

Federal Court



Cour fédérale

Date: 20190501

Docket: T-1456-18

Citation: 2019 FC 557

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 1, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

THE MINISTER OF INDUSTRY

Applicant

and

MARC BLANCHETTE

Respondent

JUDGMENT AND REASONS

[1] The Minister of Industry (currently known as the “Minister of Innovation, Science and Economic Development Canada”) [Minister] is seeking a permanent injunction under subsection 10(4) of the *Radiocommunication Act*, RSC 1985, c R-2 [Act], ordering the respondent to cease installing, operating or possessing radio apparatus without holding a radio authorization duly issued by the Minister under the Act.

[2] The respondent did not appear in the case, even though he was duly notified of the proceedings instituted by the Minister.

[3] According to the evidence on the record, an investigation conducted by inspectors appointed under the Act (paragraph 5(1)(j)) revealed that, since the end of 2015, the respondent had engaged in several illegal activities related to radiocommunications. Among other things, it is alleged that he operated radio apparatus without holding a radio authorization issued under the Act; impersonated an amateur radio operator; illegally used a call sign of an amateur radio; interfered with radiocommunications of emergency radios; and generally created conflict over the airwaves.

[4] Based on the information obtained through the investigation, the Minister states that the respondent has never held a radio operator certificate. Under subparagraph 5(1)(a)(iii) of the Act and section 33 of the *Radiocommunication Regulations*, SOR/96-484 [Regulations], a person may operate radio apparatus in the amateur radio service only where the person holds an appropriate radio operator certificate, a form of radio authorization issued by the Minister. The respondent did in fact take steps to obtain one, but the Minister denied his request in April 2016 because of his behaviour on the radio.

[5] As part of the investigation launched by the Minister into the respondent's activities, the Minister's inspectors have obtained three warrants from the Court of Québec since 2016 for the purpose of searching the respondent's residence and seizing offence-related radio equipment, including the radio apparatus he used to contravene the Act. The searches enabled the inspectors

to seize the respondent's equipment and to issue seven statements of offence to him charging him with installing, operating and possessing radio apparatus without holding a radio authorization, contrary to subsection 4(1) of the Act.

[6] Despite the searches, seizures and criminal charges, the respondent obtained new equipment each time and continued operating radio apparatus without the required authorizations.

[7] No less than 120 complaints from 28 different people, including amateur radio operators, were received by the Minister concerning the respondent's illegal operation of radio apparatus.

[8] In June 2018, the Minister formally ordered the respondent to cease operating or possessing one or more radio apparatus without a radio authorization, to no avail.

[9] On August 3, 2018, the Minister filed a motion for an interlocutory injunction as part of these proceedings. Although the motion was also duly served on the respondent, he did not take part or show any intention of taking part in the proceedings.

[10] On September 14, 2018, Justice Mosley allowed the Minister's motion. He ordered the respondent to:

[TRANSLATION]

Cease installing, operating or possessing any radio apparatus, namely, a device or combination of devices intended for, or capable of being used for, radiocommunication, without radio authorization, namely, a licence, certificate or authorization issued

by the Minister of Industry under paragraph 5(1)(a) of the *Radiocommunication Act*, until final judgment in this court file.

[11] In October 2018, the respondent was convicted of seven charges laid against him for offences committed under subsection 4(1) of the Act. The Court of Québec fined the respondent \$2,500 and ordered that the equipment seized during the searches conducted by the Minister’s inspectors be forfeited.

[12] The case law has established that the role of the Act is to “[govern] the use of radio apparatus and radio-sensitive equipment to ensure the orderly development and efficient operation of radiocommunications in Canada” (*X (Re)*, 2017 FC 1047 at para 82; see also the Act, s 5). To this end, Parliament conferred on the Minister the mission of issuing radio authorizations and of doing any other thing necessary for the effective administration of the Act (Act, ss 2, 5(1)(a), 5(1)(n)).

[13] Paragraph 10(1)(a) and subsections 10(4) and (5) of the Act confer on the Court the power to grant an injunction ordering a person to cease or refrain from any activity that the Court deems to contravene the Act. In this case, the Minister alleges more specifically that the respondent has contravened subsection 4(1) of the Act, which reads as follows:

Prohibitions

4 (1) No person shall, except under and in accordance with a radio authorization, install, operate or possess radio apparatus, other than

(a) radio apparatus exempted

Interdictions

4 (1) Il est interdit, sans une autorisation de radiocommunication et sans en respecter les conditions, d’installer, de faire fonctionner ou de posséder un appareil radio autre :

a) qu’un appareil exempté au

by or under regulations made under paragraph 6(1)(m); or	titre d'un règlement pris en application de l'alinéa 6(1)m);
(b) radio apparatus that is capable only of the reception of broadcasting and that is not a distribution undertaking.	b) qu'un appareil qui ne peut que recevoir de la radiodiffusion et n'est pas une entreprise de distribution.

[14] In *Canada (Minister of Industry) v Thomson*, 2004 FC 265 [*Thomson*], this Court summarized the criteria to be met to obtain an injunction under subsection 10(4) of the Act:

[16] According to subsection 10(4) of the *Act*, the Federal Court may grant an injunction where it is satisfied that an offence under paragraph 10(1)(a) is being or is likely to be committed. Paragraph 10(1)(a) provides that every person who contravenes section 4 of the *Act* has committed an offence. Therefore, to grant an injunction in this case, the Court must be satisfied that the respondent is committing or will likely commit an act that is in violation of section 4 of the *Act*.

[17] In order to determine whether the respondent is violating section 4 of the *Act*, two separate issues must be resolved. First, is the structure at issue a "radio apparatus" within the ambit of section 4 of the *Act*? If it is found that the structure is not a "radio apparatus" or is exempted from section 4 of the *Act*, then it cannot be found that the respondent violates section 4. If, however, the structure is found to fall under the jurisdiction of section 4, then the second issue arises; namely, is the respondent installing, operating or in possession of the "radio apparatus" in accordance with his radio authorization?

[15] The first material element of the offence set out in subsection 4(1) of the Act is the act of "install[ing], operat[ing] or possess[ing] radio apparatus". Section 2 of the Act defines "radio apparatus" as a "device or combination of devices intended for, or capable of being used for, radiocommunication".

[16] Paragraphs 4(1)(a) and (b) of the Act provide exceptions to the prohibition to install, operate or possess radio apparatus without a radio authorization. Paragraph 4(1)(a) notably refers to provisions of the Regulations that list the exemptions. The evidence presented by the Minister does not indicate that one of the exceptions applies in this case, and, once again, the respondent never intervened in the proceedings to prove the contrary.

[17] According to the affidavit of Daniel Nadeau, an inspector appointed under the Act on behalf of the Minister, the searches revealed that the respondent possessed radio apparatus within the meaning of the Act at least three times since the end of 2015. That radio apparatus required a radio authorization for the respondent to operate it (Affidavit of Daniel Nadeau at paras 12, 22, 30, 33). Furthermore, in 2018, the respondent was convicted of installing, operating or possessing radio apparatus without a radio authorization under subsection 4(1) of the Act (Additional Affidavit of Daniel Nadeau at para 9).

[18] The second material element of the offence set out in subsection 4(1) of the Act is the offender's failure to hold a "radio authorization". This is defined in section 2 of the Act as "a licence, certificate or authorization issued by the Minister under paragraph 5(1)(a)". As we have seen, the Minister's evidence shows unequivocally that the respondent never held such authorizations.

[19] I am therefore satisfied that the respondent committed the offence set out in subsection 4(1) of the Act, and that the injunction sought should be granted.

[20] The Minister is correct in stating that the respondent's conduct is not only illegal but also dangerous, especially when he interferes with radiocommunications reserved for emergency services. In a criminal matter where an individual was charged with contravening the Act by selling radio apparatus whose programming had been modified to be able to use any frequency, Judge Michel Boissonneault of the Court of Québec noted the following:

[TRANSLATION]

When we analyze the scope of the *Radiocommunication Act* and its regulations, it becomes clear that protection of the public is the priority. The airwaves are not a vacant space where anyone can set up shop. Once their programming was modified, the respondent's radio apparatus made it possible to broadcast over any frequency, including those reserved exclusively for public protection services. This means ambulance services, police services, civil aviation, telecommunications companies, etc. By distributing modified radio apparatus giving access to all frequencies, the respondent could indirectly endanger people's lives.

[Emphasis added.]

(Directeur des poursuites criminelles et pénales c Audet (Communication LG enr), 2011 QCCQ 12563 at para 20)

[21] Those statements are just as applicable to the circumstances of this case.

[22] In closing, the case law has established that one of the grounds that may support granting an injunction under the Act is “the public interest in having the law of the land duly administered and enforced” (*Thomson* at para 23). This proceeding is a clear case where such a principle should apply.

[23] Accordingly, the Minister's application for a permanent injunction is well founded. The evidence shows that the respondent is committing the offence under subsection 4(1) of the Act

by operating and possessing one or more radio apparatus without holding a radio authorization as required by the Act. It is therefore completely appropriate that the Court order the respondent to cease any activity related to the offence set out in subsection 4(1).

JUDGMENT in T-1456-18

THE COURT:

1. **ALLOWS** the application for a permanent injunction;
2. **ORDERS** the respondent to cease installing, operating or possessing any radio apparatus, namely, a device or combination of devices intended for, or capable of being used for, radiocommunication, without radio authorization, namely, a licence, certificate or authorization issued by the Minister of Industry under paragraph 5(1)(a) of the *Radiocommunicatin Act*;
3. Without costs.

“René LeBlanc”

Judge

Certified true translation
This 10th day of May, 2019.
Michael Palles, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1456-18

STYLE OF CAUSE: THE MINISTER OF INDUSTRY v MARC
BLANCHETTE

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 29, 2019

JUDGMENT AND REASONS: LEBLANC J.

DATED: MAY 1, 2019

APPEARANCES:

Pavol Janura

FOR THE APPLICANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE APPLICANT

None

FOR THE RESPONDENT