

Federal Court



Cour fédérale

**Date: 20141014**

**Docket: T-1021-13**

**Citation: 2014 FC 968**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, October 14, 2014**

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

**SIMPLIFIED ACTION**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA**

**Plaintiff**

**And**

**IAN PARENTEAU**

**Defendant**

**JUDGMENT AND REASONS**

[1] This is a simplified action pursuant to rule 292 of the *Federal Courts Rules*, SOR/98-106 (the Rules), commenced by a statement of claim dated June 7, 2013.

[2] The plaintiff is claiming from the defendant the amount of \$18,871.32 with interest at a rate of 7.125% per year as of November 1, 1998.

[3] Upon analysis of the documents filed and the parties' oral and written submissions, the Court concurs with the plaintiff for the following reasons.

#### I. THE FACTS

[4] According to an agreed statement of facts filed by the parties on August 18, 2014, the facts in this case are as follows:

- On June 15, 1991, the defendant joined the Canadian Armed Forces in the Regular Officer Training Plan (ROTP);
- The defendant took education and training courses and received other financial benefits at public expense through the ROTP;
- On April 6, 1998, in Oromocto, New Brunswick, the defendant signed an agreement and a promissory note acknowledging he owed the plaintiff the amount of \$23,311.24, and undertaking to pay to the plaintiff interest on said amount at an annual rate of 7.125% as of November 1, 1998. Through said agreement and promissory note, the defendant agreed to pay said amount in 114 instalments of \$282.02;
- On May 6, 1998, the defendant was released from the Canadian Armed Forces;
- On August 18, 1998, a net amount of \$4,439.92 from the defendant's Canadian Forces Superannuation Plan was applied to the repayment of the defendant's debt;

- On October 19, 1998, the plaintiff accepted the defendant's request to defer the repayment of his debt and interest until April 1, 2010, subject to certain conditions and owing to the fact that he was still pursuing full-time studies. Moreover, this agreement provided that the defendant would begin repaying his debt two months after graduating, or after a change in his full-time enrolment status, and that he would contact the Accounts Processing, Pay and Pension Directorate of the Department of National Defence (the Department) within that time frame to make new arrangements for the repayment of his debt;
- In December 2010, the defendant completed his full-time studies;
- On September 23, 2011, Sheila Price, an analyst with the Department's revenue and collection branch, contacted the defendant to obtain proof that he was still a full-time university student in February 2010;
- On September 2011, the defendant sent the Department a copy of his last three invoices for the PhD program in political science;
- On October 25, 2011, the Department's analyst notified the defendant that since he had completed his studies in December 2010, the debt repayment was to begin in March 2011. The analyst also indicated to the defendant that he had to immediately pay the amount of \$896.40 in interest accrued so that he could start making his monthly payments of \$282.02;
- The defendant was given formal notice to pay the amount that was owing via emails and letters dated November 22, 2011, January 10, 2012, March 5, 2012, April 18, 2012, April 24, 2012 and July 24, 2012, but he never followed up;

II. ISSUES

[5] In an order dated December 5, 2013, Prothonotary Morneau identified the two issues as follows:

(a) Is the plaintiff entitled to claim the amount of \$18,871.32 plus interest from the defendant owing to non-compliance with his obligations?

(b) What is the limitation period applicable in this case?

[6] Before answering these questions, the Court must deal with an objection by the plaintiff regarding the filing of an unsigned affidavit by the defendant, served on the plaintiff on September 18, 2014.

[7] On that date, counsel for the defendant sent a missive to counsel for the plaintiff explaining why their client was unable to swear the affidavit filed. They acknowledge they are aware of the timelines imposed by the Rules, but explain that their client is on a humanitarian mission related to the Ebola crisis in Dakar, Senegal, and will not be back until September 21, 2014. However, he was contacted and he confirmed that he agrees to the content of the affidavit filed and as soon as he returns to Canada, he will sign the affidavit after being sworn in.

[8] Counsel for the plaintiff objects to the filing of the defendant's affidavit arguing that the prothonotary's order dated December 5, 2013, imposes on the defendant a 30-day period before the hearing to file his affidavit evidence. Given that the defendant has exceeded the prescribed

time limit, and that he neither requested an extension nor provided a reasonable explanation as to why he failed to comply with the order, the Court should reject the document.

[9] At the hearing, counsel for the plaintiff informed the Court that her objection now only pertains to paragraphs 16, 17, 21 and 22 of the defendant's affidavit.

[10] The Court admits the affidavit as there is no prejudice to the plaintiff and the defendant's explanations for not filing it earlier are reasonable. And, as noted by counsel for the defendant, the impugned paragraphs are only four repeated paragraphs of the defence that has already been filed with the Court.

[11] The parties agree that should the action be allowed, the amount is \$16,907.68 plus interest at 7.125 % and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*.

**(a) Is the plaintiff entitled to claim the amount of \$16,907.68 plus interest from the defendant owing to non-compliance with his obligations?**

A. *Plaintiff's arguments*

[12] The plaintiff submits that when the defendant enrolled in the ROTP program, he was required, in accordance with article 25 of the *Canadian Forces Administrative Orders* (CFAOs) 9-12, and in accordance with article 9 of the CFAO 15-7, to serve 48 months of obligatory service as an officer once he had completed his studies. Moreover, the plaintiff alleges that the defendant's release from the Canadian Forces prior to the expiry of the 48-period, was possible

provided that the defendant complied with the reimbursement provisions provided for in article 15.07 of the *Queen's Regulations and Orders (QR&O)*.

[13] According to the affidavit of Lynne Villeneuve, paralegal at the Department, the defendant studied at the Canadian Military College (CMC) and received education and training until May 1996. Subsequently, between September 1996 and October 1999, he studied at the University of New Brunswick where he received a master's degree in history. It was during this study period at the University of New Brunswick that the defendant was released from the Canadian Forces, on May 6, 1998.

[14] According to the affidavit of Lynne Villeneuve, the amount specified on the promissory note signed on April 6, 1998, is incorrect as it was calculated based on the tuition fees from the prior year. In all, the Crown allegedly paid \$40,433.13 for the defendant's academic and military training, but has waived any claims to more than the amount specified on the promissory note.

[15] The plaintiff states that since the defendant's release occurred prior to the expiry of the obligatory service period, he therefore owed \$23,311.24, pursuant to the agreement and promissory note he signed on April 6, 1998.

[16] On August 18, 1998, the amount of the debt was reduced when \$4,439.92 from the defendant's superannuation account was applied towards repayment, in accordance with the promissory note signed on April 6, 1998.

[17] On October 19, 1998, the plaintiff agreed to postpone repayment of the debt and applicable interest until April, 2010, through an addendum. The defendant signed said document on November 14, 1998. The addendum modified the repayment terms of the debt subject to the following three conditions:

- (1) The defendant had to provide the plaintiff with proof of his full-time student status every 6 months;
- (2) The defendant would start repaying his debt two months after any change in his full-time student status or upon completion of his studies;
- (3) The defendant agreed to contact the Accounts Processing, Pay and Pension Directorate, after the above-mentioned two-month period to [TRANSLATION] “make new arrangements for the repayment of [his] debt”;

[18] The plaintiff alleges that the defendant was a full-time student until December 2010 when he completed the coursework of doctoral studies at the Université du Québec à Montréal.

[19] As indicated in the agreed statement of fact, the sequence of events from September 2011 to July 2012 is not in dispute. However, the plaintiff adds that on June 23, 2014, the Canada Revenue Agency collected the amount from a tax credit of \$1,943.64 owed to the defendant and applied it as compensation for the repayment of his debt. The principal amount and interest now owed by the defendant is therefore \$16,907.68.

B. *Defendant's arguments*

[20] According to the defendant, the agreed-upon deadline for repayment of the debt was postponed [TRANSLATION] “in a firm and definitive manner until April 1, 2010”. He alleges that the action has been prescribed from April 1, 2013, under the limitation periods provided for in the *Civil Code of Québec*.

[21] Furthermore, the defendant notes that at the time of his release, he had completed approximately 2.5 years of obligatory service in the Canadian Forces. He alleges that since he obtained a professorship at the Royal Military College Saint-Jean in 2009, his 4.5 years of service as a professor should be taken into account and applied to the remaining 48 months of service. He notes that said position may be filled by an officer of the Canadian Forces with a graduate degree.

[22] The defendant also argues that he never committed to repay [TRANSLATION] “to the plaintiff amounts other than the costs incurred for his tuition fees”. He notes that according to article 5.01, “Annual College Fees under Chapter 5 of QR (Cannilcols)”, the only amount provided for in the regulations is \$1,524 for each academic year.

[23] He concludes by noting that the plaintiff never agreed to provide him with a breakdown of the amount being claimed from him.



C. *Plaintiff's reply*

[24] The plaintiff replies that the defendant's contention, that he never agreed to reimburse the plaintiff for any amounts other than the tuition fees, is not accurate. She makes reference to the agreement signed on April 6, 1998, as well as QR&O 15.07, which provides that the costs incurred by the public shall be not only for fees, but also pay and allowances paid to the defendant.

III. ANALYSIS

Obligatory service

[25] Annex A of CFAO 15-7, page A-2, states that officers enrolled in the ROTP program must serve "[t]wo months service for each month of academic training with a minimum of 36 months and a maximum of 60 months commencing on graduation from a CMC or university".

[26] According to the information regarding the defendant's periods of study contained in the affidavit of Lynne Villeneuve, the defendant was a student from August 26, 1991, to May 3, 1996. Despite a few interruptions in December and in the summer, the defendant was allegedly a student for a total of 38 months. Multiplying this amount by two yields a number greater than 60, therefore, the defendant allegedly reached the maximum period required under Annex A of the aforementioned CFAO 5-7. He therefore should have served a period of 60 months after graduating from the CMC.

[27] However, the defendant was released from the Canadian Forces on May 6, 1998, therefore, only two 2 years after completion of his studies at the CMC. The evidence on the record shows that the defendant failed to meet the minimum obligatory service required under the ROTP program.

[28] As for the defendant's argument that his employment as professor at the Royal Military College Saint-Jean be accounted for so as to comply with the obligatory service requirement, the Court does not believe that this argument is valid.

[29] In CFAO 15-7, "obligatory service" is defined as follows:

**obligatory service**

means that period of time, prescribed by the Chief of the Defence Staff (CDS), that a member must serve after having attended a course on full-time paid duty and during which the member shall not be released on request under Item 4 of the Table to Article 15.01 of QR&O, unless there are special and unforeseen circumstances.

[Emphasis added.]

[30] This definition indicates that the service applies to a military member and not a civilian member of the Canadian Forces. Thus, the defendant's employment as a professor at the Royal Military College Saint-Jean should not be accounted for in calculating his years of obligatory service.

Reimbursement of the required amount

[31] The amount claimed by the Crown includes tuition fees and other costs. Article 5.01, “Annual College Fees under Chapter 5 of the QR&O (Canmilcols)” refers to the tuition fees for officer cadets enrolled in a military college. The issue here is not the ROTP program in which the defendant was enrolled and whose terms and conditions of reimbursement were different.

[32] In the case at bar, because the defendant’s minimum period of obligatory service began upon graduation, in May or June 1996, more than 12 months had elapsed when he was released from the Canadian Forces in May 1998. Accordingly, paragraph 15.07(3)(b) of the QR&O ought to be applied in this case. However, an agreement and promissory note in accordance with article 27 of CFAO 9-12 were signed on April 6, 1998. It is therefore necessary to give force to the provisions of the agreement and promissory note as they represent the commitments made by the defendant to the plaintiff.

[33] Under this agreement, he acknowledged that he would be released from the Canadian Forces prior to the completion of the period of service prescribed in accordance with QR&O article 15.07, and acknowledged being liable to the plaintiff for the cost of the courses and training in the amount of \$23,311.24 and interest at the rate of 7.125% per year as of November 1, 1998. He also promised to pay the debt in 114 consecutive monthly instalments of \$282.02 from November 1, 1998, to April 1, 2008.

[34] However, the terms of this agreement and promissory note were amended. In letters dated October 19 and 21, 1998, the plaintiff agreed to the postponement of the reimbursement of the

debt and provided the defendant with an addendum containing new conditions for the change.

The defendant signed the addendum on November 14, 1998, in Saint-Laurent, Quebec.

Accordingly, the defendant acknowledged as his debt to the plaintiff the amount stipulated in the agreement and promissory note signed on April 6, 1998.

[35] On August 18, 1998, said amount was reduced by \$4,439.92 owing to the drawdown of the defendant's superannuation account balance. The new amount owed to the plaintiff was therefore \$18,871.32.

[36] Accordingly, the plaintiff is entitled to claim from the defendant the amount of \$18,871.32 plus interest. However, having regard to the payment of \$1,963.64 taken from the defendant's federal tax credit on June 23, 2014, this amount is now \$16,907.68.

**(b) What is the limitation period applicable to this case?**

A. *Plaintiff's arguments*

[37] The plaintiff alleges that section 32 of the *Crown Liability and Proceedings Act*, RSC, 1985, c C-50, applies in this case, therefore the limitation period is six years. This argument is based on the fact that the first document signed by the defendant was signed in New Brunswick, the addendum was signed in Quebec, and the payments were made in Ontario.

[38] The plaintiff further alleges that even if this Court were to find that it is the three-year prescriptive period of the *Civil Code of Québec* that is applicable in this case, [TRANSLATION] "it

would not start to run until March 2011, that is, two (2) months following completion” of the defendant’s full-time studies which is December 2010.

B. *Defendant’s arguments*

[39] The defendant submits that because he signed the Enrolment Form and the forms for the ROTP program in Trois-Rivières, in June 1991, and the addendum in Saint-Laurent, Quebec, although the payments had to be made in Ontario, the parties are subject to Quebec civil law and the three-year prescriptive period specified in article 2925 of the *Civil Code of Québec* is applicable.

[40] According to the defendant, because he did not make any voluntary payments since August 1998, the plaintiff’s claim is prescribed. He added that the addendum signed by him in November 1998 does not constitute a renunciation, suspension or interruption of the prescription.

[41] He also claims that the addendum he signed in November 1998 postponed the repayment due date to April 1, 2010. Accordingly, claim is prescribed as the plaintiff’s claim was filed in this Court on June 7, 2013, that is, more than two months after the prescription of the claim.

IV. ANALYSIS

[42] The defendant cites the following cases to support his position that the three-year prescriptive period must apply here: *Boudreault c Économats des Forces Canadiennes (Canex)*,

[2001] RJQ 1048, JE 2001-914; *Villeneuve v Canada*, 2006 FC 456; *Olivier c Canada* (*Procureur général*), 2013 QCCA 70.

[43] Section 32 of the *Crown Liability and Proceedings Act* provides as follows:

Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

[Emphasis added.]

[44] It is necessary to determine where the cause of action arose. It is a contractual matter.

[45] In the case at bar, the plaintiff's claim is based on the debt created by the agreement and the promissory note. The signing of the agreement and promissory note took place in New Brunswick. However, the addendum that altered the terms of the documents was signed in Saint-Laurent, Quebec. Therefore, it is the prescriptive period provided for in article 2925 of the *Civil Code of Québec* that applies. The article provides as follows:

An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise determined.

[46] It must then be determined when to begin calculating the prescriptive period.

[47] According to the Court, by signing the addendum on November 14, 1998, the defendant agreed to the terms specified and altered the promissory note .

[48] In the addendum, it is provided that the due date for repayment of the debt was postponed until April 1, 2010, but the cause of action of the plaintiff's right of action could only begin two months after a change in his full-time enrolment status or after graduating.

[49] The evidence shows that the defendant only changed his full-time student status in December 2010. The calculation of the prescriptive period should therefore begin in March 2011. The plaintiff's action is dated June 7, 2013, within the three-year period provided for in article 2925 of the *Civil Code of Québec*.

[50] At the suggestion of the Court, the parties agreed that a lump-sum amount of \$1,500 in costs be payable.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The plaintiff's action is allowed;
2. The defendant shall pay costs to the plaintiff in the amount of \$16,907.78 with interest at the rate of 7.125% per year from March 31, 2011, and an indemnity under article 1619 of the *Civil Code of Québec* as of March 31, 2011;
3. The defendant shall also pay to the plaintiff a lump-sum amount of \$1,500 in costs.

“Michel Beaudry”

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Judge

Certified true translation  
Daniela Guglietta, Translator



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

**DOCKET:** T-1021-13

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA v IAN PARENTEAU

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 30, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BEAUDRY J.

**DATED:** OCTOBER 14, 2014

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