly broken up, property damaged, individuals ordered out of communities, in one case out of the province, and generally, within the cities and towns, bitter controversy aroused. The work of the Witnesses was carried on both by word of mouth and by the distribution of printed matter, the latter including two periodicals known as *The Watch Tower* and *Awake*, sold at a small price.
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> In 1945 the provincial authorities began to take steps to bring an end to what was considered insulting and offensive to the religious beliefs and feelings of the Roman Catholic population.

A city by-law was enacted requiring a licence "for peddling any kind of wares." The police rounded up and arrested close to one thousand young Jehovah Witness men and women who were offering their leaflets on the street corners. The fine was $40, a large sum at the time. The accused all pleaded "not guilty." When they asked to be released on bail Roncarelli stepped forward and pledged tens of thousands of dollars to help his fellow Jehovah Witnesses.

While the prosecutor planned to run a test case of this charge, the unlicenced distribution of the tracts on the streets continued and many Jehovah Witnesses were repeatedly charged with violating the by-law. The government and the public became irritated by the Jehovah Witnesses attacking the Church, being issued tickets for doing so and returning to the streets to continue more of the same, thanks to Roncarelli. Although Roncarelli was doing nothing illegal, the Duplessis government in Quebec saw him as helping his accused friends make a mockery of the justice system, and the public continued to blame Roncarelli. According to the Supreme Court of Canada, people in Quebec:

> … sought other means of crushing the propagandist invasion and among the circumstances looked into was the situation of [Roncarelli]. Admittedly an

> adherent, he was enabling these protagonists to be at large to carry on their campaign of publishing what they believed to be the Christian truth as revealed by the Bible; he was also the holder of a liquor licence, a "privilege" granted by the Province, the profits from which, as it was seen by the authorities, he was using to promote the disturbance of settled beliefs and arouse community disaffection generally. (p. 132)

Another Witness, Saumur, had been harassed by the police and arrested 103 times for distributing the literature before he challenged the legal basis for the arrests on the basis that the municipality lacked jurisdiction and that this was religious and political censorship.

The all important liquor licence at Roncarelli's restaurant was coming up for renewal by the Quebec Liquor Commission. The chief prosecutor in Montreal and the head of the Commission discussed it. Then the Commission head called Premier Duplessis to ask what to do about Roncarelli. The Premier agreed the matter was most serious but they should be certain this man who wanted the liquor licence renewal was the same person involved in the surety bails. A private investigator was hired to confirm his identity.

The next Jehovah Witness tract was another bombshell. Under the banner, "Quebec's Burning Hate", the Witnesses seared the province by condemning what they called the savage persecution of Christians.[2] Now the line had been crossed. The Premier, who was also the Attorney-General, ordered that all copies of this tract were to be seized and one Witness was charged with the obscure crime of seditious libel. Within the week, which also happened to be when Roncarelli applied for the renewal of his restaurant's liquor licence, the licence was denied and the Premier declared that no further liquor licence would ever be granted to him. This decision on December 4, 1946 was presumably to punish Roncarelli and to curtail his financial ability to support people charged with offences. It was a warning to others that they would similarly be stripped of provincial "privileges" if they persisted in supporting the Witnesses.

Charges Struck Down

The Jehovah Witnesses took their fight against Quebec police and political harassment to court. In 1951, the man accused of the crime of seditious libel was acquitted. The Supreme Court of Canada said mere criticism of the government is not a crime (*R. v. Boucher*).

The bylaw under which all the Jehovah's Witnesses were charged and arrested for distributing their leaflets to the public without the necessary permits was found to be unconstitutional seven years later (*Saumur v. The City of Quebec*). Another Witness, Saumur, had been harassed by the police and arrested 103 times for distributing the literature before he challenged the legal basis for the arrests on the basis that the municipality lacked jurisdiction and that this was religious and political censorship. In a 5 to 4 decision, the Supreme Court of Canada said the subject matter of the bylaw related to "speech" and "religion" which were both in the exclusive constitutional jurisdiction of the federal government. All three francophone judges found the law to be valid, which was a prelude to what Roncarelli would eventually face.

This decision led to the dismissal more than 1000 cases against Witnesses in the Province of Quebec. Ultimately all charges were dropped against those Witnesses whose attendance in court Roncarelli had vouched for.

Roncarelli Goes to Court

When the liquor licence was not renewed, Roncarelli's restaurant business declined and was sold within six months. He was not charged with any offence like the two other Jehovah Witnesses; he would have to start his own action to take on the Premier if he was to obtain any redress. There was no precedent for someone in Roncarelli's position and it would not be easy for a vilified man to extract compensation from a powerful Premier. He launched a lawsuit seeking $119,000 in damages.

Thirteen years passed before the Supreme Court of Canada issued its decision. After a five-day hearing in the Court, the two francophone judges (both sons of previous premiers of Quebec) were the strongest defenders of Duplessis and found no legal wrong in what he did. They had taken the same position in other cases of abuse of power by the Duplessis government. Six of the other judges ruled against Duplessis, saying that that there is no such thing as unlimited discretion or power in public authorities, including the Premier. Rand J. stated at pp. 140:

> [legislation does not confer] an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. … 'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.

Continuing at pp. 141- 142:

> The act of [Duplessis] through the instrumentality of the Commission brought about a breach of an implied public statutory duty toward [Roncarelli]; it was a gross abuse of legal power expressly intended to punish him for an act wholly irrelevant to the statute, a punishment which inflicted on him, as it was intended to do, the destruction of his economic life as a restaurant keeper within the province. …

In the end, Premier Duplessis was ordered to personally pay Frank Roncarelli a total of $46,132 for damages and court costs, only a small fraction of his actual loss. The moral victory was much sweeter. This case was likely the first one where a person had sued the premier of a province, and won.

Conclusion

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The language used by the judges suggested that even they were troubled by the tactics of the Jehovah Witnesses who had fomented so much civil unrest. Quebec society and its provincial government clearly were at war with the Witnesses. The law, however, is blind to popularity. What is constitutionally monumental is the objective judicial conclusion that the Premier did *not* have untrammelled powers to punish the most unpopular people. He would have to follow the law.

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Roncarelli v. Duplessis remains today a landmark constitutional decision. More accurately, it is the trilogy of Supreme Court of Canada decisions (*Boucher, Saumur* and *Roncarelli*) from 1951 to 1959 that collectively stand tall as the inspiring pre-*Charter of Rights* fortress for the rule of law in Canada.

After losing his restaurant, Roncarelli found work in highway construction and moved to the United States. He died within a few years of the decision that vindicated him.

Notes

1. The Preamble reads: "Whereas *Canada is founded upon principles that recognize* the supremacy of God and *the rule of law*" (emphasis added)
2. The Jehovah Witnesses were widely despised in Quebec society. Even 13 years later, Supreme Court justices would refer to the Jehovah Witnesses as a "militant religious sect."

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