Federal Court  Cour fédérale

Date: 20180416

Docket: T-1813-14

Citation: 2018 FC 410

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 16, 2018

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

LÉOPOLD CAMILLE YODJEU NTEMDE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

[1] Léopold Yodjeu, the plaintiff, instituted an action against Her Majesty The Queen, which led to a large number of incidents that necessitated decisions from the Court, presided over by judges other than the undersigned, and several decisions by the Federal Court of Appeal. The undersigned's orders and reasons were all part of the motion for summary judgment. It will not be necessary to review those incidents unduly, since the only decision to be made in this case relates to the defendant's motion for summary judgment.

I. Preliminary remarks

[2] It was no simple matter to finally hold the sitting on October 24, 2017, in order to hear the motion for summary judgment. The defendant had stated the intention on May 17, 2016, to file a motion for summary judgment, well before the memorandum was due for the pre-trial conference that the plaintiff was seeking to expedite. That motion was filed on July 5, 2016.

[3] The motion was heard on November 16, 2016, following the direction from the Chief Justice of this Court on August 26, 2016. However, Mr. Yodjeu was not present on November 16; he had been indisposed the previous evening. Moreover, on November 2, 2016, the plaintiff's spouse, Ms. Mbakop, had filed a motion that appeared first and foremost to indicate a desire to intervene in the case. Ms. Mbakop was not present either on November 16. When tracked down by the Court, she was heard on her motion, and an order was made by Mr. Justice LeBlanc on November 18. Moreover, the defendant's motion for summary judgment was not heard because of Mr. Yodjeu's absence.

[4] The hearing for the motion was therefore scheduled for October 4 and 5, 2017 (direction from the Chief Justice dated June 1, 2017). In the meantime, the plaintiff had filed motions to add affidavits and to have the motion for summary judgment dismissed. As for Ms. Mbakop, she had applied to have Justice LeBlanc's decision set aside, citing paragraphs 399(1)(b), 399(2)(a) and 399(2)(b) of the *Federal Courts Rules* (SOR/98-106).

[5] Having been appointed to hear those matters on October 4 and 5, 2017, the undersigned issued a direction on August 4, 2017, providing for an order for the various pending motions that

had to be disposed of before the defendant's motion for summary judgment could be heard. Those motions concerned the addition of exhibits (motions dated June 2 and July 20, 2017), the motion from Ms. Mbakop to have Justice LeBlanc's order set aside or amended, and a motion to strike affidavits that supported the Crown's motion for summary judgment, which would lead to the dismissal of said motion for summary judgment. The direction also indicated the expectations regarding the duration of the proceedings for each of the motions.

[6] However, it appears that the plaintiff and his spouse refused to participate, since they filed a [TRANSLATION] "request for direction" in which they sought to postpone the hearing on October 4 and 5, 2017. The same request had been dismissed by Mr. Justice Bell from the Bench (and affirmed in writing through an order dated October 2, 2017), and the plaintiff indicated in a document dated September 25, 2017, which was not a motion, that he intended to appeal my colleague's decision. My direction dated September 29 affirmed that an intention to appeal an order is not associated with any stay. It also notified the parties that they were expected to appear on October 4 and 5. Furthermore, it indicated that the allocation of time would be as flexible as possible. Ms. Mbakop was notified by another direction dated that same day that she was expected to appear on October 4. She was also formally notified that [TRANSLATION] "if Ms. Mbakop does not appear at the designated time and place, the Court will hear the submissions from counsel for the Attorney General on the course of action to be taken."

[7] Neither Ms. Mbakop nor Mr. Yodjeu were present on October 4, 2017. In fact, written communications had been sent to the Court informing it of their absence (letter dated October 3 and email dated October 4, at 7:38 a.m.).

[8] Since they chose not to attend, rule 38 was applied. Through an order served on October 5, the Court declared that the plaintiff's cross-motions could be adjudicated on the basis of the record compiled by Mr. Yodjeu. As for Ms. Mbakop's motion, it had to be dealt with as a motion under rule 369; the Court allowed Ms. Mbakop to submit a written reply. Ms. Mbakop took advantage of that opportunity. Moreover, the Court considered it to be a severe sanction to proceed with the adjudication of the motion for summary judgment without hearing Mr. Yodjeu orally. Thus, the hearing of the main motion was postponed until October 24, 2017. That time, Mr. Yodjeu was present. He offered his apologies to the Court, and they were accepted.

[9] As for the preliminary motions, the Court disposed of them, and they were the subject of orders on October 19 and 20, 2017:

- 2017 FC 929: dismissal of the application to set aside the order by Justice LeBlanc refusing Ms. Mbakop's intervention;
- 2017 FC 939: a number of the affidavits proposed by Mr. Yodjeu were allowed to be filed;
- 2017 FC 940: dismissal of Mr. Yodjeu's motion (filed on May 25, 2017, and amended on July 26, 2017):
    - provision for costs;
    - designation of an adjudicator;
    - requirement for counsel for the defendant to produce affidavits;

- striking of the defendant's affidavits, leading to the dismissal of the motion for summary judgment.

Mr. Yodjeu had also requested to add exhibits (seven in total). The Court preferred to admit those exhibits, even though serious doubts as to their admissibility persisted, thus requiring a rule of caution. Mr. Yodjeu would be responsible for using them cautiously.

[10] Lastly, the proceeding before the Court was accompanied by independent remedies instituted by the plaintiff. In one of these, he appears to be challenging the refusal by the Canadian Human Rights Commission to deal with his case; in the other, the Privacy Commissioner had previously found that two of the plaintiff's complaints were founded, because the government replied to two applications outside the prescribed time limits (63 days in one case and 42 days in the other). Those remedies are irrelevant to the issue before this Court: can the action for damages withstand the motion for summary judgment?

II. The instituted action

[11] Léopold Camille Yodjeu Ntembe filed a statement of claim with the Federal Court on August 22, 2014. Essentially, the plaintiff complained about the processing of his application to sponsor his spouse and his child, who were still in Burkina Faso, while he had been granted permanent residence in Canada.

[12] The plaintiff did not retain counsel, aside from some opinions that he allegedly received during certain incidents that occurred after he filed his statement of claim. The statement of claim is unclear. What follows is taken directly from the statement.

[13] From the statement of claim, it appears that Mr. Yodjeu has been a permanent resident of Canada since February 12, 2012. He states that he returned to Paris two weeks later for work. It appears that there was a [TRANSLATION] "breach of contract" shortly after, since he states that he returned on May 1, 2012. On May 3, 2012, he submitted the sponsorship application for his immediate family; he reportedly sent the application via Canada Post.

[14] The plaintiff states that he changed his address with Citizenship and Immigration Canada around a month and a half later; the date is not specified, and said change was reportedly made over the telephone. No clarifications are provided regarding this change of address.

[15] It appears that the issue of Mr. Yodjeu's residence arose during the processing of his sponsorship application after that point. In fact, the sponsorship application was refused on August 7, 2012. Mr. Yodjeu alleges that he never received that notice. Whatever the case may be, he acknowledges that he received the notice of refusal in November 2012. It was at that time that he sought to provide evidence of his residence in Canada using the documents he had in his possession (work contract, pay stub, lease).

[16] After the sponsorship application was refused, the processing of the file, namely the permanent residence application for his spouse and their daughter, despite the refusal of the sponsorship application, was handed over to the Canadian Embassy in Senegal. The decision was

made on May 22, 2013, to refuse permanent residence because the decision-maker was not satisfied of Mr. Yodjeu's residence. Because the decision on May 22 contained errors, it was amended on June 4, 2013. Other documents that were submitted in the meantime did not change that decision.

[17] On September 28, 2013, the plaintiff filed a complaint with the Canadian Human Rights Commission; the statement of claim indicates that the complaint concerned [TRANSLATION] "the provision of services to my family" (paragraph 16(c)).

[18] The plaintiff had appealed the refusal of the permanent residence application as soon as he was notified of it in June 2013. In December 2013, the plaintiff was notified by Citizenship and Immigration Canada [CIC] that it would be recommended to the Immigration Appeal Division [IAD] that the appeal of the refusal to grant permanent residence on June 4, 2013, be allowed. The IAD had to allow the appeal without a hearing, given the concession to allow the appeal in January 2014. In July 2014, the sponsored individuals were granted permanent residence.

[19] The plaintiff therefore submits that:

- through its officials, the defendant acted without authority or exceeded its authority;
- a principle of procedural fairness was not followed, namely that an immigration officer must give applicants the benefit of the doubt;

- the decision is vitiated by an error of law. The alleged error of law is that the original refusal was based on an error regarding the residential address in Montreal, an error that was noted since the IAD found that Mr. Yodjeu's appeal had to be allowed;

- the decision is vitiated by an error of fact described as an error that was made in a perverse or capricious manner or without regard to the evidence available. This time, the plaintiff alleges wrongdoing by a person employed by the Canadian Embassy in Dakar;

- the CIC internal file was corrupted by a CIC officer in order to prevent the plaintiff from receiving notices that his sponsorship application had been refused on three occasions. There had allegedly been fraud and false testimonies. The plaintiff alleges incompetence by "SOW", who was later identified as Steven Owen; he filed an affidavit in support of the defendant's motion for summary judgment in which he provides some clarification on this matter;

- Mr. Owen and the employee hired locally in Dakar engaged in conduct that contravenes the law.

[20] Probably seeking to articulate a cause of action, the plaintiff alleges a [TRANSLATION] "conflict of interest by an organized gang with international ramifications" regarding the local employee in Senegal. That person, who is of Senegalese origin, reportedly processed the permanent residence file of Ms. Mbakop and the couple's daughter, while the plaintiff had a dispute with his general manager at Ecobank, a Senegalese man who had allegedly harassed the plaintiff when he was an employee at Ecobank. The fact that his file was reportedly

processed by a Senegalese woman, who received Mr. Yodjeu's emails, was apparently the result of a system of collusion (statement of claim, paragraph C-1(a)). The plaintiff adds that when he was approached by Ecobank to join their ranks, he received suspicious telephone calls [TRANSLATION] "in the same style as the ones I received in Canada." That led the plaintiff to suspect that there had allegedly been [TRANSLATION] "a disclosure of personal and confidential information by CIC with the goal of harming and jeopardizing my family's safety" (statement of claim, paragraph C-1(b)).

[21] The plaintiff also submits that CIC's information system had been fraudulently manipulated. To arrive at that allegation, Mr. Yodjeu focuses his claims on Steven Owen, the CIC official who first processed the sponsorship application in August 2012. Since the plaintiff states that he had changed his address in June 2012, he refuses to accept that the notice he claims to have been sent three times between August 2012 and November 2012 was actually sent. Thus, he alleges that Mr. Owen is likely Senegalese, like the employee hired locally at the Canadian Embassy in Dakar and the general manager at Ecobank who allegedly harassed Mr. Yodjeu, which would explain the false pretences regarding the refusal of his application and the confusion surrounding the repeated mailings of the notices of refusal. The plaintiff states that [TRANSLATION] "it is as clear as spring water that these individuals are in league and are part, in my opinion, of a well-oiled system that is based on collusion and is able to circumvent the CIC control system" (statement of claim, paragraph C-2).

[22] Lastly, the plaintiff presents his understanding of section 130 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [Regulations], which requires that anyone making a sponsorship application in the family class reside in Canada. Here, the plaintiff

attempts to explain why an address in Paris appeared on the sponsorship application for persons living in Burkina Faso. The plaintiff states that he chose to mail the sponsorship application in Canada on May 3, 2012, two days after he arrived from Paris. The plaintiff states the following: [TRANSLATION] "[I] chose to mail my application from Canada . . . the Paris address was temporary and I had planned to change it once I had arrived. I changed my address a month and a half after my arrival and nearly two months before the refusal decision from Mississauga (officer SOW)" (statement of claim, paragraph C-31). In the statement of claim, we have neither the exact date of such an important measure, nor any evidence other than the plaintiff's indication that he had allegedly spoken to an [TRANSLATION] "officer in charge of address changes." The plaintiff has provided no clarifications in that regard.

[23] Mr. Yodjeu claims damages of $1,444,000. Much of these [TRANSLATION] "direct" damages, in fact, the vast majority, are for damages allegedly suffered by Mr. Yodjeu's spouse and their daughter. In fact, the defendant submitted that the plaintiff was illegally arguing on behalf of others. Of the $184,000 in direct damages, only $10,000 are claimed for Mr. Yodjeu.

[24] Most of the indirect damages are claimed as compensation for Mr. Yodjeu himself, but not all of them. They are broken down as follows:

- Moral and financial stress: $200,000
- Career opportunity in teaching/research: $500,000
- Loss associated with drop in credit score: $100,000

- Psychological stress: $250,000
- Ms. Mbakop's membership in the Ordre québécois des médecins: $200,000
- Plaintiff's son born in conditions that could have resulted in miscarriage: $10,000

[25] The plaintiff submits, without giving any explanation, that he was directly and indirectly prevented from earning income, thus forcing him to spend all his savings.

III. Statement of defence

[26] The statement of defence came the month following the filing of the statement of claim. The defendant essentially gave a general rebuttal of the statement of claim. The original statement of defence, dated September 23, 2014, was amended on February 26, 2016. Leave to amend was granted on March 21, 2016. Prothonotary Morneau, who dealt with the case, wrote the following in his order:

> [TRANSLATION]
> **WHEREAS** the Court is satisfied that it is fair and in the interests of justice to allow the amendments sought by the defendant, since those amendments are intended to correct errors in the original statement of defence and because the proposed amendments seek to assist this Court in addressing the genuine issues on the merits.

The amended statement of defence is therefore the defence to the action as instituted. Thus, the statement of claim and the amended statement of defence make up the legal framework for the dispute. However, the statement of claim and the amended statement of defence are not enough. The allegations they contain must still be proven.

[27] The defendant argued its version of the facts. Thus, it is submitted that the plaintiff indicated on the sponsorship undertaking form sent on May 3, 2012, that his mailing and residential address was in Courbevoie, France (Ms. Mbakop's permanent residence application was also filed on May 3, 2012). His sponsor questionnaire, prepared on April 18, 2012, stated that he would be living in France until May 1, 2012, but did not provide an address for after that date. Mr. Yodjeu also did not indicate the end date of his employment, although he did state that he was working as a banking consultant in France.

[28] According to the defendant, the plaintiff's change of address was done on July 4, 2012. That change was reportedly entered into the Field Operations Support System [FOSS], a database used by CIC and the Canada Border Services Agency [CBSA] for processing immigration files in Canada. However, it was not entered into the Global Case Management System [GCMS], which replaced the FOSS, or the system used for processing immigration files abroad [CAIPS].

[29] On August 7, 2012, a notice that the sponsorship application had been refused was issued in a letter dated that same day.

[30] The defendant argues that the plaintiff was ineligible because the residency obligation had not been fulfilled. The sponsorship application form indicated that Canada was not his only country of residence. In his sponsor questionnaire, Mr. Yodjeu indicated that he was not living in Canada at that time. The mailing address given by the plaintiff was in France, as was the telephone number he provided. In addition, the return address for the sponsorship application mailed in Canada was in France.

[31] The defence is specific about the residency obligation. A review of section 130 of the Regulations is insufficient. We must also refer to section 133 of the Regulations to understand that the residency obligation in Canada extends from the filing of the sponsorship application until a decision is made.

[32] The notice of decision dated August 7, 2012, was returned on September 27, 2012, and indicated that the recipient could not be identified. This indicates that Mr. Yodjeu did not receive the decision dated August 7, 2012.

[33] A change of address was communicated to CIC on October 19, 2012, when the plaintiff allegedly contacted the Montreal Call Centre. With the address corrected through the change of address process, it was therefore on November 2, 2012, that the letter from August 7 was sent to Mr. Yodjeu. The letter notifying him that his sponsorship application had been refused bore the date November 2.

[34] Thus, a new phase of the file began on November 9, 2012, when the plaintiff alleged in an email that he had been living in Canada since early May 2012. The plaintiff provided documents on December 19, 2012, seeking to show that he had been living in Canada for some time. As we will see, this “evidence” dated back only to August 2012.

[35] Despite the refusal on August 7, 2012 (or on November 2), the plaintiff had indicated in his sponsorship application that he wanted the review of the permanent residence application to continue; that explains the new communications from the plaintiff starting in September 2012 and the manner in which the new documents and information submitted by Mr. Yodjeu were sent

by CIC to Dakar, Senegal, where the permanent residence application was processed. They were received on February 23, 2013. The permanent residence application for Mr. Yodjeu's spouse and daughter was refused on May 22, 2013 (letter of refusal amended on June 4, 2013, to correct an error in the sponsor's name).

[36] The refusal of the permanent residence application was appealed before the IAD that same day. Moreover, a work or study permit, which allows temporary residence, was granted to Ms. Mbakop on September 5, 2013; the same day, a temporary resident visa was issued for the couple's daughter. On September 18, 2013, Ms. Mbakop and the couple's daughter arrived in Canada. Nevertheless, the appeal before the IAD continued its course.

[37] On December 12, 2013, the Minister, through one of his agents, consented to the appeal, and the appeal was therefore allowed on December 27, 2013, meaning that a new review by a different decision-maker was ordered by the IAD in accordance with the usual procedure. It appears that in order to complete the review, additional information and documents were requested on May 15, 19 and 23, 2014. Ms. Mbakop and their daughter were granted permanent resident status on or around June 30, 2014.

[38] Thus, Her Majesty The Queen argues that its agents had committed no fault justifying an award of damages. If harm was caused, it was the result of Mr. Yodjeu's negligence in preparing his sponsorship application, in which residence in Canada at the appropriate time was not established. The plaintiff's negligence in changing his address was also a source of the difficulties he encountered. Furthermore, the processing times for the file were reasonable, given the numerous sponsorship applications.

[39] The amended statement of defence notes at paragraph 41 that if the plaintiff had provided information and evidence in order to establish his residence at the time the sponsorship application was filed, the sponsorship application and the permanent residence application might have succeeded earlier.

[40] The defence also focused directly on the alleged conflict of interest of the Senegalese employee at the Canadian Embassy in Dakar. It appears that Mr. Yodjeu filed a complaint on August 28, 2013, with the CIC Call Centre in Montreal. The defendant argues that said employee did not know Mr. Yodjeu. Her job at the embassy consisted, *inter alia*, of entering data into the Global Case Management System [GCMS]; she made two entries regarding the plaintiff's file, one on February 19, 2013, to acknowledge receipt of documents sent by the plaintiff and one on June 4, 2013, to correct an error reported by the plaintiff after receiving the notice of refusal on May 22, 2013. The defendant argues that the plaintiff's file was being handled by another employee tasked with making those decisions. In fact, the locally hired employee accused of a conflict of interest had no decision-making authority of any kind whatsoever.

[41] But there is more. The Canadian Embassy in Dakar complained about alleged harassment by the plaintiff. In fact, following his complaint on August 28, 2013, Mr. Yodjeu was informed on September 2, 2013, that the person had no decision-making authority. Subsequently, on September 4, 2013, the plaintiff made his allegation based on his claim that he and this person had worked for the same bank. The defendant argues that he was mistaken, with one having worked for Ecobank-Senegal and the other for Ecobank-Cameroon, two legally distinct entities. In addition, the defendant argues that the plaintiff tried to contact this person outside of work through various means, forcing her to close her social media accounts. The allegations continued

on September 30, 2013. That led to a formal response from CIC that same day in which it reiterated that the file had been processed appropriately and ordered that communications be suspended until the appeal had been decided.

[42] As for the alleged damages, the defendant states that it is not liable. In any case, they would be unwarranted and grossly exaggerated, in addition to being unproven. Lastly, the plaintiff is arguing on behalf of others by seeking remedies for his spouse and their daughter.

IV. The incidents that led to the motion for summary judgment

[43] In an order dated January 11, 2016, the Chief Justice of this Court noted that 360 days had passed since the statement of claim was issued (August 22, 2014) with no requisition for pre-trial conference being filed, which led him to appoint Prothonotary Morneau as the judge responsible for managing the proceeding.

[44] The parties submitted a time frame on February 1, 2016 (a counsel to defend Mr. Yodjeu's interests was assigned to the case at that time). The time frame approved by Prothonotary Morneau by order on February 4, 2016, stated that the defendant could amend its defence no later than February 29 and that the requisition for pre-trial conference had to be submitted no later than May 31, 2016.

[45] The Court does not intend to detail the numerous incidents and skirmishes that marked the development of this case in 2016; however, it may be useful to refer to one incident that occurred in May 2016

[46] Mr. Yodjeu wrongly believed that his action could be heard before the end of 2016. But for that to happen, the pre-trial conference still had to be held, for which the deadline of May 31, 2016, had been set, by order on February 4, 2016, for the filing of the pre-trial conference memorandum. However, counsel for the defendant refused to provide their availabilities for such a conference as long as the plaintiff was fixated on the topic of the alleged damages against his spouse and their daughter.

[47] In fact, on May 12, 2016, the plaintiff announced that he wanted to add his spouse and their daughter as plaintiffs. That led to an exchange of correspondence resulting in the order by Prothonotary Morneau on May 20, 2016, in which he suspended the time frame ordered on February 4, 2016. This whole episode is related in paragraphs 17 to 27 of the order dated October 20, 2017 (2017 FC 940).

[48] The aspect of that exchange of correspondence that is relevant to the motion for summary judgment is that the defendant announced clearly (and formally as of May 17, 2016) that a motion for summary judgment would be filed and that the plaintiff was not authorized to argue on behalf of others.

V. The motion for summary judgment

[49] A notice of motion was filed on July 5, 2016; the defendant cited rule 213 to request a summary judgment.

[50] The defendant argues that the action in extracontractual liability cannot succeed because the action has no factual basis; thus, the plaintiff cannot demonstrate fault, which of course means that the two other grounds for the action, namely, the damage caused and the causal connection between the alleged fault and the damage caused, cannot be demonstrated.

[51] It is submitted that all the evidence needed to settle the dispute is available and that the Court may find that there is no genuine issue for trial.

[52] Rules 213 to 216 allow a party to a dispute to file a motion for summary trial or summary judgment. In this case, the defendant has chosen a summary judgment. There is no doubt that the defendant was authorized to file this motion. This motion concerns the entire action and not, as might have been the case, only a portion of the issues raised. Authors Letarte et al. thus describe the purpose of the summary judgment or trial at paragraph 4-42 of *Recours et procédures devant les Cours fédérales*, LexisNexis, 2013:

> [TRANSLATION]
> Thus, the goal of both the summary judgment and the summary trial is to bring as expeditious and economical a resolution to the proceeding as possible. In fact, the trial of an action is very costly in terms of both time and money for the parties and for the judicial system. The motion for summary judgment or summary trial is often an appropriate procedural vehicle for summarily dismissing an action, a defence or a portion thereof at a preliminary stage of the debate.

[53] The burden is very clearly on whoever is seeking to obtain the summary judgment. Rule 215 establishes that the motion for summary judgment can be granted only if the Court is satisfied that there is no genuine issue for trial. In this case, the parties would need to administer

their evidence through affidavit with cross-examination on affidavit made out of court, so that the Court could determine whether there is a genuine issue for trial with respect to the statement of claim or of defence. Ultimately, it is up to the defendant to establish the necessary facts to obtain the summary judgment. The issue to be determined is whether the success of Mr. Yodjeu's application is so dubious that there is no need to hold a trial. In fact, rule 214 specifically provides that the party responding to a motion for summary judgment must submit its own evidence to demonstrate that there is a genuine issue for trial:

Facts and evidence required	**Faits et éléments de preuve nécessaires**
214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.	**214** La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

Allegations alone do not suffice; there must be evidence (*Rude Native Inc v Tyrone T. Resto Lounge*, 2010 FC 1278, paragraphs 15–18; *Trevor Nicholas Construction Co Limited v Canada*, 2011 FC 70, paragraph 44).

[54] My colleague Madam Justice Gagné applied the summary of the general principles in the matter set out by Madam Justice Tremblay-Lamer in *Granville Shipping Co v Pegasus Lines Ltd*, [1996] 2 FCR 853 [*Granville Shipping*]. It serves as a useful guide that Justice Gagné reproduced at paragraph 27 of her reasons for judgment in *Morin v Canada*, 2013 FC 670, another immigration case. The passage from *Granville Shipping* reads as follows:

> I have considered all of the case law pertaining to summary judgment and I summarize the general principles accordingly:
>
> 1. the purpose of the provisions is to allow the Court to summarily dispense with cases which ought not proceed to trial because there is no genuine issue to be tried (*Old Fish Market Restaurants Ltd. v. 1000357 Ontario Inc. et al*);
>
> 2. there is no determinative test (*Feoso Oil Ltd. v. Sarla (The)*) but Stone J.A. seems to have adopted the reasons of Henry J. in *Pizza Ltd. v. Gillespie*. It is not whether a party cannot possibly succeed at trial, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial;
>
> 3. each case should be interpreted in reference to its own contextual framework (*Blyth* and *Feoso*);
>
> 4. provincial practice rules (especially Rule 20 of the Ontario *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194]) can aid in interpretation (*Feoso* and *Collie*);
>
> 5. this Court may determine questions of fact and law on the motion for summary judgment if this can be done on the material before the Court (this is broader than Rule 20 of the Ontario *Rules of Civil Procedure*) (*Patrick*);
>
> 6. on the whole of the evidence, summary judgment cannot be granted if the necessary facts cannot be found or if it would be unjust to do so (*Pallman* and *Sears*);
>
> 7. in the case of a serious issue with respect to credibility, the case should go to trial because the parties should be cross-examined before the trial judge (*Forde* and *Sears*). The mere existence of apparent conflict in the evidence does not preclude summary judgment; the court should take a "hard look" at the merits and decide if there are issues of credibility to be resolved (*Stokes*).

[55] In *Canada (Attorney General) v Lameman*, 2008 SCC 14; [2008] 1 SCR 372 [*Lameman*], the Supreme Court of Canada firmly establishes the principles that govern summary judgments:

> [11] For this reason, the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial": *Guarantee Co. of North America v.*

> *Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 27. The defendant must prove this; it cannot rely on mere allegations or the pleadings: *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 21 O.R. (3d) 547 (C.A.); *Tucson Properties Ltd. v. Sentry Resources Ltd.* (1982), 22 Alta. L.R. (2d) 44 (Q.B. (Master)), at pp. 46-47. If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal: *Murphy Oil Co. v. Predator Corp.* (2004), 365 A.R. 326, 2004 ABQB 688, at p. 331, aff'd (2006), 55 Alta. L.R. (4th) 1, 2006 ABCA 69. Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried: *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), at p. 434; *Goudie v. Ottawa (City)*, [2003] 1 S.C.R. 141, 2003 SCC 14, at para. 32. The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts: *Guarantee Co. of North America*, at para. 30.
>
> [Emphasis added. See also *Buffalo v Canada*, 2016 FCA 223, paragraph 47.]

[56] The Supreme Court of Canada encouraged the lower courts to use summary judgments in appropriate cases, and, in so doing, sought a genuine culture shift (*Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*], paragraphs 28 and 32). We must of course beware of generalizations or blind borrowing from other cases that follow rules other than our Rules (*Manitoba v Canada*, 2015 FCA 57). However, the applicable standard according to the Ontario *Rules of Civil Procedure* (R.R.O. 1990, Reg. 194), which was applied in *Hryniak*, has a clear relationship with the standard presented in rule 215 of the Rules. Rule 215 stipulates that the Court must be "satisfied that there is no genuine issue for trial with respect to a claim or defence", while Ontario Rule 20.04 states that "[t]he court shall grant summary judgment if . . . (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence".

[57] However, it appears that the final test set out by the Supreme Court in *Hryniak* is the Court's ability to provide a fair and just adjudication on a motion for summary judgment. I see no reason why that test would not apply in our case. That rule of caution seems all the more important to me because Mr. Yodjeu is not retaining the services of counsel. This caution is thus articulated at paragraph 50 of *Hryniak*:

> [50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[58] Ultimately, the Court must consider the evidence in the context of a motion for summary judgment to determine whether there is a genuine issue for trial. The plaintiff must refute this or present his own evidence. However, if the Court is satisfied that there is "no genuine issue for trial" (in French, "pas de véritable question litigieuse"), a summary judgment is thus rendered.

VI. Analysis

[59] Mr. Yodjeu has been in possession of the motion for summary judgment since July 2016, that is, more than a year before the hearing was held in late October 2017. According to the Rules, the motion may only be brought at least 20 days before the hearing date, during which time the reply record must be served and filed not later than 10 days before the hearing date. Mr. Yodjeu therefore had ample time to file his evidence in order to "put [his] best foot forward"

as stated at paragraph 11 of *Lameman*, reproduced at paragraph 55 of these reasons. In fact, Mr. Yodjeu had filed his action on August 22, 2014: he had more than three years “to put [his] best foot forward”. Moreover, the Court allowed him to submit the new evidence that he considered relevant, despite the doubts expressed in this regard by the Court (order dated October 20, 2017 (2017 FC 940), paragraph 32 *et seq.*). In other words, the plaintiff was given every opportunity to compile his reply record as he saw fit.

[60] Nevertheless, this matter is simple once we trim away the diversions in which the plaintiff too often lost himself (order by Justice Bell dated October 2, 2017). The final result is that the Court can consider only the evidence and arguments that have been presented to it. The matter that is before the Court is the action undertaken by Mr. Yodjeu regarding the manner in which Crown officials processed his sponsorship application and the permanent residence application of his spouse and their daughter. Nothing more. The disputes that the plaintiff might have wanted to initiate against the Canadian Human Rights Commission or the Privacy Commissioner are different from the action that he instituted in August 2014.

[61] The defendant, who is the moving party in this case, filed four affidavits into evidence with numerous supporting exhibits. Those affidavits come from the main actors. Three are from the decision-makers at each stage of this matter, and the fourth is from the person who was responsible as the manager of the immigration program in Dakar (a team of around 20 employees):

- Steven Owen is the individual who made the initial decision on the plaintiff's sponsorship application;

- Chantal Kidd made the decision on the permanent residence application for Ms. Mbakop and the couple's daughter. At the time, she was a temporary employee at the Canadian Embassy in Senegal;

- Karine Santerre is the person who recommended that the appeal from the refusal to grant permanent residence to the spouse and the couple's daughter be conceded;

- Isabelle Ouellet was responsible for the immigration program at the Canadian Embassy in Senegal.

Those four witnesses were presented to establish the facts, from the point of view of the moving party and defendant to the action, and to elaborate on the decisions that were made. They all responded to the written cross-examination that they underwent by Mr. Yodjeu in November 2016.

The instituted action

[62] I consider it relevant to reiterate the framework in which the motion for summary judgment was brought. The action instituted by Mr. Yodjeu in August 2014 presented certain facts about the refusals issued, namely the refusal to grant the sponsorship application and the permanent residence application for Ms. Mbakop and their daughter. This was followed by what Mr. Yodjeu referred to as [TRANSLATION] "my accusations".

[63] Essentially, it must be understood that this constitutes the fault alleged by the plaintiff, which he must demonstrate in order to have any hope of his action succeeding. These allegations are as follows:

a) the person hired locally in Dakar allegedly processed Mr. Yodjeu's file when this was likely to place her in a conflict-of-interest situation;

b) a person referred to as "SOW" allegedly backdated the refusal of the sponsorship application. We now know that "SOW" is Steven Owen, the official who found that the plaintiff was not eligible because it had not been proven that Mr. Yodjeu was a resident of Canada during the prescribed period;

c) Mr. Owen allegedly breached a principle of procedural fairness according to which applicants should be given the benefit of the doubt in cases where the evidence for residence may be doubtful. The plaintiff further submits that the person hired locally in Dakar allegedly received the plaintiff's changes of address, along with his proof of residence in Canada.

d) Mr. Yodjeu alleges that the refusal of his sponsorship application is erroneous because he was living in Montreal. The person hired locally in Dakar allegedly motivated her decision to refuse the permanent residence application for Ms. Mbakop and their daughter based on [TRANSLATION] "erroneous information and slanderous vilification by my former colleagues after I left Ecobank";

e) Mr. Yodjeu alleges that the person hired locally in Dakar lied about the reasons for the refusal. The plaintiff proceeds to make a series of accusations, ranging from his

allegation that the Minister did not have any new facts when his delegate, Ms. Santerre, consented to Mr. Yodjeu's appeal before the IAD, to family photos that he alleges were related to the refusals;

f) Mr. Yodjeu states that he suspects his CIC file was corrupted in order to prevent him from receiving the letter of refusal in August 2012. Mr. Yodjeu states that he suspects Mr. Owen because he is [TRANSLATION] "the one who benefits from the crime." If I understand correctly, Mr. Owen allegedly wanted to hide his error for having refused the sponsorship on the ground, in Mr. Yodjeu's words, [TRANSLATION] "that [he] did not provide any proof of residence." This is where the entire problem lies. As we will see, the problem is not that Mr. Yodjeu did not demonstrate his residence in Canada during a certain period in 2012. He did so for the period starting in August 2012. In fact, the evidence contains Mr. Yodjeu's statements indicating that he had to establish his residence only from the time of the sponsorship application. The problem is that the evidence had to show that he was a resident at the time he made the sponsorship application and not that he had established residence since the application was made.

[64] It is on the basis of those [TRANSLATION] "accusations" that in his statement of claim, Mr. Yodjeu details a theory of a [TRANSLATION] "conflict of interest by an organized gang with international ramifications", including the [TRANSLATION] "harassment and persecution of my family by an organized gang" and the [TRANSLATION] "disclosure of personal and confidential information with the goal of harming and jeopardizing my family's safety."

[65] As noted earlier, each party to a motion for summary judgment must “put its best foot forward”. In this case, the plaintiff has in no way presented the evidence that could support his [TRANSLATION] “accusations” consisting of wrongdoings by Mr. Owen and the person hired locally in Dakar, which could be the faults giving rise to the defendant’s civil liability. Conversely, the defendant filed solid evidence, with regard to which no doubt remains. That evidence has in no way been refuted, and the plaintiff has filed no evidence in rebuttal. All things considered, this is a simple matter that has been made needlessly complex by baseless allegations.

The legal framework of a sponsorship application

[66] This entire case revolves around the time when the plaintiff, who had permanent resident status in Canada, resided in the country for the purpose of being qualified to act as a sponsor.

[67] Subsection 11(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27 [the Act]) gives an immigration officer the power to issue a visa to a foreign national who wants to enter Canada as long as the requirements of the Act are met. This power comes with its share of discretion, but as with all discretion, it is not absolute. Among the people who may become permanent residents, those who are in the family class qualify (section 12 of the Act). There is no question that the family class was appropriate in this case.

[68] It was Ms. Mbakop and her daughter who had to obtain permanent residence beforehand, thus allowing them to enter Canada. Mr. Yodjeu, as a permanent resident, could sponsor his spouse and his daughter. However, section 13 of the Act specifies that a “permanent resident . . .

may sponsor a foreign national, subject to the regulations." Nevertheless, it is Division 3 of the Regulations, under the heading "Sponsors", that applies.

[69] Sections 130 and 133 of the Regulations are central to the dispute. Paragraph 130(1)(b) requires that, in order to be considered a sponsor, like Mr. Yodjeu, a person must reside in Canada. That paragraph reads as follows:

Sponsor	**Qualité de répondant**
130 (1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who	**130 (1)** Sous réserve des paragraphes (2) et (3), a qualité de répondant pour le parrainage d'un étranger qui présente une demande de visa de résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au titre de la catégorie des époux ou conjoints de fait au Canada aux termes du paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :
(a) is at least 18 years of age;	**a)** est âgé d'au moins dix-huit ans;
(b) resides in Canada; and	**b)** réside au Canada;
(c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.	**c)** a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie du regroupement familial ou à celle des époux ou conjoints de fait au Canada conformément à l'article 10.

If it were based on that provision alone, it would not be very clear as to when a person must reside in Canada in order to be considered a sponsor. Could it be argued that it is sufficient that

residence be established since the time the sponsorship application was made? Mr. Yodjeu seemed to believe that it was enough for him to establish his residence in Canada at any time, which would explain why he provided pay stubs and leases from August 2012, arguing that this was sufficient. Unfortunately, that is not the case. The clear answer is found at paragraph 133(1)(a), of which I will reproduce only the portion that pertains to this dispute:

Requirements for sponsor	**Exigences : répondant**
133 (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor	**133 (1)** L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :
(a) is a sponsor as described in section 130;	**a)** avait la qualité de répondant aux termes de l'article 130;
(b) intends to fulfil the obligations in the sponsorship undertaking;	**b)** avait l'intention de remplir les obligations qu'il a prises dans son engagement;
(c) is not subject to a removal order;	**c)** n'a pas fait l'objet d'une mesure de renvoi;
(d) is not detained in any penitentiary, jail, reformatory or prison;	**d)** n'a pas été détenu dans un pénitencier, une prison ou une maison de correction;
(e) has not been convicted under the Criminal Code of	**e)** n'a pas été déclaré coupable, sous le régime du Code criminel :
(…)	[…]

[Emphasis added.]

As we can see, Mr. Yodjeu had to establish, with supporting evidence, that he qualified as a sponsor from the day that he filed his application until the time the decision was made. We have

already seen that paragraph 130(1)(b) of the Regulations requires that the sponsor reside in Canada. The pairing of paragraphs 130(1)(b) and 133(1)(a) ensures that, as stated in subsection 133(1), a sponsorship application shall only be approved by an officer if there is evidence that the sponsor resides in Canada on the day on which the application was filed and from that day until the day a decision is made with respect to the application. The Court notes that the French version is imperative: "l'agent n'accorde la demande de parrainage que si les conditions sont remplies." The English version is also just as imperative, using the word "shall". The *Interpretation Act* (RSC, 1985, c I-21) also confirms the imperative nature of the officer's obligation:

"Shall" and "may"	**Expression des notions**
11 The expression "shall" is to be construed as imperative and the expression "may" as permissive.	**11** L'obligation s'exprime essentiellement par l'indicatif présent du verbe porteur de sens principal et, à l'occasion, par des verbes ou expressions comportant cette notion. L'octroi de pouvoirs, de droits, d'autorisations ou de facultés s'exprime essentiellement par le verbe « pouvoir » et, à l'occasion, par des expressions comportant ces notions.

It is unimportant that evidence of residence could be produced for certain times during the prescribed period (from the filing of the application to the decision), as Mr. Yodjeu did with leases or pay stubs, but without ever providing any evidence whatsoever for the period from May to August 2012. Mr. Yodjeu's sponsorship application and the permanent residence application for his spouse and their daughter were refused because Steven Owen and Chantal Kidd found that the evidence of his residence in Canada had not been established at the prescribed time.

Steven Owen

[70] Mr. Owen and Ms. Kidd testified by affidavit and explained their decisions. Mr. Owen made his decision on August 7, 2012. The decision was sent to Mr. Yodjeu Ntembe in Courbevoie, France, but with the note “Chez Ngansop Ntembe Marie Claude”. Thus, it was decided that pursuant to subsection 130(1) of the Regulations, Mr. Yodjeu had not demonstrated that he had been residing in Canada from the time the application was filed. Attached to the decision are the provisions of the Regulations, including sections 130 and 133. Section 133 is unequivocal, and Mr. Yodjeu had to prove that he was residing in Canada from the day that he filed his application.

[71] Mr. Owen clearly explained in his affidavit what had led him to find that the residency obligation was not met when the sponsorship application was filed on May 3, 2012. In fact, the documentary evidence submitted by Mr. Yodjeu and consulted by Mr. Owen did not in any way establish residence in Canada, and the plaintiff therefore had not proven his residence in Canada. On the contrary, he had instead implied in his supporting documents for his sponsorship application that he had been residing in France:

- on the sponsorship application, his residential and mailing addresses were in France. A telephone number in France was provided;

- to the question “Is Canada your only country of residence?”, Mr. Yodjeu answered “no”, even though a note on the questionnaire associated with this question clearly

states that answering no to that question disqualifies the applicant from being a sponsor;

- on the sponsor questionnaire, the plaintiff indicated that his employer was in France; he did not specify an end date for his employment;

- the form titled “Additional Family Information” showed the plaintiff’s current address as being in Paris;

- although the sponsorship application was mailed in Canada and was indeed received in Canada, the return address was in France.

I reviewed each of the documents to which Mr. Owen referred. In my view, it is easy to understand why the immigration officer would have found that the sponsor had not established his residence in Canada during the prescribed period. As the witness himself notes, even though there was a change of address in July 2012, that does not in any way negate the necessity of establishing residence prior to that change.

[72] Therefore, Officer Owen was justified in finding that the evidence had not shown that, on the day on which the application was filed until the day a decision was made with respect to the application, Mr. Yodjeu resided in Canada as required by law. This is evidence that must be submitted by the person filing the sponsorship application. That being the case, as required by law, the officer did not authorize the application.

[73] Mr. Owen also testified that he did not know the person who was hired locally in Senegal. He is also not Senegalese and has never been to Senegal. He stated that he had simply applied the criteria from the Regulations on the sole basis of the documents submitted by the plaintiff; on August 7, 2012, he did not have before him any documents that satisfied him that the plaintiff resided in Canada at the time when the application was filed.

[74] The cross-examination to which Mr. Owen responded raised no concerns about the evidence provided in the affidavit. For a reason that remained unexplained, the plaintiff fixated on the fact that the letter of refusal from August 7, 2012, was sent back to Canada with the note [TRANSLATION] “recipient cannot be identified”. Nevertheless, the issue was instead to establish residence at the time the sponsorship application was filed and to provide evidence of that residence. It was only when the plaintiff changed his address on October 19, 2012 that the initial letter of refusal could be sent again on November 2, 2012. Moreover, the letter is not [TRANSLATION] “backdated”, as the plaintiff alleges. It bears the most recent date the letter of refusal was sent. The issue has always been the lack of evidence of his residence in early May 2012. Not only did the only evidence available fail to confirm his residence on the day the sponsorship application was filed, as was the plaintiff’s burden to demonstrate, but the documentation led to the opposite finding.

[75] There is no question as to Mr. Owen’s credibility. The documents submitted by Mr. Yodjeu speak for themselves.

Chantal Kidd

[76] Chantal Kidd is the immigration officer who processed the permanent residence application in Dakar. As noted in the decision letter dated August 7, 2012 (received in November 2012 after the plaintiff's change of address on October 19, 2012), the sponsorship application indicated that Mr. Yodjeu wanted to go ahead with the permanent residence application regardless of the outcome of the sponsorship application. Thus, the permanent residence application for the plaintiff's spouse and their daughter was sent to Dakar on August 7, 2012. It appears that it was forwarded automatically. The fact that there was a delay in sending the letter of refusal did not in any way delay the process. The plaintiff was informed that the permanent residence application was being evaluated overseas (at the Canadian Embassy in Senegal) and that, because Mr. Yodjeu did not meet the eligibility requirements to be a sponsor, [TRANSLATION] "that will be considered in the evaluation of the permanent residence application of your family member or members."

[77] The plaintiff was indeed advised to continue the process because the Act allows for an appeal of the refusal to issue the permanent resident visa (section 63 of the Act) and because humanitarian and compassionate considerations may exempt an applicant from criteria and obligations.

[78] Ms. Kidd was on temporary assignment in Dakar for a period of six weeks, between April 29 and June 7, 2013; she has more than 18 years of experience as an immigration officer. She is the one who, *inter alia*, evaluated permanent residence applications in the family class. She is also the one who made the decision on May 22, 2013.

[79] She attests that on September 14, 2012, the plaintiff inquired about the next steps: he was informed that the processing time for a permanent residence application in the family class at that time was 25 months. As we have seen, Mr. Yodjeu was impatient and had unreasonable expectations. That only heightened the plaintiff's enthusiasm. He contacted Dakar several times, occasionally providing documents.

[80] The witness attached documents sent to Dakar to her affidavit. The plaintiff appeared to believe that those documents would demonstrate his residence during the prescribed period. The documents consisted of leases and pay stubs. None of those documents make it possible to establish or even infer residence in Canada during the first months of the prescribed period, either at the time of, or in the weeks following, the filing of the sponsorship application.

[81] Thus, on May 22, 2013, Ms. Kidd reviewed all the documents, including those sent after Mr. Owen's decision. She found that the plaintiff had not shown that he resided in Canada in May 2012. The only documents were pay stubs beginning in August 2012 and a lease for a period starting on December 1, 2012. It is nevertheless baffling that the plaintiff was unable to improve his record, being satisfied with documents that in no way proved his residence in May 2012. Regardless, the letter of refusal (August or November 2012) was explicit. That certainly could have confirmed Ms. Kidd's opinion that proof of residence for the period prior to August 2012 had not been shown since nothing relevant had been submitted by the plaintiff.

[82] Seeking, in my view, to try to help Ms. Mbakop and the couple's daughter, Ms. Kidd examined the exemption for humanitarian and compassionate grounds in order to consider the best interests of the child. Given the inadequacy of the evidence, the best interests of the child

were for her to stay with her mother until an improved permanent residence application could be made.

[83] Lastly, the witness categorically denies any influence from the locally hired employee whom Mr. Yodjeu accused of conspiring against him. She did not know that person and never had any sort of discussions with locally hired employees during the six weeks she spent in Dakar.

[84] The letter of refusal issued after Ms. Kidd's decision explains the reasons for her decision.

[85] Regarding both Ms. Kidd and Mr. Owen, the plaintiff loses himself in conjecture on matters that have no bearing on the outcome of the proceeding. For instance, the plaintiff questions the returns to sender of the letter of refusal dated August 7, 2012, and how the authorities might have received the address used on November 2, 2012, to send the refusal. Similarly, it is difficult to understand the discussion surrounding Ms. Kidd, whom Mr. Yodjeu acknowledges as having made the decision on May 22, 2013, yet doubts that she was behind the June 4 decision (apparently made by the locally hired employee), which is merely a correction of the first decision. Mr. Yodjeu's income tax returns for 2012 or documents relating to employment insurance or certain tax credits that were submitted between May 22 and June 4 are also meaningless with respect to the uninterrupted period of residence that is required by law. They do not in any way prove residence during the prescribed period. They are nothing more than irrelevant or unimportant diversions with respect to the issue raised by the plaintiff in his action: was there a fault that gave rise to the civil liability of the Crown officials in determining

the plaintiff's residence at the start of the prescribed period, which began on May 2, 2012, and which ended with the final decision? Those diversions are not genuine issues for trial.

Isabelle Ouellet

[86] The evidence submitted by the Attorney General concerns the role played by the person hired locally. To some extent, that evidence corroborates Ms. Kidd's evidence, according to which she was the one who made the decision on May 22, 2013, without the assistance of local staff. Ms. Ouellet testifies that when the sponsorship stage is completed in Canada, the permanent residence application is sent to a processing office, like the one in Dakar, which takes over. Earlier, we saw that the referral to Dakar was made on the day of Mr. Owen's decision, August 7, 2012. Isabelle Ouellet confirms that the duties of the local staff do not include making decisions on immigration files processed in Dakar.

[87] Ms. Kidd's decision, which was made on May 22, 2013, was sent to the plaintiff and his spouse on May 28. That same day, Mr. Yodjeu sent an email to report that there was an error in the letter of refusal: the wrong sponsor was identified. It was that error that was corrected in the letter dated June 4. The rest of the letter remained the same, and the decision was unchanged. Mr. Yodjeu subsequently sought to file other items, including his [TRANSLATION] "income statement for 2012, an employment insurance document and a federal tax credit document (Isabelle Ouellet's affidavit, paragraph 10)." He alleges that he thus established his residence. Those documents in no way changed the decision made on May 22, 2013. The notes clearly indicate that Ms. Kidd was informed of them and found that they changed nothing. After all, they were merely the plaintiff's statements and nothing more. The Court consulted those documents.

It is perfectly reasonable to find that they prove nothing with respect to the issue at the centre of the debate, namely the plaintiff's residence at the appropriate time. No one doubts that the plaintiff resided in Canada during a period in 2012, since he earned income here. But that is not the issue.

[88] In her affidavit, Ms. Ouellet goes on to detail the events surrounding the allegation made after the decision from May 22/June 4, 2013, according to which the employee hired locally had a conflict of interest. Mr. Yodjeu alleged that this employee had made the decision on his file as part of a vast conspiracy. On August 28, September 4, September 30 and October 15, 2013, emails were sent by Mr. Yodjeu, and replies were sent by Ms. Ouellet on September 2 and 30, 2013. Those replies stated that this employee had had no influence over the decision, which must be made by a visa officer.

[89] Because the plaintiff continues to present the same allegation, the affiant describes the role played by the locally hired employee. She indicates that this employee did clerical work for approximately 75% of her time, with the remaining 25% being dedicated to analyzing cases of a different category than those described as being in the [TRANSLATION] "child/spouse family class." I am reproducing paragraph 17 of the affidavit, which describes what the clerical work involves:

> [TRANSLATION]
> 17. Clerical work on files consisted of following up on emails from applicants and sending medical forms and document requests as required by a visa officer, preparing files for finalization upon receipt of the passport(s), printing documents received for the file, printing letters of refusal generated by the GCMS at the request of a visa officer, forwarding files to visa officers for review upon

> receipt of documents or other information, and communicating with applicants as needed regarding the processing of their files.

Entering data into the databases, which the plaintiff focused on, is certainly one clerical job. But it is not the only clerical job. The few entries that the locally hired employee made are unimportant. What is important is of course the decision-making authority.

[90] Ms. Kidd was on temporary assignment to Dakar to help reduce the processing times for applications in the family class. As someone who is responsible for clerical work, the locally hired employee would have received documents from Mr. Yodjeu for filing. She made two entries in the GCMS, including one on June 4 to correct the letter from May 22. Nothing more. The locally hired employee had no decision-making authority. Lastly, it appears that Mr. Yodjeu had difficulties with a person who has the same surname as the locally hired employee when he was working for Ecobank-Cameroon. The affiant reports that her investigation into the complaint made by Mr. Yodjeu revealed that the employee did not know her homonymous counterpart at Ecobank-Cameroon and that this employee worked for Ecobank-Senegal and never for Ecobank-Cameroon. It appears that Mr. Yodjeu's attempts to communicate directly with the employee through her personal social media accounts led to a formal warning from the embassy to cease those communications.

[91] What is important is that the conspiracy theory put forward by the plaintiff is not only a diversion with respect to his inability to prove his residence in Canada at the prescribed time, but is also not supported by the evidence. It is nothing more than unlikely and unproven speculation. We cannot see what role the employee might have played in the decision on May 22, 2013;

Ms. Kidd is the visa officer who had the authority to make the decision, and the Court has no doubt that she did so. In fact, Mr. Yodjeu appeared to concede that this is the case. Following the error the plaintiff reported, a new letter was sent. Aside from the corrected error, the June 4 letter is identical. Acknowledging that the locally hired employee did the clerical work to correct the letter dated June 4, 2013 (which appears to have fed the plaintiff's suspicions), it is clear that she could not have played any role in the decision made on May 22. Even if she had known Mr. Yodjeu, that would have changed nothing about the fact that the decision was made by Ms. Kidd, the person empowered to do so. In that sense, the plaintiff's efforts surrounding the letter of June 4 are only an unfortunate distraction. The employee's clerical work on the June 4 letter changes nothing about the fact that this letter is the same as the one from May 22, which presents Ms. Kidd's decision.

[92] Despite the difficulties that emerged between the plaintiff and the embassy in Dakar regarding the role of the locally hired employee, the embassy processed a study permit application that had been filed by Ms. Mbakop. Thus, an approval of that application was sent by the embassy on September 5, 2013, three months after the permanent residence application was refused. A temporary resident visa was issued for the couple's child that same day. Ms. Mbakop and the couple's daughter headed to Canada as temporary residents on September 18, 2013.

[93] The involvement of the embassy in Senegal did not stop there. As we will see, the Minister consented to the appeal before the IAD. On May 15, 19 and 24, 2014, Dakar asked Mr. Yodjeu and his spouse to provide documents and information in order to process the permanent residence application. On June 30, 2014, Dakar notified them that a permanent resident visa would be valid until August 7, 2014. In the meantime, the embassy would complete

its review. Permanent resident visas were issued for Ms. Mbakop and her daughter on July 22, 2014.

Karine Santerre

[94] That brings us to the IAD's decision to allow the appeal of the decision to refuse permanent residence on June 4, 2013 (with the original decision on May 22).

[95] It is Karine Santerre who testified on this third decision, which is relevant to the dispute. She is a hearings officer at the Appeals Division, Hearings and Detention. She is an employee of the CBSA. While Mr. Owen, Ms. Kidd and Ms. Ouellet are CIC employees, Ms. Santerre is not.

[96] Ms. Santerre provides a brief overview of the submissions made as was typical of Mr. Yodjeu after his notice of appeal dated June 4, 2013. On September 24, he complained about, *inter alia*, the processing of his sponsorship application by the Canadian Embassy in Senegal, while he alleged that he satisfied the requirements with the pay stubs and statements of income, etc. On October 21, 2013, the IAD determined that it had no jurisdiction for dealing with such a complaint. The Court also notes an application for priority processing of his appeal, in which the plaintiff puts forward, to justify his application, what he himself calls [TRANSLATION] "suspicions of a conspiracy theory, conflict of interests and harassment" (exhibit K-9).

[97] On December 12, 2013, Ms. Santerre recommended that the IAD allow the appeal. The [TRANSLATION] "reply to a written request" containing that recommendation warrants further examination.

[98] Ms. Santerre states in her affidavit that she is of the opinion that the decisions on August 7, 2012, and on May 22, 2013 (paragraph 13 of the affidavit indicates March 22, 2013, which is clearly an error), are correct, since the evidence did not make it possible to find that the plaintiff qualified as a sponsor.

[99] In her affidavit, she explains that the plaintiff presented an address in France as being the mailing address for his application. That is mentioned in the [TRANSLATION] "reply to a written request" (paragraph 2). In that "reply", Ms. Santerre notes that the plaintiff did not submit any formal evidence establishing residence in Canada after his arrival: no lease or rent receipts were filed. Evidence of this kind was indeed provided, but it all concerned periods well after his arrival. Thus, Ms. Santerre reiterates that the burden is on the plaintiff to demonstrate that he resided in Canada.

[100] What tipped the balance in the plaintiff's favour is the search conducted by Ms. Santerre in the Integrated Customs System [ICS], a database accessible only to CBSA employees that records entries into Canada. It noted an entry at Pierre Elliott Trudeau Airport on May 1, 2012. The affidavit states that the database that is accessible only to employees of the CBSA (and not CIC) allowed her to see an entry on May 1, 2012, as well as entries into Canada on February 12, 2012, and July 17, 2013. Since there were no entries into Canada between May 1, 2012, and July 17, 2013, Ms. Santerre chose to give [TRANSLATION] "the plaintiff the benefit of the doubt,

and I found that he did indeed reside in Canada as of the filing of his sponsorship application in May 2012" (paragraph 21). Paragraph 10 of the "reply to a written request" is essentially of a similar nature. Thus, the cross-checks of the plaintiff's entries into Canada, through the privileged access to the database that is accessible only to CBSA employees, allowed Ms. Santerre to make an inference in favour of the plaintiff.

[101] While Mr. Yodjeu alleged to have changed his address with CIC a month and a half after his arrival, Ms. Santerre noted a change of address by the plaintiff on July 4, 2012. Exhibit K-11 indicates a change of address that took effect on July 4, 2012, and nothing more.

[102] Contrary to what the plaintiff alleged, there was indeed new information, gleaned from Ms. Santerre's initiatives, which raised sufficient doubt for her to make an inference in favour of the plaintiff. That inference is certainly not flawless, but that is the finding she made. She found that because the database had not recorded any new entries into Canada, that suggested that Mr. Yodjeu had not left Canada and returned at a later date. Such an inference, perhaps generous, clearly could not have been made without that information, which is not accessible to CIC employees.

[103] The appeal to which the Minister consented on December 12, 2013, was allowed on December 27, 2013. The appeal made under section 63 of the Act is by nature a *de novo* appeal in which the IAD considers the new evidence in the case. The resulting decision was that the refusal to issue a permanent resident visa was set aside because the Minister consented to the appeal. The matter was thus referred back to a different visa officer to reprocess the application. Therefore, there is nothing surprising about the fact that the reassessment of the file took place in

Dakar. As we have seen, new information was requested from the plaintiff, and permanent residence was granted in June 2014. As counsel for the defendant noted, a processing time of 25 months was cited for the permanent residence application. Despite the ups and downs, 26 months elapsed between the sponsorship application and the final decision.

[104] The evidence filed on behalf of Her Majesty, in my view, clearly explains the factual background. In his action, the plaintiff had to prove a fault giving rise to civil liability. The evidence from the Crown, if it is not refuted, which it certainly was not under cross-examination, seems to rule out any fault. The plaintiff submitted his sponsorship documents, which warranted a reasonable inference that at the time he filed his sponsorship application, he did not reside in Canada. He might have been mistaken, and he may try to explain his misunderstanding *ex post facto*, but the fact remains that the defendant's agents had to examine the sponsorship application forms and the submitted documents. The plaintiff submitted leases and pay stubs that established residence in Canada only as of August 2012. Like Ms. Santerre, I find that the plaintiff [TRANSLATION] "did not file any formal proof of residence showing that he immediately established his residence in Canada after his arrival" (reply to a written request, exhibit K-10, paragraph 5). A lease, rent receipts, pay stubs and invoices, like those he filed later, could have shed some light. The plaintiff did not do this. Ms. Kidd did receive his tax return sent between May 22, 2014, and June 4, 2014, and she found that it did not change the decision from May 22. This is easy to understand, because the tax return is not independent proof of continuous residence.

The plaintiff's evidence

[105] Therefore, it is up to the plaintiff to present his version of the facts. However, very unfortunately, the plaintiff did not, in either his written submissions, or his oral arguments, try to show how the actions of Mr. Owen and Ms. Kidd, the two decision-makers, could have been faults that give rise to civil liability. The Court reminded the plaintiff during the hearing that he had to focus on demonstrating the fault. Not once did he address the fundamental problem: the forms that he had sent in May 2012 in support of his sponsorship application gave every indication that his residence was in France. Throughout this dispute, he has never tried to explain his situation in Canada in May and June. That, in my view, is fatal to the instituted action. In addition, his speculations of a conspiracy hatched by CIC employees are implausible, since the evidence clearly did not show this.

[106] The plaintiff's entire statement of claim revolves around the two decisions: that of Mr. Owen refusing sponsorship and that of Ms. Kidd refusing permanent residence because Ms. Mbakop and the couple's daughter were not validly sponsored. The evidence presented by the defendant established the benign circumstances in which the decisions were made: the plaintiff did not prove his residence and, to date, we still do not know where he resided in May and June 2012. In any case, what is important is that this evidence was not presented to the decision-makers.

[107] Nevertheless, the Court prefers to examine Mr. Yodjeu's arguments, even though they have very little to do with the focal point of May 2012.

[108] Mr. Owen's affidavit remained spotless both in the written submissions and at the hearing. At most, Mr. Yodjeu contrasts Mr. Owen's decision with Ms. Santerre's recommendation, refusing to accept that Ms. Santerre had new information. In so doing, he is not so much attacking Mr. Owen's credibility as attempting to present a different narrative. In short, he states that Ms. Santerre made a recommendation based on the same facts that Mr. Owen had at his disposal, but arrived at a different result. He appears to infer from this that Mr. Owen must have erred. That is incorrect, since the evidence differs. This disregards Ms. Santerre's finding that Mr. Owen and Ms. Kidd were correct based on the information that they had and which came from the plaintiff himself. Moreover, Ms. Santerre states that she gave the plaintiff the benefit of the doubt that she had after she consulted the database to which she alone had access as a CBSA employee, a database to which CIC employees did not have access.

[109] The plaintiff submits that Ms. Kidd should have [TRANSLATION] "set aside" Mr. Owen's decision. The plaintiff is confusing Ms. Kidd's and Mr. Owen's duties, since he believes that Ms. Kidd could [TRANSLATION] "set aside" Mr. Owen's decision. This betrays a lack of understanding that Mr. Owen dealt with the sponsorship and Ms. Kidd with the permanent residence. Mr. Yodjeu knew that applying for permanent residence without sponsorship was, for all intents and purposes, destined to fail. He submitted no additional evidence to refute Mr. Owen's finding, aside from documents posterior to the change of address on July 4, 2012.

[110] That is probably why Ms. Kidd also chose to examine whether there were humanitarian and compassionate grounds that would allow her to grant permanent residence by lifting the Act's criteria and obligations. Mr. Yodjeu wanted to object to this. It is unclear what he can be

objecting to when we are seeking to apply a remedial provision. Ms. Kidd's credibility has never been called into question. Quite the contrary.

[111] In his memorandum of fact and law, the plaintiff also referenced the person who was hired locally in Dakar. Without any evidence, the plaintiff makes accusations that he is not any more capable of supporting in his oral arguments. But there is more. As we have just seen, Ms. Kidd's decision in Dakar was largely predetermined by section 120 of the Regulations, unless she could provide an exemption for Ms. Mbakop or her daughter on humanitarian and compassionate grounds. That section reads as follows:

Approved sponsorship application	**Parrainage**
120 For the purposes of Part 5,	**120** Pour l'application de la partie 5, l'engagement de parrainage doit être valide à l'égard de l'étranger qui présente une demande au titre de la catégorie du regroupement familial et à l'égard des membres de sa famille qui l'accompagnent, à la fois :
(a) a permanent resident visa shall not be issued to a foreign national who makes an application as a member of the family class or to their accompanying family members unless a sponsorship undertaking in respect of the foreign national and those family members is in effect; and	**a)** au moment où le visa est délivré;
(b) a foreign national who makes an application as a member of the family class and their accompanying family members shall not become permanent residents	**b)** au moment où l'étranger et les membres de sa famille qui l'accompagnent deviennent résidents permanents, à condition que le répondant qui s'est engagé satisfasse

unless a sponsorship undertaking in respect of the foreign national and those family members is in effect and the sponsor who gave that undertaking still meets the requirements of section 133 and, if applicable, section 137.	toujours aux exigences de l'article 133 et, le cas échéant, de l'article 137.

As we can see, a sponsorship undertaking must be in effect. That was not the case in the view of decision-makers Owen and Kidd. Ultimately, the locally hired person not only had no influence in fact, but she also had none in law.

[112] It is not that the stage of the process that deals specifically with the permanent residence application is useless. One might think that evidence that establishes residence during the prescribed period, and therefore from the time the sponsorship application was filed, could have had an effect at the stage of evaluating the permanent residence application. Recall that Mr. Owen's decision letter (August 7 and November 2, 2012) stated that he apparently considered the fact that Mr. Yodjeu did not meet the eligibility conditions for being a sponsor when evaluating the permanent residence application. However, no such evidence was filed, since the plaintiff submitted only documents that establish residence in Canada after his change of address on July 4, 2012. The other advantage of continuing the process was, as we have seen, making it possible to file an appeal before the IAD under section 63 of the Act.

[113] Grasping at straws, the plaintiff also complained that the processing of his application was too slow following the IAD's decision. It is unclear what he means by too slow. There is no basis for such an assertion other than Mr. Yodjeu's impatience. It seems as though Mr. Yodjeu believed that his file deserved absolute priority attention. Nevertheless, his spouse and their

daughter had already been in Canada since September 2013, and he had benefited from the work of a CBSA officer who had discovered useful information. In fact, the statement of claim, which constitutes the framework in which this dispute must be handled, does not indicate what fault was committed and by whom. The [TRANSLATION] "accusations" deal with SOW (Steven Owen) and the locally hired employee, who were allegedly the cause of the difficulties encountered by Mr. Yodjeu (and his family) in Dakar. At paragraph 19(e), the statement of claim indicates the plaintiff's hope of having permanent residence granted as soon as possible, but nothing more. Regardless, it had been stated that the process would typically take 25 months.

[114] All things considered, no genuine cause of action is disclosed, other than the alleged activities of Mr. Owen and the locally hired employee, which were never proven. Once this base of the house of cards is removed, the whole house collapses. Without any fault by Mr. Owen and with a non-existent conspiracy, the plaintiff's statement of claim has no basis. He cannot try to improve it *ex post facto* by making new allegations (*Cabral v Canada (Citizenship and Immigration)*, 2016 FC 1040).

[115] Two arguments by Mr. Yodjeu remain to be briefly addressed: an alleged admission in the defendant's original statement of defence and an alleged spoliation.

The admission

[116] First, the admission. If I understand correctly, the plaintiff submits that the Crown allegedly made an admission in the original statement of defence by stating that [TRANSLATION] "if the plaintiff had made his change in a timely manner with CIC and not the

CBSA, he would not have been excluded as a sponsor on the ground that he did not reside in Canada at the time of filing" (paragraph 41). However, as stated above, the statement of defence was amended after leave was granted by the judge tasked with managing the case; that paragraph is no longer before the Court.

[117] There are several reasons for rejecting such an argument. First, it would have to established how that statement constitutes an admission. I have no doubt that if the plaintiff had changed his address in a timely manner, his residence in Canada could have been established. The new version in the amended statement of defence is less definitive regarding the legal result of a timely change of address, but the idea seems to be consistent. But what constitutes a timely manner? And what must be proven to confirm the reality of the new address? This leads me to my second concern: an admission can relate only to a fact and not to a question of law or a question of mixed fact and law (*Fiducie Charbonneau v Québec (Sous-ministre du Revenu)*, 2010 QCCA 400). Paragraph 41 clearly deals with the legal consequence of a change of address: that is a question of mixed fact and law and cannot constitute an admission. Furthermore, what is the effect of an amendment authorized by the Court? The ability to retract an admission (if it is indeed an admission) has been more generous since *Andersen Consulting v Canada*, [1998] 1 FCR 605. Moreover, "[w]here an amendment to a pleading is sought and obtained, the new passage replaces the earlier passage and, that being so, no inconsistency is created between two operative pleadings" (paragraph 9). In other words, paragraph 41 was replaced in the amended statement of defence. It disappeared because it was replaced. Lastly, the argument on the admission does not lead the plaintiff anywhere. As with other arguments made on the motion for summary judgment, this question has no bearing on what was argued in the statement and must be determined in this case. Even if it were true that a change made in a timely manner could have

changed the situation, it still would have been necessary to establish the new address at the time when the sponsorship application was filed and thereafter. This was not done. This [TRANSLATION] "admission", if it is indeed an admission and was not retracted, does not help the plaintiff's case. As for other allegations of admissions in the plaintiff's memorandum of fact and law, they have no value on their face.

Spoliation

[118] The argument on spoliation goes no further than the one on the admission. Essentially, Mr. Yodjeu complains that certain pieces of information could have been useful to him, but they no longer exist. He focuses primarily on the recording of the conversation he alleges to have had with a clerk a few weeks after his arrival on May 1, 2012, to change his address. This lack of clarity is partially remedied by the affidavit from Ms. Santerre, to which exhibit K-11 is attached, indicating a change of address on July 4, 2012. According to Ms. Santerre's affidavit, [TRANSLATION] "I consulted additional evidence, in particular the information in the Field Operations Support System ("FOSS") and in the Integrated Customs Enforcement System ("ICES") through the CBSA's Integrated Customs System ("ICS")" (paragraph 17). This is the source of that exhibit.

[119] According to the plaintiff, the defendant should have kept this recording and others from between August and November 2012. He cites mainly the obligation to act in good faith (article 1375 of the *Civil Code of Québec*, CQLR, c CCQ-1991) and the clean hands doctrine (doctrine of equity, according to which a party appearing before the Court seeking a remedy of

equity, such as an injunction or judicial review, must do so having met the obligations of good faith and without having committed any wrongdoing).

[120] The plaintiff objects to the affidavit from James Hogue. He is a "Specialist, Virtual Contact Centre" for the CIC Call Centre; he has extensive experience, having worked at the CIC Call Centre since February 2006. He explains that before September 22, 2014, the system being used was Avaya CCMA, which was replaced by the Virtual Contact Centre. Server capacity before September 2014 was more limited than what is available with the new system; only six to seven months of recordings could be saved before being destroyed in chronological order. The failure to destroy the recordings would cause outages; therefore, the destruction was systematic.

[121] That is explained by the number of calls answered every day by between 150 and 175 officers. Mr. Hogue testifies that an average of 1.6 million calls are handled annually, which on average last just over seven minutes.

[122] Calls are recorded for quality assessment and agent training purposes. They are not recorded to retain proof of conversations.

[123] For reasons that remain mysterious, in the motion for summary judgment, the plaintiff tried to use Mr. Hogue's affidavit—which, moreover, he is not challenging—to discuss another dispute, the one involving the Canadian Human Rights Commission. That matter is not before the Court on a motion for summary judgment. With respect to the current dispute, the plaintiff also appears to be interested in an appeal that he allegedly filed on December 9, 2012, regarding the fact that the decision (made by Mr. Owen) on August 7, 2012, which had been sent to France

in accordance with the contents of the sponsorship application, did not reach him until November 2012, after Mr. Owen apparently noted the change of address in October 2012, according to his affidavit and the cross-examination that he underwent. It is unclear, and the plaintiff does not explain, how one or more letters being returned between August 2012 and November 2012 may have any impact on the dispute. This [TRANSLATION] "delay" in receiving the decision did not harm him in any way, since the decision on August 7, 2012, was automatically sent to Dakar that same day. If the plaintiff was seeking evidence of a change of address that likely occurred on July 4, 2012 (and not a month or six weeks after his arrival in Canada), the recording of the telephone conversation had been destroyed in accordance with the practice in place at that time. The other calls that were made in 2012 would have likely also been destroyed, following the policy of keeping recordings for only six or seven months. Where would the spoliation be?

[124] It is unnecessary to provide an overview of spoliation. As the Court of Appeal of Alberta noted in *McDougall v Black & Decker Canada Inc*, 2008 ABCA 353 [*Black & Decker*], a landmark decision on the issue, the problem presented by lost or destroyed evidence is not new. However, not all destroyed evidence is spoliation. For the limited purposes of this case, we can take the following state of law from *Black & Decker*, which is authoritative:

> spoliation refers to the intentional destruction of relevant evidence when litigation is existing or pending;
>
> the typical remedy is a presumption of fact that the destroyed evidence would not have assisted the spoliator;

> although the law does not allow for an independent remedy, the law may be heading in that direction.

[125] Quebec law does not appear to deviate from the principles set out by the Court of Appeal of Alberta. In *Jacques v Ultramar Ltée*, 2011 QCCS 6020 [*Ultramar*], Madam Justice Bélanger, as she then was, thus summarized the state of law:

> [TRANSLATION]
> [26] Therefore, the state of law in Quebec is as follows:
>
> 1. There is no explicit obligation to preserve the evidence in a dispute, nor is there an obligation to present the adversary with a list of documents pertaining to the dispute.
>
> 2. The implicit obligation to preserve the evidence exists and flows from a general obligation of good faith; consequently, this obligation would cover only the most serious cases of spoliation.
>
> 3. The maxim *omnia praesumuntur contra spoliatorem* (all things are presumed against the spoliator) has had very limited application to date.
>
> 4. The consequence of the implicit obligation to preserve evidence, based on good faith, is that when a party disposes of evidence by mistake or in good faith, no negative inference can be drawn from this.
>
> 5. Good faith is presumed, and the burden is heavy for proving bad faith.
>
> 6. The consequence of spoliation is a negative inference, and this negative inference has not, to date, led to a dismissal of a remedy or a defence after a hearing on the merits.
>
> 7. In the absence of a formal obligation to preserve evidence and in the presence of an implicit obligation to do so, if a person seeks to obtain a formal order to preserve evidence, this must be done through an injunction order or an application for safeguard and in accordance with the specific criteria for those remedies.

[Emphasis added.]

The destruction in 2012 of recordings, the purpose of which is not to compile evidence but rather for training and assessment, was carried out according to a conservation policy that was not challenged by the plaintiff and that appears to be reasonable, given the number of conversations and the limited server capacity. It was impossible that the goal of destroying recordings over time was to impede a potential dispute that only materialized in August 2014. The plaintiff was required to present evidence of bad faith in a case where it would have constituted one of the most serious instances of spoliation. He did not do so. Regardless, [TRANSLATION] "the only sanction for spoliation in civil matters is the negative presumption" (*Ultramar*, paragraph 22). If it could be applied in this case, such a presumption would at best apply to situations that have no bearing on the disposal of the dispute as circumscribed in the plaintiff's statement of claim. The fact that the decision on August 7, 2012, was returned by Canada Post because the recipient in France was not identified is of no real consequence. The dispute involving the Canadian Human Rights Commission (T-1617-14) is not before this Court.

[126] There was no spoliation. The destruction of the conversations was part of a normal and typical procedure from which we cannot deduce any bad faith.

VII. Conclusion

[127] I consider it relevant to reiterate that a simple administrative error does not necessarily constitute a civil fault giving rise to civil liability (*Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585, paragraphs 28–31). As the Supreme Court of Canada noted in

Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal, 2004 SCC 30; [2004] 1 SCR 789, "if upon judicial review an administrative decision is found to be unlawful, it does not necessarily follow that there is a fault giving rise to recourse in civil liability" (paragraph 23). In this case, there has not even been a judicial review. The administrative process was sufficient to obtain permanent residence for Ms. Mbakop and the plaintiff's daughter. That same process allowed for temporary residence to be granted even when an appeal was pending before the IAD.

[128] In presenting his case, the plaintiff was obligated to demonstrate a civil fault, even though the administrative process ultimately led to the permanent residence application being granted. The fact that additional information generated by the defendant allowed for a favourable finding for the plaintiff at the IAD stage does not in any way show that there was a fault in the other two previous stages. The plaintiff needed to show that Mr. Owen and Ms. Kidd committed a civil fault and not an administrative error (I would add that not even an administrative error was demonstrated, since the decision-makers reviewed the documentation provided by the plaintiff, which led to the finding that his residence in Canada in May and June 2012 had not been established.). He never did so, seeking instead to identify problems or advance a mythical conspiracy theory, in which the co-conspirators were all Senegalese and which acted more as a diversion than anything else. The plaintiff even insinuated that vandalism of his vehicle might have been linked to [TRANSLATION] "his pending complaint against certain CIC officers." Those alleged problems came to a dead end. I repeat: the decisions to refuse sponsorship and permanent residence were based on the documentation provided by Mr. Yodjeu, which indicated that he resided somewhere other than Canada for a portion of the prescribed period, namely from the filing of his application until the decision was made.

[129] It is rather surprising that the plaintiff chose not to speak about the documentation that he himself produced. He instead tried to place great emphasis on the fact that Mr. Owen's decision on August 7, 2012, was only sent to him in November. As for Ms. Kidd's decision, it was based on the same logic as that of Mr. Owen. However, the plaintiff alleged that there was a conspiracy led by a locally hired employee, who had the misfortune of doing the clerical work to prepare the corrected letter dated June 4, 2013. It is also surprising that the plaintiff could not produce any proof of residence before August 2012 when he must have known that his real problem was the period from May to June 2012.

[130] The action can only fail if no civil fault has been demonstrated. The plaintiff provided no evidence to confirm this. In fact, the allegations of a civil fault were attacked head-on by the decision-makers, whose credibility is not at issue. This dispute is in no way based on the credibility of one of the individuals involved or on the assessment of contradictory evidence, which legitimately fall to the trial judge. Rather, it seems to me that all of the evidence required for an equitable decision is before the Court, since every opportunity has been given to establish the existence of a fault.

[131] On the contrary, the defendant has satisfied me that there is no genuine issue for trial. The facts are simple and benign: it would not be useful to hold a trial. The defendant did not merely make allegations or rely on pleadings—it submitted evidence. Therefore, it was up to the plaintiff, Mr. Yodjeu, to refute that evidence concerning the absence of any fault or to present rebuttal evidence. He did not do so. He did not prove the allegations that he argued in his statement of claim. After presenting his version of the facts, he did not provide any rebuttal evidence. Instead, he tried to attack issues that at best can be described as peripheral and was

unsuccessful. I have found that these were diversions, distracting us from the fundamental issue. The plaintiff has put what he considers to be his best foot forward regarding the existence of issues to be tried. Ultimately, the Court can only find that the action is so baseless that a trial is unwarranted. Mr. Yodjeu has not demonstrated the existence of a genuine issue for trial, and there is no evidence to demonstrate the existence of a "fault." The motion for summary judgment must therefore be granted with costs.

JUDGMENT in T-1813-14

THIS COURT'S JUDGMENT is that:

1. The defendant's motion for summary judgment is granted;

2. The action instituted by the plaintiff against the defendant dated August 22, 2014, is dismissed;

3. Costs are awarded in favour of the defendant.

"Yvan Roy"
Judge

Certified true translation
This 30th day of July 2020

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1813-14
STYLE OF CAUSE:	LÉOPOLD CAMILLE YODJEU NTEMDE v HER MAJESTY THE QUEEN
PLACE OF HEARING:	QUEBEC CITY, QUEBEC
DATE OF HEARING:	OCTOBER 24, 2017
JUDGMENT AND REASONS:	ROY J.
DATED:	APRIL 16, 2018

APPEARANCES:

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Sébastien Dasylva	FOR THE DEFENDANT

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