Tessier Ltée v Quebec (2012) – Division of Powers and Labour Relations

On May 17, 2012, the Supreme Court of Canada released its decision in *Tessier Ltée v Quebec*.[1] The case dealt with the constitutional division of powers between the federal and provincial levels of government. At issue was whether Tessier, a company with part of its operations related to shipping, was governed by federal or provincial occupational health and safety legislation.

Tessier is a heavy equipment rental company in Quebec. The company has operations in several sectors, including crane rental services and stevedoring. The stevedoring operations account for 14% of its overall revenue and 20% of employee salaries. Employees in stevedoring operations are fully integrated with the rest of the company.

The dispute first arose in 2006 when Tessier's parent company sought a declaration from Quebec's Commission de la santé et de la sécurité du travail (CSST) that Tessier's activities fell under federal jurisdiction. The CSST ruled that Tessier's activities came under provincial jurisdiction. The decision was later overturned by the Quebec Superior Court, which found that the company fell under federal regulation. The Quebec Court of Appeal later allowed an appeal and ruled that the company fell under provincial regulation. This decision was then appealed to the Supreme Court of Canada.

Tessier claimed that its labour activities fell under federal jurisdiction over shipping and therefore was not subject to provincial health and safety regulations.[2] It based this claim on an argument that stevedoring, the loading and unloading of ships, falls under federal jurisdiction under sections 91(10) and 92(10)(a)(b) of the *Constitution Act, 1867*.[3] The company claimed that it was similar to the company in the *Stevedores Reference* case, which was found to be federally regulated.

The Supreme Court did not share Tessier's interpretation of the *Constitution Act, 1867* or the *Stevedores Reference*. The Court determined that Tessier's activities fall under provincial jurisdiction. In coming to its conclusion, the Court clarified the scope of sections 91 and 92 of the *Constitution Act, 1867* and case law on derivative jurisdiction.[4]

Section 91(10): federal authority to regulate shipping not absolute

Under section 91 of the *Constitution Act, 1867*, the federal government has the exclusive authority to legislate in areas including "navigation and shipping" (section 91(10)). According to the Court, though, this section does not confer absolute authority on the federal Parliament to regulate shipping. Parliament's authority over navigation and shipping consists of only those aspects that engage national concerns, which must be uniformly

regulated across the country.[5]

Section 92(10): stevedoring is not necessarily subject to federal regulation

Under section 92(10), the provinces are entitled to regulate transportation within their boundaries. On the other hand, Parliament has jurisdiction over transportation that crosses provincial boundaries. Included in this authority over transportation is the ability to regulate labour relations of those employed in shipping work or undertakings.[6]

When a company is involved in shipping, determining whether it is federally or provincially regulated depends on the territorial scope of the company's activities. Since stevedoring is not necessarily a transportation activity that crosses provincial boundaries, it is not subject to federal regulation under section 92(10).[7]

The derivative jurisdiction test

Drawing from the *Stevedores Reference* and other relevant case law, the Court clarified several principles related to derivative jurisdiction.[8] The derivative jurisdiction test renders an otherwise provincially regulated company into a federally regulated one. This test is consistent with the Court's interpretation of section 91(10) and 92(10).[9]

The Court emphasized that stevedoring is not an activity that brings an undertaking directly within a federal head of power. However, an undertaking will fall under federal labour regulation if the stevedoring activities at issue form an integral or essential part of shipping under section 92(10). In applying the derivative jurisdiction test, the Court will look at the operational core of a company, the particular subsidiary operation engaged in by the employees in question, and the relationship between the two.[10] The Court said that federal labour regulation will apply to a company when:

1) the services provided to the federal undertaking form the *exclusive* or *principal* part of the related work's activities;

2) the services provided to the federal undertaking are performed by *employees who form a functionally discrete unit* that can be constitutionally characterized separately from the rest of the related operation.[11]

Decision: Tessier is subject to provincial regulation

The Court recognized that the *Tessier* case was the first time that a court had considered a case where employees did not form a discrete unit and were fully integrated into related operations. However, the Court emphasized that even if the work of the employees is vital to the functioning of a federal undertaking, it will not render an operation that is otherwise local into a federal one – and this is especially so if the work represents an insignificant part of the employees' time or is a minor aspect of the ongoing nature of the operation.[12]

In a situation like *Tessier*, where there is an indivisible, integrated operation, the Court also

said that it should not be artificially divided for the purposes of constitutional classification. A local work or undertaking will only be federally regulated if its dominant character is integral to a federal undertaking. Otherwise, jurisdiction remains with the province.[13]

In this case, Tessier devoted a majority of its efforts to non-shipping activities, which fell under provincial jurisdiction. Employees were also fully integrated, working across different sectors of the organization.[14]

Taking these facts into consideration, the Court determined that Tessier's essential operational nature is local and its stevedoring activities form a relatively minor part of overall operations. As a result, Tessier's employees were governed by provincial occupational health and safety regulations. The case was dismissed with costs.[15]

---

[1] *Tessier Ltée v Quebec*, 2012 SCC 23 .

[2] *Reference re Industrial Relations and Disputes Investigation Act* , [1955] SCR 529 (the *Stevedores Reference*).
Tessier, supra note 1 at paras 8-9, 20.

[3] *Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3, ss. 91(10), 92(10).

[4] *Ibid*.

[5] *Tessier,* supra note 1 at paras 22-24.

[6] *Ibid* at paras 25, 28.

[7] *Ibid* at para 28.

[8] *Ibid* at paras 36-46.

[9] *Ibid* at paras 17-18.

[10] *Ibid* at paras 34, 37.

[11] *Ibid* at paras 48-49.

[12] *Ibid* at para 50.

[13] *Ibid* at para 55.

[14] *Ibid* at paras 56-58.

[15] *Ibid* at paras 58-62.