Federal Court  Cour fédérale

Date: 20140121

Docket: T-744-13
Citation: 2014 FC 66

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, January 21, 2014

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

SYLVAIN ABEL, MARTIN ASSELIN, MARIE-CLAUDE ASSELIN, YAN AUDET, STÉPHANE AYLWIN, RICHARD BACON, BENOIT BEAUSÉJOUR, JEAN BEAUSÉJOUR, CLAUDE BÉLAND, DANIEL BÉLAND, GEORGE CLAVEAU JR., JAMES COOPER, STEVE COSSETTE, ANDRÉ CÔTÉ, CHANTAL COUTURE, LÉON DEBLOIS, BRUNO DELISLE, JEAN DÉSAULNIERS, JEAN-ROCK DESCHESNES, RÉAL DESPINS, BENOIT BÉLANGER, ALAIN BELLEY, NORMAND BERGERON, MARIO BERTRAND, STEPHAN BILODEAU, SYLVAIN BILODEAU, DANIEL BLAIS, MICHEL BLAIS, LINDA BOISVERT, MARTIN BOIVIN, LAURIER BONNEAU, PAUL BORDELEAU, GUY BOUCHARD, JACQUES BOUCHARD, DANIEL BOUDREAULT, CHANTAL BOULANGER, JEAN BOUSQUET, MARTIN BOUTIN, RICHARD BRETON, DANY BRODEUR, CÉLINE DROLET, DOMINIC DUFOUR, ÉRIC DUFOUR, LOUIS DUMONT, GILLES FAFARD, JÉRÉMI FERRON, DANIEL FORTIER, DOMINIQUE FORTIN, GILLES FORTIN, GASTON FOURNIER, ROLAND FRANCOEUR, FRANÇOIS HARVEY, DENIS FRAPPIER, JEAN-MARIE FRASER, RENÉ FRASER, LINE GAGNÉ, MARTIAL GAGNÉ, RICHARD GAGNÉ, FERNAND GAGNON,

MARCEL GAGNON, RENÉ GAGNON, SYLVAIN GAGNON, SYLVAIN GARCEAU, JACQUES GARNEAU, RAYMONDE GÉLINAS, ALAIN GILBERT, DENIS GONNEVILLE, BERNARD GRENIER, DANY GRENIER, NANCY GRENIER, ROLAND GROLEAU, ANDRÉ GRONDIN, JEAN-CLAUDE HARVEY, MARTIN HARVEY, RENÉ HARVEY, YVES HARVEY, RICHARD HAYES, NORMAND ISABELLE, PIERRE JACOB, CLAUDE LABONTÉ, JEAN LACHANCE, DENIS LALANCETTE, DENIS LALANCETTE, MICHEL LAMBERT, JULIEN LAMPRON, MICHEL LANGEVIN, TOUSSAINT LAPOINTE, MARC LAPOINTE, MICHEL LAROCHE, SYLVAIN LAROUCHE, DENISE AYOTTE, GUY LAVERGNE, JOCELYN LEFEBVRE, MARC LEFEBVRE, JACQUES LEMAY, NORMAND LESIEUR, ANDRÉ MARTIN, PATRICK MARTINEAU, RÉAL MÉNARD, DENIS MERCIER, FRANCIS METCALFE, LUCIE MONGRAIN, DANIEL MONGRAIN, MICHEL MOREAU, JEAN-PIERRE MORIN, MARIO MUNGER, GLEN NATALE, SYLVAIN NERON, LOUIS-MARIE OUELLET, ÉRIC PARADIS, YVAN PARADIS, CLERMONT PERRON, MARC-ANDRÉ QUIRION, CÉLINE RACINE, JOCELYN RICARD, GISÈLE ROLLIN, HEIDI SAVARD, PIERRE SAVOIE, JOEL SCATLAND, DANY SÉGUIN, JULIE SIMARD, CAROL SIMONEAU, MICHEL ST-AMANT, FERNAND ST-AMAUD, GUY ST-LOUIS, DANIEL ST-PIERRE, RÉJEAN TAILLON, GUY TARDIF, PATRICK THIBEAULT, ALAIN TREMBLAY, JOHANNE TREMBLAY, JEAN-PIERRE TREMBLAY, LANGIS TREMBLAY, MARCEL TREMBLAY, NOEL TREMBLAY, DANY TURCOTTE, JULES-AIMÉ TURCOTTE, LUC TURCOTTE, RÉGIS TURCOTTE, CAMIL TURGEON, LUC VAUGEOIS, MICHEL VEILLETTE, GUY VENNES, JACQUES VINCENT, MICHEL VINCENT, MICHEL VINCENT JR.

Applicants

and

DENIS ASSELIN, JEAN ASSELIN AND NATHALIE ASSELIN, IN THEIR CAPACITY AS DIRECTORS OF TRANSPORT ASSELIN LTÉE

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Sylvain Abel et al. (the applicants) have filed the present application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [the FCA], regarding the decision of a referee dated March 27, 2013, pursuant to section 251.12 of the *Canada Labour Code*, RSC 1985, c L-2 [the CLC], rescinding a payment order in the amount of $279,328.41 issued by an inspector (the inspector) of the federal Labour Program of Human Resources and Skills Development Canada [HRSDC], on the ground that it was prescribed.

[2] For the following reasons, the Court allows the application for judicial review.

II. The facts

[3] Transport Asselin Ltée (Transport Asselin), a company incorporated under Part 1A of the *Companies Act*, RSQ, c C-38 [the CA], was the applicants' employer. Since Transport Asselin carried out interprovincial road transportation, it met the definition of a federal undertaking under paragraphs 2(*b*) and 167(*a*) and (*c*) of the CLC.

[4] Transport Asselin made an assignment of its property on August 25, 2005, at which point the employment relationship between the applicants and their employer was terminated. In the days following the assignment, the applicants filed a complaint with the Labour Program in order to recover the sums owed to them under Part III of the CLC. The respondents submit that neither the applicants nor the inspector informed them of the existence of this complaint (see the respondents' record, page 93, paragraph 40).

[5] However, on August 31, 2005, an HRSDC inspector contacted Transport Asselin in order to obtain a breakdown of the amounts owed to each employee in wages, vacation pay, notice and severance pay.

[6] The liquidation of Transport Asselin's assets was not finalized until November 18, 2009.

[7] On or around December 21, 2010, the inspector informed the respondents that he was conducting an investigation to determine whether anything was owed to the employees of Transport Asselin under Part III of the CLC.

[8] On or around January 10, 2011, the inspector informed the respondents of the results of his investigation. He concluded that the respondents, as the employer's directors, were [TRANSLATION] "personally, jointly and severally liable for the wages and other amounts" owed to the employees, in the amount of $698,069.71. In response to the respondents' arguments and objections, the inspector revised the amount owed on January 25, 2012, and set the total amount owed to the applicants at $279,328.41.

[9] On March 6, 2012, the respondents were served with a payment order in this amount. Arguing that it was prescribed, the respondents challenged the payment order before a referee, after paying the amount requested to the Receiver General for Canada.

[10] The respondents submit that the wage recovery relief provided under section 251.18 of the CLC, which governs the liability of directors, is subject to the three-year prescriptive period provided under article 2925 of the *Civil Code of Québec* [the CCQ]. The respondents argue that the provincial law in the matter of prescription compensates for Parliament's silence on this matter. Since the three-year prescriptive period began on August 25, 2005, the date on which bankruptcy was declared, the payment order issued in March 2012 is prescribed.

[11] On March 27, 2013, the referee rendered his decision. He rescinded the payment order since he agreed with the respondents' arguments that the applicants' claim was prescribed.

III. Legislation

[12] The statutory provisions applicable in this case are reproduced in the annex to this judgment.

IV. Issue and standard of review

A. Issue

- ***Did the referee err in fact and in law in holding that the payment order issued by the inspector on January 12, 2012, under section 251.18 of the CLC was prescribed?***

B. Standard of review

[13] The applicants allege that when it comes to interpreting the labour standards enacted in Part III of the CLC or adjudicating the appeal of a payment order, the applicable standard of review is reasonableness as the decision-maker acts within the scope of his or her jurisdiction. However, the question of whether provincial enactments apply to supplement a federal enactment is a matter in which the referee has no expertise. This is moreover a question of general law that is of central importance to the legal system as a whole. Consequently, the referee's decision in this regard should be reviewed on a standard of correctness.

[14] The respondents submit that the referee had to dispose of the issue of prescription in light of the purpose of Part III of the CLC and the liability of directors under this statue. The respondents

argue that this is a question of mixed fact and law and that the applicable standard of review is therefore reasonableness. They add that if the Court applied a standard of correctness, the Court should nonetheless not interfere with the referee's decision.

[15] The Supreme Court, in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] at paragraph 34, writes as follows:

> . . . unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.

[16] The Court agrees with the parties' position that it must show deference to the referee's conclusions regarding the interpretation of the provisions of the CLC. In those cases, the standard of reasonableness applies.

[13] Regarding the referee's conclusions on the application of provincial enactments, the Court is of the opinion that the applicable standard of review is that of correctness. In fact, *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], at paragraph 60, instructs as follows:

> . . . courts must also continue to substitute their own view of the correct answer where the question at issue is one of general law "that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" (*Toronto (City) v. C.U.P.E.*, at para. 62, *per* LeBel J.).

V. Positions of the parties

A. Position of the applicants

[17] The applicants allege that wage recovery complaints made under Part III of the CLC are not prescribed by an express period. Consequently, Labour Program inspectors may recover the amounts owed to employees at any time. They refer to, among other things, *Delaware Nation v Logan*, 2005 FC 1702, at paragraphs 24 to 26, in which Justice Phelan concluded that the fact that Parliament had established a limitation period for specific matters, but not a more general limitation period suggests that it deliberately refrained from doing so, and it is not the Court's function to compensate for Parliament's choice by enacting a prescriptive period.

[18] The applicants point out that the CLC provides for 90 days to file a complaint for unjust dismissal. In their opinion, this is an example of Parliament's explicit choice, yet no limitation period is provided for wage recovery complaints. The applicants refer to *Erb Transport Ltd v Smytkiewicz*, [2008] CLAD No 154, where the referee writes as follows at paragraph 45:

> Had parliament intended such complaints to be made in writing in order to be valid, it would have expressed that intention with the same clear language provided in section 240 (1) for unjust dismissal claims, which it has chosen not to.

[19] This reasoning could apply to Parliament's choice not to establish a limitation period for Part III, since the time limits for other remedies have been expressly provided for in the CLC.

[20] The applicants also submit that the inspector appointed by the Minister to enforce the CLC's wage recovery provisions has both investigative and decision-making power. Following his or her investigation, the inspector makes a decision. In some circumstances, the inspector may issue a payment order that, according to the applicants, [TRANSLATION] "has all the essential features of a decision since it disposes of the merits of a proceeding brought by an employee to have his or her rights recognized under Part III of the Code" (see the applicants' record, page 152, para 36).

[21] The applicants argue that filing a complaint with the Labour Program is the equivalent of exercising a remedy. Since the complaint was filed in the days following the employer's bankruptcy, nothing in the CLC obliged the inspector to limit the length of his investigation or his deliberation. The applicants argue therefore that if the Court concluded that a limitation period applied, the limitation period was interrupted by the filing of their complaint with the Labour Program. Consequently, the payment order issued by the inspector is not prescribed.

[22] Lastly, the applicants argue that the referee misunderstood the grounds of the remedy provided for employees under Part III of the CLC and, consequently, the scope of his own jurisdiction.

B. Position of the respondents

[23] In the respondents' opinion, it was reasonable for the referee to have maintained that the *jus commune* of Quebec is a supplementary source of law to federal legislation, given the omission of a limitation period in the CLC. The respondents support this position by arguing that public order and

stable legal relationships between persons require that claims not be made irrespective of the time. The respondents also submit that the liability of directors, for the payment of wages, flows from a statutory provision and cannot, therefore, be indefinite.

[24] They submit, moreover, that Parliament codified the suppletive nature of provincial law. The respondents refer here to section 8.1 of the *Interpretation Act*, LRC 1985, c I-21, which specifies as follows:

> Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

[25] The respondents also rely on the FCA, particularly section 39, which stipulates that the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

[26] The respondents refer to, among other things, *Syndicat des travailleurs et travailleuses des Postes c Société canadienne des Postes*, 2010 CanLII 46539, at paragraphs 51 to 56, in which the arbitrator wrote the following:

> [TRANSLATION]
> In the absence of a limitation period in the collective agreement or the *Canada Labour Code*, the *jus commune* of the province of Quebec is a suppletive source of law to the collective agreement. This was recognized by the Supreme Court in *Isidore Garon ltée v. Tremblay; Fillion et Frères (1976) inc. v. Syndicat national des employés de garage du Québec inc.*, (2006) 1 SCR 27. [See para 52.]

[27] The respondents also rely on a decision of the Supreme Court of British Columbia, *In the Matter of Western Express Air Lines Inc.*, 2006 BCSC 1267, which ruled that the company's incorporating statute overlapped with the CLC and that these enactments therefore work together and complement each other. In that case, the Court wrote as follows:

> **22.** In my view s.251.18 of the *Code* constitutes a basic statement of the extent to which directors may come under a liability to employees for various amounts. It contains no time period for giving notice of a claim. By contrast s.119 *CBCA* includes within it a number of rights and protections available to directors that are not contained in the *Code*. It places on employees of *CBCA* corporations the relatively minor obligation to file Proofs of Claim within six months, a requirement on which the *Code* is silent.
>
> **23.** In my view the statutory provisions are overlapping and not contradictory and hence the six month limitation period in the *CBCA* applies.

[28] The respondents submit that the Court must apply this reasoning to the facts in the present matter, arguing that section 96 of the CA, the enactment under which Transport Asselin was incorporated, does not provide for a prescriptive period for claims against directors for unpaid wages, which is why the prescriptive period in article 2925 of the CCQ has been applied in the case law.

[29] The respondents submit that the applicants' argument that the payment order issued by the inspector is an administrative decision and not a remedy was not raised before the referee, nor did the inspector mention it in his report. The respondents argue that if this Court concludes that it was an administrative decision, the period for challenging the validity of a payment order and to warrant the remedy, in the shape of a rescission of the order, is limited by the principles of natural justice

and the duty of fairness. The respondents rely on *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, in which the Supreme Court sanctioned the idea that the duty of fairness could be breached as a result of an unreasonable or inordinate delay.

[30] The respondents claim to have been severely prejudiced by a delay they describe as being [TRANSLATION] "inordinate" and [TRANSLATION] "unreasonable". They also allege that they could not have foreseen receiving a claim after all that time. The inspector's decision allegedly left them confused, worried and stressed.

[31] The respondents submit that the referee's decision to rescind the payment order was reasonable and that the Court does not have to intervene in these circumstances.

VI. Analysis

[32] Section 251.1 of the CLC provides employees with a mechanism for being paid wages or other amounts they are entitled to, stipulating as follows:

> **251.1** (1) Where an inspector finds that an employer has not paid an employee wages or other amounts to which the employee is entitled under this Part, the inspector may issue a written payment order to the employer, or, subject to section 251.18, to a director of a corporation referred to in that section, ordering the employer or director to pay the amount in question, and the inspector shall send a copy of any such payment order to the employee at the employee's latest known address.
>
> (2) Where an inspector concludes that a complaint of non-payment of wages or other amounts to which an employee is entitled under this Part is unfounded, the inspector shall so notify the complainant in writing.

[33] On reading this provision, it is clear that to assert one's right to unpaid wages or other amounts, employees must file a complaint with HRSDC, which will appoint an inspector. If, following an investigation, the inspector determines that the complaint is well-founded, the inspector issues a payment order. The payment order constitutes an order issued by an inspector with investigative powers. If appealed, the order may be referred to adjudication and ultimately be enforced by this Court under subsection 244(1) of the CLC.

[34] The federal regime established by the CLC differs from Quebec's provincial labour standards regime. In contrast to the Commission des normes du travail, which goes before the courts to recover unpaid wages (see section 98 of the *Act Respecting Labour Standards*, QLR, c N-1.1), HRSDC does not institute proceedings before the ordinary courts of law. HRSDC inspectors have all the powers of a person appointed as a commissioner under the *Inquiries Act*, RSC 1985, c I-11 (see subsection 248(1) of the CLC). The remedies provided under Part III of the CLC are therefore exercised before public servants appointed for this purpose. As pointed out by Justice Sharlow in *Dynamex Canada Inc v Mamona*, 2003 FCA 248, at paragraph 32, "[a] review of Part III also discloses another objective, which is to facilitate the efficient resolution of disputes arising from its provisions".

[35] Since wage recovery appeals under Part III of the CLC are first brought before an inspector, the Court agrees with the applicants' position that the payment order is a [TRANSLATION] "decision [that] disposes of the merits of a proceeding brought by an employee to have his or her rights recognized under Part III of the Code". In short, it is a statutory procedure. It must be remembered that the courts have held that, generally speaking, an applicant must use statutory procedures before

going to the ordinary courts of law (see *Canadian Pacific Ltd v Matsqui Indian Band*, [1995] 1 SCR 3, at paras 33 to 38).

[36] The remedy provided under section 251.1 of Part III of the CLC is initiated by the filing of a complaint (see section 251.1 of the CLC), in response to which a decision is made by an inspector. If the decision is appealed, it is brought before a referee appointed by the Minister (see section 251.12 of the CLC). The next step is a hearing before the referee should either of the parties wish to challenge the payment order made against it.

[37] In short, the Court notes that the applicants' complaint that initiated the remedy was filed but a few days following the bankruptcy, in accordance with the CLC. In these circumstances, the remedy was exercised pursuant to the provisions of the CLC and cannot be prescribed.

[38] Since the decision of the Federal Court of Appeal in *St-Hilaire v Canada (Attorney General)*, 2001 FCA 63 [*St-Hilaire*], it has been trite law that the CCQ applies in a suppletive manner when the Court has to deal with a private law issue arising in Quebec (see *St Hilaire*, above, at para 50). Moreover, section 39 of the FCA clarifies that, except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court if the cause of action arose in that province.

[39] Moreover, in *Gingras v Canada*, [1994] 2 FC 734, the Court set out the procedure to be followed by the Court before importing the prescriptive or limitation period enacted by a provincial

enactment. First, the Court has to verify whether the applicable federal statute provides for a limitation period. In the absence of a specific period, as in the present matter, given that the CLC did not enact one for the remedy provided under section 251.1, the Court has to rely on the general prescriptive or limitation period applicable in the province in which the cause of action arose.

[40] In the matter at bar, if one applies the provisions of the CCQ on prescription, the parties have acknowledged that the prescriptive period began when the company declared bankruptcy, since it has been clearly established in the case law that assignment in bankruptcy terminates the relationship between an employer and its employees. The remedy provided under section 251.1 of the CLC was therefore available as of that point. The employees therefore had three years following the assignment to file a complaint (see article 2925 CCQ).

[41] What actually happened is that they filed their complaint a few days after the bankruptcy, thus interrupting the prescriptive period under article 2892 of the CCQ, which defines interruption as the filing of a judicial demand or the serving of a notice in cases of arbitration.

[42] In the opinion of the Court, the application of this Civil Code rule regarding prescription should also entail the application of the Civil Code principles regarding the interruption of prescription, but without making the procedural rules subject to these principles.

[43] In filing their complaint, the applicants clearly filed a demand under Part III of the CLC. This demand was properly brought before the inspector because it met the conditions of the CLC.

[44] In *Leesona c Consolidated Textile Mills*, [1978] 2 SCR 2 at page 10, the Supreme Court held as follows:

> It is clear that, in s. 38 of the *Federal Court Act*, the reference to provincial "laws relating to prescription" does not include procedural rules. It cannot have been intended that, in respect of prescription, the filing and service of the proceedings in the Federal Court would be governed by the Quebec *Code of Civil Procedure* mentioned in art. 2224 rather than by the Rules of the Federal Court.

[45] Today, article 2224 is article 2892 of the CCQ, which specifies that the filing of a judicial demand before the expiry of the prescriptive period constitutes a civil interruption. In the second paragraph of this article, requests for arbitration are equated with judicial demands as long as the object of the dispute to be submitted is described. In all cases, the interruption of prescription is subject to the serving of an action. It seems abnormal to us, however, to require the present complaint to have been served in accordance with the time limits set out in the *Code of Civil Procedure* to interrupt prescription as the CLC, under which the remedy is sought, does not contain such a requirement. For this reason, it is our opinion that, by analogy with the decision in *Leesona*, above, it is preferable here to refer to the mechanism for exercising the CLC remedy to determine whether the filing of the complaint interrupted the prescription period under article 2892 of the CCQ. Moreover, the result of article 2892 not being available to interrupt prescription would be actual, serious harm as the great majority of demands made under the CLC would become prescribed, given the time it takes to process these files.

[46] In the matter at bar, the inspector, after contacting the bankrupt's accountant in the days after the complaint was filed, saw fit to wait for payment of all the amounts payable to the

employees under the bankruptcy before investigating. The CLC does not prescribe when an investigation should be held and how long it should take.

[47] The Court, while sympathetic to the respondents' argument that they were not informed of the filing of the complaint, nonetheless wishes to emphasize that even though they were not formally advised of the complaint until 2010, they must have known that the employees had not received all of the money owed to them. In fact, they received the final statement of receipts and disbursements from the trustee on November 18, 2009, and the final dividend statement on November 27, 2009, and both statements indicate that the workers were still owed money.

[48] It was unreasonable for the referee to declare that the inspector's payment order was prescribed when the filing of the complaint interrupted the prescription (see articles 2892 and 2896 of the CCQ).

[49] The Court can also not subscribe to the respondents' argument that the time taken to make the decision was unreasonable and inordinate. The delay between when the complaint was filed and when the payment order was made "was not so inordinate or inexcusable as to amount to an abuse of process" (see *Blencoe*, above, at para 132). Moreover, at it was established in *Blencoe*, "[t]here must be more than merely a lengthy delay for an abuse of process; the delay must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (see para 133). The respondents have failed to demonstrate that they suffered prejudice of such magnitude.

[50] For these reasons, it is the Court's view that the referee's conclusions do not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, above, at para 47) and therefore justify the intervention of this Court; the Court also finds that the referee's interpretation of how the CCQ applies should also have taken into account the possibility of an interruption under article 2892 of that same code.

JUDGMENT

THE COURT

1. Allows the applicants' application for judicial review; and

2. Refers the matter back to the referee for redetermination of this file in accordance with these reasons.

With costs against the respondents.

"André F.J. Scott"
Judge

Certified true translation
Johanna Kratz, Translator

ANNEX

Canada Labour Code, RSC 1985, c L-2

Enforcement of orders

244. (1) Any person affected by an order of an adjudicator under subsection 242(4), or the Minister on the request of any such person, may, after fourteen days from the date on which the order is made, or from the date provided
in it for compliance, whichever is the later date, file in the Federal Court a copy of the order, exclusive of the reasons therefor.

(2) On filing in the Federal Court under subsection (1), an order of an adjudicator shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order were a judgment obtained in that Court.

Inquiries

248. (1) The Minister may,

(*a*) for any of the purposes of this Part, cause an inquiry to be made into and concerning employment in any industrial establishment; and

(*b*) appoint one or more persons to hold the inquiry.

Powers on an inquiry

(2) A person appointed pursuant to subsection (1) has all of the powers of a person appointed as a commissioner under Part I of the Inquiries Act.

Exécution des ordonnances

244. (1) La personne intéressée par l'ordonnance d'un arbitre visée au paragraphe 242(4), ou le ministre, sur demande de celle-ci, peut, après l'expiration d'un délai de quatorze jours suivant la date de l'ordonnance ou la date d'exécution qui y est fixée, si celle-ci est postérieure, déposer à la Cour fédérale une copie du dispositif de l'ordonnance.

Enregistrement

(2) Dès le dépôt de l'ordonnance de l'arbitre, la Cour fédérale procède à l'enregistrement de celle-ci; l'enregistrement confère à l'ordonnance valeur de jugement de ce tribunal et, dès lors, toutes les procédures d'exécution applicables à un tel jugement peuvent être engagées à son égard.

Enquêtes

248. (1) Le ministre peut, dans le cadre de la présente partie :

a) faire procéder à une enquête sur toute question concernant l'emploi dans un établissement;

b) nommer la ou les personnes qui en seront chargées.

Pouvoirs lors d'une enquête

(2) Toute personne nommée conformément au paragraphe (1) est investie des pouvoirs conférés aux commissaires aux termes de la partie I de la *Loi sur les enquêtes*.

Inspectors

249. (1) The Minister may designate any person as an inspector for the purposes of this Part.

. . .

Recovery of Wages

Payment order

251.1 (1) Where an inspector finds that an employer has not paid an employee wages or other amounts to which the employee is entitled under this Part, the inspector may issue a written payment order to the employer, or, subject to section 251.18, to a director of a corporation referred to in that section, ordering the employer or director to pay the amount in question, and the inspector shall send a copy of any such payment order to the employee at the employee's latest known address.

Where complaint unfounded

(2) Where an inspector concludes that a complaint of non-payment of wages or other amounts to which an employee is entitled under this Part is unfounded, the inspector shall so notify the complainant in writing.

Service of documents

(3) Service of a payment order or a copy thereof pursuant to subsection (1), or of a notice of unfounded complaint pursuant to subsection (2), shall be by personal service or by registered or certified mail and, in the case of registered or certified mail, the document shall be deemed to have been received by the addressee on the seventh day after the day on which it was mailed.

Inspecteurs

249. (1) Le ministre peut désigner quiconque à titre d'inspecteur pour l'application de la présente partie.

[…]

Recouvrement du salaire

Ordre de paiement

251.1 (1) L'inspecteur qui constate que l'employeur n'a pas versé à l'employé le salaire ou une autre indemnité auxquels celui-ci a droit sous le régime de la présente partie peut ordonner par écrit à l'employeur ou, sous réserve de l'article 251.18, à un administrateur d'une personne morale visé à cet article de verser le salaire ou l'indemnité en question; il est alors tenu de faire parvenir une copie de l'ordre de paiement à l'employé à la dernière adresse connue de celui-ci.

Plainte non fondée

(2) L'inspecteur qui conclut à l'absence de fondement d'une plainte portant que l'employeur n'a pas versé à l'employé le salaire ou une autre indemnité auxquels celui-ci a droit sous le régime de la présente partie avise le plaignant par écrit de sa conclusion.

Signification

(3) L'ordre de paiement ou sa copie ainsi que l'avis de plainte non fondée sont signifiés à personne ou par courrier recommandé ou certifié; en cas de signification par courrier, ils sont réputés avoir été reçus par le destinataire le septième jour qui suit leur mise à la poste.

Proof of service of documents

(4) A certificate purporting to be signed by the Minister certifying that a document referred to in subsection (3) was sent by registered or certified mail to the person to whom it was addressed, accompanied by an identifying post office certificate of the registration or certification and a true copy of the document, is admissible in evidence and is proof of the statements contained therein, without proof of the signature or official character of the person appearing to have signed the certificate.

Preuve de signification

(4) Le certificat censé signé par le ministre attestant l'envoi par courrier recommandé ou certifié soit de l'ordre de paiement ou de sa copie, soit de l'avis de plainte non fondée, à son destinataire, et accompagné d'une copie certifiée conforme du document et du récépissé de recommandation ou de certification postale est admissible en preuve et fait foi de son contenu sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

Appeal

251.11 (1) A person who is affected by a payment order or a notice of unfounded complaint may appeal the inspector's decision to the Minister, in writing, within fifteen days after service of the order, the copy of the order, or the notice.

Appel

251.11 (1) Toute personne concernée par un ordre de paiement ou un avis de plainte non fondée peut, par écrit, interjeter appel de la décision de l'inspecteur auprès du ministre dans les quinze jours suivant la signification de l'ordre ou de sa copie, ou de l'avis.

Payment of amount

(2) An employer or a director of a corporation may not appeal from a payment order unless the employer or director pays to the Minister the amount indicated in the payment order, subject to, in the case of a director, the maximum amount of the director's liability under section 251.18.

Consignation du montant visé

(2) L'employeur et l'administrateur de personne morale ne peuvent interjeter appel d'un ordre de paiement qu'à la condition de remettre au ministre la somme visée par l'ordre, sous réserve, dans le cas de l'administrateur, du montant maximal visé à l'article 251.18.

Appointment of referee

251.12 (1) On receipt of an appeal, the Minister shall appoint any person that the Minister considers appropriate as a referee to hear and adjudicate on the appeal, and shall provide that person with

(*a*) the payment order or the notice of unfounded complaint; and

(*b*) the document that the appellant has

Nomination d'un arbitre

251.12 (1) Le ministre, saisi d'un appel, désigne en qualité d'arbitre la personne qu'il juge qualifiée pour entendre et trancher l'appel et lui transmet l'ordre de paiement ou l'avis de plainte non fondée ainsi que le document que l'appelant a fait parvenir au ministre en vertu du paragraphe 251.11(1).

[…]

submitted to the Minister under subsection 251.11(1).

. . .

Civil liability of directors

251.18 Directors of a corporation are jointly and severally liable for wages and other amounts to which an employee is entitled under this Part, to a maximum amount equivalent to six months' wages, to the extent that

(*a*) the entitlement arose during the particular director's incumbency; and

(*b*) recovery of the amount from the corporation is impossible or unlikely.

Responsabilité civile des administrateurs

251.18 Les administrateurs d'une personne morale sont, jusqu'à concurrence d'une somme équivalant à six mois de salaire, solidairement responsables du salaire et des autres indemnités auxquels l'employé a droit sous le régime de la présente partie, dans la mesure où la créance de l'employé a pris naissance au cours de leur mandat et à la condition que le recouvrement de la créance auprès de la personne morale soit impossible ou peu probable.

Federal Courts Act, RSC 1985, c F-7

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Powers of Federal Court

(3) On an application for judicial review, the Federal Court may

(*a*) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Grounds of review

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(*d*) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(*e*) acted, or failed to act, by reason of fraud or perjured evidence; or

Pouvoirs de la Cour fédérale

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Motifs

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

(*f*) acted in any other way that was contrary to law.

Defect in form or technical irregularity

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(*a*) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(*b*) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

Prescription and limitation on proceedings

39. (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

Prescription and limitation on proceedings in the Court, not in province

(2) A proceeding in the Federal Court of Appeal or the Federal Court 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.

f) a agi de toute autre façon contraire à la loi.

Vice de forme

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

Prescription — Fait survenu dans une province

39. (1) Sauf disposition contraire d'une autre loi, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour d'appel fédérale ou la Cour fédérale dont le fait générateur est survenu dans cette province.

Prescription — Fait non survenu dans la province

(2) Le délai de prescription est de six ans à compter du fait générateur lorsque celui-ci n'est pas survenu dans une province.

Civil Code of Québec

2880. Dispossession fixes the beginning of the period of acquisitive prescription.

The day on which the right of action arises fixes the beginning of the period of extinctive prescription.

2880. La dépossession fixe le point de départ du délai de la prescription acquisitive.

Le jour où le droit d'action a pris naissance fixe le point de départ de la prescription extinctive.

2892. The filing of a judicial demand before the expiry of the prescriptive period constitutes a civil interruption, provided the demand is served on the person to be prevented from prescribing not later than 60 days following the expiry of the prescriptive period.

Cross demands, interventions, seizures and oppositions are considered to be judicial demands. The notice expressing the intention by one party to submit a dispute to arbitration is also considered to be a judicial demand, provided it describes the object of the dispute to be submitted and is served in accordance with the rules and time limits applicable to judicial demands.

2892. Le dépôt d'une demande en justice, avant l'expiration du délai de prescription, forme une interruption civile, pourvu que cette demande soit signifiée à celui qu'on veut empêcher de prescrire, au plus tard dans les 60 jours qui suivent l'expiration du délai de prescription.

La demande reconventionnelle, l'intervention, la saisie et l'opposition sont considérées comme des demandes en justice. Il en est de même de l'avis exprimant l'intention d'une partie de soumettre un différend à l'arbitrage, pourvu que cet avis expose l'objet du différend qui y sera soumis et qu'il soit signifié suivant les règles et dans les délais applicables à la demande en justice.

2896. An interruption resulting from a judicial demand continues until the judgment acquires the authority of a final judgment (*res judicata*) or, as the case may be, until a transaction is agreed between the parties.

The interruption has effect with regard to all the parties in respect of any right arising from the same source.

2896. L'interruption résultant d'une demande en justice se continue jusqu'au jugement passé en force de chose jugée ou, le cas échéant, jusqu'à la transaction intervenue entre les parties.

Elle a son effet, à l'égard de toutes les parties, pour tout droit découlant de la même source.

2925. An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise established.

2925. L'action qui tend à faire valoir un droit personnel ou un droit réel mobilier et dont le délai de prescription n'est pas autrement fixé se prescrit par trois ans.

Companies Act, RSQ, c C-38

96. (1) The directors of the company shall be solidarily liable to its employees for all debts not exceeding six months' wages due for services rendered to the company whilst they are such directors respectively.

(2) No director shall be liable to an action therefor unless

(*a*) the company is sued within one year after the debt became due and the writ of execution is returned unsatisfied wholly or in part; or

(*b*) during such period, a winding-up order is made against the company or it becomes bankrupt within the meaning of the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3) and a claim for such debt is filed.

96. 1. Les administrateurs de la compagnie sont solidairement responsables envers ses employés, jusqu'à concurrence de six mois de salaire, pour services rendus à la compagnie pendant leur administration respective.

2. Un administrateur ne devient responsable d'une telle dette que si

a) la compagnie est poursuivie dans l'année du jour où la dette est devenue exigible et le bref d'exécution est rapporté insatisfait en totalité ou en partie; ou si

b) la compagnie, pendant cette période, fait l'objet d'une ordonnance de mise en liquidation ou devient faillie au sens de la Loi sur la faillite et l'insolvabilité (Lois révisées du Canada (1985), chapitre B-3) et une réclamation de cette dette est déposée.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-744-13
STYLE OF CAUSE:	SYLVAIN ABEL ET AL v DENIS ASSELIN, JEAN ASSELIN AND NATHALIE ASSELIN, IN THEIR CAPACITY AS THE DIRECTORS OF TRANSPORT ASSELIN LTÉE
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 4, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	SCOTT J.
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APPEARANCES:

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