

1964
Oct. 20
Oct. 21

BETWEEN:

JOSEPH EMILE POULIOT SUPPLIANT;

AND

MINISTER OF TRANSPORT RESPONDENT.

Practice—Certiorari—Writ of certiorari—Jurisdiction of Exchequer Court—Meaning of “officer of the Crown” as used in s. 29(c) of the Exchequer Court Act—Exchequer Court Act, R.S.C. 1952, c. 98, s. 29(c).

This is an application for a writ of certiorari addressed to the Minister of Transport.

Held: That this Court is a statutory Court and has no jurisdiction to grant an order for a writ of certiorari unless such jurisdiction has been conferred upon it by statute.

- 2. That a Minister of the Crown is not an officer of the Crown within the meaning of s. 29(c) of the *Exchequer Court Act*.
- 3. That the application is dismissed.

APPLICATION for a writ of certiorari.

The application was heard on October 20, 1964 by the Honourable Mr. Justice JACKETT, President of the Court, at Ottawa and was dismissed with costs.

G. S. Dery for suppliant.

R. Bedard, Q.C. for respondent.

JACKETT P. the next day (October 21, 1964) delivered the following reasons for dismissing the application:

An application was made to this Court by Joseph Emile Pouliot on Tuesday, October 20, for a writ of certiorari addressed to the Minister of Transport.

As this Court is a statutory Court, it has no jurisdiction to grant an order for such a writ unless such jurisdiction has been conferred upon it by statute. The only statutory provision suggested by counsel as being a possible foundation for jurisdiction for the order requested was section 29 of the *Exchequer Court Act*, R.S.C. 1952, chapter 98, which reads in part as follows:

29. The Exchequer Court has and possesses concurrent original jurisdiction in Canada

* * *

(c) in all cases in which demand is made or relief sought against any officer of the Crown for anything done or omitted to be done in the performance of his duty as such officer;

* * *

In *Belleau v. Minister of National Health and Welfare*¹, per Angers J. at pages 303 *et seq.*, it was decided that a Minister of the Crown is not an "officer of the Crown" within the meaning of paragraph (c) of section 29. Even if I had doubt as to the correctness of this decision, I should feel constrained to follow it because it is a carefully considered decision and should, in my view, be followed until such time, if any, as it is overruled by the Supreme Court of Canada. Any doubt that I might have had as to the correctness of this decision is removed by reference to the French version of section 29(c) where the expression employed is "un fonctionnaire de la Couronne". Clearly, this phrase does not include one of Her Majesty's ministers but, as I understand it, refers to the class of officer or servant normally referred to in English as "civil servant". I might also add that I have a very clear recollection of an unreported order made by Thorson P. by which, in an exercise of the inherent jurisdiction of the Court, he struck out a statement of claim against the Secretary of State seeking to obtain an order in the nature of Mandamus. My recollection is that President Thorson, in that case, accepted the submission that the Secretary of State was not an "officer of the Crown" within the meaning of those words in Section 29(c) of the *Exchequer Court Act*.

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 POULIOT
 v.
 MINISTER OF
 TRANSPORT
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 JACKETT P.
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For the above reasons, when this matter came before me yesterday, I dismissed the application with costs.