Federal Court Cour fédérale

Date: 20240119

Docket: T-1151-20

Citation: 2024 FC 91

[ENGLISH TRANSLATION]

Montreal, Quebec, January 19, 2024

PRESENT: Madam Associate Judge Steele

BETWEEN:

SYLVIE ROBITAILLE

Plaintiff

and

HIS MAJESTY THE KING

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The plaintiff, Sylvie Robitaille, is a Canadian taxpayer who prepares and files her own annual provincial and federal income tax returns using paper forms.

[2] In the fall of 2012, the Minister of National Revenue decided to stop the automatic delivery of paper tax packages to Canadian taxpayers' homes. Taxpayers like Ms. Robitaille who

still wished to submit their annual tax returns in paper format were then invited to either download them from the Canada Revenue Agency [CRA] website; pick them up at a Canada Post or Service Canada office, or at one of the Caisses Desjardins branches in Quebec; or request them from the CRA by telephone or online.

[3] Around April 2017, Ms. Robitaille tried in vain to obtain a paper package for her income tax return for the 2016 taxation year. She was able to go to two post offices near her home, but there were no paper packages left in the displays in both post offices. She called the CRA, but was unable to get through to speak to an agent.

[4] She therefore decided to send a letter to the CRA explaining the situation, accompanied by a cheque for $1,000.00, which she found more than sufficient to cover any tax balance she may have owed for the 2016 taxation year. However, a CRA officer mistakenly failed to indicate in the system that the cheque was for the 2016 taxation year. The payment was therefore processed as an instalment for the current year, 2017. What followed was a series of correspondence between Ms. Robitaille and the CRA to clarify, rectify and regularize her case. The CRA acknowledged having made a processing error and sent Ms. Robitaille a letter of apology in August 2019.

[5] At the end of this process, which included a hearing before the Tax Court of Canada in August 2020, Ms. Robitaille's tax file was regularized. Ms. Robitaille nevertheless commenced this action for damages on September 28, 2020. She criticized the CRA for its [TRANSLATION] "bureaucratic red tape", inefficiency, and poor management of her tax file. She further submitted

that the Minister of National Revenue's decision to stop the automatic mailing of tax packages was discriminatory. She is claiming compensatory and punitive damages in the amount of $20,000.00, which she adjusted to $40,000.00 at the hearing of this case on the merits.

[6] Despite its sympathy for Ms. Robitaille's tribulations, and acknowledging that she has shown patience and tenacity, the Court is nevertheless not satisfied that she has proven a fault on the part of the Crown likely to engage its liability, or an infringement of her fundamental rights under the *Quebec Charter of Human Rights and Freedoms*, CQLR c C-12 [*Quebec Charter*, or the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c 11(UK) [*Canadian Charter*]. Consequently, Ms. Robitaille is not entitled to payment of the monetary compensation sought. Ms. Robitaille's action must therefore be dismissed.

[7] Before delving into the analysis of the reasons leading to the aforementioned determination, let us turn to the parties' submissions and the evidence.

II. Parties' submissions

[8] In her Statement of Claim and her Reply, Ms. Robitaille essentially criticized the CRA for its [TRANSLATION] "bureaucratic red tape", the poor management of her tax file and its [TRANSLATION] "penalizing and discriminatory" attitude towards herself and all taxpayers who file their tax returns in paper format, following the decision by the Minister of National Revenue to stop the automatic mailout of paper tax packages for the 2013 to 2017 taxation years inclusively.

[9] Ms. Robitaille argues that the CRA and/or its officers were negligent and acted in bad faith in processing her tax file and that they damaged her reputation. She also contends that her fundamental rights were infringed as a result of the cessation of the automatic delivery of home tax packages. Ms. Robitaille initially claimed discrimination based on age and social condition, contrary to sections 10 and 12 of the *Quebec Charter*. At trial, Ms. Robitaille argued an infringement of the right to equality based on age and/or a ground analogous to disability under subsection 15(1) of the *Canadian Charter*. She submits that she and old people like her who do not have access to technology are isolated or minoritized by the decision to cease home delivery of paper tax packages.

[10] In her Statement of Claim, Ms. Robitaille claims compensatory and punitive damages, initially quantified at $20,000.00, but which she increased to $40,000.00 at the hearing. She is asking for the Court to exercise its discretion in awarding her compensatory damages (quantified at $20,000.00 on the morning of the hearing) for the time—hundreds of hours—she spent working on her file and asserting her rights, as well as the temporary abandonment of her university courses as an independent law student. With respect to punitive damages (quantified at $20,000.00 on the morning of the hearing), she was of the view that they were necessary to prevent such as situation from recurring and for the discriminatory measures that infringed her fundamental rights.

[11] The defendant denies the allegations and replies that the facts of this case do not expose the Crown to civil liability on the part of the Crown. The defendant categorically denies the existence of any fault on the part of the Minister of National Revenue or CRA employees.

According to the defendant, the Minister's decision to stop mailing tax packages is a policy decision that is immune from prosecution. The Minister, moreover, rendered another decision in January 2018 and the mailing of tax kits to homes has resumed. In addition, the actions taken by the various CRA officers comply with policies and procedures and are reasonable in regard to the facts of the case. While the CRA acknowledges some errors in processing the plaintiff's 2016 file, those errors have been corrected since at least December 2019, if not earlier. Indeed, the CRA cancelled the penalties and interest for the late filing of Ms. Robitaille's 2016 income tax return, and has apologized. In addition, at the end of the hearing before the Tax Court of Canada in August 2020, the case was definitively settled. With respect to damages, the Tax Court of Canada awarded Ms. Robitaille an amount for the disbursements incurred in the appeal, meaning that she obtained the compensation to which she was legally entitled following those proceedings. The defendant further maintains that there has been no demonstration of an intentional fault or unlawful or intentional infringement of any fundamental right. Consequently, Ms. Robitaille is not entitled to punitive damages either.

[12] The defendant is therefore calling for the action to be dismissed.

III. Issues

[13] The parties were unable to agree on the issues. Moreover, on a number of occasions, Ms. Robitaille rephrased the issues she felt the Court should determine, including in a document entitled [TRANSLATION] "Summary of Issues" submitted on the morning of the trial.

[14] It is therefore up to the Court to determine the issues to be decided, which are mainly based on the pleadings filed by both parties.

[15] There can be no doubt that this proceeding exposes the Crown to civil liability.

[16] The central issue, therefore, is whether the defendant committed a fault, whether intentional or not, whether Ms. Robitaille was harmed as a result of that fault, and whether such harm was an immediate and direct consequence of the fault. The Court must also determine whether Ms. Robitaille's fundamental rights were infringed, whether intentionally or not.

[17] Thus, the Court has identified the following issues:

(a) Has Ms. Robitaille demonstrated that the Minister of National Revenue and/or her employees, through their conduct, committed a fault exposing the Crown to civil liability?

(b) If so, has Ms. Robitaille demonstrated any damage that was an immediate and direct consequence of this fault, and if so, what is the quantum?

(c) Has Ms. Robitaille demonstrated an infringement of one of her fundamental rights as a result of the Minister of National Revenue's decision to stop the automatic mailing of tax packages from 2013 to 2017 inclusively?

(d) If so, is Ms. Robitaille entitled to compensatory or punitive damages for this infringement?

IV. Parties' evidence

A. *Objection to the evidence adduced on May 11, 2023*

[18] As this is a simplified action, the parties exchanged documents and performed written examinations, which were filed in the [TRANSLATION] "Trial Record". The parties acknowledged the authenticity of the documents, but not their veracity (Direction dated March 10, 2023). In addition, in accordance with Rule 299 of the *Federal Courts Rules*, the parties have submitted affidavit evidence: (1) the affidavit of plaintiff Sylvie Robitaille filed on November 29, 2022, and (2) the affidavit of Chantal Tourigny, for the defendant, filed on March 3, 2023. Both Ms. Robitaille and Ms. Tourigny were cross-examined at the hearing.

[19] On May 11, 2023, after the exchange of affidavit evidence in chief and reply by the parties, Ms. Robitaille filed three additional exhibits. The defendant's counsel objected to that evidence on the grounds that it was late and had not been introduced as affidavit evidence. The Court took the objection under advisement.

[20] The defendant's objection is upheld. Indeed, the documents submitted at the hearing, which postdate Ms. Robitaille's written testimony in her affidavit filed on November 29, 2022, are inadmissible because they are of such a nature as to take the defendant by surprise. In particular, they were not previously disclosed to the defendant, nor were they adduced into evidence by affidavit in accordance with Rule 299, and consequently the defendant was unable to respond to them.

[21] The Court will therefore disregard the documents (p 1101 *et seq*.) submitted on May 11, 2023, and any arguments arising from them. In other words, the Court will only

consider evidence that was properly tendered in accordance with Rules 295, 296 and 299 of the *Federal Courts Rules*, as well as the cross-examinations held at the hearing.

[22] We will now turn to the evidence.

B. *Facts presented in evidence by the parties*

[23] It should be noted that the chronology of the facts was not challenged by the parties. They may be summarized as follows.

[24] Ms. Robitaille was born in 1959 and considers that she was not [TRANSLATION] "immersed" in the age of technology. In particular, she does not have internet access at home or a cell phone, mainly by choice. She nevertheless admitted in cross-examination that she has access to that medium at school, and had access to it in 2016, including an email address, for the purposes of her studies as an independent law student.

[25] Ms. Robitaille assiduously prepares and files her (federal and provincial) income tax returns each year using paper forms and is up-to-date with her files. In 2013, she learned that the CRA would be discontinuing the automatic mailing of federal tax packages to people's homes, and that she would need to obtain them by other means.

[26] Indeed, in the fall of 2012, then Minister of National Revenue, the Honourable Gail Shea, decided to discontinue the automatic mailing of general tax and benefit packages directly to the homes of Canadian taxpayers. The Minister noted that more and more Canadians were choosing

to interact with the CRA via its website and electronic services. The Minister cited budgetary, environmental and efficiency considerations to explain her decision. The taxpayers concerned were notified by letter of the change, as well as of the various alternative ways of obtaining paper packages, although Ms. Robitaille was of the view that she had been taken by surprise.

[27] In particular, the packages were to be available at Canada Post and Service Canada service points and Caisses Desjardins branches in Quebec or by calling the CRA. The forms could also be downloaded or ordered online. The CRA did not control the delivery of forms: service points were responsible for ordering them. Various measures were taken to ensure that service points would be able to obtain them or to notify taxpayers in the event of shortages.

[28] Despite those measures, Ms. Robitaille found it increasingly difficult to obtain tax packages, both at the post offices near her home, to which she is able to walk, and by telephone. She even went so far as to contact the CRA to ask that a note be added to her file to the effect that she had requested that a package be sent to her each year. That request was refused, and she was invited to continue to obtain tax packages in the manner recommended by the CRA. A complaint to the Taxpayers' Ombudsman also failed to produce the desired outcome.

[29] In April 2017, Ms. Robitaille tried unsuccessfully to obtain a federal income tax return package for the 2016 taxation year from two post offices near her home. She was also unable to speak to an officer by calling the number provided by the CRA to make such a request.

[30] In order not to miss the April 30, 2017, deadline, she sent the CRA a letter by registered mail, dated April 24, 2017, in which she explained the situation and enclosed a cheque in the amount of $1,000.00 to cover any potential tax balance owed for the 2016 taxation year.

[31] Around June 2017, the Receiver General for Canada cashed the cheque for $1,000.00, but the CRA officer processing the communication failed to indicate the taxation year for which the cheque was intended.

[32] In January 2018, the Minister of National Revenue announced the resumption of the mailing of paper packages, including a tax and benefit guide and a booklet of forms for 2017, to taxpayers who had previously filed their returns on paper.

[33] Around February 2018, Ms. Robitaille noted an error in the processing of her cheque for $1,000.00 when she received an instalment payment summary notice. Indeed, rather than reserving the amount for the payment of any tax balance payable for the 2016 taxation year, as Ms. Robitaille had requested in her letter of April 24, 2017, the amount appeared as an instalment for the taxation year under way, i.e., 2017. On February 28, 2018, Ms. Robitaille sent the CRA a second explanatory letter, accompanied by her initial letter.

[34] On October 5, 2018, Ms. Robitaille received a letter from the CRA requesting that she file her 2016 income tax return. She also received a cheque in the amount of $1,291.84 that the CRA considered to have been an overpayment for the 2017 taxation year.

[35] Around November 5, 2018, Ms. Robitaille sent the CRA her 2016 tax return and a third letter explaining the situation, accompanied by the cheque for $1,291.84.

[36] Around February 2019, the CRA sent Ms. Robitaille a cheque for $1,295.53. On February 26, 2019, Ms. Robitaille sent a fourth letter to the CRA, accompanied by the cheque in the amount of $1,295.53. She explained in her letter that the amount of $1,000.00 was intended to pay her 2016 taxes and avoid penalties. It should be noted that, as of February 26, 2019, she had not yet received a notice of assessment following her 2016 tax return sent on November 5, 2018.

[37] On April 15, 2019, Ms. Robitaille sent a fifth letter in response to a request for information from a CRA officer.

[38] On May 16, 2019, the Minister issued a notice of assessment for the 2016 taxation year, which included, among other things, a tax reimbursement for 2016 in the amount of $707.11, less a late-filing penalty of $77.15, and arrears interest totalling $63.52. Ms. Robitaille subsequently cashed the cheque on July 3, 2019.

[39] On May 21, 2019, Ms. Robitaille sent a cease and desist letter to the CRA, which remained unanswered. She therefore took steps to lodge an objection to the notice of assessment and to initiate an appeal before the Tax Court of Canada.

[40] On or about June 14, 2019, Ms. Robitaille sent a notice of objection contesting the penalty and arrears interest for the late filing of her 2016 tax return.

[41] On August 2, 2019, the CRA sent Ms. Robitaille a letter of apology for the errors and processing delays relating to the 2016 taxation year. The letter further stated that interest and penalties would be reversed, but that the $707.11 reimbursement had been made in error and needed to be returned.

[42] On August 7, 2019, and November 22, 2019, statements of account were sent to Ms. Robitaille indicating that her account balance was assessed at $0.

[43] On September 23, 2019, Ms. Robitaille filed an appeal regarding the notice of assessment for 2016 with the Tax Court of Canada, given that her notice of objection had not yet been processed.

[44] On November 18, 2019, the CRA's Appeal Division issued its decision on the notice of objection and concluded that no adjustment was required. Ms. Robillard was invited to provide additional documentation if necessary. On November 25, 2019, Ms. Robitaille replied that all relevant documents had been provided and that she was maintaining her objection.

[45] On December 12, 2019, the CRA confirmed to Ms. Robitaille that a new notice of assessment for 2016 would be issued and that the late-filing penalties and interest in the amount of $130.44 would be waived.

[46] In January 2020, in addition to the new notice of assessment for 2016, Ms. Robitaille also received new notices of assessment for the 2013, 2017 and 2018 taxation years.

[47] On January 24, 2020, the CRA sent a letter confirming the cancellation of penalties and interest and calling on Ms. Robitaille to discontinue her appeal before the Tax Court of Canada, given the new notice of assessment for 2016.

[48] Ms. Robitaille did not communicate with the CRA and did not discontinue her appeal considering that it had not been entirely resolved, notably with respect to the calculation of the amount of penalties and interest, which she considered to be erroneous (there was an unexplained $10 difference between the CRA's calculations and Ms. Robitaille's calculations), and the absence of any mention of punitive damages.

[49] In the summer of 2020, the Tax Court of Canada scheduled an appeal hearing for August 27, 2020. The CRA counsel attempted to communicate with Ms. Robitaille to resolve the matter, but was unable to reach her.

[50] On August 20, 2020, the CRA's counsel sent a letter to Ms. Robitaille by bailiff, notifying her that the Tax Court of Canada did not have jurisdiction to hear her application for punitive and exemplary damages, and again calling on her to discontinue the proceeding in order to avoid the hearing scheduled for August 27, 2020. As Ms. Robitaille was away, she did not receive the letter.

[51] On August 26, 2020, having still not heard back from Ms. Robitaille, counsel for the CRA sent her a second letter by bailiff informing her that she would seek to have the appeal dismissed, as she found that there was no longer any dispute between the parties.

[52] On the morning of the August 27, 2020, hearing, the CRA's counsel reiterated the CRA's position to Ms. Robitaille. The parties then appeared before Justice d'Auray. There were exchanges and debates before the Court, notably on the history of the case and the quantum of penalties and interest, and on the expenses incurred by Ms. Robitaille to bring her case to a conclusion. The Court adjourned the hearing so that the CRA could verify and validate the amounts discussed, as Ms. Robitaille still found there to be a discrepancy between her calculations and those of the CRA.

[53] In a judgment dated September 3, 2020, Justice d'Auray of the Tax Court of Canada summarily dismissed the appeal, but awarded Ms. Robitaille the sum of $222.08 to cover certain disbursements in connection with the hearing, including costs for photocopying and gathering evidence.

[54] At the end of that hearing, Ms. Robitaille was of the view that there were still errors in the notice of assessment for 2017, but that situation was ultimately resolved in January 2021 following an adjustment request.

[55] We now turn to an analysis of the issues.

V. Analysis

A. ***First issue****: Has Ms. Robitaille demonstrated that the Minister of National Revenue and/or her employees, through their conduct, committed a fault exposing the Crown to civil liability?*

(1) *Legal principles*

[56] In Quebec, the Crown's extracontractual civil liability derives from paragraph 3(a)(i) and section 10 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, and article 1457 of the *Civil Code of Quebec* [CCQ] (*Hinse v Canada (Attorney General)*, 2015 SCC 35 [*Hinse*] at para 21).

[57] Since there can be no institutional fault, Ms. Robitaille bears the burden of establishing that the injury she claims to have suffered arises from a fault committed by the Minister of National Revenue, or her servants, in the performance of their duties, and solely if those servants may themselves be the subject of a civil liability suit (CCQ, art 2803, *Hinse* at para 70).

[58] There are, however, some limits to the Crown's civil liability.

[59] In particular, in the case of decisions that may be described as "policy decisions", the case law recognizes that the Crown is generally protected by qualified immunity from prosecution. In *Hinse*, citing *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 [*Imperial Tobacco*] at paragraph 90, the Supreme Court of Canada wrote:

> [23] The principles in question include those relating to Crown immunity, which the Court considered in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45; see also *Canadian Food Inspection Agency*, at para. 27; s. 8 *C.L.P.A.* In *Imperial Tobacco*, the Court noted that the prevailing view in Canada is that only "true" policy decisions are protected by Crown immunity. The Court explained that it is not helpful to posit a stark dichotomy

> between policy decisions and operational decisions, or to define policy decisions negatively as decisions that are not "operational" decisions: paras. 84-86. Although it refrained from establishing a black-and-white test, the Court concluded that core policy government decisions that are protected from suit are "decisions as to a course or principle of action that are based on public policy considerations, such as economic, social and political factors, provided they are neither irrational nor taken in bad faith": para. 90. Policy decisions form a narrow subset of discretionary decisions. Such a decision is a considered decision that represents "a 'policy' in the sense of a general rule or approach, applied to a particular situation": para. 87. To determine whether a decision is a policy decision, the role of the person who makes it may be of assistance, given that employees working at the operational level are not usually involved in making policy choices: paras. 87-90.
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> [24] In *Imperial Tobacco*, the Court did not lay down a strict rule that only "true" core policy decisions can be protected by a qualified immunity. On the contrary, it stated that "[a] black and white test that will provide a ready and irrefutable answer for every decision in the infinite variety of decisions that government actors may produce is likely chimerical": para. 90. Although that case concerned the federal Crown's liability for negligence at common law, its conclusions on the issue of immunity for acts of the Crown pertained to public law, which means that they are applicable to Quebec's rules relating to Crown liability.

[60] To find qualified immunity from prosecution, the Court must be able to determine that the decisions in question were neither irrational nor taken in bad faith, and were based on a course or principle of action and considerations of public interest, such as economic, social or political factors (*Imperial Tobacco* at para 90; *Nelson (City) v Marchi*, 2021 SCC 41 at paras 1, 3, 39, 42–44, 46–47, 60–68).

[61] In particular, there is a presumption of good faith, even in the context of a government decision. In *Hinse*, the Supreme Court of Canada wrote:

> [48] In Quebec civil law, the concept of bad faith is flexible, and its content varies from one area of the law to another: *Entreprises*

Sibeca Inc. v. Frelighsburg (Municipality), 2004 SCC 61, [2004] 3 S.C.R. 304, at para. 25. In *Finney*, this Court defined the scope of a statutory immunity according to which the Barreau du Québec could not be prosecuted for acts carried out in good faith. The Court held that bad faith is broader than just intentional fault or a demonstrated intent to harm another: para. 37. It also encompasses serious recklessness. LeBel J. wrote the following:

> . . . recklessness implies a fundamental breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed. The act, in terms of how it is performed, is then inexplicable and incomprehensible, to the point that it can be regarded as an actual abuse of power, having regard to the purposes for which it is meant to be exercised. [Emphasis added; para. 39.] [Emphasis in original.]

[49] In *Sibeca*, this Court applied the definition of bad faith from *Finney* in the context of the qualified immunity that protects a municipality when exercising its regulatory discretion. Deschamps J.'s comments on the nature of that discretion can be transposed to the instant case:

> Municipalities perform functions that require them to take multiple and sometimes conflicting interests into consideration. To ensure that political disputes are resolved democratically to the extent possible, elected public bodies must have considerable latitude. Where no constitutional issues are in play, it would be inconceivable for the courts to interfere in this process and set themselves up as arbitrators to dictate that any particular interest be taken into consideration. They may intervene only if there is evidence of bad faith. The onerous and complex nature of the functions that are inherent in the exercise of a regulatory power justifies incorporating a form of protection both in civil law and at common law. [para. 24]

[50] In Deschamps J.'s view, the interpretation of bad faith proposed in *Finney* is applicable both to cases in which acts were committed deliberately with intent to harm and to those in which circumstantial evidence of bad faith must be relied on: *Sibeca*, at para. 26.

[51] In our opinion, a standard of bad faith that encompasses serious recklessness as defined in *Finney* and applied in *Sibeca* is

> consistent with the logic of Quebec's principles of civil liability. Moreover, this standard is akin to the concept of gross fault, which includes gross recklessness: see art. 1474 *C.C.Q.*; J.-L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile* (8th ed. 2014), at No. 1-190.
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> [52] This standard is of course higher than the standard of simple fault that the trial judge incorrectly applied in the case at bar. A simple fault such as a mistake or a careless act does not correspond to the concept of bad faith that defines the limits of the Crown's qualified immunity. Moreover, it would be paradoxical if the exercise of the Minister's power of mercy were subject to a reasonableness standard on judicial review while being considered from the standpoint of a simple fault in extracontractual liability.
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> [53] In sum, decisions of the Minister that are made in bad faith, including those demonstrating serious recklessness — as defined in *Finney* and *Sibeca* — on the Minister's part, fall outside the Crown's qualified immunity. Bad faith can be established by proving that the Minister acted deliberately with the specific intent to harm another person. It can also be established by proof of serious recklessness that reveals a breakdown of the orderly exercise of authority so fundamental that absence of good faith can be deduced and bad faith presumed. It is with this in mind that the duty owed by the Minister when exercising his or her power of mercy must be analyzed.

[62] In addition, the case law teaches that in order to make a finding of fault, it must be demonstrated that the employee engaged in deliberate, unlawful conduct in his or her capacity as a public officer, or that he or she disregarded the unlawfulness and consequences of his or her conduct, in this case, the probability of injury to the plaintiff (*Odhavji Estate v Woodhouse*, 2003 SCC 69 [*Woodhouse*] at paras 23–25).

[63] With these principles in mind, let us now examine the alleged fault of the Minister of National Revenue and her servants.

(2) *Discussion*

[64] At the outset, it should be made clear that Ms. Robitaille's action was filed in her own name and on her own behalf. Although some of the allegations and submissions made in the pleadings and other documents, such as the pre-hearing conference memorandum, or the "memorandum of fact and law" submitted at the hearing, appear to indicate that Ms. Robitaille is also advancing the interests of one or more groups, the fact is that this action is a purely personal action, and not a class action or representative proceeding within the meaning of the *Federal Courts Rules*. This judgment affects and binds only the parties designated herein.

(i) *Cessation of automatic mailing of tax packages to homes*

[65] As we noted earlier, in Ms. Robitaille's view, the Minister of National Revenue's decision to cease the automatic mailing of home tax packages from 2013 to 2018 inclusively constitutes a fault. She further alleges that the decision violated her fundamental rights, as will be discussed below. The defendant replies that the Minister's decision is a policy decision protected by simple immunity from prosecution.

[66] Given the teachings in *Imperial Tobacco* and *Hinse*, it is appropriate to examine the evidence surrounding the decision in question.

[67] The defendant's uncontradicted evidence is to the effect that the Minister of National Revenue's decision in the fall of 2012 to discontinue the automatic mailing of tax packages to all taxpayers was part of a broader objective to operate the CRA more efficiently and cost-effectively, especially given the observation that Canadian taxpayers' use of the CRA's online services had increased over time (Affidavit of Chantal Tourigny at paras 42–44; Affidavit of

F. Brassard in response to written examination, Question 1). Indeed, promoting the use of online services would enable the CRA to reduce its processing costs and times. In addition, the Minister had raised environmental and budgetary considerations, notably during debates in the House of Commons, where the Minister had noted, for example, the waste of 1.3 million unused paper packages sent to the homes of Canadian taxpayers.

[68] Given the evidence, the Court has no difficulty in concluding that the Minister's decision represents a "course or principle of action based on a balancing of economic, social and policy considerations" (*Imperial Tobacco* at para 90). The Minister's decision appears legitimate and in keeping with the CRA's mandate to maintain an efficient and cost-effective self-assessment taxation system.

[69] If, with hindsight, we may conclude that there were possible failings in how the decision was executed, this does not mean that the decision itself was unlawful, irrational or made in bad faith. Moreover, in addition to electronic statements, it was still possible to submit tax returns via paper forms, except that these had to be requested or obtained from service points. In 2018, the decision was adjusted to reinstate the automatic mailing of tax guides and forms, but solely for taxpayers who had previously filed their tax returns in paper format.

[70] Thus, in the absence of any evidence to the contrary, the Court finds that the Minister's decision to cease the automatic mailing of home income tax packages from 2013 to 2017 inclusively was not made unlawfully or irrationally, or in bad faith. The decision is therefore

immune from prosecution. The Minister's decision therefore did not generate any fault that could expose the Crown to a civil liability claim.

(ii) *Processing of tax file and interference with reputation*

[71] With respect to the processing of her tax file, Ms. Robitaille submits, firstly, that there were several failings on the part of the CRA, that it took multiple notifications and correspondence for the $1,000.00 cheque to finally be correctly attributed, that the CRA's errors had repercussions on, among other things, the GST reimbursement and the CRA's processing of other taxation years, such as 2013, 2017 and 2018, when the CRA issued notices of reassessment. She further criticizes the officers who handled her file for a lack of transparency in her regard. The defendant replies that there were indeed [TRANSLATION] "regrettable [processing] errors", notably in the attribution of the $1,000.00 cheque initially sent by Ms. Robitaille in April 2017, but that those errors do not constitute a fault likely to engage the Crown's civil liability.

[72] As previously discussed, in order to find a fault on the part of the Crown, it must be established that its officers engaged in deliberate and unlawful conduct and demonstrated disregard with respect to their conduct and the consequences of that conduct (*Woodhouse* at paras 23–24).

[73] It is not disputed that several CRA employees intervened in Ms. Robitaille's file. The defendant further admitted to errors in the processing of the 2016 tax return, including the first CRA officer's failure to correctly attribute the year covered by the $1,000.00 cheque sent by

Ms. Robitaille on April 25, 2017. This initial error resulted in the amount being automatically processed as an instalment for the taxation year under way (2017), rather than as a payment earmarked for the previous taxation year (2016).

[74] However, despite the errors, the Court cannot identify in the evidence any deliberate or unlawful conduct by one or more of the CRA officers who intervened in Ms. Robitaille's file, nor in what way the officers demonstrated disregard with respect to their conduct or the consequences thereof. Even if one accepts that the initial error was avoidable, and that once in the system, it reverberated for several months despite Ms. Robitaille's letters, the evidence shows that it was ultimately corrected in the months following the filing of the 2016 tax return and the sending of the objection to the resulting notice of assessment. Ms. Robitaille also acknowledges that her file is now in order.

[75] The Court is not persuaded that Ms. Robitaille has demonstrated that the officers acted in a manner that did not comply with standards, practices or the law. As stipulated in the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) [ITA], the taxpayer must file an annual income tax return (ITA, s 150(1)). The Minister then, with all due dispatch, examines the taxpayer's income tax return, assesses the tax and any interest and penalties payable, and determines the amount of any statutory refund and the amount of tax, if any, deemed to be paid (ITA, s 152(1)). Following this review, the Minister sends a notice of assessment (ITA, s 152(2)). Liability for the tax is not affected by an incorrect assessment under the Act (ITA, s 152(3)). The Minister may at any time make an assessment, reassessment or additional assessment (ITA, s 152(4)). The trigger for this

process appears to be the filing of the taxpayer's annual income tax return, which, in this case, was sent to the CRA more than a year late, in November 2018.

[76] In addition, the evidence is silent as to the standards or practices specific to the CRA, except for the defendant's uncontradicted evidence that Ms. Tourigny reviewed the practices of the tax authorities in Ms. Robitaille's case and concluded that despite regrettable errors, for which the CRA apologized, the actions performed by the various officers complied with the policies and procedures in accordance with the statutory powers (Affidavit of Chantal Tourigny filed on March 3, 2023, at paras 38–41; Affidavit of F. Brassard in response to written examination, Question 7).

[77] Although Ms. Robitaille was required to rigorously follow up on her case to regularize it, the evidence does not allow us to infer or conclude that there was any fault on the part of one or more servants of the Crown in the processing of her tax file.

[78] Secondly, Ms. Robitaille submits that the incorrect notices of assessment she received damaged her reputation. The defendant replies that notices of assessment are not public and cannot support an allegation of reputational damage. The defendant is also of view that the action was, moreover, prescribed under article 2929 CCQ.

[79] In *Prud'homme v Prud'homme*, 2002 SCC 85 [*Prud'homme*], the Supreme Court of Canada set out the grounds and criteria for a claim for interference with reputation:

> 32 Quebec civil law does not provide for a specific form of action for interference with reputation. The basis for an action in

defamation in Quebec is found in art. 1457 *C.C.Q.*, which lays down the general rules that apply to questions of civil liability. Thus, in an action in defamation, the plaintiff must establish, on a balance of probabilities, the existence of injury, of a wrongful act, and of a causal connection, as in the case of any other action in civil, delictual or quasi-delictual liability. (See N. Vallières, *La presse et la diffamation* (1985), at p. 43; *Houde v. Benoit*, [1943] Que. K.B. 713, at p. 720; *Société Radio-Canada v. Radio Sept-Îles Inc.*, [1994] R.J.Q. 1811 (C.A.), at p. 1818.).

33 To demonstrate the first element of civil liability, the existence of injury, the plaintiff must convince the judge that the impugned remarks were defamatory. The concept of defamation has been defined in several ways over the years. Generally speaking, it is held that defamation [TRANSLATION] "consists in the communication of spoken or written remarks that cause someone to lose in estimation or consideration, or that prompt unfavourable or unpleasant feelings toward him or her" (*Radio Sept-Îles*, *supra*, at p. 1818).

34 Whether remarks are defamatory is determined by applying an objective standard (*Hervieux-Payette v. Société Saint-Jean-Baptiste de Montréal*, [1998] R.J.Q. 131 (Sup. Ct.), at p. 143, reversed on other grounds by *Société Saint-Jean-Baptiste de Montréal v. Hervieux-Payette*, [2002] R.J.Q. 1669 (C.A.)). In other words, we must ask whether an ordinary person would believe that the remarks made, when viewed as a whole, brought discredit on the reputation of another person. On this point, we should note that words may be defamatory because of the idea they expressly convey, or by the insinuations that may be inferred from them. In *Beaudoin v. La Presse Ltée*, [1998] R.J.Q. 204 (Sup. Ct.), at p. 211, Senécal J. provided a good summary of the approach to be taken in determining whether particular remarks are defamatory in nature:

> [TRANSLATION] "The form in which the libel is expressed is of little import; it is the result achieved in the mind of the reader that creates the delict." The defamatory allegation or imputation may be direct, or it may be indirect, "by simple allusion, insinuation or irony, or be made conditionally, as an expression of doubt, or hypothetically." Often, the allegation or imputation "is conveyed to the reader by way of a simple insinuation, an interrogative sentence, a reference to a rumour, mention of information that has infiltrated the public awareness, juxtaposition of unrelated

> facts that, together, take on the appearance of being related".
>
> The words must also be interpreted in their context. For instance, "it is not possible to isolate a passage from a text and complain of it, if the entire text sheds a different light on that excerpt". On the other hand, "it matters little that the elements of which it is composed are true if the text as a whole conveys a message that is contrary to reality". In fact, truth or reality may be distorted by half-truths, selective compilation, omissions, and so on. "We must consider a newspaper article or radio broadcast as a whole, and the sentences and words must be interpreted by reference to one another."

35 However, a person who has made remarks that are deemed to be defamatory will not necessarily be civilly liable for them. The plaintiff must further demonstrate that the person who made the remarks committed a wrongful act. In *La responsabilité civile* (5th ed. 1998), at pp. 301-2, J.-L. Baudouin and P. Deslauriers point out that in defamation cases, the wrongful act may derive from two types of conduct, one malicious and the other merely negligent:

> [TRANSLATION] The first is an act in which the defendant, knowingly, in bad faith, with intent to harm, attacks the reputation of the victim and tries to ridicule or humiliate him or her, expose the victim to the hatred or contempt of the public or a group. The second results from conduct in which there is no intent to harm, but in which the defendant has nonetheless interfered with the reputation of the victim through the defendant's temerity, negligence, impertinence or carelessness. Both kinds of conduct constitute a civil fault and entitle the victim to reparation, and there is no difference between them in terms of the right. In other words, we must refer to the ordinary rules of civil liability and resolutely abandon the false idea that defamation is only the result of an act of bad faith where there was intent to harm.

36 Based on the description of these two types of conduct, we can identify three situations in which a person who made defamatory remarks could be civilly liable. The first occurs when a person makes unpleasant remarks about a third party, knowing

> them to be false. Such remarks could only have been made maliciously, with the intention to harm another person. The second situation occurs when a person spreads unpleasant things about someone else, when he or she should have known them to be false. A reasonable person will generally refrain from giving out unfavourable information about other people if he or she has reason to doubt the truth of the information. The third case, which is often forgotten, is the case of a scandalmonger who makes unfavourable but true statements about another person without any valid reason for doing so. (See J. Pineau and M. Ouellette, *Théorie de la responsabilité civile* (2nd ed. 1980), at pp. 63-64.)
>
> 37 Accordingly, in Quebec civil law, communicating false information is not necessarily a wrongful act. On the other hand, conveying true information may sometimes be a wrongful act. This is an important difference between the civil law and the common law, in which the falsity of the things said is an element of the tort of defamation. However, even in the civil law, the truth of what is said may be a way of proving that no wrongful act was committed, in circumstances in which the public interest is in issue (see the comments by Vallières, *supra*, at p. 10, cited with approval by the Quebec Court of Appeal in *Radio Sept-Îles*, *supra*, at p. 1819).

[80] In both *Prud'homme* and *Martineau*, the courts have determined that the communication of false information is not necessarily a wrongful act. Thus, even if the notice of assessment for 2016 was incorrect, it is well established that the issuance of an erroneous tax assessment does not in itself create a fault (*Martineau c Québec (Sous-ministre du Revenu)*, 2004 CanLII 13425 (QCCA) at para 28). In addition, the Court finds it difficult to conceive how Ms. Robitaille's honour or reputation could have been interfered with, given that notices of assessment are not public and there is no evidence to show that the exchanges between Ms. Robitaille and the CRA officers were not kept confidential.

[81] As there is no evidence that CRA officers spread defamatory remarks, the Court cannot find that Ms. Robitaille's reputation was interfered with.

(3) Conclusion with respect to the first issue

[82] In light of the foregoing, in answer to the first issue, namely, “Has Ms. Robitaille demonstrated that the Minister of National Revenue and/or her employees, through their conduct, committed a fault exposing the Crown to civil liability”, the Court responds no.

B. ***Second issue****: If so, has Ms. Robitaille demonstrated any damage that was an immediate and direct consequence of this fault, and if so, what is the quantum?*

[83] Given that the Court finds no fault on the part of the Minister of National Revenue or her employees, it is not necessary to address this second issue, given that the first element required as the basis for a civil liability action against the Crown has not been met.

[84] However, should this conclusion prove to be erroneous, the Court is nevertheless of the opinion that the civil liability action must be dismissed for lack of evidence of any damage and of the required causal link between the fault and the damage.

(1) Legal principles

[85] Under article 1457 CCQ, Ms. Robitaille must show that she has suffered an injury and that this injury arises directly from the alleged fault (CCQ, art. 1607; *Hinse* at para 132). The plaintiff therefore has a positive obligation to prove her damages: “[a]longside deliberate unlawful conduct and the requisite knowledge, a plaintiff must also prove the other requirements common to all torts. More specifically, the plaintiff must prove that the tortious conduct was the legal cause of his or her injuries, and that the injuries suffered are compensable in tort law.” (*Woodhouse* at para 32).

[86] In light of these requirements, let us examine the facts.

(2) Discussion

[87] The issue of damages is somewhat confusing, as there has been a particular emphasis on punitive damages under the *Quebec Charter*. The Court understands, however, that Ms. Robitaille is claiming compensatory pecuniary and non-pecuniary damages and/or punitive damages, which she nevertheless tells us are [TRANSLATION]"at the Court's discretion" and [TRANSLATION] "if the situation is favourable to me". Nevertheless, as the case law shows, the awarding of damages is not a discretionary remedy; the party claiming them must prove those damages (*Woodhouse* at para 32).

[88] Ms. Robitaille submits that she spent hundreds of hours preparing her case and was forced to reduce her course load at university as an independent law student. She adds that she suffered considerable stress and inconvenience as a result of all the steps she had to take over the years in order to regularize a situation she finds to be quite simple. The defendant replies that even if the Court were to find that the Crown had committed a civil fault, this could not, and did not, result in damages. In addition, the allegations of stress and inconvenience are unfounded. At the very least, the alleged damages were indirect, hypothetical and grossly exaggerated.

[89] Given the evidence, even if the Crown were found to be at fault, the Court is of the opinion that the existence of immediate and direct harm resulting from the fault has not been demonstrated.

[90] First, it should be recalled that the CRA exercised the discretion conferred on it by waiving the penalties and interest for the late filing of the 2016 income tax return. This issue was also the subject of a hearing before the Tax Court of Canada and a final judgment dismissing the appeal dated September 3, 2020. Although Ms. Robitaille was not entirely satisfied with the outcome, the Tax Court of Canada put an end to the debate. She was further awarded reimbursement for a portion of her costs, despite her appeal being dismissed. Ms. Robitaille undoubtedly experienced annoyances, frustrations and inconvenience as a result of having to invest time and energy in defending herself, but these are not compensable in legal terms (*Restaurant Le Relais de Saint-Jean inc c Agence du revenu du Québec*, 2020 QCCA 823 at paras 71–73).

[91] Second, the fact that the Tax Court of Canada does not have jurisdiction to hear an action for punitive damages (ITA, ss 69 and 171; *Tax Court of Canada Act*, RSC 1985, c T-2, s 12) and that Ms. Robitaille subsequently chose to institute this proceeding, with the risks and costs inherent in any legal proceeding, is not an immediate and direct damage arising from any of the faults alleged against the Crown in this action. Costs incurred by a party in defending a case before the courts are generally not compensable in monetary terms, in the absence of evidence that the defendant has acted improperly. Nothing in this case suggests that the defendant's position is unreasonable. As pointed out in *Iannuzzi c Procureur général du Canada*, 2021 QCCS 2932 at para 29, [TRANSLATION] "[t]he loss of time and effort involved in obtaining justice are inconveniences inherent in the efforts of anyone who is drawn into a judicial process . . . . Such inconveniences do not in themselves give rise to a legal right of action against the taxing authority."

[92] Third, even if the Court accepted that Ms. Robitaille experienced frustrations and moments of anxiety related to the error in processing her 2016 tax return, she is required to show that the injury was serious and prolonged and rose above the level of upset (*Mustapha v Culligan of Canada Ltd*, 2008 SCC 27 (CanLII), [2008] 2 SCR 114 at para 9). No such demonstration has been made.

[93] Fourth, no intentional or malicious conduct on the part of the officers who handled her file has been demonstrated, and accordingly, the conditions for an award of punitive damages have not been met (CCQ, art 1621).

[94] Fifth, Ms. Robitaille has not demonstrated the quantum of damages claimed.

[95] It should be remembered that the issue of damages and the causal link between the fault and the damages does not rest on the Court's discretion, but is part of the plaintiff's burden of proof. The Court has no alternative but to conclude that Ms. Robitaille has not discharged her burden of proving, on a balance of probabilities, that the injury she suffered resulted from the faults alleged to have been committed by the defendant.

(3) Conclusion with respect to the second issue

[96] The answer to the second issue, "Has Ms. Robitaille demonstrated any damage that was an immediate and direct consequence of this fault, and if so, what is the quantum?" is no.

C. ***Third issue:*** *Has Ms. Robitaille demonstrated an infringement of one of her fundamental rights as a result of the Minister of National Revenue's decision to stop the automatic mailing of tax packages from 2013 to 2017 inclusively?*

[97] According to the reading of her Statement of Claim and her Reply, Ms. Robitaille's claim of infringement of her fundamental rights was specifically based on allegations of discrimination based on age and/or social condition under sections 10 and 12 of the *Quebec Charter*. However, at the hearing, Ms. Robillard chose instead to plead an infringement of her right to equality based on discrimination on the grounds of disability or a ground analogous to disability, supporting her argument with subsection 15(1) of the *Canadian Charter*. The Court will therefore address some of the guiding legal principles surrounding these provisions.

(1) Legal principles

[98] In *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 (SCC) [*Andrews*] at 174, the Supreme Court of Canda offered a definition of what constitutes "discrimination", a definition that has been repeatedly restated by Canadian courts:

> . . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. . . .

[99] The right to equality is a fundamental right enshrined in the *Canadian Charter* and the *Quebec Charter*, albeit with some nuances.

[100] Subsection 15(1) of the *Canadian Charter* protects a substantive equality (*Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 [*Taypotat*] at para 17). This provision prohibits discrimination based on race, national or ethnic origin, colour, religion, sex, age or physical or mental disability, or any analogous grounds (*Andrews* at 174).

[101] The analysis of an alleged breach of the legal right to equality under subsection 15(1) of the *Canadian Charter* is a two-stage process, as further described in *Taypotat*:

> [19] The first part of the s. 15 analysis therefore asks whether, on its face or in its impact, a law creates a distinction on the basis of an enumerated or analogous ground. Limiting claims to enumerated or analogous grounds, which "stand as constant markers of suspect decision making or potential discrimination", screens out those claims "having nothing to do with substantive equality and helps keep the focus on equality for groups that are disadvantaged in the larger social and economic context": *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para. 8; Lynn Smith and William Black, "The Equality Rights" (2013), 62 *S.C.L.R.* (2d) 301, at p. 336. Claimants may frame their claim in terms of one protected ground or several, depending on the conduct at issue and how it interacts with the disadvantage imposed on members of the claimant's group: *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para. 37).
>
> [20] The second part of the analysis focuses on arbitrary — or discriminatory — disadvantage, that is, whether the impugned law fails to respond to the actual capacities and needs of the members of the group and instead imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating their disadvantage:
>
> > The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory. [*Quebec v. A*, at para. 332]
>
> [21] To establish a *prima facie* violation of s. 15(1), the claimant must therefore demonstrate that the law at issue has a disproportionate effect on the claimant based on his or her membership in an enumerated or analogous group. At the second stage of the analysis, the specific evidence required will vary depending on the context of the claim, but "evidence that goes to establishing a claimant's historical position of disadvantage" will be relevant: *Withler*, at para. 38; *Quebec v. A*, at para. 327.
>
> [22] The question in this case is which "enumerated or analogous group" faces discrimination, and whether Mr. Taypotat

> has established that the education requirement set out in the *Kahkewistahaw Election Act* has a disproportionate effect on the members of any such group.

[102] If a violation is established, the party whose rights have been violated may seek redress in accordance with section 24 of the *Canadian Charter*. Depending on the circumstances, the appropriate remedy may include punitive damages (*Vancouver (City) v Ward*, 2010 SCC 27 at para 56).

[103] In contrast to subsection 15(1) of the *Canadian Charter*, section 10 of the *Quebec Charter* does not protect a right to substantive equality, and the grounds of discrimination set out therein are exhaustive (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc* (*Bombardier Aerospace Training Center)*, 2015 SCC 39 [*Bombardier*] at para 52; *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 [*Ward*] at para 35).

[104] The right to equality under section 10 of the *Quebec Charter* must also be attached to another right guaranteed by the *Quebec Charter* (*Bombardier* at paras 53–54). By way of illustration, section 12 of the *Quebec Charter* pleaded in the case at bar prohibits refusal, through discrimination, to make a juridical act concerning goods or services ordinarily offered to the public.

[105] As under the *Canadian Charter*, certain criteria must be demonstrated in analyzing an alleged violation of equality rights under the *Quebec Charter*. These well established criteria were recently reiterated in *Ward*:

> [36] A plaintiff claiming the protection of s. 10 must satisfy a burden of proof that has three elements. First, the plaintiff must prove a "distinction, exclusion or preference" (*Quebec Charter*, s. 10), that is, "a decision, a measure or conduct [that] 'affects [him or her] differently from others to whom it may apply'" (*Bombardier*, at para. 42, quoting *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 551). Second, the plaintiff must establish that one of the characteristics expressly protected in s. 10 was a factor in the differential treatment complained of (*Bombardier*, at paras. 52 and 56). Third, the plaintiff must show that the differential treatment impairs the full and equal exercise or recognition of a freedom or right guaranteed by the *Quebec Charter* (*Bombardier*, at para. 53). Where these three elements are established, the burden of justifying the discrimination falls on the defendant.

[106] Thus, under both the *Quebec Charter* and the *Canadian Charter*, the party invoking the protection of either Charter has the burden of proving the alleged discrimination, on a balance of probabilities [*Bombardier* at para 59].

(2) Discussion

[107] At the outset, the Court notes that Ms. Robitaille has not specifically pleaded a violation of her equality rights protected under the *Canadian Charter*. There is no allegation to this effect, either in the Statement of Claim or in the Reply. There appears to be an ambiguous reference to the "Charter of Rights and Freedoms" in Ms. Robitaille's pre-hearing conference memorandum, but that reference was in connection with section 49 of the *Quebec Charter*, which suggests that, at that time, the basis for Ms. Robitaille's action and her claim for punitive damages was based on the *Quebec Charter*. Paragraph 72 of Ms. Robitaille's affidavit filed on November 29, 2022, mentions the *Canadian Charter*, but there is no request for a remedy pleaded under section 24 of the *Canadian Charter*. In fact, it was only at trial that section 15 of the *Canadian Charter* was specifically pleaded.

[108] This approach seems inadequate to truly place before the Court the issue of an infringement of a fundamental right conferred by the *Canadian Charter*. In the recent decision of *Canada (Public Safety and Emergency Preparedness) v Ewen*, 2023 FCA 225 [*Ewen*] at para 26, Justice Stratas of the Federal Court of Appeal determined that the Court could not determine a "Charter issue", if:

(a) There was no statement of claim or notice of application alleging a Charter breach and pleading the required elements to which the appellant could respond;

(b) There was no evidence from the respondent respecting an alleged breach of section 15 Charter rights;

(c) There was no claim for a declaration of a breach or another remedy under subsection 24(1) of the Charter; and

(d) There was no opportunity to file evidence or to cross-examine.

[109] Most of the conditions set out in *Ewen* are not met in this case, which, at the very least, raises a question about the Court's ability to decide the issue.

[110] In any event, whether one approaches the issue of discrimination from the perspective of the *Canadian Charter* or the *Quebec Charter*, the facts do not tend to support or establish a *prima facie* infringement of the fundamental right to equality invoked by Ms. Robitaille.

[111] Indeed, Ms. Robitaille essentially argues that the Minister of National Revenue's decision to stop automatically sending tax packages to taxpayers' homes for the period from 2013 to 2017

inclusively discriminated against taxpayers who, like her, do not have internet access at home, particularly seniors.

[112] The evidence submitted by Ms. Robitaille is silent on the definition of the group constituting [TRANSLATION]"seniors" who do not have home internet access.

[113] As to the matter of age, when the Minister of National Revenue made her decision in the fall of 2012, and during the period from 2013 to 2017 inclusively, when the decision was still applicable, Ms. Robitaille was in her mid-fifties. While it may be true that to a child or teenager, a person in their fifties might be perceived as being old, from a more objective point of view, given that the usual age to start receiving pension benefits in Canada is around 65, for example, a person would qualify as being old at much more venerable age than their mid-fifties. The issue thus arises as to which age group is actually targeted by the allegedly discriminatory decision of the Minister of National Revenue, and whether Ms. Robitaille was part of it. The Court cannot presume the composition of the targeted group, nor whether Ms. Robitaille was part of it, for lack of evidence in this regard.

[114] With respect to whether the absence of home internet access may constitute or amount to a "disability" or a "social condition", the evidence is also lacking. Moreover, Ms. Robitaille completely overlooked the fact that she does not have internet access by choice, and the impact of that choice on the arguments she put forward.

[115] The notion of "disability", while flexible and open-ended, suggests at the very least that the person must have an ailment, whether real or perceived, which underlies the prohibited

distinction (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, [2000] 1 SCR 665 [*Boisbriand*] at paras 63, 71–72 and 76–82). The lack of internet access, whether by choice or not, does not fit with the definition of disability, however broad that may be.

[116] The same applies to the notion of "social condition". It is generally recognized that this notion refers to a person's place in society (*Leclair c Paquet*, 1981 CanLII 4368 (QC CQ) at paras 39–42). The notion of "social condition" further suggests that it relates to the individual. For example, being a social assistance recipient is generally associated with a person's social condition (*AM c Procureur général du Québec*, 2023 QCCS 1753, leave to appeal refused, 2023 QCCA 1156). The lack of internet access, whether by choice or not, does not fit squarely within the definition of social condition.

[117] The Court recognizes that internet access can, in many circumstances, facilitate communications and access to information, and that a lack of access to this medium can also give rise to frustrations or inconvenience. However, given the case law and the evidence, the Court cannot agree with Ms. Robitaille's argument that lack of internet access is a ground, or an analogous ground, of discrimination prohibited under either of the charters.

[118] In addition, the evidence that the Minister's decision had the effect of creating or exacerbating disparities based on one of the prohibited grounds or that the Minister's decision reinforced discrimination against a particular group or subgroup is not compelling (*Taypotat* at paras 24 and 27).

[119] Ms. Robitaille has certainly submitted various documents (the veracity of which is not admitted) to support her claim that the cessation of the mailing of tax packages was discriminatory and exacerbated discrimination against her and people who do not have internet access, particularly the old. Those documents include, among others, news articles; an [TRANSLATION] "Evaluation Study" from the Audit, Evaluation and Risk Branch from November 2017 noting that certain groups were making the electronic transition more slowly, that more low-income people, persons with disabilities, the young and the elderly filed their tax returns on paper, and that there were initiatives to improve and increase the rate of use of electronic methods; and excerpts from debates in the House of Commons, during which some MPs raised issues related to the filing of tax returns, particularly by low-income seniors.

[120] Even when taken together, those documents do not allow the Court to conclude that Ms. Robitaille or any specific group was disadvantaged by the Minister's decision, or that there was any *prima facie* infringement of Charter rights. While the burden of demonstrating an infringement of a fundamental right protected by one of the charters must be neither too high nor impossible to meet, it is settled case law that the Court cannot decide an action based on the *Canadian Charter* or the *Quebec Charter* on the basis of anecdotal circumstances or mere conjecture and hypothesis. In the words of the Supreme Court of Canada in *Taypotat*:

> [34] I think intuition may well lead us to the conclusion that the provision has some disparate impact, but before we put the Kahkewistahaw First Nation to the burden of justifying a breach of s. 15 in its *Kahkewistahaw Election Act*, there must be enough evidence to show a *prima facie* breach. While the evidentiary burden need not be onerous, the evidence must amount to more than a web of instinct. The evidence before us, even in combination, does not rise to the level of demonstrating any relationship between age, residence on a reserve, and education among members of the Kahkewistahaw First Nation, let alone that arbitrary disadvantage results from the impugned provisions.

[121] It must therefore be concluded that Ms. Robitaille has not discharged her burden with respect to the essential elements of a remedy for violation of her fundamental rights.

(3) Conclusion

[122] The answer to the third issue, "Has Ms. Robitaille demonstrated an infringement of one of her fundamental rights as a result of the Minister of National Revenue's decision to stop the automatic mailing of tax packages between 2013 and 2017?" is no.

D. ***Fourth issue****: If so, is Ms. Robitaille entitled to punitive damages for this infringement?*

[123] Given that the Court finds no infringement of Ms. Robitaille's fundamental rights under the *Canadian Charter* or the *Quebec Charter* it is not necessary to address this fourth issue, since there is no basis to support the claim for punitive damages.

[124] However, even if infringement had been demonstrated, the Court finds that the evidence would not allow Ms. Robitaille to succeed on her claim for punitive damages.

(1) Legal principles

[125] It is well established that given that the main purpose of punitive damages is to punish and deter, evidence of intentional or unlawful fault or infringement is required as a basis for the action (*De Montigny v Brossard (Succession)*, 2010 SCC 51 at paras 47–55).

[126] Both the *Canadian Charter* and the *Quebec Charter* allow damages to be awarded for infringements of fundamental rights.

[127] As it is explained in *Hinse*:

> [164] Section 49 of the *Charter* provides that, "[i]n case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages." This Court explained what "unlawful and intentional interference" means in *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211:
>
> > Consequently, there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the *Charter* when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence. Thus, an individual's recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test. [Emphasis added; para. 121.] [Emphasis in original.]
>
> [165] In the instant case, given that the Ministers' conduct cannot be equated with bad faith or serious recklessness, we cannot conclude that there was intentional interference. The evidence does not support a finding that the Ministers' state of mind was such that they intended to harm Mr. Hinse or had knowledge of the adverse consequences their conduct would have for him. This stringent test was not met, and punitive damages should not have been awarded.

[128] See also comments to the same effect in *Ludmer c Attorney General of Canada*, 2020 QCCA 697 at paras 100–103.

[129] The evidence must therefore enable the Court to find intentional infringement, failing which the action for punitive damages cannot succeed.

(2) Discussion

[130] The Court has already determined that the decision to stop the automatic mailing of tax packages to taxpayers' homes is a policy decision that enjoys immunity. Moreover, as the Court has already determined in the first issue, there is no evidence to show that the Minister of National Revenue engaged in wrongful conduct or bad faith, or that she otherwise abused her authority in making the decision in question.

[131] Thus, it must be concluded that the criteria necessary to give rise to an award of punitive damages have not been met.

(3) Conclusion

[132] The answer to the fourth issue, "Is Ms. Robitaille entitled to punitive damages for this infringement?" is no.

VI. Conclusion

[133] For the foregoing reasons, the simplified action of the plaintiff, Sylvie Robitaille, filed on September 28, 2020, is dismissed.

VII. Costs

[134] Ms. Robitaille was seeking costs in the event she was successful, essentially for printing invoices.

[135] The defendant is also seeking costs. It also submitted a bill of anticipated costs at the hearing in the amount of $8,463.37, including legal fees and disbursements.

[136] Usually, the unsuccessful party is required to pay the costs of the successful party. Rule 400 of the *Federal Courts Rules* grants the Court discretion to determine whether one party must be ordered to pay the other's costs *(Ben Abdesslem v Canada*, 2018 FC 998 at para 41). Rule 400 further provides that the Crown is entitled to an award of costs if it is successful.

[137] In the exercise of its discretion, the Court may consider multiple factors in awarding and quantifying costs, including setting a lump sum, thereby avoiding the time and expense associated with assessing a bill of costs.

[138] In the Court's opinion, this matter has gone on long enough, and it is time to close this chapter for the benefit of all concerned.

[139] The defendant was successful, and the Court sees no reason to depart from the principle that the defendant is entitled to costs. In view of all the circumstances of this case and in the exercise of its discretion, the Court awards the defendant the lump sum of $2,500.00 in costs.

VIII. Concluding remarks

[140] The Court wishes to acknowledge the efforts and courtesy of Ms. Robitaille, who represented herself throughout the case, as well as the professionalism of the defendant's counsel, which contributed to the smooth unfolding of the proceedings and the hearing. The

Court also wishes to thank the parties for their patience and understanding in anticipation of this judgment.

JUDGMENT in T-1151-20

THIS COURT'S JUDGMENT is as follows:

1. The action of the plaintiff, Sylvie Robitaille, is dismissed.

2. Costs in the amount of $2,500.00 are awarded to the defendant.

"Alexandra Steele"
Associate Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1151-20
STYLE OF CAUSE:	SYLVIE ROBITAILLE v HIS MAJESTY THE KING
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	MAY 24, 2023
JUDGMENT AND REASONS:	STEELE AJ
DATED:	JANUARY 19, 2024

APPEARANCES:

Sylvie Robitaille	ON HER OWN BEHALF
Marieke Bouchard	FOR THE DEFENDANT HIS MAJESTY THE KING

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT HIS MAJESTY THE KING