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Québec Court of Appeal sets the record straight on the test for interlocutory injunctions in Québec and confirms liberal standing requirements for neighbourhood annoyance claims

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On June 21, 2018, the Québec Court of Appeal rendered judgment in *Groupe CRH Canada inc. c Beauregard, 2018 QCCA 1063*, granting interlocutory injunctive relief that restricts the loading of trucks at a stone quarry outside normal business hours. In doing so, the Court provided extensive guidance on the test for interlocutory injunctions in Québec. Of importance, it confirmed that

- the "appearance of right" criteria applied in Québec is not different than the "serious question to be tried" criteria in common law jurisdictions;
- contrary to common law jurisdictions, interlocutory injunctions can be granted in situations where the harm sustained by the plaintiff is *not* irreparable, provided such harm is serious; and,
- the balance of convenience test must be applied in nearly all cases, and not only when the "appearance of right" is considered doubtful.

In its analysis of the substance of the matter, the Court also reiterated that the question of who qualifies as a "neighbour" having standing to bring a neighbourhood annoyance claim should be interpreted liberally.

Background

Groupe CRH Canada Inc. (CRH) operates a stone quarry in Varennes, a suburb of Montréal. In 2016, CRH became an important supplier of crushed stone for the Turcot Interchange Project, resulting in a significant increase in trucking on the road adjacent to the Respondents' homes, the only access road for the quarry. A significant portion of this increase occurred at night and on weekends. Armed with a mandate from 24 of their neighbours, the Respondents commenced legal proceedings on the basis that this increased trucking activity constituted a neighbourhood annoyance, and sought an interlocutory injunction to reduce the amount of truck traffic passing by their homes.

The Superior Court granted an interlocutory injunction on the basis that trucking on the road adjacent to the Respondents' homes was excessive and constituted a neighbourhood annoyance under article 976 of the *Civil Code of Québec* (CCQ). CRH appealed.

Reasons and conclusions

The test for interlocutory injunctions in Québec

In its decision, the Court goes out of its way to clarify the test applicable to interlocutory injunctions in Québec. In many cases, notably in the landmark decision of *Société de développement de la Baie James c Kanatewat*, [1975] CA 166, this test was expressed as having two main components, namely (i) that the right asserted has a reasonable prospect of being recognized on the merits (appearance of right); and, (ii) that an interlocutory injunction is necessary to avoid a serious or irreparable injury to the applicant, or a factual or legal situation that would render the final judgment ineffectual.

In many cases, it was only when the appearance of right was qualified as "doubtful" that Courts applied the balance of convenience test to decide whether to issue the injunction. If the applicant's right was clear, the balance of convenience would often not be considered.

The Court made clear that this understanding of the test is no longer correct.

First, the "appearance of right" test is no different than the "serious issue to be tried" test applied at common law since the decision of the House of Lords in *American Cyanamid Co. v Ethicon Ltd.*, [1975] 1 All E.R. 504. As such, an applicant need not demonstrate a reasonable prospect of success on the merits, but rather that the claim is not frivolous or vexatious. There are only two limited situations where Courts should engage in a more extensive review of the merits of the underlying claim at the interlocutory stage: (i) when the result of the interlocutory application in effect amounts to a final determination of the action; or, (ii) when the application raises a constitutional issue that can be determined as a pure question of law.

Second, while at common law interlocutory injunctions are limited to cases where the applicant will sustain irreparable harm if the relief is not granted, the Court highlighted that this is not the case in Québec. Pointing to article 511 of the *Code of Civil Procedure*, the Court noted that interlocutory injunctions can be granted in Québec to prevent serious *or* irreparable harm. This distinction between common law and Québec civil law is justified by the fact that, contrary to common law, specific performance is not an exceptional remedy under Québec civil law. It is, in fact, the default remedy under article 1601 *CCQ*.

Third, and contrary to the commonly held understanding that it only applied in cases where the "appearance of right" was considered "doubtful," the Court clarified that the balance of convenience test must be applied in nearly all cases, even in cases where the "appearance of right" is considered clear or strong. The only situations where it need not be applied are: (i) when the case on the merits is frivolous or vexatious (and therefore does not meet the "appearance of right"/"serious issue to be tried" threshold); or, (ii) when the case raises a pure question of law.

These exceptions to the general application of the balance of convenience test are based on the judgment of the Supreme Court of Canada in *RJR-MacDonald Inc. v Canada (AG)*, [1994] 1 SCR 312. However, in stating the second exemption (when the case raises a pure question of law), the Court of Appeal in effect broadened its application in Québec.

In *RJR-MacDonald Inc.*, the Supreme Court stated the exemption as applying to *constitutional issues* raising a pure question of law. In this case, the Court of Appeal broadened the exemption to apply to *any* pure question of law. In this regard, the Court noted that because specific performance is a default remedy under Québec law, it may be possible to obtain an interlocutory injunction enforcing contractual rights without having to consider the balance

of convenience test, if such contractual rights can be determined as a pure question of law.

Standing to sue for neighbourhood annoyances

CRH argued that they are not "neighbours" of the Respondents, and that they therefore cannot benefit from the right of action for neighbourhood annoyances provided by article 976 *CCQ*. They argued that the Respondents suffer annoyances from traffic on a public road, for which the municipality is ultimately responsible, and not from the activities carried out at their stone quarry.

The Court disagreed, reaffirming that plaintiffs in a neighbourhood annoyances action need not be adjacent neighbours to the source of the annoyance – they merely need to be in the "neighbourhood," a term which should be interpreted liberally. In this case, the fact that the Respondents were only three kilometres away from the quarry, and the fact that their houses were adjacent to the only road leading to the quarry, was sufficient to give them standing to bring a neighbourhood annoyances claim.

Further, while the annoyance resulted from traffic on a public road, and not the activities carried out in the quarry itself, the Court found that the increase in trucking was directly linked to the activities of the quarry and could form the basis for a neighbourhood annoyances claim.