

The Jordan framework applies to contempt of court proceedings in civil matters

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In this Update

- On June 5, 2017, the Superior Court decided in *St-Amour v. Major* (2017 QCCS 2352) that the *Jordan* framework regarding the right to a trial within a reasonable time applies in cases of contempt of court in civil matters
- The Superior Court's decision provides, among other things, an overview of the principles applicable to matters of constitutional guarantee applicable to defendants in civil cases which deal with issues of contempt of court

On June 5, 2017, in *St-Amour v. Major* (2017 QCCS 2352), the Superior Court decided, among other things, that the new framework defined by the Supreme Court of Canada in its famous decision *R. v. Jordan* (2016 SCC 27) (*Jordan*) regarding the right to a trial within a reasonable time applies in cases of contempt of court in civil matters.

From the outset, Justice Pierre Dallaire points out that it is with “[translation] great humility” that he will decide whether, in this case, “[translation] it is necessary to apply the *Jordan* decision to summons to appear issued to answer accusations of contempt of court in civil matters which date back to Spring 2012 and which have yet to be tried in Court.” He also notes that his decision does not benefit from the additional enlightenment it could receive from the Supreme Court's decision in *Cody* (the Supreme Court rendered its decision on June 16, 2017 – *R. v. Cody*, 2017 SCC 31).

Briefly, in 2010, in *St-Amour v. Major*, the Court granted an interlocutory injunction which ordered the defendants not to impede the plaintiffs' exercise of their rights of passage during the proceedings. In 2012, based on allegations to the effect that the defendants were in breach of the 2010 injunction, the Superior Court issued two summons to appear to respond to accusations of contempt of court. In December 2016, in accordance with the *Jordan* decision, the defendants filed an application to dismiss the contempt of court proceedings. The existence of the plaintiffs' rights of passage were acknowledged in March 2017 by the Court of Appeal (*St-Amour v. Major*, 2017 QCCA 555).

The Superior Court's decision provides an overview of the principles applicable to matters of constitutional guarantee applicable to defendants in civil cases which deal with issues of contempt of court. The Court concluded that a party charged with contempt, whether civil or criminal, benefits from the protection granted by Section 11b) of the *Canadian Charter of Rights and Freedoms* (the Charter). The Court also concluded that there is no need to distinguish between contempt proceedings initiated by the Crown or by an individual. The

Jordan decision therefore applies to contempt of court proceedings in civil matters.

Justice Dallaire retains that the new framework defined in *Jordan* sets a 30-month limit for cases brought before the Superior Court, a deadline beyond which the time limit is presumed to be unreasonable under Section 11b) of the Charter.

In applying the framework proposed by the *Jordan* decision, Justice Dallaire ordered a stay of the contempt of court proceedings. According to the judge, the plaintiffs did not discharge the burden they had to justify a delay of approximately 58 months (the delay between the summons to appear and the filing of the application to dismiss).

This decision is significant since it is the first time that a Court acknowledged that the new framework of the *Jordan* decision also applies in cases of contempt of court in civil matters. Finally, it should be noted that this decision could be appealed.