A judge grants application to dismiss medical resident's recourse for a second time and, of his own motion, considers declaring her quarrelsome

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On November 15, 2024,[1] in *Bouchelaghem v. Université Laval,*[2] Superior Court Mr. Robert Dufresne granted an application for dismissal on the grounds of res judicata and abuse. His judgment is a reminder of the importance of the presumption of judgments' validity and stability, principles linked to the authority of res judicata.

To put Mr. Justice Dufresne's decision in context, it is important to explain plaintiff's first recourse, which led to an initial judgment by Mr. Justice Bernard Tremblay, J.S.C., granting an initial application for dismissal.[3]

First recourse

The plaintiff was as a doctoral student outside Canada and the United States. In July 2019, she began a residency program in family medicine. On November 24, 2020, the program's Promotion Committee for the Faculty of Medicine decided to exclude the plaintiff from the program due to her results in the residencies completed to that date.[4]

On December 2, 2020, Plaintiff appealed this exclusion before the Faculty of Medicine's Appeals Committee.[5] On February 4, 2021, this committee held a hearing that ended with the Promotion Committee's decision being upheld.[6] On February 8, 2021, the Dean of the Faculty of Medicine communicated the Appeal Committee's decision to the plaintiff.[7] That same day, the plaintiff

contacted the Dean to complain about the Appeal Committee's decision.[8] On February 18, 2021, the Dean reiterated to the plaintiff the contents of the Appeal Committee's decision and informed her that the decision was final.[9] All internal remedies had been exhausted.

On May 17, 2022, the plaintiff filed an application against Université Laval for annulment of the final decision rendered on February 8, 2021, by the Appeal Committee, titled *Demande introductive d'instance associée [à un] pourvoi en contrôle judiciaire* ("Originating application associated with an appeal for judicial review").

In this 442-paragraph proceeding, she sought reinstatement in the family medicine residency program, plus damages.

While a challenge to an exclusion decision must be made within a reasonable time,[10] usually 30 days according to jurisprudence, the plaintiff initiated her appeal almost 15 months after her exclusion from the residency program. On September 28, 2022, the University therefore filed an application to dismiss her case, on the grounds that the delay in initiating it was unreasonable and that the plaintiff did not cite any valid exceptional circumstances in her proceedings to justify this delay.

On May 15, 2023, Mr. Justice Tremblay, J.S.C., concluded that the plaintiff's recourse qualified as an application for judicial review and that it had been filed late.[11] For these reasons, he declared the recourse inadmissible and dismissed it in its entirety, since he also considered that the damages claimed by the plaintiff arose directly from her exclusion from the residency program.[12]

Dissatisfied with Mr. Justice Tremblay's decision, the plaintiff served the University with a *Demande de permission d'en appeler d'un jugement mettant fin à l'instance* ("Application for leave to appeal a judgment ending the proceeding"). On September 19, 2023, Ms. Justice Gagné, J.C.A., dismissed the plaintiff's application for leave to appeal,[13] thereby confirming the finality of the initial decision and giving res judicata to Mr. Justice Tremblay's ruling.

Second recourse

On January 30, 2024, the plaintiff initiated a new action against Université Laval, this time titled *Demande introductive d'instance en dommages et intérêts* ("Originating application for damages"), in which she claimed a total amount of nearly $9.5 million from the University.

This 213-paragraph proceeding largely repeated the allegations made in the first recourse, generally accusing the same parties of the same faults. However, the plaintiff had removed all allegations relating to the application for judicial review and the justification for her delay in pursuing a recourse, choosing instead to group her complaints against each representative or member of the University.

The University filed a *Demande en irrecevabilité pour cause de chose jugée et en rejet pour abus* ("Application for dismissal on the grounds of res judicata and abuse")against this new recourse, considering that the plaintiff was attempting to revive a dispute that had already been decided by the Quebec courts, and that she had already availed herself of her right of appeal.

In response to the University's application for dismissal, the plaintiff amended her originating application to add thirteen (13) defendants, namely the individuals targeted by her allegations.

The hearing on the defendants' application for dismissal on the grounds of res judicata and abusetook place on October 9 and November 7, 2024, before Mr. Justice Dufresne.

The law

The principle of res judicata is codified in article 2848 of the *Civil Code of Québec.* To establish the

legal presumption of validity of judgments (res judicata), two conditions must be met:

> Triple identity must be established to ensure that the same cause, between the same parties applying for the same purpose, has already been decided.
> The judgment in a contentious matter must be rendered by a competent court and must be final.[14]

Before beginning his analysis of the triple identity, Mr. Justice Dufresne first examined this second criterion. He noted that the judgment in a contentious matter was rendered by a court of competent jurisdiction, since Mr. Justice Tremblay was seized of the application for dismissal. He also concluded that the judgment had become final as more than thirty days had elapsed since its pronouncement and permission to appeal had been refused. The second criterion is therefore satisfied.[15]

Mr. Justice Dufresne then proceeded to analyze the triple identity criterion. He found it had been established that the **parties were legally identical** in both recourses. Hundreds of allegations were compared between the first and second recourses, as were dozens of exhibits produced in support of both proceedings.[16] He also noted that the plaintiff formulated the same complaints in both recourses, although the way of describing those to whom they were addressed was somewhat different. He put it this way:

> “[24] The faults, failures and complaints raised before Mr. Justice Tremblay, J.S.C., against the defendants are the same as those raised in the present case. Those responsible are identified. Whether they are identified as managers, employees or civil servants, does not change the fact that, legally, the defendant is the same in both recourses."

As recognized in jurisprudence, adding defendants to a recourse does not prevent the court from finding that the parties are identical, since this identity does not have to be perfect.[17]

As for **identity of cause**, Mr. Justice Dufresne noted that although the vocabulary is sometimes different, the complaints of bad faith, falsification of documents, illicit and illegal application of standards, violation of certain fundamental rights, and discrimination are repeated or renewed from one proceeding to the next. In both recourses, the plaintiff raises the same issues (which she confirmed when examined by the judge on this subject during her closing arguments).[18] The second recourse again sought compensation for the harm resulting from the plaintiff’s exclusion from her residency program. Mr. Justice Tremblay had already ruled that the plaintiff’s damages stem from her exclusion from the program. He had already concluded, in his judgment of May 15, 2023, that the entire recourse is inadmissible.[19]

Finally, on the question of **identity of purpose**, Mr. Justice Dufresne wondered whether the new recourse would expose the court to contradict an earlier decision. He soon discovered that this was indeed the case; allowing the plaintiff’s recourse would require rejecting the conclusions of the previous judgment.[20]

The abusive nature of the recourse

Mr. Justice Dufresne then considered whether the plaintiff’s recourse was abusive. He considered this to be the case, since the plaintiff was repeating the allegations of a recourse that had already been dismissed. He concluded that she has not acted in good faith and that she was trying to harm the people she holds responsible for her exclusion:

> “[41] These modifications, by adding defendants and increasing the amount claimed, constitute an excessive and unreasonable use of proceedings. This only serves to harm these people, whom the plaintiff holds culpably responsible for her exclusion from the Program. This is a misappropriation of the ends of justice, whereby the plaintiff is

attempting to take justice into her own hands to make these people pay for their faults. Moreover, the plaintiff appears to meet many of the criteria for being declared quarrelsome." [Our translation]

In closing, Mr. Justice Dufresne reminds us that article 51 C.C.P. allows the Court to act, even of its own motion, when a party engages in vexatious or quarrelsome behaviour. He considers that the plaintiff meets several criteria that would allow her to be declared quarrelsome. He mentions having examined these criteria and having considered doing so, but given that the plaintiff did not have the opportunity to present her arguments on the question of quarrelsomeness at the hearing, he concludes that he could not act in violation of the *audi alteram partem* principle.

He grants the University's application for dismissal on the grounds of res judicata and abuseand dismissed the plaintiff's recourse in its entirety.

Conclusion

The principle of res judicata, codified in article 2848 of the *Civil Code of Québec*, is a pillar of our legal system. Once a court has rendered a final decision, that judgment cannot be called into question again.

In the *Bouchelaghem* case, Mr. Justice Dufresne had to examine numerous allegations and exhibits, and he came to the conclusion that despite the different wording of the allegations and the addition of thirteen parties as defendants, the nature of the plaintiff's second recourse remains in practice identical to the first.

This judgment is a reminder that excessive and unreasonable use of proceedings, with the aim of harming the opposing party, can lead to a party being declared quarrelsome and having to pay additional costs, at the initiative of the judge hearing the case, even without an application from the party subject to the complaints.

The plaintiff applied for leave to appeal Mr. Justice Dufresne's judgment. On February 12, 2025, Mr. Justice Michel Beaupré of the Quebec Court of Appeal dismissed this application.[21]

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1. The case was pleaded on October 9 and November 7, 2024.
2. 2024 QCSC 4232. The plaintiff filed an application for permission to appeal this decision on December 30, 2024. The hearing is scheduled for February 11, 2025.
3. *Bouchelaghem v. Université Laval*, 2023 QCSC 4483.
4. *Bouchelaghem v. Université Laval*, 2023 QCSC 4483 para. 8.
5. *Id.,* para. 9.
6. *Id.*, para. 10.
7. *Id.*, para. 10.
8. *Id.,* para. 149.
9. *Id.,* para. 151.
10. An application for judicial review must be filed within a reasonable time, in accordance with article 529 para.3 C.C.P.
11. *Bouchelaghem*, supra note 3, para. 116 and para. 162 to 165.
12. *Id.*, para. 120 to 125.
13. *Bouchelaghem v. Université Laval*, 2023 QCCA 1443.
14. *Bouchelaghem* v. *Université Laval*, supra note 2, para. 16.
15. *Id.*
16. *Bouchelaghem v. Université Laval*, supra, note 2, para. 23.
17. *Bouchelaghem v. Université Laval*, supra, note 2, para. 8.
18. *Bouchelaghem v. Université Laval*, supra, note 2, para. 27-28.
19. This was also noted by Ms. Justice Gagné, J.C.A., in her judgment dismissing the application for leave to appeal, supra, note 13, para. 6.
20. *Bouchelaghem* v. *Université Laval*, supra, note 2, para. 36.
21. *Bouchelaghem* c. *Université Laval*, 2025 QCCA 144.