

MONTREAL'S ABORTIVE VICE PROBE

Widespread interest has been aroused in law circles by the efforts of the Citizens' Vigilance League of Montreal to obtain a satisfactory judicial inquiry into the civic administration of the City of Montreal, with particular regard to what it alleges to be the flourishing condition of vice and crime permitted to exist within the city's boundaries.

There has been much discussion in the public press regarding the legal means available to obtain such a probe under the law of the Province of Quebec, and much of this lay opinion has been swayed by considerations outside the law. These notes are simply an attempt to summarize the law of the Province of Quebec relating to judicial inquiries, both the actual text of the relevant statutes and recent judicial pronouncements.

Those who sought an inquiry in Montreal had the choice of two alternative modes of procedure.

The first mode is provided by the Public Inquiry Commission Act (R.S.Q., 1941, c. 9). This act empowers the Lieutenant-Governor in Council to appoint a commissioner or commissioners to inquire into any matter relating to the Government of the Province, public affairs, the administration of justice, or matters relating to public health or the welfare of the population. In this case, therefore, a Royal Commission is appointed and the consequent inquiry is general and unrestricted in its scope. No definite facts need have been previously alleged and nobody in particular is accused. The commissioners may pursue their probe unrestricted by the terms of specific allegations and are free to conduct their inquiry as they see fit.

The second mode of procedure is provided by the Municipal Bribery and Corruption Act (R.S.Q., 1941, c. 214). This statute authorizes a City Council or 50 electors of the City to present a petition to the Chief Justice of the Superior Court for the appropriate Appellate Division or, in his absence or incapacity to act, to two justices of the Superior Court (s. 10) for an inquiry into matters relating to malfeasance, breach of trust or other misconduct on the part of one or several members of the Council or municipal officials. The petition must allege known facts, and must set them forth with precision and clarity, as in a civil-law action or a criminal indictment. The ensuing inquiry, when the petition is granted, is a special one, limited to the facts and charges alleged in the petition; in reality it partakes of the nature of a

court action based upon known issues, which are clearly defined in advance.

The Citizens' Vigilance Committee decided to proceed by way of the Municipal Bribery and Corruption Act and a petition was presented to the Honourable Chief Justice Bond in December 1945.

On January 3rd, 1946, the Chief Justice rendered judgment rejecting the petition. In support of his decision (as yet unreported) he referred to the following pertinent sections of the act:

The petition shall not be considered unless it states the accusations, actions or facts, in a precise manner, which alone shall form the object of the inquiry. (s. 9, para. 2).

The judge designated in the order for the holding of the inquiry shall, after having given to the accused parties notice of the accusation and of the date on which he will proceed, inquire into the accusations, actions or facts alleged in the petition, and shall, for that purpose, have all the powers ordinarily exercised by the Superior Court or by one of the judges thereof. (s. 12, para. 1).

The judge, in rendering judgment upon the inquiry, shall designate the person or persons bound for the payment of the costs and, if occasion therefor, in what proportion, and shall order the payment thereof within the delay which he shall fix. (s. 12, para. 3).

Any person accused before a judge under the provisions of this division, shall be heard personally, or by attorney, and may make his defence and produce his witnesses. (s. 22).

The judge may condemn any person to reimburse the municipality, or any party entitled thereto, the expenses incurred and the losses sustained in consequence of the acts of such person.

He may also declare any person to have forfeited his office and to be disqualified from exercising any municipal office during the period determined in the judgment (s. 13).

He then went on to say:

In my opinion, this act is not designed to enable a body of electors (no matter how worthy) to embark upon an inquiry unlimited and undefined in extent in the expectation that something of a more tangible nature may emerge. There may be other means for eliciting information leading to the detection of those responsible for the condition of affairs set out in the petition, but the act presently invoked requires something more specific in the nature of precise charges which alone shall be the object of the inquiry and of which the persons involved shall receive due notice. And this is not unreasonable, for otherwise the scope of the investigation would be unbounded and reputations jeopardized without adequate safeguards. This would be an impossible task to impose upon a judge, except within the strict conditions imposed by the act.

In October 1946 a second petition was presented to two judges of the Superior Court, Mr. Justice L. P. Demers and Mr. L. J. Louis Loranger, signed by 116 taxpayers and supported by 15,000 citizens of Montreal. By judgment rendered the 11th of October, 1946 (also unreported as yet), the petition was granted as to ten paragraphs only out of a total of 185 paragraphs. The remainder were rejected for the same reasons as were expressed in Chief Justice Bond's judgment, with emphasis upon the lack of precision in the charges alleged and the lack of connection shown between the names of persons given and the names of officers sought to be incriminated. The judges stressed the fact that they could not go beyond the role assigned to them by the precise terms of section 9 of R.S.Q., c. 214. This statute demands that actual charges must be made against definite persons, who would then be notified by the inquiring judge and be given an opportunity to make their defence personally or by attorney. The judge may then declare such persons to have forfeited municipal office for such period as he may determine.

The judgment, furthermore, rejected absolutely certain conclusions in the petition, which had asked the inquiring judge to intervene in the administration of the City of Montreal police force, to interfere with the appointment and dismissal of employees and to suggest by-laws which the city council should adopt. The learned justices held that the petitioners had at their disposal other means to remedy the evil.

The petitioners were not prepared to proceed with the limited inquiry authorized and, being of the opinion that no appeal was allowed from the judgment, presented a desistment or discontinuance to the Hon. Mr. Justice Louis Cousineau in chambers. Mr. Justice Cousineau had been appointed in the judgment to preside at the inquiry. According to newspaper reports, his Lordship raised the question whether or not a desistment could be granted solely on the signature of the lawyer representing the petitioners, adding that every individual who signed the petition was a petitioner and that it must appear certain that the desistment was unanimous before it could be validly sanctioned. His Lordship later rendered judgment (still unreported) granting the desistment, following article 276 of the Quebec Code of Civil Procedure relating to ordinary civil actions, which says that a discontinuance may be signed by the party or by his attorney.

The Citizens' Vigilance League, for obvious reasons, desires to remain the master of the evidence it has accumulated and to

be the only party to present it before any judicial body or court of inquiry. Hence a Royal Commissioner would not suit its purpose, neither would a series of actions before the criminal courts, where public officials would have access to the evidence accumulated. In either case the League would lose its exclusive control of its own evidence.

It is not the intention to discuss here the merits of the two judgments on the League's petitions; for present purposes it must be assumed that both are good in law. Obviously the law in its present state will not permit a broad inquiry into the public administration of the City of Montreal on such evidence as the League offered in its petitions. No doubt there will be considerable discussion, however, as to whether or not a group of citizens who desire an inquiry into municipal affairs should be so restricted.

THE SEPARATION OF POWERS IN LOWER CANADA

WHEREAS it is expedient to make effectual provision for excluding Judges of His Majesty's Courts of King's Bench within this Province from being elected or sitting and voting in the House of Assembly of this Province, Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of An Act of the Parliament of Great Britain passed in the thirty first year of His Majesty's Reign, intituled, "An Act to repeal certain parts of An Act passed in the fourteenth year of His Majesty's Reign," intituled "*An Act for making more effectual provision for the Government of the Province of Quebec in North America*" and to make further provision for the Government of the said Province". And it is hereby enacted by the authority of the same that from and after the passing of this act, no person who shall be a Judge of either of His Majesty's Courts of King's Bench within this Province, shall be capable of being elected or of sitting, or voting, as a Member of Assembly in any Provincial Parliament. (An Act for declaring Judges to be disabled and disqualifying them, from being elected, or from Sitting and Voting in the House of Assembly, 51 George III, 1811, c. 4)