COURT OF APPEAL FOR ONTARIO

CITATION: Centre de Services à l'emploi Prescott-Russell Inc. v. Forage M3 Drilling Services Inc., 2026 ONCA 692
DATE: 20261002
DOCKET: COA-25-CV-0499

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Rouleau, Thorburn and Favreau JJ.A.

BETWEEN

Centre de Services à l'emploi Prescott-Russell Inc.

Plaintiff

and

Forage M3 Drilling Services Inc., 8978514 Canada Inc. cob Forage Grenville Drilling*, Tyler Baccardax*, Stéphane Chartrand*, Matthew MacTavish and Forage Fusion Drilling Ltd.

Defendants/Moving Parties (Appellants*)

and

Luc Corbeil*, Corbeil Family Trust* and Matthew Holding Inc.

Third Parties/Respondents (Respondents*)

Edward C. Conway, for the appellants

Patrick Snelling, for the respondents

Heard: March 26, 2026

On appeal from the order of Justice Michelle Flaherty of the Superior Court of Justice, dated April 2, 2025, with reasons reported at 2025 ONSC 2047.

Favreau J.A.:

A. INTRODUCTION

[1] The appellants, Tyler Baccardax and Stéphane Chartrand,[1] appeal from a judgment dismissing their third-party claim against the respondents, Luc Corbeil and the Corbeil Family Trust.

[2] Mr. Corbeil signed an indemnity agreement that required him to indemnify the appellants for amounts they may be required to pay as a result of personal guarantees they gave to various entities, including Centre de Services à l'emploi Prescott-Russell Inc. ("CSEPR"). The appellants settled a claim brought by CSEPR and, relying on the indemnity agreement, sought indemnification from the respondents.

[3] The appellants brought a motion for summary judgment. The motion judge dismissed their motion and granted summary judgment to the respondents. She found that the appellants had not provided personal guarantees to CSEPR and, on that basis, dismissed the third-party claim against the respondents.

[4] I would allow the appeal. The motion judge erred in her interpretation of the contractual documents in this case, including the indemnity agreement and the loan agreement between the appellants and CSEPR. To determine whether Mr. Corbeil had an obligation to indemnify the appellants, the motion judge was

[1] 8978514 Canada Inc. cob Forage Grenville Drilling is also an appellant. Mr. Baccardax is the secretary, 50% shareholder, and directing mind of this entity. Neither the appellants, respondents, nor the motion judge focused on the role of this appellant. Accordingly, these reasons do not address the role of 8978514 Canada Inc.

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required to ascertain the parties' intentions from the agreements as a whole and the surrounding circumstances. Instead, the motion judge focused on an isolated aspect of the loan agreement and ignored the full surrounding circumstances. This was a palpable and overriding error.

[5] Reading the agreements as a whole and in the context of the surrounding circumstances, I find that the appellants gave personal guarantees to CSEPR, giving rise to Mr. Corbeil's obligation to indemnify them in accordance with the indemnity agreement. However, I agree with the motion judge that there is no basis for finding that the Corbeil Family Trust had an obligation to indemnify the appellants. Moreover, the issue of whether the appellants met their obligations under the indemnity agreement, such that Mr. Corbeil had an obligation to indemnify them, should be remitted back to the Superior Court.

B. BACKGROUND

1. The parties and their relationship

[6] The litigation between the parties arises from a share purchase of Forage M3 Drilling Services Inc. ("Forage"). The appellants were owners of shares in Forage, along with Matthew MacTavish. In 2019, the appellants sold their shares to Mr. Corbeil.

[7] At the time of the sale, Forage owed money to various entities, including for a loan it had obtained from CSEPR. As part of the share purchase transaction,

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Mr. Corbeil and Mr. MacTavish agreed to indemnify the appellants for personal guarantees they gave to CSEPR and other entities.

[8] In 2021, after Mr. Corbeil had acquired the shares, Forage defaulted on its loan from CSEPR. CSEPR brought an action against a number of defendants, including Mr. Baccardax and Mr. Chartrand. In turn, they brought a third-party claim against Mr. Corbeil and the Corbeil Family Trust.

[9] Mr. Baccardax and Mr. Chartrand reached an agreement with CSEPR to settle the main action. As part of the settlement, Mr. Baccardax and Mr. Chartrand agreed to pay $80,000 to CSEPR. They then brought a motion for summary judgment seeking repayment from Mr. Corbeil and the Corbeil Family Trust of the amount of the settlement and their legal costs on the basis of the indemnity agreement.

[10] There were three key agreements on the motion: (1) the indemnity agreement between Mr. Baccardax and Mr. Chartrand on the one hand, and Mr. Corbeil and Mr. MacTavish on the other hand (the “Indemnity Agreement”); (2) the loan agreement between Forage and CSEPR (the “Loan Agreement”); and (3) a general security agreement that was made around the same time as the Loan Agreement (the “General Security Agreement”). I address the specific provisions of each of these documents because they are central to the appeal.

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2. The Loan Agreement and General Security Agreement

[11] CSEPR entered into the Loan Agreement with Forage on June 17, 2016. The Loan Agreement is in French.

[12] The Loan Agreement is in the form of a letter of offer from CSEPR. The letter to which the terms of the offer are attached describes Forage, Mr. Chartrand, Mr. Baccardax and Mr. MacTavish as "*l'emprunteur*".

[13] One of the terms of the Loan Agreement was that CSEPR was to obtain a general security agreement from Forage and personal guarantees from Mr. Chartrand, Mr. Baccardax and Mr. MacTavish:

> Le centre prendra un cautionnement (General Security Agreement) sur 8978514 Canada Inc Forage Grenville Drilling au montant de trois cent cinquante mille ($350,000.00). Un cautionnement sur 974686-2 Canada Inc Forage M3 Drilling Services Inc au montant de trois cent cinquante mille ($350,000.00). Une garantie personnelle de Stéphane Chartrand au montant de trois cent cinquante mille dollars ($350,000.00). Une garantie personnelle de Tyler Baccardax au montant de trois cent cinquante mille dollars ($350,000.00). Une garantie personnelle de Matthew MacTavish au montant de cent mille dollars ($100,000.00).

[14] The last page of the Loan Agreement included a signature page titled "Acceptation de l'emprunteur". It was signed by Mr. Chartrand, Mr. MacTavish and Mr. Baccardax.

[15] On July 11, 2016, the parties to the Loan Agreement entered into the General Security Agreement. The General Security Agreement describes CSEPR

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as the “Secured Party”, and Mr. Chartrand, Mr. Baccardax, Mr. MacTavish and Forage collectively as the “Debtor”. The General Security Agreement gives CSEPR a security interest in “all of [the] Debtor’s personal property.” Mr. Chartrand, Mr. Baccardax and Mr. MacTavish signed the General Security Agreement on behalf of Forage and in their personal capacities.

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3. The Indemnity Agreement

[16] In 2019, when Mr. Corbeil purchased the appellants’ shares in Forage, the parties entered into the Indemnity Agreement.

[17] The Indemnity Agreement designates Mr. Corbeil and Mr. MacTavish as the “Indemnifiers”, and Mr. Baccardax, Mr. Chartrand and 8978514 Canada Inc. as the “Indemnitees”.

[18] The Indemnity Agreement includes the following preamble:

> **WHEREAS** Baccardax and Chartrand, either individually or by way of their holding companies were shareholders of FORAGE M3 DRILLING SERVICES INC (“**M3**”);
>
> **AND WHEREAS** the Indemnifiers, directly and indirectly, acquired the ownership of M3 by way of a reorganization;
>
> **AND WHEREAS** M3 is indebted to the following creditors:
>
> …
>
> Centre de Services à L’emploi de Prescott-Russel Inc.

> (the "**Creditors**")
>
> **AND WHEREAS** Indemnitees have provided personal guarantees to the Creditors (the "**Guarantees**");
>
> **AND WHEREAS** it is the intention of the Indemnifiers to either pay off the Creditors (thereby extinguishing the Guarantees) or obtaining a release of the Guarantees from the Creditors;
>
> **AND WHEREAS** the Indemnifiers have agreed to indemnify the Indemnitees on the following terms and conditions.

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[19] The Indemnity Agreement goes on to provide that the Indemnifiers, namely Mr. Corbeil and Mr. MacTavish, agree to indemnify the Indemnitees, namely Mr. Baccardax and Mr. Chartrand, "from and against all claims, demands, debts, actions, causes of action[,] damages, loss, costs, liabilities or expenses which may be brought against the Indemnitees, or which the Indemnitees, directly or indirectly, may suffer or incur as a result of the Guarantees."

[20] The Indemnity Agreement is conditional on the Indemnifiers' right to defend or compromise any claims arising from the Guarantees, and on the Indemnitees' obligation to participate in such recourse by the Indemnifiers:

> The parties hereto agree that the obligation of the Indemnifiers to indemnify and save harmless shall be:
>
> > (i) subject to the requirement that the Indemnifiers shall be afforded an opportunity at their sole expense, to resist, defend and compromise the same; and

> (ii) subject to the requirement that Indemnitees shall participate and fully co-operate in the exercise by the Indemnifiers of their recourses herein, at the sole cost and expense of the Indemnifiers.

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4. The litigation

[21] In April 2021, Forage defaulted on the loan from CSEPR. In October 2022, CSEPR commenced an action against Forage, Mr. Baccardax, Mr. Chartrand and Mr. MacTavish.

[22] Forage was declared bankrupt on December 9, 2022. The loan from CSEPR was listed as one of its unsecured debts.

[23] Mr. Baccardax and Mr. Chartrand brought a crossclaim against Mr. MacTavish and a third-party claim against Mr. Corbeil and the Corbeil Family Trust, relying on the Indemnity Agreement.

[24] In May 2023, Mr. Baccardax and Mr. Chartrand reached their settlement with CSEPR in the main action.

5. The motion judge's decision

[25] After the appellants reached the settlement with CSEPR, they brought a motion for summary judgment against Mr. Corbeil and the Corbeil Family Trust. Relying on the Indemnity Agreement, they sought reimbursement for the amount of the settlement and their full costs of the litigation.

[26] The motion judge dismissed the appellants' motion, and, instead, granted summary judgment in favour of Mr. Corbeil and the Corbeil Family Trust and dismissed the third-party claim. She found that the appellants had not established that they provided personal guarantees to CSEPR. On this basis, she concluded that the amounts they sought to recover were not covered by the Indemnity Agreement, which only addressed amounts owed under personal guarantees. The motion judge reached this conclusion based on her interpretation of the Loan Agreement and the General Security Agreement.

[27] The motion judge found that the Loan Agreement did not constitute a personal guarantee, reasoning that it used the future tense to refer to personal guarantees and that Mr. Baccardax did not sign the Loan Agreement:

> The Loan Agreement refers to personal guarantees from MacTavish, Chartrand, and Baccardax. However, the Loan Agreement uses the future tense, stating that CSEPR "prendra" or will take a personal guarantee. As noted, there is no information to indicate whether the signatories were signing in their personal capacity as borrowers or whether they signed on behalf of Forage M3. At least one of the individuals did not sign at all.
>
> Given the language of the Loan Agreement and the ambiguity regarding its execution, I cannot conclude that it creates personal guarantees on behalf of MacTavish, Chartrand, and/or Baccardax.

[28] The motion judge found that the General Security Agreement did not establish that the appellants provided personal guarantees because it did not

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incorporate the Loan Agreement by reference and because it did not refer to any personal guarantees.

[29] The motion judge also found that the Loan Agreement and the General Security Agreement read together did not establish that the appellants provided personal guarantees to CSEPR. She reasoned as follows:

> [T]he parties' intention was that the Moving Parties would provide some form of assurance that the loan would be repaid. When the Loan Agreement and the [General Security Agreement] are considered together, I find that, ultimately, the parties intended that this assurance would take the form of personal security over Forage M3 as well as MacTavish, Chartrand and [Baccardax's] personal property. I am not satisfied that the Loan Agreement or the [General Security Agreement], when read together or separately, amount to personal guarantees by these three individuals or any of them.

[30] The motion judge further found that the Indemnity Agreement was irrelevant for determining whether the appellants provided personal guarantees to CSEPR. She acknowledged that the Indemnity Agreement stated that the appellants gave personal guarantees to CSEPR, but held that:

> The Indemnity Agreement may be evidence of the subjective understanding of Mr. Corbeil and the Moving Parties, three years after the Moving Parties entered into the [General Security Agreement]. Importantly, however, [CSEPR] was not a party to the Indemnity Agreement and that document can have no bearing on the rights and obligations created by the Loan Agreement and the [General Security Agreement].

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[31] Finally, the motion judge found that there was no basis for requiring the Corbeil Family Trust to indemnify the appellants given that it was not a party to the Loan Agreement, the General Security Agreement or the Indemnity Agreement.

[32] While the appellants had brought the motion for summary judgment, the motion judge ultimately granted summary judgment in favour of the respondents. She found that, given her finding that the appellants had not provided personal guarantees to CSEPR, there was no genuine issue for trial.

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C. ISSUES AND ANALYSIS

[33] The central issue on appeal is whether the motion judge erred in finding that the appellants did not provide personal guarantees to CSEPR.

[34] As discussed below, I find that the motion judge erred. In particular, she failed to apply the principles of contractual interpretation by focusing on isolated words in the relevant agreements, rather than looking at those words in the context of the agreements as a whole and the surrounding circumstances within which they were made. I start with a review of the standard of review and the general principles that apply to contractual interpretation, followed by my analysis of the errors made by the motion judge.

1. Standard of review

[35] The interpretation of a contract is a question of mixed fact and law. This means that, on appeal, this court owes deference to the motion judge's contractual

interpretation. The court will only interfere if the judge below made a palpable and overriding error: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 50-52; *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, 492 D.L.R. (4th) 389, at para. 28.

[36] There are two exceptions. The first is where there is a standard form contract, which does not apply in this case. The second is where there is an extricable question of law: *Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 S.C.R. 540, at para. 44.

[37] The circumstances where the court will find an extricable question of law are uncommon. These include the application of an incorrect principle, the failure to consider the required element of a legal test or the failure to consider a relevant factor: *Sattva*, at para. 53.

2. General principles of contractual interpretation

[38] When interpreting a contract, the court is to interpret the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time the contract was formed: *Sattva*, at para. 47. The court is to derive the meaning of the words used in the contract from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement: *Sattva*, at para. 48. While the surrounding circumstances are relevant to interpreting a

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contract, they should not be allowed to overwhelm the meaning of the words in the contract: *Sattva*, at para. 57. In addition, the relevant surrounding circumstances only include "knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting": *Sattva*, at para. 58.

3. The motion judge erred in her interpretation of the relevant agreements

[39] As reviewed above, the motion judge started her analysis by focusing on the wording of the Loan Agreement. She found that, because the provision in the Loan Agreement dealing with personal guarantees used the future tense "*prendra*", the Loan Agreement could not itself be interpreted as providing for personal guarantees given by the appellants. The motion judge then turned to the General Security Agreement and found that, because it did not refer to the Loan Agreement or personal guarantees, it too could not be interpreted as providing for personal guarantees given by the appellants. The motion judge next looked at the Indemnity Agreement and held that it was irrelevant to determining whether the appellants gave personal guarantees to CSEPR because it could not be used to discern the objective intentions of the parties to the Loan Agreement and General Security Agreement.

[40] This analysis fails to properly apply the principles of contractual interpretation. In particular, it fails to take account of the surrounding circumstances and improperly zeroes in on an isolated word in the Loan Agreement.

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[41] The starting point in this case should have been the Indemnity Agreement because this is a dispute between the parties to that agreement. The motion judge should have focused on the wording of the Indemnity Agreement and the objective surrounding circumstances at the time the parties entered into the Indemnity Agreement.

[42] Instead, the motion judge started her analysis with the Loan Agreement and the General Security Agreement. These do not govern the relationship between the parties to this appeal. Rather, these agreements form part of the surrounding circumstances for interpreting and understanding the Indemnity Agreement.

[43] It was therefore an error for the motion judge to start her analysis by looking at the Loan Agreement and the General Security Agreement, and to treat the Indemnity Agreement as irrelevant to that analysis. Instead, she should have started with the Indemnity Agreement, and then reviewed the Loan Agreement and the General Security Agreement for the purpose of determining whether they could support the parties' understanding that Mr. Baccardax and Mr. Chartrand had given personal guarantees to CSEPR.

[44] This is a subtle but important difference. In the context of the third-party claim, the motion judge was not adjudicating a dispute between CSEPR and the appellants over whether the appellants provided personal guarantees. Instead, she was adjudicating a dispute between the appellants and Mr. Corbeil, who

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expressed his agreement and understanding, by signing the Indemnity Agreement, that the appellants gave CSEPR personal guarantees.

[45] The surrounding circumstances to the Indemnity Agreement are that Mr. Corbeil bought the appellants' interest in Forage. Mr. Corbeil agreed to indemnify the appellants for any liabilities under personal guarantees they had provided while they owned an interest in Forage. The preamble stated as a fact, without any qualifiers or equivocation, that the appellants had provided personal guarantees to CSEPR. Presumably, Mr. Corbeil reviewed the Loan Agreement and the General Security Agreement before accepting this fact. Accordingly, on the plain wording of the Indemnity Agreement, as part of the share purchase transaction, it was evidently the intention of the parties that Mr. Corbeil would take on the appellants' personal liability for Forage's debts under personal guarantees the appellants provided to CSEPR.

[46] It may have been open to the motion judge to find that Mr. Corbeil had no obligation to indemnify the appellants if it turned out that there was no evidence that the appellants had provided personal guarantees to CSEPR. But that is not the case here. Rather, the Loan Agreement specifically reflects the intention of the parties that Mr. Chartrand and Mr. Baccardax were to provide personal guarantees for the loan from CSEPR. The motion judge relied on the use of the word "*prendra*" to conclude that the Loan Agreement itself was not the appellants' personal guarantees, but rather documented an agreement to provide personal guarantees

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in the future that was to be reflected in a different agreement. She further reasoned that, since the parties never executed such a document, there were never any personal guarantees. However, the word "*prendra*" must be placed in its proper context. It is worth reproducing the relevant provision again to make this point:

> Le centre prendra un cautionnement (General Security Agreement) sur 8978514 Canada Inc Forage Grenville Drilling au montant de trois cent cinquante mille ($350,000.00). Un cautionnement sur 974686-2 Canada Inc Forage M3 Drilling Services Inc au montant de trois cent cinquante mille ($350,000.00). Une garantie personnelle de Stéphane Chartrand au montant de trois cent cinquante mille dollars ($350,000.00). Une garantie personnelle de Tyler Baccardax au montant de trois cent cinquante mille dollars ($350,000.00). Une garantie personnelle de Matthew MacTavish au montant de cent mille dollars ($100,000.00).

[47] Contrary to the motion judge's categorical determination that the use of the future tense signaled an intention that Mr. Chartrand and Mr. Baccardax would enter into personal guarantees in the future, read in context, "*prendra*" could be translated as "will take" or "will hold". Either of these translations supports a finding that the Loan Agreement itself created the personal guarantees. The structure of the Loan Agreement also supports this interpretation. The Loan Agreement was in the form of a letter of offer to Forage, Mr. Chartrand, Mr. Baccardax and Mr. MacTavish as "*emprunteur*" or borrower. The clause referring to personal guarantees was therefore contingent on the borrower accepting its terms. Once they accepted the terms by signing the "Acceptation de l'emprunteur", the intention

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that CSEPR would take or hold personal guarantees from Mr. Chartrand and Mr. Baccardax crystalized. Nothing further was required.

[48] There is nothing else in the agreement that suggests that the parties intended to document personal guarantees in a future agreement. In contrast, the same provision in the Loan Agreement stated that CSEPR "*prendra un cautionnement* (General Security Agreement) *sur* [Forage]". Therefore, when referring to CSEPR's security interest over Forage's assets, the Loan Agreement explicitly contemplates a separate agreement (a General Security Agreement), which the parties did in fact enter.

[49] In the circumstances, the motion judge took an overly narrow and technical approach when interpreting the Loan Agreement. The Loan Agreement clearly sets out the parties' intention that Mr. Chartrand and Mr. Baccardax provide personal guarantees, and the Loan Agreement itself could be interpreted as constituting those personal guarantees.

[50] The motion judge also relied on her finding that only Mr. Chartrand and Mr. MacTavish, and not Mr. Baccardax, signed the Loan Agreement, and it was not clear whether they did so in their personal capacities or as representatives of Forage. This is a palpable and overriding factual error. Mr. Baccardax did in fact sign the Loan Agreement, twice, as the respondents concede in their factum. Regardless, by focusing on this finding, the motion judge again disregarded the

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contextual circumstances of the Indemnity Agreement. The Indemnity Agreement showed Mr. Corbeil accepted that Mr. Chartrand and Mr. Baccardax gave personal guarantees to CSEPR, even if there may have been technical deficiencies in the Loan Agreement. Having agreed to indemnify the appellants for any liability arising from the personal guarantees, Mr. Corbeil cannot now refuse to indemnify them by relying on these alleged technical deficiencies.

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[51] Finally, the interpretation and approach adopted by the motion judge would lead to an absurd result and great unfairness to the appellants. Where a given construction of a contract leads to an absurd result, courts can assume that this could not have been intended by rational commercial actors in making their bargain: *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60, [2019] 4 S.C.R. 394, at para. 144, *per* Côté and Brown JJ. (dissenting, but not on this point), citing *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 61. When the appellants and Mr. Corbeil negotiated the Indemnity Agreement, it was clearly the parties' intention that Mr. Corbeil and Mr. MacTavish would take on personal liability in the event of a default on the loan from CSEPR. After Mr. Corbeil became an owner, Forage defaulted on its loan and ultimately went bankrupt. The motion judge's interpretation of the Loan Agreement would have the effect of making the appellants responsible for Forage's default after they sold their interests in the company, despite the parties' clear intention that Mr. Corbeil and Mr. MacTavish were taking on this responsibility.

[52] To sum up, at the time the appellants and Mr. Corbeil entered into the Indemnity Agreement, they all understood that the appellants had provided personal guarantees to CSEPR. This was a reasonable interpretation of the Loan Agreement. The motion judge erred by failing to take the contextual circumstances into consideration and by focusing on the word "*prendra*" divorced from its context when she found that the appellants did not provide personal guarantees to CSEPR.

[53] While I agree with the appellants that the motion judge erred in finding that they had not given personal guarantees to CSEPR for which Mr. Corbeil became responsible under the Indemnity Agreement, I agree with the motion judge that the Corbeil Family Trust has no liability in this case. The Corbeil Family Trust was not a party to the Indemnity Agreement, and the appellants provided no legal basis for finding that it should be responsible for indemnifying them.

[54] Finally, one of Mr. Corbeil's alternative arguments on the motion was that the appellants had not met their obligation under the Indemnity Agreement to give him notice of CSEPR's claim and an opportunity to defend the claim. The motion judge did not decide this issue. This issue must be decided before a final determination can be made on whether Mr. Corbeil is to indemnify the appellants for the amount of the settlement and their legal costs. I would remit this issue back to the Superior Court.

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D. DISPOSITION

[55] I would allow the appeal and make a declaration that the appellants provided personal guarantees to CSEPR. I would remit the matter back to the Superior Court to determine whether the appellants complied with clause 2 of the Indemnity Agreement and whether Mr. Corbeil is required to compensate the appellants for the settlement with CSEPR and their costs of the litigation with CSEPR.

[56] As agreed between the parties, I would award $21,000 all inclusive in costs to the appellants as the successful parties on the appeal.

Released: October 2, 2026 “P.R.”

“L. Favreau J.A.”
“I agree. Paul Rouleau J.A.”
“I agree. Thorburn J.A.”

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