The Impact of the Supreme Court of Canada's Decision in The Case of Gabriel Nadeau-Dubois in The Context of Individual and Collective Labour Relations

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In October 2016, the Supreme Court of Canada rendered an interesting decision in a case opposing a Université Laval student, Jean-François Morasse, and Gabriel Nadeau-Dubois, one of the main spokespersons for the "Maple Spring" movement and representative of a coalition of student organizations named the "CLASSE".

Although the decision deals with contempt of court in the context of student protests, the points of law flowing from it regarding the required evidence to prove the existence of contempt of court are relevant in the context of both individual and collective labour relations.

In April 2012, at the height of the student protests, when picket lines had formed on campuses, Morasse sought an order from the Superior Court, prohibiting, among other things, students from blocking access to classes.

About ten days later, in a television interview, Nadeau-Dubois made comments which, in Morasse's opinion, were incitements to override the injunction order that he had obtained. He therefore filed a motion for contempt against Nadeau-Dubois before the Superior Court. The trial judge held Nadeau-Dubois in contempt of court because the student organization that had been served with the injunction order was part of the CLASSE. He therefore concluded it could be inferred Nadeau-Dubois knew about the order. This decision was later overturned by the Court of Appeal, resulting in the matter being appealed to the Supreme Court of Canada.

In a split decision, the majority of the highest court in the country concluded that Nadeau-Dubois could not be held in contempt of court, since it had not been proven that he had knowledge, either directly or by inference, of the injunction order.

The Court recalled that contempt of court is the only civil proceeding in Québec that may result in a penalty of imprisonment. It is an exceptional measure. In order for a guilty verdict to be rendered, the formalities for contempt proceedings must be strictly complied with. Clear, precise and unambiguous notice of the specific contempt offence

must be given to the accused, and the elements required for a conviction must be proven beyond a reasonable doubt.

In this case, Nadeau-Dubois had not been served personally with the injunction order. The fact that it was served on one of the organizations that was part of the CLASSE was not sufficient to support an inference that Nadeau-Dubois had personal knowledge of the order. According to the Court, the fact that other similar orders had been issued did not prove that Nadeau-Dubois was aware of the order obtained by Morasse, nor could such knowledge be imputed to Nadeau-Dubois, either on the basis of the comments he had made during the interview, the questions he was asked, or the statements made by the other student spokesperson interviewed with him.

Moreover, the majority concluded that Nadeau-Dubois' endorsement of students picketing in general did not amount to an encouragement to use picket lines to block access to classes, since the injunction order did not prohibit picketing altogether.

The three dissenting justices were of the view that the actual personal knowledge of a court order required by the case law can always be inferred from circumstantial evidence. They would have maintained the guilty verdict against Nadeau-Dubois, on the basis that he was aware of similar orders and that his comments constituted an incitement to contravene the order in question, as well as the other orders issued to ensure access for the students to their classes.

In Québec, an employer may in some cases have recourse to contempt of court proceedings in order to secure compliance with an order or an injunction that he has obtained. Such might be a case where an order is made requiring a former employee to comply with a non-competition clause that is not being honoured, or requiring certain unionized employees to cease and desist from illegal picketing.

For that reason, it is particularly interesting to focus on the burden of proof required by the Supreme Court to demonstrate direct or inferred knowledge of such a court order.

The judgment suggests that an injunction prohibiting picketing during a strike in a unionized environment must not only be served upon, and brought to the attention of, the union's officials, but also to that of each of the individuals likely to be concerned in case of non-compliance with the order. Furthermore, the order itself must be very clear, so that the parties concerned will know what is required of them.

Concretely, as far as collective labour relations are concerned, this implies that it would be preferable to serve copies of the order by bailiff individually on each employee, on the picket line or at home. Apart from the costs of so doing, the consequences of such action on labour relations will have to be assessed in each case.

As the Supreme Court held, this is an exceptional proceeding, and evidence of knowledge of the order concerned must be clearly demonstrated. We reiterate that the exceptional nature of this procedure results from the fact that, even in a civil (non-criminal) matter, imprisonment may result for any person convicted of contempt of court.

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