See paras. 40, 42, 45

Case Name:

Métis National Council Secretariat Inc. v. Dumont

Between
Métis National Council Secretariat Inc. and Clement Chartier on behalf of the Métis National Council and the Métis National Council, (Plaintiffs) Appellants,
and
W. Yvon Dumont, (Defendant) Respondent)

[2008] M.J. No. 421

2008 MBCA 142

[2009] 1 W.W.R. 210

2008 CarswellMan 598

236 Man.R. (2d) 17

305 D.L.R. (4th) 356

172 A.C.W.S. (3d) 911

Docket: AI07-30-06701

Manitoba Court of Appeal

F.M. Steel, B.M. Hamilton and R.J.F. Chartier JJ.A.

Heard: September 16, 2008.
Judgment: December 9, 2008.

(50 paras.)

Damages -- In contract -- Type of contract -- Employment -- Appeal by MÚtis National Council (MNC) from the dismissal of its action against Dumont for damages for breach of a restrictive covenant in an employment contract -- Appeal allowed and MNC awarded nominal damages of one dollar -- Dumont breached term prohibiting governor from seeking to hold political office for two

years after leaving governor's position -- Trial judge erred in holding that covenant was unenforceable because it was contrary to public interest -- As trial judge found that Dumont breached contract term but no damages had been proven, he should have made an award of nominal damages.

Damages -- Types of damages -- Nominal damages -- No loss or injury -- Appeal by MÚtis National Council (MNC) from the dismissal of its action against Dumont for damages for breach of a restrictive covenant in an employment contract -- Appeal allowed and MNC awarded nominal damages of one dollar -- Dumont breached term prohibiting governor from seeking to hold political office for two years after leaving governor's position -- Trial judge erred in holding that covenant was unenforceable because it was contrary to public interest -- As trial judge found that Dumont breached contract term but no damages had been proven, he should have made an award of nominal damages.

Employment law -- Contract of employment -- Express terms -- Restrictive covenants -- Public policy -- Restraint of trade -- Appeal by MÚtis National Council (MNC) from the dismissal of its action against Dumont for damages for breach of a restrictive covenant in an employment contract -- Appeal allowed and MNC awarded nominal damages of one dollar -- Dumont breached term prohibiting governor from seeking to hold political office for two years after leaving governor's position -- Trial judge erred in holding that covenant was unenforceable because it was contrary to public interest -- As trial judge found that Dumont breached contract term but no damages had been proven, he should have made an award of nominal damages.

Aboriginal law -- Communities and governance -- Status of community -- Types -- MÚtis settlements -- Appeal by MÚtis National Council (MNC) from the dismissal of its action against Dumont for damages for breach of a restrictive covenant in an employment contract -- Appeal allowed and MNC awarded nominal damages of one dollar -- Dumont breached term prohibiting governor from seeking to hold political office for two years after leaving governor's position -- Trial judge erred in holding that covenant was unenforceable because it was contrary to public interest -- As trial judge found that Dumont breached contract term but no damages had been proven, he should have made an award of nominal damages.

Appeal by the MÚtis National Council (MNC) from the dismissal of its action against Dumont for damages for breach of a restrictive covenant in an employment contract. Dumont was appointed Governor of the MNC. He subsequently agreed to seek election for President of Council. He lost the election, but his candidacy for President evoked an angry reaction from the MÚtis Council of Saskatchewan. As a result, terms of reference for the Governor's position were introduced which prohibited the Governor from seeking to hold political office for two years after leaving the Governor's position. Dumont accepted the terms of reference but then resigned from the position. Shortly after his resignation, Dumont intended to run for President of Manitoba MÚtis Federation. He lost the election and MNC sued to recover the salary paid to Dumont under the terms of

reference. In dismissing the action, the trial judge held that the term was a covenant in restraint of trade. While he held that the restrictive covenant was reasonable as between the parties, he found that it was unenforceable for being against the public interest. He also held that the MNC's action would be dismissed in any case because they failed to prove any damages arising from Dumont's breach of the terms of reference.

HELD: Appeal allowed and MNC awarded nominal damages of one dollar. Even if the contract was in restraint of trade, the trial judge erred in holding that the covenant was unenforceable because it was contrary to the public interest. The trial judge erred in looking only to the MÚtis community in his analysis of the public interest and not extending his inquiry to the public in general. Consequently, the contract was valid and enforceable. As the trial judge found that Dumont breached the term in the contract but no damages had been proven, he should have made an award of nominal damages.

Appeal From:

On appeal from 2006 MBQB 163, 204 Man.R. (2d) 265.

Counsel:

M.N. Trachtenberg *for the Appellants*.

A. Bruun *for the Respondent*.

The judgment of the Court was delivered by

1 **F.M. STEEL J.A.**:-- This appeal canvasses the impact of public policy on terms in an employment contract.

BACKGROUND

2 The plaintiff, Clement Chartier is the National President of the Métis National Council (the MNC). The MNC was formed in 1983. It consists of five members: the Métis Nation British Columbia, the Métis Nation of Alberta, the Métis Nation - Saskatchewan, the Manitoba Métis Federation, and the Métis Nation of Ontario. The presidents of the five provincial organizations, along with a national president, form the Board of Governors of the MNC. The Métis National Council Secretariat Inc. is a corporation set up by the MNC to carry on their affairs.

3 The MNC created the position of governor of the Métis Nation in 1999. It was designed as an

honorary and ceremonial position to which the incumbent was appointed, not elected. The responsibility of the governor was "to represent the Métis Nation, its culture and history. ... [P]romote the Métis Nation and act as a goodwill ambassador-at-large." The governor was not to participate in the politics of the organization or its constituent members.

4 The defendant, Yvon Dumont, was appointed governor in 1999, at which time there were no written terms of reference for the position. He received a salary and became eligible for the benefit package provided to the MNC staff. In June 2001, while still in the position of governor, he ran unsuccessfully for the position of national president of the MNC.

5 Following that event, the MNC Board of Governors adopted terms of reference for the position. These terms of reference included a proviso as follows:

> Politics: The Governor shall not take part in the politics of the Métis Nation. Any person who serves as Governor shall not be eligible to seek or hold political office in the Métis National Council (or any of its Governing Members) for a period of two years from the date that the person ceases to be the Governor.

6 The terms of reference were submitted to Dumont for consideration. He spent some weeks considering whether he would accept them. He accepted the terms of reference in a letter in January 2002 and served as governor until January 2003 when he resigned. Shortly thereafter, he ran unsuccessfully for the president of the Manitoba Métis Federation, a "Governing Member" of the MNC. The plaintiffs sued for damages.

7 The trial judge made certain clear findings of fact that are not disputed on appeal. These include the fact that Dumont accepted the terms of reference, they formed part of his contract with the MNC and these terms were not waived.

8 However, the trial judge also held that the term was in the nature of a covenant in restraint of trade. While he held that the restrictive covenant was reasonable as between the parties, he found that it was unenforceable as being against the public interest. He also held that if he were wrong on that point, the plaintiffs' action would be dismissed in any case since they had failed to prove any damage arising from Dumont's breach of the terms of reference.

9 The plaintiffs appeal. First, they argue that the trial judge erred when he held that the clause preventing the governor from seeking or holding political office in the MNC or any of its governing members for a period of two years was unenforceable for violating the public interest. Second, it is submitted, he erred when he found that the plaintiffs had failed to prove any damage resulting from the defendant's breach of contract.

DECISION

10 Generally speaking, the law will allow parties to contract as they wish without interference

from the court. The common law has a long history of supporting the right of individuals to contract freely. As Dickson J. (as he then was) stated in *Elsley v. J.G. Collins Ins. Agencies Ltd.*, [1978] 2 S.C.R. 916 "the courts have been disinclined to restrict the right to contract, particularly when that right has been exercised by knowledgeable persons of equal bargaining power" (at p. 923).

11 However, the law will not involve itself in enforcing contractual terms that are illegal or contrary to public policy. What is contrary to public policy? That is a vague phrase which must be interpreted with care since public policy "is a very unruly horse, and when once you get astride it you never know where it will carry you." See *Richardson v. Mellish*, [1824-34] All E.R. Rep. 258 at 266, as quoted in Brandon Kain & Douglas T. Yoshida, "The Doctrine of Public Policy in Canadian Contract Law" (2007) Ann. Rev. Civ. Lit. 1 at 7.

12 Consequently, while public policy considerations can invalidate private contracts and render them void and unenforceable, Canadian law has traditionally applied the doctrine in a narrow number of categories. See *In re Estate of Charles Millar, Deceased*, [1938] S.C.R. 1. As indicated by Kain & Yoshida, at p. 44, the doctrine of public policy has been applied to categories which include: 1) statutory and common law illegality; 2) contracts injurious to the state; 3) contracts injurious to the justice system; 4) contracts involving immorality; 5) contracts affecting marriage; and 6) contracts in restraint of trade.

13 At trial, the assumption was made, both by the parties and by the trial judge, that because they were dealing with an employment contract, this clause could be viewed as being in restraint of trade. That was the assumption by both parties on appeal as well; the only dispute being as to whether the restrictive covenant itself was unenforceable because it was contrary to the public interest.

14 If this contract is <u>not</u> one in restraint of trade, then I do not think it is otherwise contrary to public policy. It certainly does not fall into any other category traditionally viewed as being contrary to public policy. Although it restricts involvement in a non-profit volunteer organization, that cannot be said to be injurious to the state or to the justice system so as to justify court intervention. Nothing in this contract affects the operation of an effective democratic government or an orderly judiciary governed by the rule of law and accessible to the general public.

15 Some argue that public policy should not be constrained into these narrow categories. In his text, G.H.L. Fridman, Q.C., *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Canada Limited, 2006) writes (at p. 362):

> ... [T]he courts may declare a contract invalid and illegal on the ground that its very nature, or the purpose which it is designed to achieve, whether directly or indirectly, contravenes the ends of society. Such contracts offend the basis of legal order, which is founded upon justice, legality, and morality. The doctrine of public policy is concerned with the fundamentals of the legal system. What offends against public policy are acts which support, encourage, permit and

> foster conduct which is injurious to the very foundations upon which society exists. ...

16 Even if one views the public policy doctrine in that broader perspective, I do not see that a term of this nature would violate public policy generally. While participation in the fabric of one's community and culture is certainly a value to be encouraged, restrictions on elections in those voluntary associations cannot be equated with restrictions on freedom of association and participation in the political process of our country, such that it could be said that the acts "foster conduct which is injurious to the very foundations upon which society exists" (*ibid.*).

17 Some support for this position may be drawn from the Supreme Court of Canada cases of *Osborne v. Canada (Treasury Board)*, [1991] 2 S.C.R. 69, and *Baier v. Alberta*, 2007 SCC 31, [2007] 2 S.C.R. 673. Although those two cases dealt with challenges under the *Canadian Charter of Rights and Freedoms*, the comments regarding the protection of the right to run for political office are instructive, especially given the court's obligation to develop common law principles in accordance with those of the *Charter*. See, for example, *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573, *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, and *Simpson v. Mair*, 2008 SCC 40, 293 D.L.R. (4th) 513. In *Osborne*, a majority of the Supreme Court of Canada held that certain restrictions on the political activities of public servants were unconstitutional as they infringed the employees' *Charter* rights.

18 On the other hand, the case of *Baier* concerned legislation that limited the ability of school employees to run for election and serve as school trustees in Alberta. The court held that no *Charter* violation had been proven as a result of restrictions that banned school employees from school trustee elections unless they took a leave of absence. They noted, in particular, that voting and candidacy rights are protected in s. 3 of the *Charter*, but only in relation to the House of Commons and provincial legislatures.

19 It might be different if the clause unreasonably affected the personal life of the employee (see Fridman, at p. 398) or prohibited conduct such as voting in general elections or was unconnected with the contract. But that is not the case here.

20 Nor can I accept the assumption which was accepted by the parties and the trial judge that this is a contract in restraint of trade. Where it is argued that a provision is in restraint of trade, the first question that must be addressed is whether the proviso affects trade. See Rosemary Scott, "Post-Employment Restraints: A Trail of Broken Promises" (2006) Ann. Rev. Civ. Lit. 93 at 102. Although "trade" has been broadly defined to include all types of employment, professions and businesses, in this case, the employer is not a business or a trade or a profession. The MNC is a private, self-governed organization dedicated to supporting Métis issues. It is not a business in the sense found in most restraint of trade cases.

21 However, I understand that determining whether a clause is in restraint of trade is a question both of fact and policy. One must look to the agreement as a whole. The classes of cases covered by

the doctrine are not closed. See Scott, at p. 101, and Stacey Reginald Ball, *Canadian Employment Law*, looseleaf (Aurora: The Cartwright Group Ltd., 2008) vol. 1 at para. 7:20.1). Ball states (at para. 7:30.1):

> ... A covenant in restraint of trade should not be analyzed in isolation but interpreted in light of the whole agreement between the parties and, indeed, all surrounding circumstances. Consequently, a covenant that, by itself, appears to be unreasonably broad or that does not protect a proprietary interest may be found to be enforceable in light of the whole agreement. ...

22 It may be argued that the protection of the MNC's credibility and reputation is similar to the goodwill in a business. Ball, in commenting on covenants in restraint of trade at para. 7:20.3, points out that employers can have a legitimate proprietary interest in their trade connections and their goodwill. See also, *Winnipeg Livestock Sales Ltd. v. Plewman et al.*, 2000 MBCA 60, 150 Man.R. (2d) 82 at para. 27. As such, it might be argued that the MNC has a legitimate proprietary interest in protecting its reputation generally, and the credibility of the position of governor specifically.

23 As well, it could be argued that politics was Dumont's profession and the clause restricted his professional life. Fridman states "[a] contract, or covenant, in restraint of trade is one by which a party restricts his future freedom to act in relation to his trade, business or profession" (at p. 379). Dumont was receiving a salary for his duties as governor, not an honorarium, and he was part of the employee group insurance plan. Given those facts, it could be argued that his "trade," so to speak, was that of politics.

24 However, even if I accepted that this was a contract in restraint of trade, I still find that the trial judge erred in law when he held that the covenant was unenforceable because it was contrary to the public interest.

25 A covenant in restraint of trade must not only be reasonable between the parties, it must also be reasonable in terms of the public interest. Once the restrictive covenant is found to be reasonable between the parties, as it was here, the onus then falls to the party attacking it to prove it is contrary to the public interest. See *Elsley*.

26 The trial judge held that the restrictive covenant was contrary to the public interest because, on the evidence adduced, it violated the principle that the MNC should not interfere in Métis provincial politics. He found that the restrictive covenant was "contrary to the political philosophy of the Métis people" (at para. 34) and in order to enforce it, "the MNC would have to contravene a basic political belief of the Métis people" (*ibid.*).

27 The plaintiffs argue that the trial judge erred on the facts since there was no evidence to support such a proposition and, in any case, the judge failed to distinguish between the direct interference in Métis provincial politics by the MNC itself and the voluntary acceptance of a restrictive covenant by an individual. Furthermore, it is submitted that the judge failed to give

weight to the evidence about the need for the restrictive covenant to ensure that the position of governor was properly established and had credibility.

28 It is unnecessary for me to decide that factual issue because I believe the trial judge erred in his legal definition of public interest within a contract in restraint of trade.

29 First, who is the public here, and second, what are the competing public interests when dealing with a contract in restraint of trade?

30 The judge erred in looking only to the Métis community in his analysis of the public interest and not extending his inquiry to the public in general. Of course, the views of the Métis organizations involved are important. However, "[t]he essential function, therefore, of public policy in the common law is to bring into judicial consideration the broader societal interest of the public at large" (C.R. Symmons, "The Function and Effect of Public Policy in Contemporary Common Law" (1977) 51 Austl. L.J. 185 at 189).

31 The consideration of the public interest is a balancing of competing interests. In a provision restraining trade, the public as a whole has an interest in maintaining free and open competition and in individuals freely exercising their professions. That interest must be weighed against the value we place on allowing parties to contract freely and determine their own futures, particularly when that right has been exercised by "knowledgeable persons of equal bargaining power." See *Elsley*, at p. 923, per Dickson J.

32 As Fridman explains in his text (at p. 379):

> The doctrine of restraint of trade purports to be derived from the notion of public policy, in that it is in the interests of society that men should be free to trade or to employ their skill and labour as they feel fit, and should not be inhibited from doing so by any agreement to the contrary. ... [T]he justification of the courts' interference with contracts, otherwise freely entered into, that have the effect of restricting a party's future use of his time, skill, and expertise, is still that society will suffer. Admittedly, there are situations in which other interests, namely those of the contracting parties, can be permitted to outweigh any possible interests of society. The courts seem to be striking a balance between conflicting interests. On the one hand is the collective need or desire of society as a whole, the public, that men should be free to go and live as they please, not made into slaves of any degree or sort, and that men should be able to benefit the state and the people generally by their talents and labour. On the other hand it is the individual's desire for protection or regulation of potential competition, and the desire of some for legitimate immediate advantages that can only be achieved by the surrender of other future ones. ...

33 There is no doubt that the court should encourage individual involvement in community

organizations and that such participation is a value to be protected. However, it must be balanced against a private association's freedom to decide its own conflict of interest policies and control its own process. In particular, in this case, the MNC felt that in the development of their new organization, the convention of political neutrality for the position of governor was important. It was argued forcefully that this national organization was in the midst of developing its credibility and structure. The governor would have a highly visible role and it was the objective of the organization that the visibility not be used for personal political gain.

34 One of the key factors is the absence of an inequality of bargaining power. Dumont's January 22, 2002 letter indicates that he knew what he was agreeing to here. He accepted that the restriction was "not only reasonable, but that in order to be effective and to have the appearance of being completely politically neutral in the position, it is necessary."

35 In the final analysis, I do not believe that this was a contract in restraint of trade. Even if I am wrong in that conclusion, I believe the trial judge erred in law when he found the disputed term to be contrary to the public interest. Consequently, the contract is valid and enforceable.

LACK OF PROOF OF DAMAGES

36 The judge went on to decide the other issues in the case in the event he was wrong on the issue of the restrictive covenant. In particular, he held that the onus was on the plaintiffs to prove damage and that they did not do so. Consequently, he dismissed the action.

37 This is not an issue of damages being difficult to quantify. The trial judge was aware of the law that the difficulty of assessment of damages does not relieve the court of its duty to make an award. He cited several authorities to that effect. Instead, this is an issue of proof of loss. It is a factual issue and the standard of review is palpable and overriding error.

38 The plaintiffs argue that such error occurred here. The trial judge failed to give any weight to the evidence of the witnesses who testified as to the effect on the position of governor resulting from Dumont's decision to run as a candidate for president of the Manitoba Métis Federation in 2003. The trial judge also erred, it is submitted, in the conclusion that he drew from the evidence that the present vacancy in the position of governor was not related to the breach of the contractual term by Dumont. In particular, they argue that Dumont's involvement in Métis politics less than two years after his resignation as governor tainted or tarnished the prestige of the position and made it impossible to fill. They submit that general damages should be awarded on that basis, although there does not seem to be any allegation of pecuniary loss as a result of Dumont's actions. I take it that the plaintiffs are arguing for the award of damages for reputational loss, although it was not argued in exactly those terms.

39 While damages can be awarded in certain situations for reputational loss, the trial judge held that the evidence does not support such an award in this case. The position was never offered to another candidate and the trial judge was not satisfied that the vacancy was related to the effects of

Dumont breaching the terms of reference. There was no evidence before the trial judge of events which had to be cancelled, invitations to speak on behalf of or to represent the MNC which had to be declined or any other shortcoming, failure or embarrassment directly or indirectly flowing from the breach of contract. Moreover, there was no complaint with respect to the manner in which Dumont performed his duties as governor. In my view, the plaintiffs have not shown any palpable and overriding error in the trial judge's findings of fact on this point.

40 However, there is no question that, as the trial judge also found, Dumont breached the term in the contract. Having found a breach of contract but no proven damages, the trial judge should have made an award of nominal damages. See *Westco Storage Ltd. v. Kraft Holdings Ltd.* (1988), 56 Man.R. (2d) 1 at para. 14 (C.A.). Instead, he dismissed the action. In so doing, he erred.

41 As explained in the text S.M. Waddams, *The Law of Damages*, looseleaf (Aurora: The Cartwright Group Ltd., 2008), "[n]ominal damages is a sum awarded where the plaintiff's legal right has been invaded, but no damage has been proved" (at para. 10.10). Waddams cites Lord Halsbury's seminal decision in *Owners of Steamship "Mediana" v. Owners, Master and Crew of Lightship "Comet." The "Mediana,"* [1900] A.C. 113 (H.L.), where he wrote (at p. 116):

> ... "Nominal damages" is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. ...

42 Nominal damages are not the same thing as compensatory damages of a small amount. Compensatory damages might sometimes be small, but they are an attempt to compensate for a loss. Nominal damages do not compensate for anything that could be bought with money, but instead mark symbolically the infringement of a right. Nor are they to be confused with contemptuous damages, which are damages in the amount of the lowest coin, such as a penny, but are awarded in situations where the court wishes to express strong disapproval of the plaintiff while finding a technical infringement of rights. See Waddams, at para. 10.40.

43 The award of nominal damages accomplishes two tasks. First, as mentioned, it establishes the plaintiff's legal right and acknowledges that a breach of contract did occur. The establishment of the plaintiff's legal rights "may deter future infringements or may enable the plaintiff to obtain an injunction to restrain a repetition of the wrong" (Waddams, at para. 10.10).

44 Counsel for Dumont argues that the MNC is not entitled to nominal damages because of their conduct toward Dumont in leading him to believe that they would not sue him for breaching the term of the contract. He argues that he was verbally reassured that the terms of reference would be amended so he need only resign from the position if he decided to run for office in a Métis organization. However, the court specifically found there was no waiver.

45 The quantum of nominal damages has varied in the cases; however, in our court, in the *Westco Storage Ltd.* case, the court awarded nominal damages of $1. More recently, the Ontario Court of Appeal in the case of *Place Concorde East Limited Partnership et al. v. Shelter Corp. of Canada Ltd. et al.* (2006), 211 O.A.C. 141 at para. 78, adopted the view expressed by Waddams in his text, at para. 10.30, that the quantum of nominal damages should be $1. I would also adopt that view and award the plaintiffs nominal damages in the amount of $1.

46 The other benefit of the award of nominal damages is that it opens the question of costs. However, an award of nominal damages does not necessarily entitle a plaintiff to costs. A successful party has no legal right to costs, but only a reasonable expectation of receiving them, subject to the court's discretion in that regard. See *Westco Storage Ltd*., at para. 21, and *Anglo-Cyprian Trade Agencies, Ltd. v. Paphos Wine Industries, Ltd.*, [1951] 1 All E.R. 873 (K.B.D.), Devlin J. If the award of nominal damages carried costs with it in all cases, it would serve to encourage unnecessary litigation. It is therefore necessary to examine the facts of each particular case.

47 The cases reveal three possibilities with respect to costs where only nominal damages are awarded. Parties awarded nominal damages have been able to recover their costs, have been ordered to pay costs or the parties may be ordered to bear their own costs. The variations are considerable considering the discretion available to the court. See, for example, *Burke v. Efstathianos et al.* (1961), 27 D.L.R. (2d) 518 (Man. C.A.); *Place Concorde East*; *Butler Realty Limited v. Banfield* (1982), 39 Nfld. & P.E.I.R. 240 (Nfld. C.A.); *Westco Storage Ltd.*; and *Marynowsky v. Stuartburn (Local Government District)* (1994), 97 Man.R. (2d) 60 (C.A.).

48 In this case, I believe it best that both parties carry their own costs both at trial and on appeal. The plaintiffs could have obtained an injunction to restrain Dumont from running for election as president of the Manitoba Métis Federation and enforced its right in a more expedient and less expensive way. It chose not to do so for internal political reasons. On the other hand, Dumont was a long-time participant in Métis politics who thought carefully before he agreed to the clause and not only accepted it, but clearly, and in writing, adopted the rationale behind it.

49 As well, the position of governor was a new one for the MNC and it seems as if the council was still developing its position in that respect. The terms of reference required that the governor shall be sworn in and sign an oath of office based on these terms of reference and that never happened. Although Dumont indicated his acceptance of the terms of reference, the growing pains in the organization can be reflected by the fact that the resolution passed by the Métis Nation - Saskatchewan (a member of the MNC) refusing to recognize Dumont as the governor was never rescinded. Two years have now passed and the result will have no practical significance as between the MNC and Dumont, although it confirms the principle for the future.

50 Consequently, I would allow the appeal. I would award nominal damages of $1 to the plaintiffs and order that the parties bear their own costs both at trial and on appeal.

F.M. STEEL J.A.
B.M. HAMILTON J.A.:-- I agree.
R.J.F. CHARTIER J.A.:-- I agree.