

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Louis  
A. Lapointe and others v. Henri Larin,  
from the Supreme Court of Canada;  
delivered the 28th June 1911.*

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PRESENT AT THE HEARING :

VISCOUNT HALDANE.

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

[[DELIVERED BY LORD MACNAGHTEN.]]

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This is an Appeal from the Supreme Court  
Canada.

The question at issue lies in a very narrow  
compass, but it has given rise to a singular  
divergence of judicial opinion. The trial Judge  
dismissed the Plaintiff's action with costs. The  
Court of Review by a majority of two Judges  
to one reversed the decision of the trial Judge  
and gave judgment for the Plaintiff. The Court  
of Appeal for Quebec, consisting of five Judges,  
unanimously overruled the Court of Review and  
restored the judgment of the trial Judge. And  
lastly, the Supreme Court, by a majority of three  
to two, reversed the judgment of the Court of  
Appeal and restored the judgment of the Court  
of Review. The result is that the Defendants,  
who constituted the Finance Committee of the  
Montreal City Council, have been deprived of  
office, condemned jointly and severally to pay

the sum of \$3,809 40., and disqualified for re-election as aldermen for the period of two years.

No charge of corruption or personal misconduct of any sort is made against the Defendants or any of them. The charge is that they acted in contravention of Article 338 of the City charter, 62 Vict. chap. 58, which declares that "every member of the Council who authorizes . . . any expenditure of money exceeding the amount previously voted and legally placed at the disposal of the Council or any Committee" shall incur the penalties which have been inflicted by the judgment under appeal. Have the Defendants contravened Article 338 or have they not? That is the subject on which there has been so much difference of opinion in Canada. The question has been litigated in four Courts. Nine Judges have held that the charge is not well-founded. Five Judges, including a majority of the Judges of the Supreme Court, have taken the opposite view. And their view has prevailed.

The facts which gave rise to the present controversy are these:—On the 18th May 1908, at a special meeting of the Council, at which the mayor and 40 aldermen, constituting very nearly the whole body of the Council, were present, there was read a letter from the Comité, Dupleix of Paris, inviting the city of Montreal to send representatives to the celebration of the tercentenary of the foundation of the city of Quebec. A resolution was unanimously adopted accepting the invitation, requesting the mayor with his secretary in attendance to represent the city of Montreal, and instructing the Finance Committee to place the requisite funds at the mayor's disposal. On the 20th of May a formal acceptance was sent to the secretary of the Comité Dupleix. On the 26th the city comptroller was

requested by the mayor to place at his disposal \$1,500 for travelling expenses. On the 29th the comptroller laid the mayor's letter before the Finance Committee. The Finance Committee passed a resolution instructing the city treasurer to comply with the request, and to advance the sum required. On the 30th May the city treasurer certified the amount as correct, and recommended that it should be paid. The proposed payment was approved by the Finance Committee, subject to the certificate of the city comptroller, that there were sufficient available funds voted by the Council for the purpose. The comptroller gave his certificate to that effect, and thereupon the sum of \$1,500 was paid to the mayor.

The mayor, accompanied by his secretary, went to France in compliance with the resolution of the Council. On his return an account for the balance of the travelling expenses of the mayor and his secretary was filed with the comptroller. It was passed and paid with all the formalities observed in the case of the previous payment.

It is not denied that the Defendants as members of the Finance Committee, acting under the instructions of the Council, authorised the expenditure required to defray the cost of the representation of the city of Montreal at the Paris Fêtes. Expenditure for such a purpose is within the powers of the Council, provided the requirements of the charter are duly complied with. The only question, therefore, seems to be:—Was the expenditure in question in the present case in excess of the amount previously voted and legally placed at the disposal of the Council?

The action of the Council in the matter of finance is governed by the provisions of the charter as amended by subsequent legislation. Those provisions are contained in Section 14,

headed *Finance*, which comprises Articles 332-442, both inclusive.

Article 332 provides that the civic fiscal year shall begin on the 1st day of January and terminate on the last day of December of each year.

Article 333 deals with the disposal of capital amounts.

Article 334, as originally enacted, was in the following words :—

“ In the month of December of each year the Council shall appropriate the sums at its disposal out of the revenues of the city for the needs of the various civic departments during the ensuing fiscal year.”

“ In so doing the Council shall maintain the equilibrium between the revenues and expenses, and provide for—

“ (a) The cost of the collection of the civic revenue.

“ (b) The interest upon the civic debt and any sinking fund which may be established.

“ (c) The school tax.

“ (d) A reserve of 5 per cent. for such unforeseen expenses as judgments, epidemics, inundations, and damages caused by irresistible force.

“ (e) Other established charges upon the civic revenue, including the deficit from any previous year.

“ (f) Repairs, maintenance, salaries, and general administration.”

By 3 Edward VII. chap. 62, that article was replaced by an article in which there are one or two slight verbal alterations, and subsection (d) reappears in the following words :—

“ (d) A reserve of 5 per cent.—2 per cent. being to cover all possible loss in the collection of taxes, and 3 per cent. for unforeseen expenses, such as those relating to judgments, official receptions, epidemics, inundations, fortuitous events, and damages caused by irresistible force.”

By 7 Edward VII., chap. 63, sec. 12 (1907), the following article was inserted after Article 334 :—

“ 334b. The City may charge against the reserve fund the cost of representation and of delegations authorised by the Council as well as the sums required for the settlement of claims and for the removal of snow and ice from the side walks.

“ The City may contribute to an amount not exceeding  
 “ \$15,000 towards the maintenance of a technical school at  
 “ Montreal and charge such amount against the reserve fund  
 “ each year.

Article 335 as replaced by 3 Edward VIII.,  
 chap. 63, sec. 28, so far as material is in the  
 following terms :—

“ The amount so set aside shall never exceed the amount  
 “ of the revenue from all sources for the ensuing year.

\* \* \* \*

“ No amount appropriated can be varied or applied to  
 “ any other purpose unless such change in the appropriation  
 “ or question is approved by a vote of an absolute majority  
 “ of all the members of the Council.

The following Articles are also material :—

“ Article 336. No resolution of the Council or of any  
 “ Committee authorising the expenditure of any money shall  
 “ be adopted or have any effect until a certificate of the  
 “ Comptroller is produced establishing that there are funds  
 “ available and at the disposal of the City for the service  
 “ and purposes for which such expenditure is proposed in  
 “ accordance with the provisions of this Charter.

“ Article 337. No contract or agreement whatever shall  
 “ be binding upon the City unless it has been approved by  
 “ the Council.

\* \* \* \*

“ Article 338. Every member of the Council who  
 “ authorises either verbally by writing by his vote or  
 “ tacitly any expenditure of money exceeding the amount  
 “ previously voted and legally placed at the disposal of the  
 “ Council or any Committee shall be held personally liable  
 “ therefor, and shall thereby become disqualified as a  
 “ member of the Council and shall also be disqualified for  
 “ re-election as Alderman for a period of two years there-  
 “ after.

“ Article 339. The City Treasurer shall prepare and  
 “ publish every year, before the 1st of April in each year, a  
 “ report showing :—

- “ (a) The balance of moneys in hand and in banks at the  
 “ beginning of the year; the receipts from each  
 “ department, and the proceeds of every loan,  
 “ whether temporary or permanent ;  
 “ (b) The disbursements made by each department as  
 “ well as the repayment of all loans, whether  
 “ temporary or permanent.

“ The City Treasurer shall be personally responsible for every sum of money which he may pay, knowing that such payment exceeds the amount voted by the Council for the purpose.

It is not disputed that the budget resolutions for the year 1908 were duly passed in December 1907, and that the appropriations prescribed by Article 334 were duly voted, and also that at the time when provision was made for the expenses of the representation of the city at the Paris Fêtes there were funds available and legally at the disposal of the city for purposes which included the cost of representation and delegations authorized by the Council.

Now it seems tolerably plain that Article 338 contemplates two distinct cases -the case of expenditure of money by the Council in excess of the amount appropriated by the budget resolutions and expenditure by a committee in excess of the amount placed at the disposal of such committee by a special vote of the Council. The difficulty, such as it is, seems to have arisen principally from confusing the two cases. The confusion runs through the whole of the argument on the part of the Respondent. The case under discussion is not a case of unauthorised expenditure by a committee. It is a case of expenditure by the Council itself, or, what is the same thing, expenditure under the instructions of the Council carried into effect through the proper channel, that is the Finance Committee. It may be that there has been some departure from ordinary routine or some failure to comply with the provisions of Article 42 which deals with the functions of the Finance Committee or some infraction of a bye-law of the Council. But no error of that sort, if there has been any error, which is by no means clear, can justify the infliction of penalties attached by Article 338 to acts and defaults of a very different description.

Agreeing with Sir Charles FitzPatrick, C.J.,

their Lordships are of opinion that the Defendants have not contravened Article 338 in any respect, and they think that the action ought to have been dismissed with costs.

Their Lordships will therefore humbly advise His Majesty that the judgment appealed from should be reversed and the action dismissed with costs both here and below, and that any costs paid under the order of the Court of Review or under the Order of the Supreme Court should be repaid.

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In the Privy Council.

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LOUIS A. LAPOINTE AND OTHERS

*v.*

HENRI LARIN.

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DELIVERED BY LORD MACNAGHTEN.

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