

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-10-006994-196
S.C.: (500-36-008608-179)
C.Q.: (500-61-407867-150)

MINUTES OF THE HEARING

DATE: On March 13, 2019

THE HONOURABLE STEPHEN W. HAMILTON, J.A.

PETITIONER	
URA GREENBAUM	<i>IN PERSON</i>
RESPONDENT	COUNSEL
BARREAU DE MONTRÉAL	Mtre NATHALIE GUERTIN <i>(Barreau de Montréal)</i>

DESCRIPTION: **Application for extension of time and for leave to appeal from a judgment rendered on January 7, 2019, by the Honourable Daniel W. Payette of the Superior Court, District of Montreal.**
(Art. 296 *et seq.* C.P.P.)

Clerk: Mihary Andrianaivo	Courtroom: RC.18
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HEARING

10:21 Commencement of the hearing.

The request for extension of time is not in dispute.

Submissions by Mr. Ura Greenbaum.

10:44 Submissions by Mtre Nathalie Guertin.

10:51 Rebuttal by Mr. Ura Greenbaum.

10:56 Recess.

11:13 Resumption of the hearing.

BY THE JUDGE: Judgment – See page 3.

11:17 End of the hearing.

Mihary Andrianaivo

Clerk

BY THE JUDGE

JUDGMENT

[1] The Petitioner seeks leave to appeal from the judgment of the Superior Court Criminal Division rendered on January 7, 2019 by the Honourable Daniel W. Payette.¹ Justice Payette dismissed the Petitioner's appeal from his conviction by Justice Johanne White, J.P., of the Court of Québec, Criminal and Penal Division on June 14, 2017.²

[2] The Petitioner also seeks authorization to serve and file the motion for leave to appeal after the expiry of the delay.

[3] He attempted to file his motion to leave on February 6, 2019, the last day for doing so, but it had not been properly served on the Respondent. By the time he delivered a copy to the Respondent, it was too late to file the motion. This delay should not be fatal. The Petitioner manifested his intention to appeal within the delay and he acted diligently thereafter.

[4] The bigger issue is leave to appeal.

[5] Justice White convicted the Petitioner on two counts of acting in such a manner as to lead to the belief that he is authorized to fulfill the functions or to act as an advocate without being a member of the Bar. She ordered him to pay a fine of \$1,500 on each count.

[6] Justice Payette upheld the convictions and the fines.

[7] A further appeal to the Court of Appeal is allowed only on a question of law and with leave of a judge of the Court (Article 291 *C.P.P.*)

[8] The Petitioner seeks leave to appeal on the following issues, which he qualifies as errors of law:

- a) The conviction is at odds with and criminalizes legitimate acts foreseen in the chapter on Mandates in the *Civil Code of Quebec*;
- b) The conviction is conflict with article 88 of the *Code of Civil Procedure*;
- c) The conviction is incompatible with the exception in article 136 (c) "saving the case of a creditor addressing his debtor, writes or sends any card, letter or circular (...) (2) requiring the execution or non-execution of any

¹ *Greenbaum c. Barreau de Montréal*, 2019 QCCS 52.

² *Barreau de Montréal c. Greenbaum*, 2017 QCCQ 7271.

act or prestation or demanding the debtor the payment of a sum of money, either with costs or implying that legal proceedings will be taken”: did not prove a reproached act was committed and which, at minimum, constituted a reasonable doubt;

- d) The sentence is not consistent with the principle set forth by the Supreme Court of Canada in the case of *R c. Kienapple* (1 SCR 729) for continuing acts.

[9] Each of these arguments was rejected by Justice Payette. In my view the arguments have no merit and the leave to appeal should be refused.

[10] The Petitioner was charged and convicted under subsections 133(c) and 136(c)(2) of the *Act Respecting the Barreau du Québec*,³ which first creates the offence of “act[ing] in such manner as to lead to the belief that he is authorized to fulfil the functions of or to act as an advocate” and second, creates a presumption that a person who sends a letter demanding the payment of a sum of money and threatening legal proceedings is acting in that way.

[11] There is no inconsistency with the chapter on mandate in the *Civil Code of Quebec*, which sets out the general rules governing mandates in Quebec. The *Bar Act* provides specific rules governing the relationship between lawyer and client and provides that certain acts can only be performed by a lawyer. These specific rules override the general rules set out in the *Civil Code of Quebec*.

[12] There is no conflict with Article 88 of the *Code of Civil Procedure*, which allows parties to proceedings relating to small claims to be represented by a mandatary other than a lawyer. This exception has no application in the present matter.

[13] Further, there is no inconsistency with the exceptions in subsection 136(c) of the *Bar Act* for a creditor directly addressing his debtor. This exception does not apply and cannot be extended to the mandatary acting on behalf of the creditor.

[14] Finally, there is no inconsistency with *Kienapple* in that the two charges relate to different letters sent at different times to different people.

[15] **FOR THESE REASONS, THE UNDERSIGNED:**

[16] **DISMISSES** the Petitioner’s motion for extension of delay and for leave to appeal, with judicial costs.


STEPHEN W. HAMILTON, J.A.

³ CQLR, chapter B-1 (the « *Bar Act* »).