

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM A JUDGMENT OF THE COURT OF APPEAL FOR QUEBEC)

BETWEEN:

JEAN-FRANÇOIS MORASSE

Appellant

– and –

GABRIEL NADEAU-DUBOIS

Respondent

– and –

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
ALBERTA PUBLIC INTEREST RESEARCH GROUP and
AMNISTIE INTERNATIONALE, SECTION CANADA FRANCOPHONE**

Interveners

FACTUM OF THE INTERVENER
ALBERTA PUBLIC INTEREST RESEARCH GROUP
Rule 42 of the *Rules of the Supreme Court of Canada*

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Ranjan K. Agarwal (LSUC# 49488H)
Faiz Lalani (LSUC#68147W)

Telephone: (416) 863-1200
Facsimile: (416) 863-1716
Email: agarwalr@bennettjones.com

Lawyers for the Intervener,
Alberta Public Interest Research Group

NANDA & COMPANY
3455 Manulife Place
10180-101 Street
Edmonton, AB T5J 4K1

Avnish Nanda (LSA# 18732)

Telephone: (780) 801-5324
Facsimile: (587) 318-1391
Email: avnish@nandalaw.ca

Lawyers for the Intervener,
Alberta Public Interest Research Group

ORIGINAL TO: THE REGISTRAR, SUPREME COURT OF CANADA

COPIES TO:

THIBAUT, ROY, AVOCATS
6860, boul. Henri-Bourassa
Quebec City, QC G1H 3C7

Maxime Roy
Ariane Gagnon-Rocque

Telephone: (418) 694-3003
Facsimile: (418) 694-3008
Email: mroy@thibaultroyavocats.com

Lawyers for the Appellant,
Jean-François Morasse

NORTON ROSE FULBRIGHT CANADA LLP
1500-45 O'Connor Street
Ottawa, ON K1P 1A4

Sally Gomery

Telephone: (613) 780-8604
Facsimile: (613) 230-5459
Email: sally.gomery@nortonrose.com

Agent for the Appellant,
Jean-François Morasse

**MELANÇON, MARCEAU, GRENIER &
SCIORTINO**
1717, boul. René-Lévesque Est
Bureau 300
Montreal, QC H2L 4T3

Giuseppe Sciortino

Telephone: (514) 525-3414 Ext: 314
Facsimile: (514) 525-5134
Email: gsciortino@mmgs.qc.ca

Lawyers for the Respondent,
Gabriel Nadeau-Dubois

GOLDBLATT PARTNERS LLP
500 - 30 Metcalfe Street
Ottawa, ON K1P 5L4

Benjamin Piper

Telephone: (613) 482-2466
Facsimile: (613) 235-3041
Email: bpiper@goldblattpartners.com

Agent for the Respondent,
Gabriel Nadeau-Dubois

GREY, CASGRAIN

1155 René-Lévesque Ouest
Suite 1715
Montréal, QC H3B 2K8

Julius H. Grey

Telephone: (514) 288-6180 Ext: 229
Facsimile: (514) 288-8908
Email: juliushgrey@bellnet.ca

Lawyers for the Intervener,
Canadian Civil Liberties Association

JURISTES POWER

130, rue Albert, bureau 1103
Ottawa, ON K1P 5G4

François Larocque

Maxine Vincelette

Telephone: (613) 894-4783
Facsimile: (888) 404-2227
E-mail: flarocque@juristespower.ca

Lawyers for the Intervener,
Amnistie Internationale, Section Canada
francophone

GOWLING WLG (CANADA) INC.

160 Elgin Street
26th Floor
Ottawa, ON K1P 1C3

Guy Régimbald

Telephone: (613) 786-0197
Facsimile: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

Agent for the Intervener,
Canadian Civil Liberties Association

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PART I OVERVIEW AND STATEMENT OF FACTS

1. This appeal is fundamentally about the limits imposed by the contempt of court power on democratic expression.
2. The issue in this appeal is whether the respondent Gabriel Nadeau-Dubois (**Nadeau-Dubois**) is guilty of civil contempt of court for encouraging students to take non-violent direct action to protest the Quebec government's higher education policies. But resolving this question requires considering the role of freedom of expression in contempt of court proceedings.
3. While the contempt of court power seeks to preserve respect for the administration of justice, it can have a chilling effect on the freedom of expression. As the experience of other common law jurisdictions demonstrates below, if the contempt power of courts is not limited by constitutional protections for free expression, then the contempt power can become a tool for stifling the voices of political dissent. The trial decision at issue in this appeal, if upheld, would create a dangerous precedent in Canadian law, denuding constitutional rights of much of their meaning.
4. The Alberta Public Interest Research Group (**APIRG**) submits that the *Dagenais* framework provides a robust basis to balance concerns over preserving respect for the administration of justice with those for protecting freedom of expression.
5. In support of its position, APIRG makes these submissions:
 - (a) courts must exercise their inherent jurisdiction in accordance with *Charter* values;
 - (b) courts must not invoke the contempt power to unreasonably infringe the freedom of expression; and
 - (c) courts should interpret—and limit—the contempt power through the principles set out in the Supreme Court of Canada's *Dagenais* framework.
6. APIRG adopts the facts as set out in Nadeau-Dubois' factum.

PART II STATEMENT OF POSITION

7. APIRG supports the position of Nadeau-Dubois on the importance of protecting freedom of expression in contempt of court proceedings.

PART III STATEMENT OF ARGUMENT

A. Courts Must Exercise Their Inherent Jurisdiction in Accordance with *Charter* Values

1. The Contempt Power Is an Exercise of Inherent Jurisdiction

8. Section 96 of the *Constitution Act, 1867* entrenches the essential nature and powers of the provincial superior courts.¹ These inherent powers are necessary to preserve the rule of law, ensure uniformity in our judicial system and maintain constitutional balance in the country.² The contempt of court power is an exercise of this inherent jurisdiction.³

9. There are, however, limits to this inherent jurisdiction. These limits may be legislative or may derive from our constitutional framework and values.⁴

10. This court recently considered the interplay between inherent jurisdiction and the *Canadian Charter of Rights and Freedoms*.⁵ In *Ontario v Criminal Lawyers' Association of Ontario*, the majority explained that “the superior courts’ inherent jurisdiction must also support their independence in safeguarding the values and principles the *Charter* has entrenched in our constitutional order.”⁶

¹ (UK), 30 & 31 Vict, c 3, s 96, reprinted in RSC 1985, App II, No 5.

² *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at ¶17, [2013] 3 SCR 3 [*CLA*], Book of Authorities of APIRG (**APIRG's Authorities**), Tab 4.

³ *Vidéotron Ltée v Industries Microlec Produits Électroniques Inc*, [1992] 2 SCR 1065 at 1075 [*Vidéotron*], Respondent's Book of Authorities (**Respondent's Authorities**), vol II, Tab 36. The Quebec *Code of Civil Procedure*, CQLR c C-25 (in force at the time that judgment at first instance was rendered against Nadeau-Dubois) codified the inherent contempt power under article 50.

⁴ *CLA* at ¶24, **APIRG's Authorities**, Tab 4.

⁵ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

⁶ *CLA*, *supra* note 2 at ¶26, **APIRG's Authorities**, Tab 4.

11. As guardians of the Constitution of Canada, the courts must exercise their inherent jurisdiction in a manner that respects *Charter* values. This court has repeatedly recognized this duty when developing the common law, holding that “the judiciary ought to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution.”⁷

12. Quebec’s legislature has mandated courts to consider fundamental rights in the realm of civil justice. The recently enacted *Code of Civil Procedure* states that “the principles of civil justice and, together with the Civil Code *and in harmony with the Charter of human rights and freedoms* (chapter C-12) and the general principles of law governs procedure”.⁸

2. Courts Must Exercise the Contempt Power in Accordance with *Charter* Values

13. The *Charter* limits the contempt power.

14. In *Vidéotron Ltée v Industries Microlec Produits Électroniques Inc*, this court found that a person cited for contempt under Quebec’s *Code of Civil Procedure* cannot be compelled to testify. Doing so would have been contrary to the right against self-incrimination protected by the *Charter*.⁹

15. The freedom of expression has also been held to limit the contempt power. In *R v Kopyto*, Justice Cory found that the offence of scandalizing the court is not a reasonable limit on freedom of expression under section 1 of the *Charter*.¹⁰ The majority of the Ontario Court of Appeal in that case recognized that free expression could be justifiably limited through the contempt power. It held that determining whether such language reaches this threshold inherently involves

⁷ *RWDSU v Dolphin Delivery*, [1986] 2 SCR 573 at 603, APIRG’s Authorities, Tab 8.

⁸ Preliminary provision, *Code of Civil Procedure*, CQLR c C-25.01 (emphasis added).

⁹ *Vidéotron*, *supra* note 3, Respondent’s Authorities, vol II, Tab 36.

¹⁰ (1987), 62 OR (2d) 449, [1987] OJ No 1052 (CA) at ¶83, Appellant’s Book of Authorities (**Appellant’s Authorities**), vol II, Tab 29.

a balancing of competing interests: the alleged contemnor's freedom of expression on one hand, and the proper administration of justice on the other.¹¹

16. While the courts acknowledge that they must weigh competing values when finding a person in contempt, this court has not expressly articulated a manner for doing so when an individual's freedom of expression is at stake. A robust framework must ensure that the *Charter* right of free expression is sufficiently protected.

B. The Contempt Power Can Adversely Impact the Freedom of Expression

1. The Contempt Power Can Be Used to Silence Political Dissidents

17. Exercising the power of contempt without considering the effects on freedom of expression can lead to the suppression of political dissent.

18. At the height of the Civil Rights Movement in the United States, public officials sought injunctions to suppress demonstrators from marching in parades, engaging in sit-ins and participating in other acts of civil disobedience. During Project C, better known as The Birmingham Campaign in 1963, demonstrators defied an injunction to peacefully protest racial discrimination in Alabama. The county court found the protestors, including Martin Luther King Jr., in contempt for violating the injunction, holding they had waived their First Amendment rights by disobeying the court order. The protestors appealed the contempt order to the Supreme Court of the United States. In *Walker v City of Birmingham*, a 5-4 majority upheld the contempt order, finding that the protesters were not "constitutionally free to ignore all the procedures of the law and carry their battle to the streets".¹²

19. Chief Justice Warren and Justice Brennan voiced forceful dissents about ignoring the freedom of expression in the name of upholding the rule of law. Finding the ordinance banning the protests was unconstitutional on its face, Chief Justice Warren wrote: "I do not believe that

¹¹ *Ibid* at ¶158 (Goodman JA) and at ¶233 (Dubin JA, with Brooke JA, concurring), Appellant's Authorities, vol II, Tab 29.

¹² 388 US 307 (1967) at 321, APIRG's Authorities, Tab 12.

the fundamental protections of the Constitution were meant to be so easily evaded, or that ‘the civilizing hand of law’ would be hampered in the slightest by enforcing the First Amendment.”¹³

20. Justice Brennan recognized the conflict “between Alabama’s interest in requiring adherence to orders of its courts and the constitutional prohibition against abridgment of freedom of speech”.¹⁴ But he noted the “overriding duty to insulate all individuals from the ‘chilling effect’ upon exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise”.¹⁵

21. The failure of the U.S. Supreme Court in *Walker v City of Birmingham* to properly balance the protestors’ First Amendment rights serves as a reminder that the contempt power is dangerous if left limitless.

2. The Experience of Other Common Law Jurisdictions Demonstrates that the Contempt Power Can Unreasonably Infringe Freedom of Expression

22. The decisions of courts in other common law jurisdictions indicate the dangers inherent in an unbalanced power of contempt. In May 2013, the Fiji High Court found a non-governmental organization and its director in contempt of court for publishing statements that included “there is no rule of law” in Fiji and that “the independence of the judiciary cannot be relied upon”.¹⁶ Amnesty International condemned the court’s finding, believing that the verdict “may act to discourage individuals and organizations from raising legitimate concerns about the rule of law and independence of the judiciary”.¹⁷

¹³ *Ibid* at 324 (Warren CJ, dissenting), APIRG’s Authorities, Tab 12.

¹⁴ *Ibid* at 344 (Brennan J, dissenting), APIRG’s Authorities, Tab 12.

¹⁵ *Ibid* at 344-345, APIRG’s Authorities, Tab 12.

¹⁶ *State v Citizens Constitutional Forum Ltd* (2013), HBC195.2012 (H Ct Fiji) at ¶¶3, 98-101, APIRG’s Authorities, Tab 10.

¹⁷ “New Contempt of Court Ruling, A Setback for Freedom of Expression in Fiji” (13 August 2013), online: Amnesty International <www.amnesty.org>, APIRG’s Authorities, Tab 14.

23. Bangladesh courts have also used the contempt power to stifle political dissidents. In December 2014, the International Crimes Tribunal in Bangladesh found a British journalist guilty of contempt for questioning certain findings.¹⁸

24. English courts have also been condemned for interfering with freedom of expression through the use of the contempt power. In *Sunday Times v United Kingdom*, the European Court of Human Rights found that an injunction that prevented a newspaper from publishing an article unnecessarily infringed the newspaper's freedom of expression.¹⁹

25. The experience in other jurisdictions highlights the necessity of balancing respect for the administration of justice with the freedom of expression. This court has already articulated the proper test for balancing these competing values.

C. The *Dagenais* Framework Should Apply to the Contempt Power

1. The Traditional Basis for Applying the *Dagenais* Framework

26. The *Dagenais* framework balances competing *Charter* rights and freedoms. First developed in *Dagenais v Canadian Broadcasting Corp*, courts have applied the framework where a party to a criminal proceeding requests a publication ban. In *Dagenais*, this court recognized that the common law rule governing publication bans placed an accused's right to a fair trial ahead of the media's freedom of expression to publish details of the trial. With the enactment of the *Charter*, this court found this preference contradicted the equal status afforded to the freedom of expression, holding that "[a] hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law."²⁰

¹⁸ *Azad v Bergman*, ICT-BD, Case No. 01 of 2014 at pages 39-42, APIRG's Authorities, Tab 3. Amnesty International commented that the tribunal's lack of respect for the freedom of expression "sends a chilling message to journalists and human rights defenders that the ICT will not tolerate fair criticism": "Bangladesh: Conviction of Journalist Chills Speech" (5 December 2014), online: Human Rights Watch <www.hrw.org>, APIRG's Authorities, Tab 13.

¹⁹ [1979] ECHR 1 at ¶¶45, 67, APIRG's Authorities, Tab 11.

²⁰ *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835 at 877 (Lamer CJ) [*Dagenais*], Respondent's Authorities, vol I, Tab 14.

27. Under *Dagenais*, a court may only order a publication ban where: (a) such a ban is necessary to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and (b) the salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.²¹

2. The Expansion of the *Dagenais* Framework

28. Since *Dagenais*, this court has recognized that the principles of the framework apply more broadly than in the publication ban context. This court rearticulated the test in *R v Mentuck* to accommodate various competing interests and has since applied the framework in criminal and civil proceedings.²² The framework requires courts to minimize the negative impact on the conflicting rights affected, instead of viewing the matter as a clash between two competing values.

29. This court has applied the framework to strike a balance between the open court principle and the privacy interests of a victim of cyberbullying,²³ to the open courts principle and confidentiality orders in civil proceedings,²⁴ and to a witness's freedom of religion with the accused's right to a fair trial.²⁵

30. The Alberta Court of Appeal recently applied the *Dagenais* framework in deciding whether a contempt order unjustifiably restricted a union's freedom of expression. It found the framework "flexible enough to assess whether the Contempt Order is a reasonable limit".²⁶ Even though the Alberta Court of Appeal found that "the risks to the administration of justice were

²¹ *Ibid* at 878, Respondent's Authorities, vol I, Tab 14.

²² 2001 SCC 76, [2001] 3 SCR 442 [*Mentuck*], APIRG's Authorities, Tab 5.

²³ *AB v Bragg Communications Inc*, 2012 SCC 46, [2012] 2 SCR 567 at ¶11, APIRG's Authorities, Tab 1.

²⁴ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 at ¶53, APIRG's Authorities, Tab 9.

²⁵ *R v NS*, 2012 SCC 72, [2012] 3 SCR 726 at ¶¶7-9, APIRG's Authorities, Tab 6.

²⁶ *Alberta v Alberta Union of Provincial Employees*, 2014 ABCA 197 at ¶54, leave to appeal to SCC refused, [2014] SCCA No 387, APIRG's Authorities, Tab 2.

serious in the circumstances”, it was necessary to balance the union’s *Charter* rights against those risks.²⁷ This court must recognize the same.

D. Applying the *Dagenais* Framework to the Contempt Power

31. Because the judicial exercise of the contempt of court power is discretionary, courts must ensure they properly balance *Charter* values when determining whether it is necessary to find someone in contempt of court. The *Dagenais* framework circumscribes that discretion.

32. The original *Dagenais* framework modified the existing common law rule governing publication bans. The traditional rule at common law required “those seeking a [publication] ban to demonstrate that there is a real and substantial risk of interference with the right to a fair trial.”²⁸ The *Dagenais* framework modified that rule by adding a requirement to balance the *Charter* values at issue. It requires showing that a publication ban is both: (a) “necessary”; and (b) the salutary effects of the ban outweigh the deleterious effects to the freedom of expression of those affected by the ban.²⁹

33. APIRG proposes a similar approach regarding contempt of court orders.

34. Where finding a person in contempt of court would interfere with freedom of expression, the court should consider whether:

- (a) a contempt order is necessary to condemn a breach of the court’s authority; and
- (b) the salutary effects of the contempt order, including its effects on the rule of law and the administration of justice, outweigh its deleterious effects, specifically the effects on the right to free expression.

35. The first part of APIRG’s proposed approach considers whether a finding of contempt is necessary on the facts of the case.³⁰ The test for civil contempt in Canadian common law already

²⁷ *Ibid* at ¶58, APIRG’s Authorities, Tab 2.

²⁸ *Dagenais*, *supra* note 20 at 875, Respondent’s Authorities, vol I, Tab 14.

²⁹ *Ibid* at 878, Respondent’s Authorities, vol I, Tab 14.

³⁰ *Ibid* at 878, Respondent’s Authorities, vol I, Tab 14 and *Mentuck*, *supra* note 22 at ¶¶34-36, APIRG’s Authorities, Tab 5.

considers the necessity of a contempt of court finding. The test, as recently articulated by this court, provides that: (a) the order breached “must state clearly and unequivocally what should and should not be done”; (b) the party alleged to have breached the order must have had actual knowledge of it; and (c) the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. The contempt power should be used “cautiously and with great restraint”.³¹ If the party seeking a contempt order convinces a court of these three factors beyond a reasonable doubt, then, if *Charter* rights are engaged, the party must demonstrate that the order sought is proportional.

36. Therefore, the second part of this proposed approach considers whether the benefits to the rule of law and respect for the administration of justice outweigh the freedom of expression. This is the balancing portion from the original *Dagenais* framework. It would require the trial court to consider the proportionality of the contempt order—that is, whether there are significant, compelling benefits to issuing the order in light of the serious curtailment of expression.³²

37. These are the same “justificatory muscles”—of balance and proportionality—this court has alluded to in the administrative law context, and which ensure that the *Charter*’s protections are not so easily disregarded.³³

38. In this case, the trial judge’s reasons did not consider balancing and proportionality. Instead, his legal analysis focused on the purpose of contempt of court powers. He cited at length the importance of protecting the dignity and respect for the administration of justice. But he failed to consider that the freedom of expression is an integral part of our legal system.³⁴ The rule of law and constitutionalism are both underlying constitutional principles. “No single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other.”³⁵

³¹ *Carey v Laiken*, 2015 SCC 17, [2015] 2 SCR 79 at ¶¶33-36, Appellant’s Authorities, vol I, Tab 9.

³² *Mentuck*, *supra* note 22 at ¶¶49-50, APIRG’s Authorities, Tab 5.

³³ *Doré v Barreau du Québec*, 2012 SCC 12 at ¶5, [2012] 1 SCR 395, Appellant’s Authorities, vol I, Tab 15.

³⁴ *Morassee c Nadeau-Dubois*, 2012 QCCS 5438 at ¶¶33-37, Appellant’s Record, vol I, Part I, pages 27-28.

³⁵ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at ¶49, APIRG’s Authorities, Tab 7.

39. APIRG respectfully submits that the *Dagenais* framework, when applied to the contempt of court context, provides courts with meaningful guidance to balance the rule of law and the freedom of expression.

PART IV SUBMISSIONS CONCERNING COSTS

40. APIRG does not seek its costs of this appeal. APIRG should not be ordered to pay the whole or any part of the costs of this appeal.

PART V ORDER REQUESTED

41. APIRG respectfully requests permission to present oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF APRIL, 2016



Ranjan K. Agarwal

BENNETT JONES LLP

Lawyers for the Intervener,
Alberta Public Interest Research Group

PART VI: TABLE OF AUTHORITIES

No.	Jurisprudence	Cited At
1.	<i>AB v Bragg Communications Inc</i> , 2012 SCC 46, [2012] 2 SCR 567.	¶29
2.	<i>Alberta v Alberta Union of Provincial Employees</i> , 2014 ABCA 197.	¶30
3.	<i>Azad v Bergman</i> , ICT-BD, Case No. 01 of 2014.	¶23
4.	<i>Carey v Laiken</i> , 2015 SCC 17, [2015] 2 SCR 79.	¶35
5.	<i>Dagenais v Canadian Broadcasting Corp</i> , [1994] 3 SCR 835.	¶¶26, 27, 35, 36
6.	<i>Doré v Barreau du Québec</i> , 2012 SCC 12, [2012] 1 SCR 395.	¶37
7.	<i>Ontario v Criminal Lawyers' Association of Ontario</i> , 2013 SCC 43, [2013] 3 SCR 3.	¶¶8, 9, 10
8.	<i>R v Kopyto</i> (1987), 62 OR (2d) 449, [1987] OJ No 1052 (CA).	¶15
9.	<i>R v Mentuck</i> , 2001 SCC 76, [2001] 3 SCR 442.	¶¶28, 35, 36
10.	<i>R v NS</i> , 2012 SCC 72, [2012] 3 SCR 726.	¶29
11.	<i>Reference re Secession of Quebec</i> , [1998] 2 SCR 217.	¶38
12.	<i>RWDSU v Dolphin Delivery</i> , [1986] 2 SCR 573.	¶11
13.	<i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41, [2002] 2 SCR 522.	¶29
14.	<i>State v Citizens Constitutional Forum Ltd</i> (2013), HBC195.2012 (H Ct Fiji).	¶22
15.	<i>Sunday Times v United Kingdom</i> , [1979] ECHR 1.	¶24
16.	<i>Vidéotron Ltée v Industries Microlec Produits Électroniques Inc</i> , [1992] 2 SCR 1065.	¶8, 13
17.	<i>Walker v City of Birmingham</i> , 388 US 307 (1967).	¶¶18, 19, 20
Articles and Commentary		
18.	“Bangladesh: Conviction of Journalist Chills Speech” (5 December 2014), online: Human Rights Watch < www.hrw.org >.	¶23

19. “New Contempt of Court Ruling, A Setback for Freedom of Expression in Fiji” (13 August 2013), online: Amnesty International <www.amnesty.org>. ¶22

PART VII: STATUTES AND REGULATIONS

Code of Civil Procedure, CQLR c C-25.01

Code de procédure civile, RLRQ c C-25.01

PRELIMINARY PROVISION

This Code establishes the principles of civil justice and, together with the Civil Code and in harmony with the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs procedure applicable to private dispute prevention and resolution processes when not otherwise determined by the parties, procedure before the courts as well as procedure for the execution of judgments and for judicial sales.

This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties' rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.

This Code must be interpreted and applied as a whole and in the civil law tradition. Its rules must be interpreted in light of the special provisions it contains and those contained in other laws. In the matters it addresses, this Code supplements the silence of other laws if circumstances permit.

DISPOSITION PRÉLIMINAIRE

Le Code de procédure civile établit les principes de la justice civile et régit, avec le Code civil et en harmonie avec la Charte des droits et libertés de la personne (chapitre C-12) et les principes généraux du droit, la procédure applicable aux modes privés de prévention et de règlement des différends lorsque celle-ci n'est pas autrement fixée par les parties, la procédure applicable devant les tribunaux de l'ordre judiciaire de même que la procédure d'exécution des jugements et de vente du bien d'autrui.

Le Code vise à permettre, dans l'intérêt public, la prévention et le règlement des différends et des litiges, par des procédés adéquats, efficaces, empreints d'esprit de justice et favorisant la participation des personnes. Il vise également à assurer l'accessibilité, la qualité et la célérité de la justice civile, l'application juste, simple, proportionnée et économique de la procédure et l'exercice des droits des parties dans un esprit de coopération et d'équilibre, ainsi que le respect des personnes qui apportent leur concours à la justice.

Enfin, le Code s'interprète et s'applique comme un ensemble, dans le respect de la tradition civiliste. Les règles qu'il énonce s'interprètent à la lumière de ses dispositions particulières ou de celles de la loi et, dans les matières qui font l'objet de ses dispositions, il supplée au silence des autres lois si le contexte le permet.

Code of Civil Procedure, CQLR c C-25

50. Anyone is guilty of contempt of court who disobeys any process or order of the court or of a judge thereof, or who acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the court.

In particular, any officer of justice who fails to do his duty, and any sheriff or bailiff who does not execute a writ forthwith or does not make a return thereof or, in executing it, infringes any rule the violation whereof renders him liable to a penalty, is guilty of contempt of court.

Code de procédure civile, RLRQ c C-25

50. Est coupable d'outrage au tribunal celui qui contrevient à une ordonnance ou à une injonction du tribunal ou d'un de ses juges, ou qui agit de manière, soit à entraver le cours normal de l'administration de la justice, soit à porter atteinte à l'autorité ou à la dignité du tribunal.

En particulier, est coupable d'outrage au tribunal l'officier de justice qui manque à son devoir, y compris le shérif ou huissier qui n'exécute pas un bref sans retard ou n'en fait pas rapport ou enfreint, en l'exécutant, une règle dont la violation le rend passible de sanction.