# The judicial review of a decision rendered by the Court of Québec in civil matters: an unusual remedy, although possible in some circumstances

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**The superintending and reforming power of the Superior Court of Québec over the decisions of the Court of Québec is indisputable. It is furthermore confirmed by article 34 of the *Code of Civil Procedure*[1], which grants to the Superior Court powers to judicially review decisions made by the Québec courts, with the exception of the Court of Appeal. However, an appeal to the Court of Appeal is the means generally used to challenge a decision of the Court of Québec. There is an exception to this principle in administrative matters, whereby the Court of Québec sits on appeal of decisions made by an administrative body or tribunal. In such circumstances, the decisions rendered by the Court of Québec are often final and cannot be appealed, thereby excluding the jurisdiction of the Court of Appeal. The only possible remedy then is to apply to the Superior Court for judicial review.**

The situation is different with regard to decisions rendered by the Court of Québec in civil matters. Indeed, in view of the right specifically provided for in the Code of *Civil Procedure to appeal judgments* of the Court of Québec that put an end to a proceeding, an appeal before the Court of Appeal is the appropriate remedy. However, practical considerations may militate against the appeal in specific matters. For example, where the financial stakes are of a lesser nature, the costs and time involved in an appeal may be disproportionate to the objective being sought. Does that mean that no remedy remains available?

Not necessarily, as shown by the decision issued recently by the Superior Court in the case of *Côté* c. *Cour du Québec*[2]. In this decision, the honourable Justice Bernard Godbout concluded that the trial judge exceeded his jurisdiction who, while recognizing the existence of a transaction settling the claim before him, nevertheless allowed the plaintiff's claim without explaining or giving reasons for his decision. Noting that the decision did not fall within a range of possible, acceptable outcomes

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which could be justified when taking into consideration the facts and law, Justice Godbout allowed the application for judicial review of a decision of the Court of Québec rendered in a civil matter and reviewed the decision despite the existence of a right to appeal upon leave to the Québec Court of Appeal.

The facts of the *Côté* c. *Cour du Québec* case were rather unusual: there were obvious inconsistencies between the reasons and the operative part of the judgment at first instance. Although the Court of Appeal would certainly have had the necessary jurisdiction to correct the situation, however subject to granting leave to appeal, Justice Godbout concluded that the situation constituted an exception to the principle whereby a party must exhaust his or her remedies as stipulated in article 529 of the *Code of Civil Procedure*:

> **[translation]**
>
> **[33] That a transaction has, between the parties, the authority of res judicata is not something which has to be recognized or declared by the court. The law, more specifically article 2633 C.C.Q., provides for it. This is a rule of law.**
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> **[34] Article 529 (2) C.C.P. specifies that "*[e]xcept in the case of lack or excess of jurisdiction, judicial review is available only if the judgment or the decision cannot be appealed or contested*."**
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> **[emphasis added]**
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> **[35] Taking into account article 2633 C.C.Q., it would be difficult for one to conclude that the decision ordering the plaintiffs, including Mr. Côté, to pay to Ms. Plourde an amount of money for services rendered does falls "*within a range of possible, acceptable outcomes which are defensible in respect of the facts and law*." In so doing, the court exceeds its jurisdiction, thus allowing the Superior Court to intervene in the context of an application for judicial review despite the existence of a right to appeal upon leave to the Court of Appeal, this, without distorting the judicial review process.**

Justice Bernard Godbout exercised his discretion and allowed the application. He set aside the conclusion of the judgment which was criticized by the applicant, noting that the review of lawfulness of decisions in pursuit of the rule of law is an important component of the principle of access to justice.

Moreover, as the Québec Court of Appeal had previously indicated, judicial review where there is a right to appeal on leave is only possible in exceptional circumstances. Indeed, case law clearly shows that judicial review must not be used as a *de plano* appeal, thereby superseding the leave required by the legislator in article 30 of the *Code of Civil Procedure*. Only the absence of jurisdiction, the violation of the rules of natural justice or a decision contrary to reason may justify such remedy[3]. As noted by the Court of Appeal, [translation] *the demonstration of such an illegality, committed by a professional judge, will be rather rare*[4]. Judicial review of a decision of the Court of Québec in civil matters is therefore possible, albeit in very exceptional cases.

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1. *Code de procédure civile*, CQLR, c. C-25.01.
2. *Côté* c. *Cour du Québec*, 2016 QCCS 5539.
3. *Trudel* c. *Re/Max 2001 MFL inc.*, 2013 QCCA 1396, para 6, 7, 13 to 15; *Mondesir* c. *Asprakis*, 2010 QCCA 1780, para 13 and 14.
4. *Trudel* c. *Re/Max 2001 MFL inc.*, 2013 QCCA 1396, para 15; Mondesir c. Asprakis, 2010 QCCA 1780, para 13.

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