

NON-LEGAL & UNOFFICIAL TRANSLATION FROM FRENCH

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF SAINT-MAURICE

SUPERIOR COURT
(Civil Chambers)

N° 410-17-002039-225

**QUÉBEC ANIMAL LAW COMMUNITY -
DAQ**

Plaintiff

vs.

ST-TITE WESTERN FESTIVAL INC.

Defendant

**MOTION FOR A DECLINATORY EXCEPTION AND DISMISSAL FOR ABUSE
(Articles 168, 51 et al. C.c.p.)**

**IN SUPPORT OF ITS MOTION FOR A DECLINATORY EXCEPTION AND DISMISSAL
FOR ABUSE, THE DEFENDANT ST-TITE WESTERN FESTIVAL INC. RESPECTFULLY
SUBMITS THE FOLLOWING:**

A. THE PARTIES

1. The Plaintiff Québec Animal Law Community – DAQ (“**DAQ**”) is a registered charity in Québec, constituted as a non-profit legal person, as appears more fully from **Exhibit P-1**.
2. The Defendant St-Tite Western Festival (the “**Festival**”) is a non-profit organization that organises and presents festivals, amusement and a variety of entertainment events, as appears more fully from **Exhibit P-4**.
3. The Festival holds rodeo events, which include different events, such as:
 - a. Saddle bronc and bareback riding;
 - b. Bull riding;
 - c. Tie-down calf roping;
 - d. Steer wrestling;
 - e. Team roping;

- f. Barrel racing;
- g. Rescue races;
- h. Exchange rider races;
- i. Poney express;

as appears more fully from **Exhibit P-6**.

- 4. The Festival's rodeos are notably sanctioned by the International Professional Rodeo Association (IPRA), the world's second most important association of professional rodeos, as appears more fully from **Exhibit P-5**.

B. THE LAW SUIT

- 5. On or about May 17, 2022, the Plaintiff commenced the present proceedings to have the tie-down of calves and steer wrestling events declared in contravention of the AWS Act.
- 6. The Plaintiff purports they have the required legal interest to ensure compliance with the legislative regime established by the AWS Act, considering "the failure of these animals' owners and custodians (participating in the tie-down of calves and steer wrestling events) to ensure their welfare", as appears in paragraph 55 of the Originating Application.
- 7. The Plaintiff errs as to who is responsible for application of the AWS Act and for the statutory regime applicable to animals according to Québec law.
- 8. For the reasons that follow, the Defendant submits that the Plaintiff manifestly does not have legal standing to act in this matter and the Originating Application should be dismissed.
- 9. Furthermore, the Defendant submits that the required criteria to obtain a declaratory judgment are not met, that such an application is not appropriate in the circumstances and that it defeats the ends of justice, for which a declinatory exception for abuse must be pronounced.

C. OVERVIEW

10. Over the last few years, as will be further exposed below, the Plaintiff, its representatives or its members have been involved in actions that aim to prohibit particular rodeo events organized by the Festival, which they claim are contrary to the *Animal Welfare and Safety Act*, CQLR c B-3.1 (hereafter, the “**AWS Act**”).
11. In 2017, Alain Roy, law professor, filed an Application for a Provisional, Interlocutory and Permanent Injunction and Safeguard Order, more notably concerning the Festival, in order to prohibit training activities (saddle bronc and bareback riding) and bull riding held during the celebration of Montreal’s 375th anniversary, as appears more fully from **Exhibit P-8**.
12. The Application submitted by Professor Alain Roy led to an Out of Court Settlement and Transaction between the parties, which was homologated by the Superior Court on June 16, 2017, as appears more fully from **Exhibit P-8**.
13. In accordance with the settlement, the parties jointly requested that the Ministry of Agriculture, Fisheries and Food of Québec (hereafter “**MAFFQ**”) which oversees the application of the AWS Act, create an advisory board to identify the different standards of conduct concerning the welfare and safety of animals that apply to rodeo activities taking place in the province of Québec, including the Festival’s activities, to evaluate the scope and sufficiency of such activities in relation to current laws in force, and to make recommendations to the MAFFQ that it deems relevant to ensure the safety and welfare of animals (“the **Committee**”).
14. The Plaintiff intervened with Professor Roy in the implementation of the settlement, as appears more fully on page 53 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**.
15. Professor Alain Roy asked John-Nicolas Morello, the founder and president of the Plaintiff, to sit on the Committee created as part of the settlement, as appears more fully on pages 18, 23, 74 and 76 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**.
16. The work of the Committee, composed of three members chosen by Professor Roy, which included Mr. John-Nicolas Morello, three members chosen by the Festival, and two members chosen by the MAFFQ started during the summer of 2017, as more appears more fully on page 94 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2nd, 2022, filed as **Exhibit R-1**.

17. Further to the creation of the Committee, Professor Alain Roy became vice-president of the Plaintiff, a position he held from August 3, 2017, until September 27, 2018, as appears more fully from page 24 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**.
18. As part of the settlement that followed Professor Alain Roy's Application in 2017, the Festival gave unlimited access of its facilities to Professor Roy's representatives;
19. Due to the Plaintiff's access to the Festival's facilities, the Plaintiff obtained and viewed 135 hours of video footage, captured by Professor Roy's representatives, as appears more fully from pages 50 and 51 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2nd, 2022, filed as **Exhibit R-1**.
20. While Mr. John-Nicolas Morello, president of the Plaintiff, sat on the Committee to clarify the application of the AWS Act for the MAFFQ with respect to rodeo activities, it appears that simultaneously:
 - a. the Plaintiff filed a report with the MAFFQ concerning the Festival's activities, as appears more fully from pages 66, 71 to 73 and 75 to 76 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello on held on November 2, 2022, filed as **Exhibit R-1**;

Q. [153] In parallel, simultaneously to this Committee's activities, you submitted a report to the MAFFQ, concerning another party that is member of that same Committee?

(...)

A. Yes, DAQ submitted the report via one of our members in two thousand eighteen (2018) and personally, I am a member of this consultative committee.

- b. the MAFFQ refused to process the cited report, while it waited for the conclusion of the Committee's work, as appears more fully from page 73 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1** and the email sent by Julie Nolin on behalf of the MAFFQ on March 15, 2019, filed as **Exhibit R-2**;
- c. since 2018, the Plaintiff planned to file a new lawsuit against the Festival, as appears more fully from pages 90 to 91 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**;

Q. **[186]** *So since two thousand eighteen (2018), you had a lawsuit in mind?*

A. *In two thousand eighteen (2018), with the statement of Professor Alain Roy in the report with Dr. Kona-Boun that the rodeo breached the law, and with the report of six hundred and fifty (650) pages, DAQ was already considering a possible lawsuit.*

all of this, without waiting for the result of the Committee's work.

21. Thus, the only reason why the Festival is today the target of the Plaintiff's legal proceedings is the availability of footage which was made possible through the settlement of Professor Alain Roy's law suit, as appears more fully on pages 68 to 70 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**;
22. Yet, the Plaintiff:
 - a. is well aware of the extent of the MAPAQ's responsibilities and powers in the implementation of the AWS Act;
 - b. has been preparing the present action since 2018, thus bypassing the conclusions the MAFFQ will draw from the consultative work of the Committee, of which the Plaintiff's founding president sits; and
 - c. targets the Festival as a sole Defendant, to the exclusion of any other rodeo organizer, based on documents obtained as part of an out of court settlement of the lawsuit brought by Professor Alain Roy.

D. LEGAL FRAMEWORK

23. The AWS Act enacted in 2015 puts into place a full legal and administrative framework with the objective of ensuring animals welfare and security, as appears in the preamble of the AWS Act.
24. Section 95 states that the MAFFQ is solely responsible for the application of the AWS Act.
25. Thus, the MAFFQ is responsible for the processing, issuing and if applicable, the suspension and cancellation of the licenses provided for in the AWS Act. It can also add conditions, restrictions or prohibitions, if considered appropriate, in accordance with sections 24 to 34 of the AWS Act.

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26. Within the framework of the exercise of its jurisdiction, the MAFFQ appoints inspectors and investigators to ensure the application of the AWS Act's provisions, in conformity with sections 35 to 41 and 55 of the AWS Act.
27. The inspectors and investigators are entrusted with broad discretion when investigating and monitoring, which permits inquiries into any situation that could compromise the welfare or security of an animal, in accordance with sections 39 to 57 of the AWS Act.
28. Any person who has reasonable cause to believe that an animal is or has subjected to abuse or mistreatment, or is or has been subjected to distress, can report the situation to the MAFFQ, which will investigate, as provided for in sections 14 and 15 of the AWS Act.
29. The legal regime also includes penal provisions which punish offenses that may compromise the welfare or safety of an animal, as appears in sections 65 to 77 of the AWS Act.
30. Furthermore, the MAFFQ can issue orders it deems appropriate, including a person who is the owner or custodian of an animal to cease all their activities related to this animal, or impose conditions, if it deems that the animal is in distress or if there is an immediate danger for its welfare or safety, pursuant to section 58 of the AWS Act.
31. Finally, section 64 of the AWS Act allows the government to enact regulations to determine the conditions applicable upon which activity involving an animal may be carried on, to restrict or prohibit such an activity for certain classes of persons it determines.
32. As of the date of this motion, the Québec government has not exercised its regulatory powers concerning the Festival's rodeo activities.

E. THE PLAINTIFF CLEARLY HAS NO LEGAL STANDING

i. The Plaintiff does Not Have a Sufficient Interest

33. A sufficient interest is one of conditions that must be met for a judicial application to be admissible.

34. To be sufficient, the interest must be juridical, direct and personal, present and actual and cannot, unless there is an exception, be based on the right of action of a third party.
35. Although Québec's legislation now recognizes that animals are sentient beings and have biological needs, they nevertheless remain subject to the legal regime of property and are governed by specific provisions provided in Book Four of the *Civil Code of Québec*.
36. In accordance with the applicable rules, only the person who holds a property right over property and who possesses the required legal interest to ensure its protection or its implementation may bring an action in Court regarding that property.
37. The Plaintiff is neither the owner or custodian of animals that are involved in the tie-down of calves and steer wrestling activities organized by the Festival:

Q. [195] Does the DAQ own animals?

A. No.

Q. [196] I understand that this is currently the case, so I will just clarify to be precise. Has DAQ, since its creation in two thousand seventeen (2017) ever owned animals?

A. No.

Q. [197] Has DAQ acted as a custodian of animals, since its creation?

A. Not as far as I know.

which appear more fully on page 95 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello on held on November 2, 2022, filed as **Exhibit R-1**;

38. The Plaintiff has never been contacted by the owner or custodian of animals that are involved in the tie-down of calves and steer wrestling activities organized by the Festival:

Q. [199] Has one or more owners of the animals used for the tie-down of calves or steer wrestling communicated with you to discuss the activities of the Festival Western de St-Tite?

A. No.

as appears more fully from page 96 of the transcriptions of the pre-trial examination of Mr. John-Nicolas Morello held on November 2, 2022, filed as **Exhibit R-1**;

39. No owner or custodian of an animal involved in the tie-down of calves and steer wrestling activities organized by the Festival is a party to this proceeding.

ii. The Plaintiff's Question is Not a Matter of "Public Interest"

40. As appears from above, the entire legal and administrative regime applicable to animal welfare and safety clearly demonstrates that the only actors authorized to enforce, regulate, and sanction violations of the AWS are the MAFFQ and the government.

41. In this context, the Plaintiff clearly does not have the required legal interest to ensure compliance with the legislative regime established by the AWS Act.

42. Historically limited to constitutional disputes, the Supreme Court of Canada has broadened the notion of public interest standing to administrative law by recognizing that litigants have a sufficient interest to challenge the validity or legality of the exercise of a power conferred on the government by law.

43. In this case, the conclusions of the Plaintiff's claim do not concern the constitutionality of a law or regulation, nor does it involve control over government action.

44. On the contrary, the Plaintiff is asking the Court to substitute itself for the bodies responsible for enforcing the AWS Act in order to declare the Festival's activities contrary to its provisions, even though none of the interested entities are parties to this litigation.

45. It is not sufficient to allege a violation of a public order rule for a purely private action to submit a question of public interest to justify the Courts' intervention.

iii. The Criteria for "Public Interest" are Not Met

46. Alternatively, in the event that the Court concludes that the issues raised by the Plaintiff constitute "public interest" questions, the Festival respectfully submits that the Plaintiff does not meet the criteria for being recognized as having standing in a public law case.

47. The Plaintiff's claim (a private action brought against a legal person) does not constitute a reasonable and effective way to determine the legality of calf-roping and steer wrestling.

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48. Furthermore, there are other efficient means to bring the issues raised by the Plaintiff before the relevant authorities, whether criminal, penal, or involving the control mechanisms provided for in the AWS Act itself.
49. Thus, the Plaintiff's action must be dismissed for its clear absence of interest.

F. THE REQUIRED CONDITIONS FOR A DECLARATORY JUDGMENT ARE NOT MET

48. With its action, the Plaintiff seeks to have the Court declare the following:

DÉCLARE that:

- A.** the calf-roping activity constitutes abuse or mistreatment that can affect the health of calves, thereby compromising their well-being and safety;
 - B.** the steer wrestling activity constitutes abuse or mistreatment that can affect the health of steers, thereby compromising their well-being and safety.
 - C.** the calf-roping activity places the calves in a state of distress, as they are subjected to treatment that causes them acute pain and are exposed to conditions that cause them extreme anxiety and suffering;
 - D.** the steer wrestling activity places the steers in a state of distress, as they are subjected to treatment that causes them acute pain and are exposed to conditions that cause them extreme anxiety and suffering.
49. Without limiting the generality of the foregoing, the Defendant submits that the conditions for exercising a declaratory judgment are not met in this case since there is no real difficulty to be resolved, the Plaintiff has no real interest in the outcome of the dispute, and the AWS Law provides a range of mechanisms and recourse to bring alleged violations of the provisions of the AWS Act before the competent authorities.

G. THE APPLICANT IS COMMITTING AN ABUSE OF PROCEDURE

49. In light of the foregoing, the Defendant is of the view that the filing of these proceedings defeats the ends of justice and should be declared abusive.
50. By its claim, the Plaintiff is attempting to circumvent the jurisdictional powers established by the legislator and the Court to decide issues that the Law entrusts solely to the discretion of the MAFFQ.

FOR THESE REASONS, so pleases the Court:

- A. GRANT** the present motion for a Declinatory Exception and Dismissal for Abuse;
- B. DECLARE** the Plaintiff's Originating Application inadmissible;
- C. DECLARE** that the Plaintiff's Originating Application is abusive;
- D. DISMISS** the Plaintiff's Originating Application;
- E. THE WHOLE** with legal costs.

Trois-Rivières, on January 17, 2023

A handwritten signature in blue ink that reads "Lavery, de Billy" is written over a horizontal line.

LAVERY, DE

Attorneys for the Defendant
Festival Western de St-Tite inc.

SWORN STATEMENT

I, the undersigned, **FRÉDÉRIC LAFLAMME**, Lawyer, practicing my profession at the firm LAVERY, DE BILLY, L.L.P., located at 1500, Royale Street, Suite 360, in the City and District of Trois-Rivières, Province of Québec, G9A 6E6, solemnly declare the following:

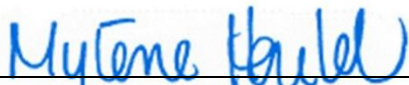
1. I attest that I am one of the lawyers for the defendant in this proceeding;
2. I attest that all facts alleged in this motion are true.

AND I HAVE SIGNED:



FRÉDÉRIC LAFLAMME

Declared under Oath before me at
Trois-Rivières, this 17th day of January
2023.



Commission for Oaths for
Québec



NOTE:

This non-legal & unofficial translation does not include the administrative documentation attached to the Motion in French:

- the List of Exhibits,
- the Notice of Presentation to be heard before the Court, and
- the Proof of Notification in lieu of service.