

Federal Court



Cour fédérale

**Date: 20130312**

**Docket: T-893-12**

**Citation: 2013 FC 263**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]  
Ottawa, Ontario, March 12, 2013

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**SYLVAIN DUFRESNE**

**Plaintiff**

**and**

**HER MAJESTY IN RIGHT OF CANADA**

**Defendant**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] This is motion by the defendant pursuant to paragraph 298(2)(b) and section 358 of the *Federal Courts Rules*, SOR/98-106 [Rules], to strike the amended statement of claim and dismiss the simplified action filed against her by Sylvain Dufresne (Mr. Dufresne) on December 28, 2012.

[2] For the following reasons, this motion is allowed.

## **II. Facts**

[3] On September 18, 2009, Judge Marc Bisson of the Court of Quebec sentenced Mr. Dufresne to 7 months and 15 days of imprisonment with a consecutive 10-year period of long-term supervision as a long-term offender.

[4] A residency condition directing him to reside at the Hochelaga Community Correctional Centre [Hochelaga CCC], under the authority of the Correctional Service of Canada [CSC], was imposed on Mr. Dufresne.

[5] His parole officer is responsible for managing his risk to the community, and in this capacity, she administers his leave schedule.

[6] Mr. Dufresne is contesting his officer's decisions regarding his leave schedule.

[7] He filed a grievance with CSC on January 6, 2012 (file V30R00007409), and on January 17, 2013, he filed a motion for a writ of *habeas corpus* with *certiorari* in aid in the Quebec Superior Court, District of Montréal, alleging that his detention at the Hochelaga CCC between December 8, 2011, and January 19, 2012, was unlawful.

[8] In the conclusions of his motion for *habeas corpus*, Mr. Dufresne asked the Court to, among other things,

- (1) declare his detention to be unlawful; and
- (2) order that the leave schedule drawn up by CSC be invalidated for lack of jurisdiction and for violating section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11 [Charter].

[9] The Honourable Mr. Justice Marc André Blanchard rendered his judgment on February 16, 2012. He dismissed Mr. Dufresne's motion. He referred specifically to paragraph 35 of Mr. Dufresne's motion, which reads, [TRANSLATION] "The applicant submits to this Court that he was unlawfully detained under the leave schedules imposed by CSC and the detention measures at the CCC, whereas the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, does not confer any such power":

[TRANSLATION]

Whereas it is also clear that the Parole Board, when it imposes a condition to reside at a specific place, such as the one it just reimposed in its decision dated December 22, 2011, and presumes to know the manner of exercise that applies with regard to this condition to reside at a specific place.

Whereas it may also be logically inferred that the person on whom the Board has imposed this condition shall comply with the regulations in force at the institutions in question.

In the present case, the Hochelaga Community Correctional Centre, Ogilvy and Sherbrooke.

...

Whereas in this case the detention, which for the purposes of this exercise may be characterized as a deprivation of residual liberty,

is not unlawful, since it appears to be entirely justified with regard to not only the letter and the spirit of the Parole Board's decision, but also subsections 134(1) and 134(2) of the Act (see *Dufresne c Directeur du Hochelaga CCC et al*, Superior Court, District of Montréal, rendered by the Honourable Mr. Justice Blanchard, February 16, 2012, pages 30 and 31 of the Defendant's Record).

[10] Mr. Dufresne appealed against the decision of Justice Blanchard but discontinued the appeal on January 31, 2013.

[11] On December 28, 2012, Mr. Dufresne filed a simplified action against the respondent. In this action, he alleges as follows:

[TRANSLATION]

2. On Thursday, December 22, 2011, around 11:00 a.m., while residing at the Hochelaga CCC (Community Correctional Centre), the plaintiff (Sylvain Dufresne) had an appointment with the defendant (Correctional Service of Canada) at the Hochelaga CCC. The plaintiff met with his PO (parole officer), Chantal Bérubé, and was given his leave schedule (pass) for the week of 2011-12-23 to 2011-12-29 by his PO.

3. The plaintiff noticed that his schedule for December 25, 2011, had a missing [block of] two hours which had been deliberately cut from his schedule by his PO.

...

6. On December 25, 2011, the plaintiff was forced to remain locked up at the Hochelaga CCC that morning, and he could not leave to go eat, given that the Hochelaga CCC does not provide food services. However, paragraph 83(2)(a) of the CCRR (*Corrections and Conditional Release Regulations*) states: "83(2) The Service shall take all reasonable steps to ensure the safety of every inmate and that every inmate is (a) adequately clothed and fed".

...

10. In response to the unsatisfactory reply from the POS and the relentless hounding by my PO, the plaintiff prepared a complaint on January 6, 2012, bearing the number

V30R00007409, in order to stop this harassing and tyrannical conduct by the CMT (case management team).

...

16. The plaintiff was subjected to a two-hour period of detention on December 25, 2011, in an arbitrary and cruel manner (without feeding the plaintiff) as an instrument of restraint in a repressive context. Here is a list of acts, regulations and directives that the CCC failed to comply with:

#### CCRA

##### Instruments of restraint

68. No person shall apply an instrument of restraint to an offender as punishment.

##### Treatment or punishment

69. No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

#### The Canadian Charter of Rights and Freedoms

##### Section 7: The right to liberty

Section 9: Everyone has the right not to be arbitrarily detained or imprisoned.

#### CCRR

Paragraph 83(2)(a): adequately fed

#### Commissioner's Directive 706

Paragraph 36: that a CCC is a minimum-security institution

#### Commissioner's Directive 714

Paragraph 5: The District Director will ensure that CCCs are in compliance with all applicable federal, territorial, provincial, municipal and local legislation and regulations (see Plaintiff's Statement of Claim).

[12] He concludes with a request for \$15,500 in damages plus the additional indemnity provided for under article 1619 of the *Civil Code of Québec*, RSQ, 1991, c C-1991 [CCQ], as follows: [TRANSLATION] “For deprivation of liberty and moral damage on December 25, 2011, the plaintiff claims for the injuries sustained by reason of the defendant’s fault the sum of five hundred and fifty [sic] dollars (\$500); for punitive and exemplary damages owing to the arbitrary, oppressive and tyrannical conduct of my PO, a sum of ten thousand (\$10,000); and an amount of five thousand (\$5,000) for moral damage and injury sustained during the period from December 8, 2011, to February 23, 2012, for the harassment suffered, the intimidation and the violation of the rights of the plaintiff, for a total of fifteen thousand five hundred dollars (\$15,500), plus interest and costs” (see Plaintiff’s Statement of Claim).

[13] The defendant objects to this simplified action, arguing that it should be struck because it lacks a cause of action and is barred by issue estoppel.

### **III. Legislation**

[14] The applicable provisions of the *Corrections and Conditional Release Act*, SC 1992, c 20, the *Corrections and Conditional Release Regulations*, SOR/92-620, the *Civil Code of Québec*, RSQ, c C-1991, the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11, and the *Federal Courts Rules*, SOR/98-106, are reproduced in an appendix to this decision.

#### **IV. Issue**

- *Has the defendant established all of the necessary elements for her motion to dismiss the action for lack of a reasonable cause of action or to apply issue estoppel, and if so, should the Court allow the motion?*

#### **V. Positions of the parties**

##### **A. Defendant's position**

[15] The defendant submits that the Court should allow her motion because it meets the requirements of paragraph 298(2)(b) of the Rules of this Court, insofar as the statement of claim discloses no reasonable cause of action, even if the alleged facts alleged in it were accepted as proven. She refers the Court to the decision of the Supreme Court of Canada in *R. v Imperial Tobacco Canada Ltd*, 2011 SCC 42 (CanLII) at paras 17 and 22.

[16] The defendant also argues that the plaintiff's simplified action must fail, given the absence of fault within the meaning of the CCQ or the lack of a violation of his right to liberty or his right not to be arbitrarily detained under the Charter.

[17] The cause of action arises from an unlawful detention for two hours that allegedly occurred at the Hochelaga CCC on December 25, 2011, further to a decision of his parole officer to cut two hours from his leave schedule.

[18] The defendant relies on the judgment of Justice Blanchard of the Quebec Superior Court, District of Montréal, dated February 16, 2012, dismissing the plaintiff's motion for *habeas corpus* to argue that the detention of Mr. Dufresne was lawful and, consequently, that there was no fault or right to damages or punitive and exemplary damages for unlawful interference with his Charter-protected right to liberty or right not to be arbitrarily detained.

[19] Finally, the defendant argues that the plaintiff's action is estopped because the three preconditions set out by the Supreme Court in *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 25 [*Danyluk*] have been met, namely:

- (1) that the question to be determined in the simplified action is the same question as the one decided in the motion for *habeas corpus*;
- (2) that the judicial decision which creates the estoppel, namely, the motion for *habeas corpus*, is final; and
- (3) that the parties are the same in both the motion for *habeas corpus* and the plaintiff's simplified action.

[20] The defendant further submits that in the present case, the Court therefore has the discretion to apply estoppel to bar wasteful relitigation of the same facts, since the plaintiff has availed himself of his right to bring a motion for *habeas corpus*. He is not permitted to proliferate litigation unduly.



[21] Finally, the defendant reminds the Court that even though the plaintiff claims that his simplified action concerns harassment, intimidation and the violation of his rights, which have nothing to do with the management of his schedule, this would not be a bar to applying estoppel, given that the action is unfounded in fact and, moreover, is based on vague facts and discloses no reasonable cause of action, thereby giving rise to the application of paragraph 221(1)(a) of the Rules of this Court.

**B. Position of Mr. Dufresne**

[22] The plaintiff is a self-represented litigant. He has filed in this Court a written reply summing up his arguments.

[23] First, he submits that the elements of fault which he is alleging against the defendant were not explicitly considered in the judgment dismissing his motion for *habeas corpus*, since the judgement of Justice Blanchard makes no mention of the detention on December 25, 2011.

[24] Second, he notes that his simplified action goes beyond the mere management of his leave privileges because it concerns all of the acts of intimidation and harassment committed against him by his parole officer, who is trying to prevent him from filing complaints and grievances (see Plaintiff's Written Reply, paragraph 3, page 4 of the Plaintiff's Record).

[25] The plaintiff also notes that in her decision dated January 16, 2012, which was not given to him until January 20, 2012, the defendant acknowledges that his complaint regarding his

detention on December 25, 2011, is well founded in part, as the director of the Hochelaga CCC, Angèle Côté, wrote in her response to the complaint:

[TRANSLATION]

. . . As was discussed during the interview, at no time were you forbidden to meet with your legal counsel regarding your various lawsuits, complaints and grievances. However, you were asked to use the time allotted for this purpose and avoid prolonging your leave on the pretext of having several meetings with counsel.

During the meeting we had, I told you that if your meetings with counsel were justified and verifiable, you would not have to make up for this time in your weekend leave schedules. However, I would remind you that this decision could be reviewed if there is any indication that you may be abusing this privilege.

Your complaint is therefore upheld in part, since the time will not have to be made up in your weekend leave schedules where your meetings with legal counsel can be verified. Action has been taken in this regard, and I have asked your case management team to stop cutting your hours in those circumstances. However, the part of the complaint dealing with physical and moral damage is denied, since you have failed to show that you suffered any such injury . . . (see Appendix A, Tab 1, Defendant's Motion Record).

[26] The plaintiff further submits that this fault that was acknowledged by the centre director was not the subject of any earlier judgement.

[27] He also notes that his simplified action concerns his being deprived of food and that this element has not been the subject of any judgment.

[28] Finally, he argues that the Federal Court is not bound by the administrative decisions of the Quebec Superior Court and that the *habeas corpus* proceeding does not have the same legal foundation as the action in damages.

## VI. Analysis

[29] In *Angle v Canada (Minister of National Revenue)*, [1975] 2 SCR 248, the Supreme Court sets out the preconditions for applying issue estoppel. At page 254 of that decision, the Court cites Lord Guest in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No. 2)*, [1967] 1 AC 853, at page 935, where he defines the required conditions for issue estoppel:

- (1) that same question has been decided;
- (2) that the judicial decision which is said to create the estoppel was final; and,
- (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies . . . .

[30] In *Danyluk*, above, the Supreme Court states at paragraph 33, regarding the applicability of issue estoppel, that issue estoppel should be subjected to a two-step analysis. The Supreme Court writes:

The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson J. in *Angle, supra*. If successful, the court must still determine whether, as a matter of discretion, issue estoppel *ought* to be applied: *British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc.* (1998), 50 B.C.L.R. (3d) 1 (C.A.), at para. 32 . . . .

[31] It is therefore up to the Court to analyze, first, the facts and the proceedings to determine whether the three preconditions laid down by the Supreme Court have been met. If they have, the

Court must also consider whether it is in the best interests of justice to apply this form of estoppel in the case before it.

[32] In the present case, there is no doubt that we are faced with the same parties, namely, the applicant, Sylvain Dufresne, who brought the motion for *habeas corpus*, and the respondent, the Attorney General of Canada, privy to Her Majesty in right of Canada in the present motion to dismiss pursuant to paragraph 298(2)(b) of the Rules of this Court.

[33] The Court also notes that the decision of Justice Blanchard dated February 16, 2012, regarding Sylvain Dufresne's motion for *habeas corpus* is clearly final. Mr. Dufresne appealed that decision on March 22, 2012, before discontinuing his appeal on January 31, 2013. Two of the three preconditions for applying issue estoppel have therefore been met.

[34] But what about the third precondition? Does Mr. Dufresne's simplified action concern the same question that was decided in the judgement of Justice Blanchard of the Quebec Superior Court, District of Montréal?

[35] The defendant submits that the facts and rights argued by Mr. Dufresne in his simplified action are the same as those raised and decided by the Superior Court on February 16, 2012. However, Mr. Dufresne argues that his simplified action raises broader issues, since it concerns the alleged harassment and intimidation committed against him since his transfer to the Hochelaga CCC. Having read the allegations in the simplified action instituted by Mr. Dufresne, the Court agrees that the decision to impose two hours of detention on him the morning of

December 25, 2011, is central to the case. The *habeas corpus* motion filed by Mr. Dufresne stated, at paragraph 29, that [TRANSLATION] “between December 8, 2011, and January 19, 2012, CSC imposed on the applicant a period of detention of 18 hours per day at the Hochelaga CCC”. Paragraphs 30, 31 and 32 described certain incidents, including the one on December 25, which in Mr. Dufresne’s view constituted unlawful detention contrary to sections 68, 134.1 and 134.2 of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA], and section 7 of the Charter. In addition, the respondent in the motion for *habeas corpus* in the Superior Court had filed a copy of the detailed schedules of Mr. Dufresne covering every week since his arrival at the Hochelaga CCC.

[36] Furthermore, Mr. Dufresne is seeking damages in the amount of \$15,500 in his simplified action, whereas his motion for *habeas corpus* instead sought to have his detention declared to be unlawful, particularly for limiting his leave privileges and thus violating section 7 of the Charter.

[37] Nevertheless, the Court must determine whether the decision of Justice Blanchard disposed of the facts and issues raised by Mr. Dufresne in his simplified action.

[38] The Court notes that Justice Blanchard had no choice but to consider all of the leave schedules, detention measures and, more specifically, the detention on December 25, 2011. The first paragraph of his decision states that [TRANSLATION] “. . . the issue as submitted by the applicant at paragraph 35 of his motion reads as follows: [TRANSLATION] ‘The applicant submits to this Court that he was unlawfully detained under the leave schedules imposed by CSC and the

detention measures at the CCC, whereas the *Corrections and Conditional Release Act* does not confer any such power”.

[39] It thus becomes clear that the judgment of Justice Blanchard on the motion for *habeas corpus* concerns the lawfulness of Mr. Dufresne’s detention and of all of the measures imposed on him between December 8, 2011, and January 19, 2012. Furthermore, the record contains a copy of the detailed schedules of Mr. Dufresne for the duration of his detention at the Hochelaga CCC. These are the same measures taken by the Hochelaga CCC which are the basis for the simplified action instituted by Mr. Dufresne and on which he relied for a part of his motion for *habeas corpus*. In light of this finding, the Court must conclude that the third precondition has been met.

[40] Mr. Dufresne raised another argument against applying issue estoppel, namely, that the director of the Hochelaga CCC agreed in part with his complaint regarding the withdrawal of two hours of leave on December 25, 2011. In his view, this partial acknowledgement of the merit of his complaint warrants this Court allowing him to pursue his action in damages.

[41] The Court cannot agree with such an argument because even though the director of the Hochelaga CCC wrote on January 20, 2012, that no more hours would be cut unless Mr. Dufresne abused his privileges, this does not constitute an admission of liability entitling him to damages.

[42] In *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184, 405 NR 160, the Federal Court of Appeal reminds us at paragraph 35 of its decision that establishing the tort of misfeasance in public office requires proving that the public officer acted deliberately in a manner which he or she knew was inconsistent with the obligations of his or her office. The Federal Court of Appeal relied on the judgment of the Supreme Court of Canada in *Odhavji Estate v Woodhouse*, [2003] 3 SCR 263. In the present case, it is clear that the facts, even if they were accepted as proven, in no way establish that Mr. Dufresne's parole officer intended to act unlawfully.

[43] Finally, upon reading the statement of claim in the record, and without speculating on any additions which Mr. Dufresne might wish to make to it, it is clear that it discloses no reasonable cause of action, since Justice Blanchard declared the decisions regarding the management of Mr. Dufresne's schedule to be lawful. Furthermore, the provisions of sections 174 and 181 of the Rules of this Court were not respected, since the allegations are vague and do not set out the essential elements of an action in liability.

[44] There is a principle to the effect that, to the extent possible, court decisions should be final so as to avoid multiple proceedings based on the same facts when a court has already considered the matter and rendered a decision disposing of it. This principle holds true even in cases where not all of the preconditions for applying issue estoppel have been met (see *Oriji v Canada*, 2006 FC 1539 (CanLII); *Peter G. White Management Ltd v Canada (Minister of Canadian Heritage)*, 2006 FCA 190 (CanLII); and *Peter G. White Management Ltd v Canada (Minister of Canadian Heritage)*, 2004 FC 346 (CanLII)).

[45] In this case, as it is clear that the judgment on the motion for *habeas corpus* was decided on the basis of the lawfulness of the measures taken regarding Mr. Dufresne's conduct, including his allegation of being denied food, there are no reasonable grounds to allow the same facts to be presented to another court, especially since a different court has already considered these same actions and measures in the framework of the Hochelaga CCC's grievance and complaint process. Allowing a third proceeding which is based on the same facts and has no chance of succeeding even if the facts were accepted as proven (see *Canada v Grenier*, 2005 FCA 348 at para 61 (CanLII), reversed in part by the Supreme Court in *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62) would not be in the interests of justice.

[46] Being satisfied that the preconditions for applying issue estoppel have been met and that the simplified action filed by Mr. Dufresne does not disclose any reasonable cause of action even if the alleged facts were proven, the Court allows the defendant's motion.



**ORDER**

**THE COURT allows** the defendant's motion, orders that the plaintiff's statement of claim be struck out in its entirety and dismisses the plaintiff's simplified action, without possibility of amendment. Without costs.

“André F. J. Scott”

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Judge

Certified true translation  
Michael Palles

## APPENDIX

### *Corrections and Conditional Release Act, SC 1992, c 20*

### *Loi sur le système correctionnel et la mise en liberté sous condition, LC 1992, c 20*

#### Instruments of restraint

68. No person shall apply an instrument of restraint to an offender as punishment.

Cruel treatment, etc.

69. No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

#### Conditions

134.1 (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations, with such modifications as the circumstances require.

#### Conditions set by Board

(2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

#### Duration of conditions

(3) A condition imposed under subsection (2) is valid for the period that the Board specifies.

#### Relief from conditions

(4) The Board may, in accordance with the

#### Moyens de contrainte

68. Il est interdit d'user de moyens de contrainte à titre de sanction contre un délinquant.

#### Cruauté

69. Il est interdit de faire subir un traitement inhumain, cruel ou dégradant à un délinquant, d'y consentir ou d'encourager un tel traitement.

#### Conditions

134.1 (1) Sous réserve du paragraphe (4), les conditions prévues par le paragraphe 161(1) du Règlement sur le système correctionnel et la mise en liberté sous condition s'appliquent, avec les adaptations nécessaires, au délinquant surveillé aux termes d'une ordonnance de surveillance de longue durée.

#### Conditions imposées par la Commission

(2) La Commission peut imposer au délinquant les conditions de surveillance qu'elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant.

#### Période de validité

(3) Les conditions imposées par la Commission en vertu du paragraphe (2) sont valables pendant la période qu'elle fixe.

#### Dispense ou modification des conditions

(4) La Commission peut, conformément aux

regulations, at any time during the long-term supervision of an offender,

(a) in respect of conditions referred to in subsection (1), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or

(b) in respect of conditions imposed under subsection (2), remove or vary any such condition.

Instructions to offenders subject to long-term supervision order

134.2 (1) An offender who is supervised pursuant to a long-term supervision order shall comply with any instructions given by a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or by the Commissioner, or given by the offender's parole supervisor, respecting any conditions of long-term supervision in order to prevent a breach of any condition or to protect society.

***Corrections and Conditional Release Regulations, SOR/92-620***

83(2) The Service shall take all reasonable steps to ensure the safety of every inmate and that every inmate is

- (a) adequately clothed and fed;
- (b) provided with adequate bedding;
- (c) provided with toilet articles and all other articles necessary for personal health and cleanliness; and
- (d) given the opportunity to exercise for at least one hour every day outdoors, weather permitting, or indoors where the weather

règlements, soustraire le délinquant, au cours de la période de surveillance, à l'application de l'une ou l'autre des conditions visées au paragraphe (1), ou modifier ou annuler l'une de celles visées au paragraphe (2).

Instructions

134.2 (1) Le délinquant qui est surveillé aux termes d'une ordonnance de surveillance de longue durée doit observer les consignes que lui donne son surveillant de liberté conditionnelle, un membre de la Commission ou la personne que le président ou le commissaire désigne nommément ou par indication de son poste en vue de prévenir la violation des conditions imposées ou de protéger la société.

***Règlement sur le système correctionnel et la mise en liberté sous condition, DORS/92-620***

83(2) Le Service doit prendre toutes les mesures utiles pour que la sécurité de chaque détenu soit garantie et que chaque détenu :

- a) soit habillé et nourri convenablement;
- b) reçoive une literie convenable;
- c) reçoive des articles de toilette et tous autres objets nécessaires à la propreté et à l'hygiène personnelles;
- d) ait la possibilité de faire au moins une heure d'exercice par jour, en plein air si le temps le permet ou, dans le cas contraire, à

does not permit exercising outdoors.

l'intérieur.

***Civil Code of Québec, RSQ, c C-1991***

***Code civil du Québec, LRQ, c C-1991***

1619

1619

An indemnity may be added to the amount of damages awarded for any reason, which is fixed by applying to the amount of the damages, from either of the dates used in computing the interest on them, a percentage equal to the excess of the rate of interest fixed for claims of the State under section 28 of the Tax Administration Act (chapter A-6.002) over the rate of interest agreed by the parties or, in the absence of agreement, over the legal rate.

Il peut être ajouté aux dommages-intérêts accordés à quelque titre que ce soit, une indemnité fixée en appliquant à leur montant, à compter de l'une ou l'autre des dates servant à calculer les intérêts qu'ils portent, un pourcentage égal à l'excédent du taux d'intérêt fixé pour les créances de l'État en application de l'article 28 de la Loi sur l'administration fiscale (chapitre A-6.002) sur le taux d'intérêt convenu entre les parties ou, à défaut, sur le taux légal.

***Canadian Charter of Rights and Freedoms (Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11)***

***Charte canadienne des droits et libertés (partie I de la Loi constitutionnelle de 1982, Annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11)***

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

***Federal Courts Rules, SOR/98-106***

***Règles des Cours fédérales, DORS/98-106***

174. Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

174. Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

181. (1) A pleading shall contain particulars of every allegation contained therein, including

181. (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

(a) particulars of any alleged

a) des précisions sur les fausses

misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

Further and better particulars

(2) On motion, the Court may order a party to serve and file further and better particulars of any allegation in its pleading

298(2) A motion may be brought, within the time set out in rule 204 for the service and filing of a statement of defence,

(a) to object to the jurisdiction of the Court; or

(b) to strike a statement of claim, on the ground that it discloses no reasonable cause of action.

Application

358. This Part applies to motions other than motions for leave to appeal under Part 6.

déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

Précisions supplémentaires

(2) La Cour peut, sur requête, ordonner à une partie de signifier et de déposer des précisions supplémentaires sur toute allégation figurant dans l'un de ses actes de procédure.

298(2) Une requête peut être présentée dans le délai prévu à la règle 204 pour la signification et le dépôt de la défense :

a) soit pour contester la compétence de la Cour;

b) soit pour faire radier une déclaration au motif qu'elle ne révèle aucune cause d'action valable.

Application

358. La présente partie s'applique aux requêtes autres que celles pour autorisation d'appeler visées à la partie 6.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-893-12

**STYLE OF CAUSE:** SYLVAIN DUFRESNE  
and  
HER MAJESTY IN RIGHT OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 18, 2013

**REASONS FOR ORDER  
AND ORDER:** SCOTT J.

**DATED:** March 12, 2013

**APPEARANCES:**

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(SELF-REPRESENTED)

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