

Monavocat inc. c. Cubed Biotech inc.

2026 QCCQ
3134

COURT OF QUEBEC
(Civil Division)

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-22-294369-262

July 13th 2026

PRESIDING : **M^e Elsa Acem, Special court clerk**

MONAVOCAT INC.

Plaintiff

V.

CUBED BIOTECH INC.

AND

ADAM B. COAPE-ARNOLD

Defendants

JUGEMENT

[1] The special court clerk is seized with a motion by the defendants to be relieved from their default for failure to plead within the time prescribed by the *Code of Civil Procedure*¹ (CCP).

[2] A hearing was held before the undersigned on the 1st of July 2026.

¹ CQLR, c. C-25.01.

I - Procedural history in the court file

- [3] On the 23rd of February 2026, the originating application was served to the defendants by bailiff. The originating application is an action for unpaid legal fees in the amount of \$8419,10.
- [4] On the 18th of March 2026, an answer was notified to the plaintiff's counsel by email, exhibit R-6.
- [5] On the 19th of March 2026, Me Qiabi, from the law firm Gattuso Bouchard Mazzone, filed a notice to cease representing the defendants.
- [6] On the 30th of March 2026, an answer to the originating application is filed by Me Qiabi for the defendants. This answer is dated March 18th 2026, and seems to be the same one which was notified to the plaintiff's counsel. The answer indicates that Me Qiabi represents the defendants and is contesting the application. It is unclear why the answer was entered into the court record approximately twelve days after it was notified to the plaintiff.
- [7] On the 7th of April 2026, the plaintiff filed a request to set the case down for default judgment on the basis that the defendants had not replied to the summons. The request for default judgment is dated the 3rd of April 2026 and is accompanied by a sworn declaration of a representative of the plaintiff.
- [8] On the 18th of April 2026, the defendants submitted an application to transfer the file in front of the small claims court given that the amount being sought was less than \$15 000,00.
- [9] The application to transfer the file was rejected on the 7th of April 2026 by the court clerk on the grounds that a judgment by default had already been rendered on the 7th of April 2026, though this was clearly not the case.
- [10] On the 11th of May 2026, a notice of substitution of the attorney of the defendants was filed by Me Pina Mancuso in the court record.
- [11] Following an inquiry by Me Mancuso, a rectified decision on the application to transfer the file to the small claims division was issued on the 4th of May 2026. This rectified decision indicates that the application for transfer remains rejected due to the fact that there is a request to set down the case for default judgment.
- [12] The motion of the defendants to be relieved of their default is dated on the 13th of May 2026 and was presented to the court on the 1st of June 2026. This motion

also included a conclusion to transfer the file to the small claims division of the Court of Quebec if the defendants were relieved of their default, however the attorney for the defendants agreed to file a separate application for the transfer should their application be granted.

- [13] Following the hearing, both parties were invited to submit jurisprudence to the undersigned on the interpretation of section 192 of the CCP.

II – Legal Framework

- [14] According to section 84 of the CCP, any delay which is not a strict time limit may be extended, and the court can relieve a party from its' default of having respected such a time limit.
- [15] In the decision *Frank-Fort Construction Inc. v. Porsche Cars Canada Ltd.*², the honorable judge Donald Bisson, j.c.s., notes that the fifteen-day delay to reply to a court summons is not a strict delay, so a defendant who is in default need not demonstrate that it was impossible for him to have acted earlier³.
- [16] In *Frank-Fort*, the Court summarizes the principles to keep in mind when deciding to relieve a party of his default:

La décision du Tribunal de relever ou non une partie de son défaut de répondre est une décision de gestion qui résulte de l'exercice d'un pouvoir discrétionnaire;

- Il faut faire preuve d'un certain libéralisme procédural envers la partie qui demande d'être relevée du défaut de répondre/comparaître;
- Le Tribunal doit effectuer une balance. On doit mettre dans la balance le droit d'une partie à procéder par défaut de comparaître et celui de la partie en défaut d'être pleinement entendue. Il s'agit de pondérer l'équilibre à maintenir dans l'exercice du pouvoir de gestion du Tribunal de faire avancer le dossier et le droit d'une partie à être pleinement entendue;
- Cette balance requiert que le Tribunal doive considérer les raisons du défaut de la partie d'avoir comparu/répondu, les intérêts de la justice et la nature des arguments que la partie en défaut veut faire valoir si elle était relevée de son défaut. Le droit des parties à une défense pleine et entière et le principe audi alteram partem doivent également être pris en compte;
- En matière de défaut d'une partie, le Tribunal doit faire preuve d'une grande prudence, particulièrement lorsqu'il est possible de remédier aux conséquences de l'erreur de l'avocat, sans injustice pour la partie adverse;
- En fin de compte, le Tribunal doit donner le bénéfice du doute à la partie en défaut afin de lui permettre une défense totale, pleine et entière⁴.

² 2016 QCCS 2032 (*Frank-Fort*).

³ *Ibid.*, para 49.

⁴ *Frank-Fort*, *supra* note 2 at para 56 (notes omitted).

- [17] In the decision *Brosses Lacasse Inc. c. Hamel*⁵, the Quebec Court of Appeal summarized the elements that a court must take into consideration when considering a motion to be relieved of a default. These elements include the time lapsed, the behaviour of the parties, the prima facie seriousness of the defendant's defence arguments, as well as the prejudice caused to all parties⁶.
- [18] In *Industries Canatal c Métal Norgate Inc.*⁷, the honorable judge Catherine La Rosa, j.c.s. mentions that when deciding whether or not to relieve a party from his default, the Court should concentrate its analysis on the arguments invoked by the party in default⁸.

III – Defendants' Arguments

- [19] The events leading up to the defendants' motion are quite peculiar. The plaintiff set down the case for judgment alleging that the defendants did not reply to the summons, yet they argue that they did communicate a reply even though their lawyer ceased to represent them shortly after.
- [20] The defendants filed a motion to be relieved of default to plead based on the rules of the special simplified rules for the recovery of certain claims, however they were not technically in default to plead given the absence of any inscription for judgment by the plaintiff for that reason.
- [21] Further complicating matters, the defendants submit that the plaintiff could not file his request for default judgment against them without first sending them a notice to appoint new counsel. This is a correct reading of the law in the case of a request to set down the case for default judgment in virtue of section 192 of the Cpc, but in the present circumstances the plaintiff filed his request for default judgment invoking the fact that the defendants *had not answered to the summons*.
- [22] One of the plaintiff's arguments is that the answer to the summons was not regularly filed due to the fact that it appears in the court record after the defendants' initial lawyer ceased representing them, thus, the question of the application of section 192 of the CPC will need to be examined.
- [23] The defendants also provided grounds for their defence in their motion to be relieved of default.

⁵ 2023 QCCA 1023 (*Brosses Lacasse*).

⁶ *Ibid.*, para 8.

⁷ 2009 QCCS 1060.

⁸ *Ibid.* at para 19. See also 6610331 *Canada Inc. c Faiz Mohammad*, 2019 QCCQ 2961.

IV – Plaintiff's Arguments

- [24] Before the defendants' motion was heard, the plaintiff wished to question the representative of the defendants on their sworn declaration. However, given that this requested was contested by the attorney for the defendants as disproportionate, the plaintiff agreed not to proceed on his examination. Thus, the request was rendered moot, and the undersigned proceeded to hear the parties' arguments on the motion to be relieved of default.

- [25] The plaintiff argues that according to the court record, the defendants' answer was filed after their lawyers cease to represent them. As such, the answer to the summons was not regularly filed and must be ignored. The plaintiff further argues that the defendant Adam B. Coape-Arnold represented the other defendant Cubed Biotech Inc. in contravention of the rules of representation when he filed his application to transfer the file to small claims court.

- [26] The plaintiff also contends that he had no obligation to send the defendants a notice to appoint new counsel before filing his request to set down the case for a default judgment.

- [27] Finally, the plaintiff characterizes the grounds for defence submitted by the defendants as laconic and insufficient to be relieved of their default.

V - Analysis

- [28] The defaults set out in the Quebec's *Code of Civil Procedure* are stated in section 180 and 192:

180. If a case has been set down following the defendant's failure to answer the summons, the plaintiff may obtain judgment without further delay or notice. However, if the failure is attributable to the Attorney General, the plaintiff must give the Attorney General at least one month's notice before filing the request for setting down.

If a case has been set down following the defendant's failure to attend the case management conference without valid cause or to defend the application within the time limit set in the case protocol or prescribed by this Code, the plaintiff must give the defendant at least five days' advance notice before the case proceeds to trial.

192. If, before a case is taken under advisement, the lawyer of one of the parties withdraws, dies or becomes disqualified from practising as a lawyer, a formal notice must be given to the party to appoint another lawyer or send the other parties a notice of intention to self-represent. The party must answer the formal notice within 10 days after its notification. No pleading may be filed or judgment rendered during that time.

A party that revokes the mandate of its lawyer must notify its decision to the other parties and to the court clerk and state its intention to appoint a new lawyer or to self-represent.

The lawyer brought in as a substitute must, without delay, notify a representation statement giving the lawyer's name and contact information to the other parties and to the court clerk.

If the party does not appoint a new lawyer, the proceeding continues as though the party were not represented. If the party does not comply with the case protocol or the rules of representation, any other party, if a plaintiff in the case, may request, without prior notice, that the case be set down for judgment, or, if a defendant in the case, that the application be dismissed.

A party represented by a lawyer is deemed to have been informed of another party's lawyer's death, disqualification or appointment to a public office that is incompatible with practice as a lawyer, without notification of the death, disqualification or appointment being necessary.

- [29] Essentially there are four situations in which inaction on a defendant's part allows the plaintiff to request that the case be set down for a default judgment: when there is no answer to the summons, when the defence is not filed in the prescribed time limit, when a party has not attended a case management conference, and when a party fails to respect the rules of representation following a notice pursuant to s. 192 of the CPC.
- [30] It is accepted law that any delay which is not considered to be a strict time limit may be extended, and the court can relieve a party from its' default of having respected such a time limit⁹.
- [31] Furthermore, it is also clear that if a defendant files a procedure after the prescribed time limit in the CPC, but before a request to set down the case for default judgment is filed, that that procedure is regularly filed into the court record, and in the absence of a case management conference, does not allow the plaintiff to request a default judgment.
- [32] In *Omega Laboratories Ltd c. Claris Lifesciences Ltd.*¹⁰ (*Omega*), the honorable judge Serge Gaudet, j.c.s., stated this quite clearly:

Pour les raisons qui suivent, le Tribunal est d'avis qu'une réponse qui est transmise avant que le demandeur ne fasse une telle demande d'inscription auprès du greffier est valablement produite.

Il est vrai que les dispositions de l'actuel Code de procédure civile, contrairement à ce qui était le cas auparavant, n'indiquent pas expressément que le défendeur peut répondre après l'expiration du délai prévu à la loi pour ce faire. Cependant, le texte de l'article 175 C.p.c. permet d'arriver au même résultat car ce n'est que « si le défendeur est en défaut de transmettre sa réponse » que le demandeur peut requérir du greffier que ce dernier inscrive l'affaire pour un jugement par défaut. Si, donc, le défendeur transmet sa réponse avant que le demandeur ne fasse sa demande d'inscription auprès du greffier, cette réponse empêchera le greffier d'inscrire pour jugement par défaut.

⁹ CCP, section 84. See also *Frank-Fort Construction Inc. v. Porsche Cars Canada Ltd*, 2016 QCCS 2032 at para 49 (*Frank-Fort*).

¹⁰ 2018 QCCS 833 at paras 22 and 23.

- [33] *Omega* also states that this reasoning is in harmony with section 176 of the CCP which allows the court clerk to strike a request for a default judgment which is irregularly filed.
- [34] Thus, in the case at hand, given that the answer of the defendants was notified to plaintiff's attorney on the 18th of March 2026, and subsequently filed into the court record on the 30th of March 2026, it follows that the request for a default judgment should be struck from the court record for the defendants were not in default when it was filed as the request to set down the case was filed on the 7th of April 2026.
- [35] The plaintiff argues that the answer filed in the court record on the 30th of March 2026 did not respect the rules of representation of the CCP by defendant Cubed Biotech Inc., given that their lawyer had ceased representing them on the 19th of March 2026.
- [36] What then constitutes a valid answer to the summons? There are two parts to this question. First of all, does the answer need to be filed in the court record, and the afferent fees paid? And secondly, if the answer is filed when the defendant Cubed Biotech Inc. is no longer represented by an attorney, does that render the answer inadmissible?
- [37] Regarding the first question, section 147, paragraph 2 of the CCP clearly states that the "answer is notified to plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff; it is filed with the court office...". Clearly an answer must be filed in the court record, but the CCP is silent as to the consequence of a delay between the notification of the answer to the plaintiff, and the filing in the court record.
- [38] In the decision *Caisse populaire Desjardins du Village huron c. Bouchard (Caisse Populaire)*¹¹, the honourable judge André Cloutier, j.c.q., examined the issue under the previous version of section 145 of the CCP, which dealt with the filing of a notice of appearance with the court¹².
- [39] In *Caisse Populaire*, the court states that there can be no appearance if the court costs are not paid¹³, and refers to section 224 paragraph 2 of the *Courts of Justice Act*¹⁴ which states the following:

Where a tariff established in accordance with the first paragraph prescribes that court costs or court office fees must be paid for the filing or issue of a proceeding or other document or for the performance of a service, no such proceeding or document may be filed with a court or a judicial officer or issued by the latter and no such service may be performed unless the costs or fees have been paid. However, if the amount of the costs and fees is determined by the clerk after the filing of a

¹¹ 2007 QCCQ 9973.

¹² CCP, section 119.

¹³ *Supra* note 10 at para 12.

¹⁴ CQLR c T-16.

proceeding or other document, the proceeding or document may be filed if the costs or fees are paid not later than two working days after the notification of a notice indicating their amount.

- [40] *Caisse Populaire* thus confirms that for an answer to be considered valid by the court clerk, it must be filed in the court record and the fees associated with said answer must be paid.
- [41] In the current file, the defendants' answer to the summons was filed and paid for on the 30th of March 2026, so as regards the first question it may be stated that the defendants' answer was validly filed in that regard.
- [42] Let us turn now to the second question, does the fact that defendants were no longer represented by an attorney when their answer was filed and paid for in the court record somehow disqualify that answer?
- [43] The rules of representation for a company are clearly stated in section 87 paragraph 3 of the CCP: legal persons must be represented by an attorney in order to heard before a court or to file a legal proceeding. Therefore, *stricto sensu*, the defendant Cubed Biotech Inc.'s answer had not been validly filed.
- [44] Nonetheless, there is section 192 of CCP to consider as well. Section 192 of the CCP states that "If, before a case is taken under advisement, the lawyer of one of the parties withdraws, dies or becomes disqualified from practising as a lawyer, a formal notice must be given to the party to appoint another lawyer or send the other parties a notice of intention to self-represent. (...) No pleading may be filed or judgment rendered during that time."
- [45] In the comments of the Minister of Justice, she states that section 192 of the CCP is in continuity with the previous section of the CCP, in that it is advisable to ask a party whether or not they will be getting new representation before the case has been set down for trial¹⁵.
- [46] This obviously makes sense in order to ensure the proper administration of justice. When a lawyer ceases to represent a client, it is unclear whether the opposing party will now be dealing directly with the party themselves or with a new attorney. In both cases, a new protocol may need to be negotiated, or some form of case management may need to occur in order to move the case along. Crucially, if the party in question is a legal person, and they fail to be represented by a lawyer following the notice in virtue of 192 of the CCP, the plaintiff may request that the case be set down for a default judgment against that defendant.

¹⁵ CAIJ online : <https://app.caij.qc.ca/fr/lois-annotees/C-25.01/article192> .

[47] There is a clear logic behind the notice provided for by section 192 of the CCP. The status of the file will be clarified, and the notice allows a defendant to comprehend that their rights may be in jeopardy if they do not react to said notice. The legislator also uses the word “must” to qualify the obligation to give such a notice to the opposing party and specifies that no pleading may be filed or judgment rendered during the 10 days following the notice.

[48] In *Sullivan on the Construction of Statutes*¹⁶, Ruth Sullivan explains succinctly the implication of the legislator using the word “must”:

When “shall” and “must” are used in legislation to impose an obligation or create a prohibition, they are always imperative. A person who “shall” or “must” do something has no discretion to decline. (...) The issue that arises in connection with “shall” and “must” is not whether they are imperative, but the consequences that flow from a failure to comply¹⁷.

[49] This argues in favour of the interpretation that the notice set out in section 192 of the CCP is obligatory rather than discretionary¹⁸. As long as the case has not been set down for trial, the withdrawal of a party’s attorney gives rise to the obligation by the other party to send a notice to appoint a new lawyer. The addition by the legislator of the 10-day period during which no pleading may be filed or judgment rendered also strongly suggests that the failure to send the notice pursuant to section 192 of the CCP is mandatory¹⁹.

[50] During the hearing the plaintiff argued that the fact that the defendants’ first lawyer ceased to represent them before the answer to the summons was filed in the court record entailed that defendants were never truly represented by counsel and thus there was never an obligation to send them a notice pursuant to section 192 of the CCP. Such a reading seems unduly restrictive and contrary to the guiding principles of the CPC. The answer to the summons filed on the 30th of March 2026 was signed by Me Qiabi. Prima facie it appeared as if the defendants were still represented at this point. Opposing counsel cannot just assume the defendants had no attorney; if this was in doubt a case management motion would have been the proper recourse.

[51] If the plaintiff suspected or knew that the defendants were no longer represented by counsel, no request to set down the case for a default judgment could be filed. The plaintiff had the imperative obligation to first send the notice set out in section 192 of the CCP, and wait the obligatory ten days. Following that time period, and in

¹⁶ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (LexisNexis, 2014).

¹⁷ *Ibid.*, at page 91.

¹⁸ *Lavoie c. Gauthier*, 2016 QCCQ 14047.

¹⁹ *Sullivan*, *supra* note 16 at page 92.

the absence of an answer from the defendant Cubed Biotech Inc., the plaintiff could file a request for default judgment against that defendant²⁰.

- [52] This may seem as if section 192 of the CCP imposes an additional obligation on parties when one party's lawyer ceases to represent them, and in the current case, trumps the regular procedures required before setting down a case for default judgment, and put simply *it does have that effect*.
- [53] Given what precedes, the request to set down the case for a default judgment should be struck from the court record because an answer was filed beforehand, and no notice pursuant to section 192 of the CCP was sent to the defendants. This implies that the defendants were not in default when they filed their answer to the summons on the 30th of March 2026. Though the analysis for this case can end here, during the hearing the parties did make representations on whether or not the defendants had a valid defence to accompany their motion to be relieved of default. Though the question is moot given my conclusion that the defendants were not in default, following the parties' representations I would have concluded that they did offer grounds for a prima facie defense.
- [54] Finally, I would add that it is incumbent upon all parties to bear in mind the guiding principles of the CCP: the right to be heard²¹, the principle of proportionality²², as well as their duty to cooperate with each other²³. As explained by the honorable judge Babak Barin, j.c.s. in the case *Fonds Azur Capital immobilier-Québec c. Morin*²⁴, these principles ensure a sound justice system based in equity.

FOR THESE REASONS, THE COURT :

- [55] **DECLARES** that the defendants were not in default because no notice pursuant to section 192 was served upon them;
- [56] **STRIKES** the application to have a case set down by judgment by default dated on the 3rd of April 2026 (document #5 on the plunitif);

²⁰ Also, it bears mention that only the defendant Cubed Biotech Inc. needed to be represented by counsel, so no request to set down the case for a default judgment against the defendant Adam B. Coape-Arnold could be filed, even if the plaintiff's reasoning was correct. See generally *Transformations Mandibois inc. c. Grenier-Vaillancourt*, 2020 QCCQ 5345 at para 3.

²¹ CCP, section 17.

²² *Ibid.* section 18.

²³ *Ibid.* section 20.

²⁴ 2017 QCCS 2153.

- [57] **ORDERS** the parties to file the notices required by the *Code of civil procedure*;
- [58] **TAKES NOTE** that that the defendants intend to ask that the file be transferred to small claims court;
- [59] **TAKES NOTE** that the plaintiff has indicated that he may amend his originating application;
- [60] **ORDERS** the Greffe to convene the parties to the provisional roll call at 11 am in room 2.06 in order to fix a date for a case management conference of 30 minutes;

THE WHOLE COSTS TO FOLLOW.

Me Elsa Acem, G.S.C.Q. (JA1054)

**Me Philippe Lord
Monavocat inc.
Lawyers for the plaintiff**

**Me Pina Mancuso
Lawyer for the defendants**