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C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-MAURICE

C O U R T O F A P P E A L

No: C.A. **200-09-01-642-236**
No. C.S. **410-17-002039-225**

QUÉBEC ANIMAL LAW COMMUNITY - DAQ, legal person whose headquarters are located at 2070, Bruxelles Street, Montréal, Québec, H1L 5Z7

APPELLANT-Plaintiff

-vs-

FESTIVAL WESTERN DE ST-TITE INC., legal person whose headquarters are located at 107-581, Saint-Paul Street, St-Tite, Québec, G0X 3H0

RESPONDENT-Defendant

NOTICE OF APPEAL
(Art. 353 C.C.P.)
Appellant
Dated May 25, 2023

THE APPELLANT SUBMITS THE FOLLOWING TO COURT OF APPEAL:

1. The Appellant appeals a judgment of the Superior Court of Québec rendered on April 21, 2023, by the Honorable Marc Paradis, S.C.J., sitting in the District of Saint-Mauricie, which dismissed at a preliminary stage the application for a permanent injunction. The first-instance judgment is attached to this Notice of Appeal (**Annex 1**).

2. The first instance hearing took place on March 21, 2023, which lasted for approximately 3 hours. No Notice of Judgment has yet been issued, as appears from the Superior Court docket dated May 18, 2023 (**Annex 2**).

History of Relevant Facts for the Appeal

3. The Appellant is a charitable organization whose mission is to advance animal law and ethics in Québec. On May 17, 2022, the Appellant filed an application for a permanent injunction to prohibit tie-down calf roping with a lasso and steer wrestling activities taking place at the St-Tite Western Festival. The Appellant alleges that these activities contravene sections 5 and 6 of the *Animal Welfare and Safety Act*[1] ("*AWSA*").

4. For the reasons set forth below, the trial judge clearly erred in dismissing the Appellant's application for an injunction at the preliminary stage as having no clear legal standing to act.

Grounds for Appeal

5. The appealed judgment contradicts the third factor of the test established by the Supreme Court for public interest standing[2], a test that the Québec legislature codified in Article 85, paragraph 2, of the *Code of Civil Procedure*[3] and that Québec courts have applied both before[4] and after[5] the implementation of the "new" *Code of Civil Procedure*. While Québec courts have repeatedly recognized that the existence of other remedies, potential or theoretical, does not deprive a plaintiff from seeking public interest standing, Judge Paradis' judgment is to the contrary[6].

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[1] CSRQ c. B-3.1.

[2] *British Columbia (Attorney General) v. Council of Canadians*, 2022 SCC 27 [« *CCD* »]; *Canada (Attorney General) c. Downtown Eastside Sex Workers United Against Violence Society*, 2012 CSC 45 [« *Downtown Eastside* »].

[3] See Comments from the ministre de la Justice (Québec) in Luc Chamberland, *Le Grand Collectif, Code de procédure civile, commentaires et annotations*, vol 1, 7e éd, Montréal, Éditions Yvon Blais, 2022, p.734.

[4] *Air Canada v. Québec (Procureure générale)*, 2015 QCCA 1789, par. 82; *Canada (Procureur général) c. Barreau du Québec*, 2014 QCCA 2234, par. 5.

[5] *Coroner en chef du Québec c. Duhamel*, 2021 QCCA 796, par. 65-68; *Saba c. Procureure générale du Québec*, 2017 QCCS 5498, par. 77, 85-86, 89-90 (Issue of legal standing was not discussed on Appeal).

[6] Judgment under Appeal, par. 46-48.

6. Regarding the first two criteria of the test, the trial judge was ready to "agree that the plaintiff has a genuine and real interest in ensuring that the provisions of the *AWSA* are respected, and therefore the question of the legality of the activities" covered by the injunction application should be decided[7]. He also concluded that "the question of whether the tie-down roping of calves with a lasso and steer wrestling activities are contrary to the *AWSA* is a serious issue"[8] and a justiciable issue "because the Superior Court has jurisdiction to decide the legality of the activities and, if necessary, to issue an injunction prohibiting them".[9]

7. However, the trial judge made a legal error in interpreting and applying the third factor of the *Downtown Eastside* precedent. Specifically, he stated and applied the wrong criterion and erred in suggesting that public interest standing cannot be sought in private law disputes, as opposed to public law disputes. The trial judge also made a clear and decisive error in concluding that a proceeding with the Ministry of Agriculture, Fisheries, and Food of Québec ("MAPAQ") was already underway.

Errors of Law

8. Both in Québec and in common law provinces, the test applicable for public interest standing is the one established by the Supreme Court in the *Downtown Eastside* decision, recently reiterated in the *CCD* decision. The third factor of this test involves determining whether the proposed lawsuit, taking into account all the circumstances, is a reasonable and effective way to bring the issue before the courts.[10]

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[7] Judgment under Appeal, par. 28.
[8] Judgment under Appeal, par. 29
[9] Judgment under Appeal, par. 30
[10] *Coroner en chef du Québec c. Duhamel*, 2021 QCCA 796, par. 65-68; *Air Canada c. Québec (Procureure générale)*, 2015 QCCA 1789, par. 82; *Canada (Procureur général) c. Barreau du Québec*, 2014 QCCA 2234, par. 5; *Saba c. Procureure générale du Québec*, 2017 QCCS 5498, par.77, 85-86, 89-90 90 (Issue of legal standing was not discussed on Appeal).

9. In 2021, the Québec Court of Appeal expressly confirmed this, while clarifying that "the wording of the second paragraph of Article 85 C.C.P. codifies" the principles established in *Downtown Eastside* "according to which 'there is no other effective way to bring the issue [before the court]' imposes a burden that is limited to demonstrating that the remedy is one of the effective means to resolve the issue, not necessarily the most effective of all." [11] (emphasis added).

10. The trial judge explicitly dismissed this interpretation of the third factor.[12] Instead, he concluded that the administrative remedies that MAPAQ could undertake, and the criminal remedies provided in the *AWSA* constitute "other effective remedies" which justify denying standing to the Appellant and, thus, dismissing the Appellant's application at the preliminary stage.[13]

11. In reaching this conclusion, the trial judge made three underlying legal errors:
    a. He ignored that the existence of other potential remedies and the likelihood that should such remedies be pursued they "should be assessed based on practical realities and not theoretical possibilities".[14] The Respondent did not prove that an administrative or criminal action had been undertaken against the Respondent. Moreover, the trial judge does not mention any such remedies. The Appellant's injunction application is the only remedy pursued, even though MAPAQ is well aware of the practices which are the subject of this lawsuit, as demonstrated by Exhibit R-2.

    b. He ignored that an administrative remedy by MAPAQ that could lead to an order does not constitute an "effective way to bring the issue before the court"[15] and does not allow to "present a context more suitable for adversarial

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[11] *Coroner en chef du Québec c. Duhamel*, 2021 QCCA 796, par. 68
[12] Judgment under Appeal, par. 47-48.
[13] Judgment under Appeal, par. 40.
[14] *Downtown Eastside,* par. 51
[15] Art. 85 al. 2 CCP.

determination"[16], contrary to the requirements of the *C.C.P*. and recognized principles established by the Supreme Court. This is especially true considering the limited enforcement power of the minister under the *AWSA*.[17]

c. He ignored that the Appellant's injunction application brings a “distinctive perspective"[18] from a potential penal remedy that the Director of Criminal and Penal Prosecutions could theoretically undertake.

12. Furthermore, the trial judge clearly erred in concluding that the Appellant's failure to contact the owners of the calves and steers "alone is sufficient to dispose of DAQ's absence of legal standing"[19]. In reaching this conclusion, the trial judge again ignored that only *realistic* ways of bringing an issue before the court should be considered in applying the third factor[20]. Clearly, those who make their animals available to the Respondent specifically for these activities will not seek an injunction to stop these activities.

13. Moreover, the trial judge acknowledged that "it does not appear that the owners of the animals intend to pursue a direct legal remedy to have the legality of the tie-down calf roping with a lasso and steer wrestling activities organized by the defendant adjudicated"[21]. Nevertheless, he still rejected the Appellant's application based on this argument.

14. Finally, the trial judge made a legal error by suggesting that public interest standing cannot be sought in private law disputes. This contradicts the principle

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[16] *Downtown Eastside*, par. 51.
[17] AWSA, sections 58-59.
[18] *Downtown Eastside*, par. 51; *Manitoba Metis Federation Inc. c. Canada (Procureur général)*, 2013 CSC 14, par. 43.
[19] *Judgment under Appeal, par. 37-38.*
[20] *Downtown Eastside*, par. 51.
[21] Judgment under Appeal, par. 35.

established in the *Delta Air Lines Inc. v. Lukács*[22] decision, where the Supreme Court confirmed, in the context of a dispute between two private parties, that public interest standing is not to be limited to cases challenging the constitutionality of a law or administrative measure.

15. On the contrary, restricting public interest standing in this way can have serious consequences. Specifically, preventing a plaintiff who meets all the criteria of *Downtown Eastside* from simply addressing the court, in a situation where the government fails - or refuses - to enforce a law of public interest and public policy, would allow the executive branch to bypass the legislative power of the National Assembly.

16. In this case, by unanimously adopting the *AWSA* and adding Article 898.1 to the Civil Code of Quebec, our ordinary law, the Québec legislature sent several strong messages: 1) animals are sentient beings, not things, 2) their well-being has become a societal concern, and 3) we all share a collective and individual responsibility in this matter[23]. The legislator's intent must be respected, and the interpretation of public interest standing in Québec must align with the recognition of this new legal status: we cannot continue to apply legal standing as if it were a dispute over a garden table, a phone, or a car.

17. Limiting public interest standing to public law would also go against the central idea that has guided the evolution of this doctrine since the 1970s: the Attorney General -and the State more generally - do not have a monopoly on the public interest and, moreover, are not always a good guardian of it.

18. These legal errors justify the intervention of the Court of Appeal.

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[22] 2018 SCC 2, par. 16-18

[23] Preamble of the Act to Improve the Legal Situation of Animals, SQ 2015, c 35.

Manifest and Decisive Factual Errors

19. The trial judge also made a manifest and decisive factual error by concluding that "an equally effective remedy is already underway" with MAPAQ and that the exercise of this "remedy tends to indicate that [the Appellant] does have access to justice".[24]

20. By "remedy," the trial judge refers to the complaint filed by a member of the Appellant with MAPAQ in February 2018. Besides the fact that this complaint does not constitute a remedy within the meaning of Article 85, paragraph 2 *C.C.P.*, in that it will never result in a judicial decision, it is simply false to claim that it is "underway". [25]

21. In fact, in March 2019, MAPAQ responded by email to the complainant that the Ministry was participating in the work of an advisory committee, had formed a working group, and "may eventually define" guidelines on the application of the *AWSA* to rodeos.[26] The judge did not even mention the handling of the complaint, instead stating that this "remedy" was "already undertaken"[27] and "underway."

22. This factual error was inevitable since the trial judge, during the hearing, refused to consult or even take possession of the Appellant's document binder[28], just as he refused[29] to consult the report submitted by the working group referred to in MAPAQ's response email.

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[24] Judgment under Appeal, par. 54.
[25] Judgment under Appeal, par. 54.
[26] Exhibit R-2 in support of the Motion to Dismiss the Action, p. 10.
[27] Judgment under Appeal, par. 40, 43.
[28] Containing only the exhibits alleged in the Originating Application.
[29] Minutes from the hearing indicate (**Annex 3**): “The Court mentioned that it will not use this report to render its decision.”.

23. Nevertheless, the trial judge erroneously concluded that the Appellant was seeking a remedy that was equally or more effective with MAPAQ, justifying the dismissal of the permanent injunction application. This is a manifest and decisive factual error warranting the intervention of the Court of Appeal.

Conclusion

24. The Appellant party requests that the Court of Appeal:

GRANT the appeal;

SET ASIDE the trial judgment;

DISMISS the Motion to Reject the Action and Abuse of Procedure by the Respondent;

GRANT the Appellant public interest standing;

ORDER the Respondent to pay the Legal Costs.

Montréal, May 25, 2023

(signed) Trudel Johnston & L'espérance

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