

## **SUPERIOR COURT**

CANADA  
QUEBEC PROVINCE  
DISTRICT MONTREAL

NOT : 500-17-079730-134

DATED : August 8, 2016

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**IN THE CHAIR: : HONOURABLE CHANTAL MASSE, JCS**

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**Tomee SOJOURNER**  
plaintiff

c.

**COUNCIL OF ADMINISTRATIVE JUSTICE**  
defendant

and

**PALMA DE LUCE**

and

**A & F INVESTMENTS INC. & ZAVECO LTD**  
Implicated

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### **JUDGMENT**

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[1] This appeal for judicial review appears unusually. It is accompanied by an application for revocation of judgment of the questioning Luce De Palma, stage manager at the Rental Board (the "Stage Manager"), the Honourable Guylène Beaugé that hosted forthwith the application for judicial review of the applicant Tomee Sojourner ( "Ms. Sojourner") following a decision of the review Board Committee of the administrative justice ( "the Committee") deciding that the complaint of Ms. Sojourner at the location of the Stage Manager was clearly unfounded and rejecting this ground.

[2] The withdrawal request was received by Justice Lalonde, the record was completed thereafter. With the agreement of all parties, the Tribunal so that

request that the appeal for judicial review on the merits, that makes the art. 348 CCP [\[1\]](#)

[3] The request for revocation of judgment is not really contested, the uncontradicted evidence showing that the Stage Manager had never received the application for judicial review, which had not been served personally. The judicial review process has by default against her and she could not be heard. Art. 346 CCP lends the conclusions withdrawal in such circumstances.

[4] It is worth noting that the judgment of the Beaugé was made while it had a less complete proof that the undersigned. The version of the Stage Manager provided the Committee had in particular not been filed in the record of the Superior Court when it made its decision. The judge Beaugé therefore had only version of Madame Sojourner and audio recording of the hearing in response to the complaint to the Council of Administrative Justice was brought (the "Board"). The Stage Manager, of course, had not had the opportunity to submit its arguments.

[5] Nevertheless, the Court does not sit on appeal from the decision of the Beaugé. Given that the withdrawal request has merit, it must decide the application for judicial review on the evidence and arguments submitted to it, which differ in some respects, what has been submitted to the Beaugé.

## **1. FACTS**

[6] The facts are not in dispute, except on a question.

[7] Ms. Sojourner was presented at a hearing of the Régie as she had been prosecuted for damages in the amount of \$ 8,600 by the owner of his former home for abandoned prematurely it without paying rent. The day before the hearing, Ms. Sojourner responded to that request by asking what his own claim for damages hearing, with the owner, arguing that housing was contaminated with mold and it's because of the poor housing she had to leave.

[8] Note that both in its complaint that the originating motion for judicial review, Ms. Sojourner rather indicates it was presented in order to claim damages from its former owner without mentioning that the request must be heard that day there was rather that thereof.

[9] At the hearing, the Stage Manager noted that the two applications should be joined, and could be heard the same day. It therefore postponed the case to enable the parties to prepare their evidence accordingly. The Stage Manager is more particularly mentioned to Mrs. Sojourner she probably should adduce expert evidence on the issue of mold and notably suggested to consult a lawyer when the latter wanted to ask him more questions. She also suggested the parties try to settle the case. The Stage Manager has therefore rendered any adverse decision vis-à-vis Ms. Sojourner. She just managed the record to allow both parties, including Ms. Sojourner, can be heard on their respective claims while their share of the possibility for them to have settlement discussions. The hearing lasted all in less than 15 minutes.

[10] Another feature of the hearing, it has conducted in both languages, the Stage Manager contacting Ms. Sojourner English and the representative of the owner in French. It should be noted that at no time during the hearing, Ms. Sojourner has said she did not understand what was happening or has

required the presence of an interpreter or translation of what was said, French. It has not been referred to his race or sexual orientation.

[11] At the hearing, the Stage Manager is referred to as Mrs. Sojourner " *Mr. Sojourner* "Several times despite the interventions of the latter indicating the need to address her as" *Mrs. Sojourner* "and that the owner's representative also referred in this way to Ms. Sojourner. While Ms. Sojourner has again stated that he had to address her as Mrs. Sojourner and not Mr. Sojourner, the Stage Manager, finally finding his mistake, it's less analysis than did the Committee , apologized. Let us say at once that listening to the audio recording and light version of the Stage Manager, although about Madame Sojourner were quite audible, it was not unreasonable to conclude, as 'did the Committee that the Stage Manager had not understood the first attempts to Ms. Sojourner rectify its misidentification. The tone of the Stage Manager at the time it finally seems to understand his mistake and his spontaneous apology, among other elements, certainly provide reasonable support this conclusion.

[12] Ms. Sojourner argues that the Stage Manager would have added "*it must be your hair,*" which denies the Stage Manager through a letter sent by his lawyer to the Committee. An official transcript provided to the hearing by counsel for Mrs. Sojourner indicates that the comment was made, another official transcript presented by the prosecutor of the Stage Manager, rather indicates that it would have said "*sorry for the error.*"

[13] Audio recording listened repeatedly [2] is inconclusive on what was specifically said. From the perspective of the Tribunal, the recording is inaudible during this passage but what we hear can hardly be understood as one or the other versions transcribed when listening using the equipment the Tribunal. Perhaps one or other of the official reporters he has disposed of more sophisticated devices, but nothing in the evidence to determine where or if it is indeed the case.

[14] To simplify everything, no transcript had been produced to the Committee's file.

[15] He has excluded the Committee's version of Madame Sojourner in its complaint (which is consistent with the transcript it produced before the undersigned, but not before the Committee) or has he retained and dismissed the complaint despite this? He has not dealt with explicitly in its decision, as discussed below.

[16] The hearing continued after the Stage Manager will be excused and it persisted in what his attorney called it slip, contacting Ms. Sojourner saying "... *Mr Mrs., apologize*" to two times and "*Sir, Mrs.*" to another recovery. The hearing then ends after the Stage Manager will be sent twice to Ms. Sojourner using the term "*Mrs.*", As it should.

## **2. COMPLAINT, THE EXPLANATION AND RELEVANT LEGISLATION**

[17] The complaint of Ms. Sojourner based on different allegations but the essential elements are found from paragraphs 24 and following of this:

"24. In summary, I take issue with the fact That

- 1) Respondent De Palma Repeatedly Addressed me as Mr. Sojourner ALTHOUGH Both the Opposing Party, Mr. Paliotti, and myself we corrected her multiple occasions due to my physical appearance and her perceptions and bias;
- 2) Respondent De Palma Addressed Mr. Paliotti in French with no translation, THUS Hindering me from fully understanding and participante in the hearing; and
- 3) Respondent De Palma Addressed me in a discourteous Clearly, hostile, dismissive and differential Manner, qui Was in stark contrast to the courteous and friendly Manner in qui Mr. Paliotti Was Treated.

### **THE VIOLATIONS OF THE CODE OF ETHICS OF THE COMMISSIONERS OF THE BOARD OF HOUSING AND OTHER LAWS**

21. I submit That Respondent De Palma violated Sections 6, 7, and 8 of the Code of Ethics of the Commissioners of the Régie du logement [\[3\]](#) (hereafter, "the code");

22. I submit That Respondent De Palma violated s. 6 of the Code by failing to be impartial and objective Clearly:

- Respondent De Palma displayed bias, or at least a reasonable apprehension thereof, based on the intersectionality of race, gender identity, sexual orientation, and language;

25. I submit That Respondent De Palma violated s. 7 of the Code by failing to perform her duty to show Appropriate consideration Towards everyone without discrimination:

- Respondent De Palma displayed bias, or at least a reasonable apprehension thereof, based on the intersectionality of race, gender identity, sexual orientation, and language;
- Respondent De Palma continued to address me as "Mr. Sojourner", DESPITE HAVING-been corrected on multiple occasions;
- Respondent De Palma Conducted Entirely parts of the hearing in French, qui Prevented me from fully understanding and participante in the hearing;
- Respondent De Palma made an offensive remark Inappropriate and That Is based on gender identity (ie "It's probably your hair.");

26. I submit That Respondent De Palma violated s. 8 of the Code by failing to be respectful and courteous Towards me:

- Respondent De Palma Did not acknowledge me prior to the commencement of the hearing;
- Respondent De Palma Was Unnecessarily cold in her mannerisms Towards me;
- Respondent De Palma Did not allow me to express my points of view, while the ALLOWING Opposing party to speak freely;

27. I submit That by Engaging in Clearly unprofessional, Discriminatory and offensive conduite, Respondent De Palma HAS violated my right to equal protection and benefit of the law without discrimination based on race, gender identity, sexual orientation and language, as protected by section 4, 10 and 12 of the Quebec Charter of Human Rights and Freedoms (Hereafter, "The Quebec Charter") and the section 15 of the Canadian Charter of Rights and Freedoms (Hereafter, "the Canadian Charter");

28. I submit That gender identity is an Analogous ground of discrimination prohibited by the Quebec Both Charter and the Canadian Charter;

29. That I submit by Engaging in unprofessional Clearly, Discriminatory and offensive conduite, HAS irreversibly Respondent De Palma has created serious apprehension of bias in the proceedings That HAS put the administration of justice into disrepute;

30. I submit que la violations of my constitutional rights to equality before and under the law, resulting and from the Clearly unprofessional, Discriminatory and offensive conduite of Respondent De Palma, must be Addressed by the Council of Administrative Justice in conformity with Canadian jurisprudence on discrimination based on the aforementioned grounds and with the standards set out by the Yogyakarta Principles (Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity).

**FOR THESE REASONS, I ASK THAT THE COUNCIL OF THE ADMINISTRATIVE JUSTICE:**

**INVESTIGATE AND DECLARE** That my complaint is well-founded and That I-have-been a victim of discrimination and bias based on the intersectionality of race, gender identity, sexual orientation and language;

**INVESTIGATE AND DECLARE** That Respondent De Palma's conduite is in violation of sections 6, 7, and 8 of the Code of Ethics of the Commissioners of the Régie du logement;

**INVESTIGATE AND DECLARE** That Respondent De Palma's conduite is in violation of Sections 4, 10 and 12 of the Quebec Charter and section 15 of the Canadian Charter;

**Condemn** Respondent De Palma to a reprimand of the Council of Administrative Justice;

**ORDER** Respondent De Palma Provide me with a written apology.

**THE WHOLE OF WHICH IS MOST SUBMITTED respectfully. " [4]**

[18] The explanations provided by the Stage Manager through his lawyer essentially invoke:

- there was misunderstanding because of an inaccurate perception or an erroneous impression may be explained by how Ms. Sojourner has itself described in its complaint [5] and his first name of "Tomee"; rehearsals

are due to slips of the tongue and the "*persistence strength of the original perception*" [6] of the Stage Manager;

- that recording demonstrates an empathetic tone and she denies having laughed Mrs. Sojourner and having made a comment on his hair, recording the finding not elsewhere;
- the Stage Manager was addressed in English to Ms. Sojourner and owner's representative to the French and the record shows that Ms. Sojourner could adequately participate in the hearing and understood what was happening;
- that the alleged exceptions of lack of impartiality and objectivity, lack of consideration, discrimination and lack of courtesy does not include the context in which the hearing lasted 12 minutes during which the Stage Manager allowed the application of Ms. Sojourner, brought together the requests and carried all for a debate on the substance, demonstrating that it has granted any listening and caring appropriately to requests thereof;
- the only real complaint is the confusion of the Stage Manager using the word "*sir*" rather than "*Mrs.*", which would be a benign misunderstanding the nature of Freudian slip when made in good faith and not with the characteristics of a fault ethical.

[19] The Council of Administrative Justice has jurisdiction over ethics complaints brought to the place of commissioners of the Régie du logement under the following provisions:

- *Act on the Régie du logement* [7] :

"8 .. The Government may, by regulation, a code of ethics applicable to commissioners.

**8.1.** The Code of Conduct sets out the rules of conduct and the duties of the commissioners towards the public, the parties, their witnesses and the persons representing them; it reads, derogatory behavior honor, dignity or integrity of the commissioners. It can also identify situations or activities incompatible with their office, their obligations concerning disclosure of their interests and the duties they may perform gratuitously.

The code of ethics may provide special rules for part-time commissioners.

**8.2.** Anyone can file a complaint to the Council of Administrative Justice against a commissioner of the Board, for a breach of the Code of Ethics, to a duty imposed by this Act or conflict of interest regulations relating to or incompatible.

**8.3.** The complaint must be in writing and briefly state the reasons on which it is based.

It is transmitted to the Council seat.

**8.4.** When the Council is reviewing a complaint against a commissioner, act in accordance with Articles 184 to 192 of the Administrative Justice Act (chapter J-3), with the necessary adaptations.

However, where, pursuant to Article 186 of the Act, the Council forms an inquiry committee, two members of the committee shall be chosen among the members of the Board referred to in paragraphs 1 ° to 6 ° and 9 ° Article 167 of the Act, which at least does not exercise the legal profession and is not a member of one of the bodies of the Administration whose president is a member of the Council. The third is the member of the Council referred to in paragraph 8 or selected from a list drawn up by the chairman of the Board after consultation with all the commissioners. In the latter case, if the committee finds the complaint, the member also participates in the deliberations of the Council to determine the penalty. "

- *Administrative Justice Act* [\[8\]](#) :

**"184.** When the complaint is made by a Council member, that member can not participate in the consideration of the complaint.

When the complaint is against a member of the Presidents Council, the Council may attend meetings of the Council until a final decision has not been made on the complaint and must be replaced during this period by the vice president of the organization whose president is referred member.

**184.1.** The Council shall forward a copy of the complaint to the member who is the subject and can ask for an explanation.

**184.2.** Unless the complaint is lodged by the Minister, the Council is a committee composed of five members, to examine the admissibility of complaints.

Two of them are chosen from the members of the Board referred to in paragraph 9 of section 167; the others are among the members representing each of the bodies of the Administration whose president is a member of the Council.

The quorum of the Committee is three members.

**184.3.** The committee may require any person the information it considers necessary and examine the relevant record even if it is confidential under Article 89.

**185.** The committee may dismiss any clearly unfounded complaint. It sends a copy of its reasoned decision to the complainant and the Council.

**186.** The Council, if the complaint was considered admissible or whether it is given by the Minister shall send a copy to the member and, if applicable, to the Minister.

The Council is an investigative committee composed of three members assigned to investigate the complaint and decide on it on behalf of the Council.

Two of them are selected from the members of the Council referred to in paragraphs 3 to 9 of section 167, which at least does not exercise the legal profession and is not a member of one of Administration agencies whose president is a member of the Council. The third is the member of the Council referred to in paragraph 2 or selected from a list drawn up by the President of the Tribunal after consultation with all its members. In the latter case, if the committee finds the complaint, the member also participates in the deliberations of the Council to determine the penalty.

If the complaint is against a president or a vice president of one of the bodies of the Administration whose president is a member of the Council, the third member is selected from Council members or among the names on the lists established by the presidents of these organizations. It should however not be a member of the body including the president or the vice president is the subject of the complaint.

**187.** The Council shall designate from among the committee members who are lawyers or notaries a president; the latter shall convene the committee meetings.

**188.** For the purposes of an investigation, the Investigation Committee and its members have the powers and immunity of commissioners appointed under the Commissions of Inquiry Act (chapter C-37), except the power to order imprisonment.

**189.** The Council, if a compelling reason may, after consulting the committee of inquiry, suspend the member for the duration of the investigation.

**190.** After giving the member who is the object of the complaint, the Minister and the complainant an opportunity to be heard, the Committee shall decide on the complaint.

If it considers that the complaint is valid, it may recommend either a reprimand or suspension with or without pay for the period he determines, or dismissal.

The committee shall send to the Council its investigation report and reasoned conclusions accompanied, if appropriate, its recommendations as to penalty.

**191.** The Council will then forward a copy of the investigation report and the committee's conclusions to the member who is the subject of the complaint, the complainant and the Minister.

**192.** If the committee finds the complaint is justified, the Council, on the recommendation of the Committee or a reprimand to the member and advise the Minister and the complainant or forward to the Minister's recommendation of suspension or removal proceedings and notify the member and the complainant.

When the recommended sanction is the removal of a member, the Board may immediately suspend for a period of 30 days. "

[20] The provisions of the *Code of Conduct for Commissioners of the Régie du logement* [9] which were given by Ms. Sojourner are:

'6. Commissioners shall be seen to be impartial and objective.

7. Shall perform their duties showing respect to all, without discrimination, appropriate behavior.

8. Commissioners shall show respect and courtesy to the people who come before him, while exercising the authority required for the proper conduct of the hearing. "

[21] The Committee in its decision also refers to the art. 3 of the Code of Ethics, which provides that shall perform their duties with honor, dignity, integrity and diligence.

[22] Ms. Sojourner refers more to the following provisions in its complaint:

- *Quebec Charter of Rights and Freedoms* [10] :

*"Art. 4. Everyone has the right to the safeguard of his dignity, honor and reputation."*

*"Art. 10. Everyone has the right to the recognition and exercise in full equality, rights and freedoms, without distinction, exclusion or preference based on race, color, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate handicap.*

*Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right. "*

*"Art. 12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public."*

- *Charter* [11] :

*"Art. 15 (1) The law does respecter of persons and applies to all, and all are entitled to equal protection and equal benefit of the law without discrimination, including discrimination based on race, national or ethnic origin , color, religion, sex, age or mental or physical disability.*

*(2) Subsection (1) does not preclude any law, program or activity to improve the situation of disadvantaged individuals or groups, in particular because of their race, national or ethnic origin, color , religion, sex, age or mental or physical disability. "*

### **3. COMMITTEE DECISION AND APPEAL IN JUDICIAL REVIEW**

[23] The Committee described the complaint in its decision:

"[1] On 26 June 2013, the Council of Administrative Justice receives a complaint Ms. Sojourner Tomee towards Luce De Palma, administrative judge at the Régie du logement (RDL).

[2] The complainant alleges that the administrative judge De Palma for having addressed her using masculine terms such as "sir". " [\[12\]](#)

[24] It's a bit short considering the wording of the complaint as reproduced above.

[25] The gist of the decision of the Committee:

"[6] To examine the admissibility of a complaint, the Committee considers the following three questions:

- at) Are the allegations contained in the complaint of an ethical nature?
- b) On their face, do the facts support the allegations in the complaint?
- c) If the allegations prove true, they could undermine public confidence in administrative justice?

[7] The Committee considers that a complaint is manifestly unfounded when he says no to any of these three questions.

a) The ethical nature of the complaint

[8] The complainant's allegations about the conduct of the administrative judge De Palma appear to be ethical nature since they concern a possible breach of the following provisions of the Code of Conduct for Commissioners of the Régie du logement [\[13\]](#) :

3. The item shall perform their duties with honor, dignity, integrity and diligence.

Article 7 shall perform their duties showing respect to all, without discrimination, appropriate behavior.

Article 8. Commissioners shall show respect and courtesy to the people who come before him, while exercising the authority required for the proper conduct of the hearing.

[9] The answer to the first question about the ethical nature of the allegations of the complainant being positive, necessary to examine whether they are supported by the facts.

b) Examination of the facts with regard to the allegations in the complaint

[10] The Committee considered objectively the elements to corroborate or refute the allegations of the complainant to determine if they are supported by the facts.

[11] The listening notes of the sound recording of the hearing allow members to see that indeed the administrative judge addressed the complainant using male qualifiers, including "sir."

[12] The members noted that the administrative judge did not seem to hear when Mrs. Sojourner says she is her "madam".

[13] Members agree that this seems an oversight by the administrative judge and has no desire to disparage the plaintiff. Instead, they find it rather apologizes and use a polite tone throughout the hearing.

[14] Thus, although the allegations of the complaint appear to fall within the ethics, the Committee believes that the above complaints are not supported by the facts brought to its attention.

Therefore, the examination of the admissibility of complaints to the Committee:

- DISMISSES the complaint. " [14]

[26] Ms. Sojourner demand that this decision be broken primarily for the following reasons:

- The Committee did not take into account all aspects of the complaint, including the language aspect of it, nor the comment "*it's probably your hair*" alleged by Ms. Sojourner, interruptions, the abrupt and unfriendly tone which was reserved for Mrs. Sojourner, and that it would be less allowed him to express these elements are crucial and relevant;
- The Committee has committed a reviewable error in concluding that the Copy Editor seemed not to hear Ms. Sojourner when it asked what addresses her as such;
- The Committee has committed a reviewable error in concluding that the Reviser was polished to the place of Madame Sojourner, audio recording reveals that she used a softer tone with the owner's representative when it employed a more aggressive tone and abrupt with Ms. Sojourner, she interrupted more Ms. Sojourner, she made it a point on her hair and revealing as it did not allow Ms. Sojourner refute an argument the owner's representative;
- The Committee did not correctly applied the test relating to allegations of bias, it is objective and not subjective;
- The Committee did not correctly apply the test for allegations of discrimination, which does not imply an intention to discriminate is present, requires all alleged grounds of discrimination are taken into account when there is more and requires an objective examination is made of the circumstances;
- The Committee did not consider the failure of the Stage Manager of procedural fairness by indicating when a request for clarification on the burden of proof, that it was not his lawyer and would not have allowed him to refute the argument of the following owner's representative that the apartment was a place where life was good ;.

[27] The Stage Manager argues that the Committee's decision was reasonable and in the absence of evidence in connection with several of the allegations of Ms. Sojourner, it was not unreasonable to not refer to each of them.

#### **4. STANDARD OF REVIEW**

[28] The decision under this action does not involve the exercise of a judicial function because it occurs at the stage of consideration of the admissibility of a complaint [15] . The Committee established for this purpose by the Board makes a decision on the admissibility of complaints by considering the complaint, the explanation of the decision maker in the

subject, if he is asked, the information can choose to require of any person it deems necessary and relevant records which may be noticed [16]. When rejecting a complaint as manifestly ill-founded, it shall forward a copy of its reasoned decision to the complainant and the Council [17].

[29] Where the complaint is deemed admissible, it is the investigative committee then established by the Council takes over, to investigate and rule on the complaint [18]. The complaint therefore beyond the control of the complainant which must nevertheless be given the opportunity to be heard at this stage, which reports to a process involving the exercise of judicial functions [19].

[30] Let us open a parenthesis here. The new provisions of the *Code of Civil Procedure* applicable to appeal for judicial review no longer make distinctions procedurally on remedies to be exercised at the place of decisions made within the framework of the judicial office or otherwise, former judicial review proceedings and nullity having been unified. In addition, the parties have not raised any procedural issues at the hearing. Finally, even if that were the case, it has already been possible to consider or treat a motion for judicial review as an invalidity action [20]. End of parenthesis.

[31] The case law establishes that the Board and its committees with expertise in ethics and no remedy is provided in place of their decisions therefore prove to be final [21]. Determining the admissibility of an ethics complaint is an exercise that is at the heart of the specialized jurisdiction by law and depends on the interpretation and application of the Act establishing here the *Justice Act administrative*. The presumption that the standard of review applicable to decisions in this context is that of reasonableness plays [22].

[32] Following the recent decision of the Supreme Court in *Laval School Board v. Union of Laval Area Education* [23], although the legal principles on which it is alleged that a reviewable error was committed by an expert decision maker is important, the question of whether these rules and principles apply when they are well known rather controversial, do not imply that the presumption is automatically rejected. According to the majority decision of the Supreme Court in this case, when a consistency of the order juridique fundamental eu country is not in question and that the issue is not foreign to the area of expertise of the decision maker, the presumption imposing the reasonableness standard of review is not postponed.

[33] A party can demonstrate that the presumption does not, for example, when the contours of law principles of paramount importance to the whole legal system is at issue [24].

[34] In addition, it is stated particularly in the case of *Nurses Union, respiratory therapists, nursing assistants Heart-du-Québec (SIIIACQ) v. Centre hospitalier régional de Trois-Rivières* [25], it is only when an issue of crucial law for the legal system and appartena nt not the area of expertise of the Committee that would dissociate the facts arises that the standard of decision correct would be applicable [26].

[35] In this case, the principles of law applicable to discrimination and impartiality are well known and are not controversial. The standard of

reasonableness will be applicable to the extent that it would be necessary to determine the pleas to those principles. As for the issues to the facts, discretion or policy, or questions of mixed law and fact, this is also the reasonableness standard that prevails [27].

[36] The party seeking to revise a decision on such matters, must demonstrate that this decision does not have the attributes of reasonableness, which include the justification, transparency and intelligibility within the decision-making process as well as the membership of the decision of possible, acceptable outcomes which are defensible in respect of the facts and law [28].

[37] The Supreme Court stated in the case of *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* [29], that the grounds of expert decision maker does not have to draw a clear conclusion on each component of the reasoning which led to its final conclusion and it may be that the reasons do not make reference to all the arguments. following this decision, the reasons must be examined correlation with the result and must be able to find if it is part of the possible outcomes . the grounds meet the criteria of transparency and intelligibility if they allow the reviewing court understand the basis of the court decision and whether the conclusion is one of possible, acceptable outcomes given the facts and the law [30].

## 5. **ANALYSIS**

[38] The Committee, describing the complaint as he did and not dealing in reasons, did not state any reason related to the elements of the complaint relating to language, race and the sexual orientation as well as the allegation according to which there had been breach of the duty of impartiality and objectivity in s. 6 of the *Code of Conduct for Commissioners of the Régie du logement* . He has not specifically addressed the note to hair Lady Sojourner alleged by it.

[39] By not referring to Art. 6 of the *Code of Conduct for Commissioners of the Régie du logement* , it could be considered that the Committee decided implicitly that the allegations of Ms. Sojourner were manifestly ill-founded and that the complaint was inadmissible on this issue. However, there is no motivation stated in this regard while Article 185 of the *Administrative Justice Act* however requires that reasons be given where a complaint is rejected.

[40] It must be said that the facts alleged in the light of the audio recording and the complaint, seem hardly stay the course in this regard. They essentially amount to the subjective perception of Ms. Sojourner -subject of the matter relating to the alleged remark in connection with its hair- and that reveals the recording. Is this enough to conclude that the complaint is of an ethical nature, to support and to undermine public confidence in administrative justice? It is not for the Court but for the Committee to decide these issues. He had to do it seamlessly to understand his reasoning. This is not the case.

[41] Although it may be tempting in the particular circumstances of the case, the Tribunal can complete the motives of the Committee so that there is a total absence of reasons on the question of alleged bias in the complaint.

[42] It is nevertheless worth noting, in *obiter*, that are the criteria for deciding whether there is bias a decision maker in order to drive his challenge could be considered to determine if ethical misconduct has occurred due to a breach of the duty of impartiality and objectivity in s. 6 of the *Code of Conduct for Commissioners of the Régie du logement*. The mere subjective perception, if the facts do not pass the applicable test is objective, is not enough:

- Business *Indian Band Wewaykum v. Canada* [31] and *Quebecor v. CBC* [32], show the applicable test, well known, which is whether a reasonable, sensible, informed that viewing the matter realistically and practically, would think in all likelihood that the decision maker, consciously or not do not decide fairly;
- the following passage from the decision *Quebecor v. CBC*. [33] is also of interest:

"[...] We must also take into account the human aspect of things: the witnesses, the lawyers and the judge may be more or less clear, more or less versed in the matter that is the subject of evidence, or more less fatigued or stressed; even in the best case, misunderstandings are possible, such differences and disagreements. This is normal and does not usually give a decision on recusal requests nor justifies it. In this case, if there was it, the challenge would not be appropriate. "

[43] The analysis is required in light of these known principles but applied in the very particular context of a complaint of an ethical nature within the expertise of the Board and its Committees shall be conducted by the Tribunal without usurping the role and functions of these. We must therefore, at least on this issue, return the file, even if it seems very thin.

[44] The decision mentions reasons related to Articles 3 [34], 7 and 8 of the *Code of ethics of commissioners of the Board of Housing* and the allegations relating to how the Stage Manager turned to Ms. Sojourner by designating as Mr. Sojourner. However, it completely ignores the issue of language and does not explicitly address the alleged remark on the hair of Madame Sojourner, or the argument that race and sexual orientation are concerned.

[45] Again, it should be noted that the Committee had either failed in its duty to properly justify its decision or either failed to rule on certain aspects of the complaint under Articles 7 and 8 of the *Code of Conduct for Commissioners of the Rental Board*. As for the aspect of the complaint in connection with the issue of language, which is also a prohibited ground of discrimination according to art. 10 of the *Quebec Charter*, how the Committee defined the complaint may fear that he did not rule. Similarly, if there were no facts allowing the complainant to rebuke the Stage Manager on other aspects should have been clearly stated.

[46] Given these findings related to insufficient motivation or failure to rule on all elements of the complaint, it must be completely cancel the Committee's decision and return the case to the Commission to be dealt with. It is therefore not necessary for the Court to decide all other issues raised by Ms. Sojourner nor discuss what is and is not valid as evidence in the context of the judicial review application, including transcripts transferred to the Tribunal during argument from both sides.

[47] It is as if the Committee considered that certain elements of the complaint were not worthy to be a motivation rejecting. But it is precisely at the stage of considering the admissibility of complaints, explain and motivate the rejection of manifestly unfounded complaints considered. If the Committee really considered, as argued by the prosecutor of the Stage Manager, that the evidence was so thin on the issues that this constituted grounds for rejection, he had to make in its decision. Ignorance of whole sections of the complaint and a lack of motivation that results about these forces the return of the dossier to the Council which will form a committee able to decide properly reasoned decision on the admissibility of all the elements the complaint of Ms. Sojourner.

[48] As the Gascon J. in *the Executive Committee of the Collège des médecins du Québec c. PILORGE* [35] while it was a decision to impose a training period and a doctor commenting on the decision of the Supreme Court in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador ( Treasury Board)* [36]:

"[13] In my view, the judge did not err in quashing the decision of the Executive Committee on 26 May 2011 in the circumstances. Insufficient reasons for the decision on a key element representations of the respondent leaves no choice in this case. [...]

[21] [...] the decision is silent on why the substantive arguments submitted by the respondent are discarded. [...]

[22] Contrary to the appellants, the trial judge could assume that the arguments raised before the Executive Committee had been properly weighed and considered. Indeed, the reasons for the decision not to allow him to infer or to assess the extent.

[...]

[32] At the hearing, counsel for the appellants argued that the conclusion of the Executive Committee of the sanction imposed is a reasonable outcome in this case. Therefore, according to him, this result overcomes disability or laconic statement. In support, he emphasized the teachings of the Supreme Court in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* .

[33] I believe that this judgment is of no assistance to the appellants in this case. First, counsel for the appellants in that case reads more than he stated. Second, the proposal leads, ultimately, to an absurd result.

[34] It is true that in that judgment the Supreme Court indicates that insufficient grounds does not allow itself to break a decision and the reasons must be considered in correlation with the result (para. [14] ). After all, the Court stated inter alia that "the motives meet the criteria established in *Dunsmuir* if they allow the reviewing court to understand the basis of the court ruling [..]" (para. [16]). It further reiterates that in the absence of grounds in circumstances where they are necessary, there is a breach of a duty of procedural fairness, which constitutes an error of law (para. [22]).

[35] Now this and precisely the situation in this case. The reasons given do not allow to understand the basis for the decision, while the

circumstances imposed to explain why the representations made by the Respondent were not retained. Therefore, without adequate reasons, we can not know if the ultimate decision is in fact reasonable.

"

[49] On the question of a breach of duty to exercise its functions with or without discrimination, appropriate behavior, the Tribunal will in *obiter*, make some comments. The concept of discrimination does not necessarily imply an intention; a discriminatory effect on the person who claims to be a victim is necessary, however. When this concept is examined in the context of an action for damages, there is no reason to consider the intention (except for an award of exemplary damages), nor even, in some cases, the existence of a civil fault [37].

[50] In the context of a complaint by a person of an ethical nature art. 7, the intention is not a prerequisite for finding that there is discrimination. To decide otherwise would effectively allow discriminatory attitudes to persist solely because of the good faith of the person paying it. The standards for the behavior of all change over time, which is the decision-maker or a private citizen. Good faith can not excuse all behavior.

[51] It is also of whether the conduct which it alleges was discriminatory may constitute ethical misconduct warranting ethical sanction. It is human behavior the subject of the complaint must be scrutinized, considering all the circumstances. The assessment as to the existence of a breach of ethics or of facts sufficient to conclude that the admissibility of a complaint alleging such an ethical breach within the expertise of the Board and its committees.

[52] Generally, outside the ethical context, although the emotions felt by the person who is the subject of hurtful comments are part of the analysis, they are not the only element to be taken into account before finding discrimination. We must consider all the relevant facts and the seriousness of the infringement.

[53] The prosecutor Lady Sojourner referred the Court to several authorities on the issue of discrimination, including the case *Calego International inc. V. Commission of Human Rights and Youth Rights* [38]. The Tribunal allows to quote a relevant part of this decision, stating that the violation of dignity arising about to be a real seriousness, a high threshold to cross, before concluding that they are discriminatory and that Articles 4 and 10 of the *Quebec Charter* are violated:

"[47] The judge subsequently finds that this speech has caused moral damage to the Complainants. Their strong reaction at the meeting and their efforts the next day and in the days that followed sufficient to support this finding.

[48] These words, more difficult question, are provided discriminatory under the *Charter* ?

[49] It is true that in one day he said to nonsense and nonsense that hurt a friend, a coworker, a junior, a neighbor, etc. In all these cases, the dignity of a person is more or less reached. However, there is not every time a fault which has the effect of "nullifying or impairing" the safeguarding of the fundamental right to dignity protected by the

*Charter* and which gives rise to an exemplary sanction by awarding damages -intérêts punitive.

[50] It takes someone with real seriousness. The threshold is high. Otherwise, we trivialize the *Charter* and recklessly multiplying the lawsuits to get big money and not to safeguard fundamental rights.

[51] According to the findings of fact by the judge, the attack on the dignity of the Complainants is such that the threshold for application of the *Charter* has been crossed. The evidence supports the conclusion "

[54] In this case, the following remarks were made by the representative of the employer at the place of Chinese workers " . *This is Canada, not China We take shower and shampoo every day, wash hands with soap, flush the toilet after-use. Do not piss on the floor ... This is my kitchen, not yours. My kitchen, I want it clean. You Chinese eat like pigs.* " [\[39\]](#).

[55] It is obvious here that the complaint of Ms. Sojourner is not intended in any way to get " *big money* ", since this is not the subject of an ethics complaint. The complaint of Ms. Sojourner and these procedures can not be reasoned that because it is for her a question of principle. The fact remains that even to advance noble principles, like those that animate certainly here, you have to cross a certain threshold of severity of the infringement when alleged discrimination.

[56] The concept of discrimination that is found in Art. 15 of the *Canadian Charter* , also relied on by Mrs Sojourner, to the extent that it would be applicable here [\[40\]](#), also requires proof of a kind of breach create a disadvantage by perpetuating prejudice or stereotyping [\[41\]](#).

[57] In this case, the physical appearance of Ms. Sojourner, its n full om ( "Tomee Sojourner"), the apology spontaneously by the Stage Manager, the fact that the end of the hearing, which lasted less 15 minutes, the Stage Manager turned to Ms. Sojourner using the "word *Mrs.* " twice, the decision taken at the hearing, comments to assist Ms. Sojourner or can be interpreted as such [\[42\]](#) or explanations in connection with its burden of proof regarding mold and refers to a service that can assist so she could consult a lawyer if she wished and politeness which she demonstrated all throughout the hearing -subject of the analysis can be made of the incorrect designation of Ms. Sojourner and about alleged liés- that are there, the tone used by the Stage Manager (the one that can be objectively hear on registration and not the only perception could have Ms. Sojourner), include items to consider, as such, the fact that Ms. Sojourner had to call to order the Stage Manager several times before getting to be properly designated by it and the frustration and humiliation she might have felt, no doubt of that. The elements related to the language should also be analyzed. If the Committee was satisfied, for example, that the words in both languages enabled all to understand most of what was going on even without systematic translation from French to English and English to French, he there could be a relevant factor. If other arguments were not based on any fact, at least none that goal, it would have been welcome to the show.

[58] It is far from clear, even to resume practice and even considering that the alleged statement was made, that the complaint of Ms. Sojourner related art. 7 of the *Code of Conduct for Commissioners of the Régie du logement*,

establishing the duty of the directors to exercise their duties showing respect to all, without discrimination, appropriate behavior, can pass the account the admissibility test light of all elements that must be considered and the high level of achievement has to be established to consider that discrimination.

[59] This assessment and the application of general principles on discrimination in the context of ethics, however, is entirely within the Committee and not of the Superior Court. It is against-indicated for the Superior Court to state a formal opinion on these matters Whereas the aspects of the complaint relating to the language and bias, in particular, have been no discussions in the decision, having been excluded from the claim elements as set out by the Committee and therefore rejected *de facto* without the reasons for this. The complaint related art. 8 is not easily separable complaints made under sections 6 and 7.

[60] The original application for judicial review asks the Court to annul the decision of 4 October 2013 and refer the case to the Council for a new decision is made. These applications are well founded.

[61] Given the time elapsed, it is not assumed that the process can be resumed before the same members nor that it would be desirable in the circumstances [\[43\]](#). It is for the Council to decide what happens next within the constraints that are his.

[62] It would not be appropriate to assume court costs on the demand for withdrawal by Ms. Sojourner since the pleas raised at the bottom are not retained and that it has not really challenged this request on the withdrawal . The usual rule will apply by cons in regard to legal costs in connection with the application for judicial review.

### **FOR THESE REASONS, THE COURT:**

[63] **GRANTS** the motion in part of the questioning in revocation of judgment, but **WITHOUT LEGAL COSTS** ;

[64] **RETRACT** the judgment of the Superior Court rendered from the bench during the hearing of 21 October 2014;

[65] **DISMISSES** the other conclusions of the motion of the questioning in revocation of judgment;

[66] **GRANTS** the motion to institute proceedings for judicial review;

[67] **CANCELLED** the decision of 4 October 2013 to examine the admissibility of complaints the Council of Administrative Justice Committee;

[68] **REFERS** the matter before the Council of Administrative Justice so that it is disposed of the admissibility of the complaint of Ms. Sojourner Tomee in accordance with this judgment;

[69] **WITH LEGAL COSTS** on the motion to institute proceedings for judicial review only .

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Ms. Madeleine Lemieux Bâtonnière  
Paradis, Lemieux, Francis  
Counsel for the defendant

Me Mario Coderre  
Prosecutor questioned Luce De Palma

Court date :        October 13, 2015

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- [1]        The provisions of *the Civil Procedure Code* RLRQ c. C-25.01 in force are immediately applicable according to Article 833 and therefore its governing the withdrawal as the requested judicial review.
- [2]        The Tribunal heard repeatedly versions registered in the record during the deliberations, including records available to the Committee, which was filed in the record at the hearing. There was also listening to the audience.
- [3]        Code of Ethics of the Commissioners of the Régie du logement, RRQ 2013, c R-8.1, r 1, ss 6-8.
- [4]        Complaint of Mrs. Sojourner, P-1, para. 24 at the end of the conclusions of the complaint. The erroneous numbering is that of the complaint.
- [5]        *Exhibit P-1, para. 1 and 3 "1. I am a 40 - year-old professional Black lesbian woman. I am wide, built burly, dark-skinned, with a shaved head étroitement. I am English-speaking with limited knowledge of French; [...] 3. For the hearing, I Wore black dress pants, a lilac colored dress shirt, a men's suit jacket, and black laced dress shoes . "*
- [6]        Exhibit M-1, p.3.
- [7]        RLRQ, c. R-8.1., Art. 8 to 8.4.
- [8]        RLRQ, c. J-3., Art. 184 to 192.
- [9]        RLRQ, c. R-8.1, r.0.2, s. 6, 7 and 8.
- [10]       RLRQ, c. C-12. Articles 4, 10 and 12.
- [11]       Part 1 of the *Constitution Act, 1982* , being Schedule B to *the Canada Act (UK)*, 1982, c.11, s. 15.
- [12]       Decision of 16 September 2013, Exhibit P-2, para. 1 and 2.
- [13]       Code of Conduct for Commissioners of the Régie du logement, RRQ, c R-8.1, r.0.2.
- [14]       Id., Para. 6-14 and conclusions.
- [15]       See, by analogy, *Larochelle v. Police Ethics Committee* , 2015 QCCA 2105, para. 11, 13 and 36.
- [16]       Art. 184.1 and 184.3 of the *Administrative Justice Act* .
- [17]       Art. 185 of the *Administrative Justice Act* .
- [18]       Art. 186 of the *Administrative Justice Act* .
- [19]       Art. 190 of the *Administrative Justice Act* .
- [20]       *Cyr v. Society of Auto Insurance Quebec*, [2006] 1743 RJQ (CA), para. 94-96.
- [21]       *Renaud v. Committee of Inquiry of the Council of Administrative Justice* , 2010 QCCS 2764, *Cloutier v. Council of Administrative Justice* , 2012 QCCS 524, *Harvey v. Council of Administrative Justice* , 2013 QCCS 3253 and *Grenier v. Council administrative*

*justice* , 2011 QCCS 2650 (request for hosted call rejection, 2012EXP-1131 (CA)). See also by analogy, on the question of the existence of expertise and not the applicable standard, the statutory scheme applicable in this case is different from the present one, *Larochelle v. Police Ethics Committee* , supra note 8, by. 37 and 44.

[22] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* , [2011] 3 SCR 654, at para. 34.

[23] 2016 SCC 8.

[24] *Secular Movement Québec c. Saguenay (City)* , [2015] 2 SCR 3 , para. 51, concerning the obligation of State neutrality stemming from the freedom of conscience and religion.

[25] DTE 2012T-760 (CA) (motion for leave to appeal to the Supreme Court rejected). See also *Montreal School Board v. Alliance of Teachers of Montreal* , JE 2008-1224 (CA) (motion for leave to appeal to the Supreme Court rejected) and *Doré v. Barreau du Québec* , [2012] 1 SCR 395. by. 45 ff.

[26] Id., Para. 22, 23 and 25.

[27] *Dunsmuir v. New Brunswick* , [2008] 1 SCR 190, para. 51 and 53.

[28] Id. , Paragr.47.

[29] [2011] 3 SCR 708.

[thirty] Id., Para. 11-16.

[31] [2003] 2 SCR 259.

[32] JE 2011-480 (CA).

[33] Id., Para.8.

[34] Art. 3 however, was not cited in the complaint of Ms. Sojourner.

[35] JE 2013-955 (CA).

[36] Supra note 29.

[37] *Montigny v. Brossard*, [2010] 3 SCR 64 .

[38] 2013 QCCA 924.

[39] Id, para. 11 of the decision of the Court of Appeal, citing the trial decision reproducing these words in s. 363.

[40] *RWDSU v. Dolphin Delivery Ltd.* , [1986] 2 SCR 573.

[41] *Withler v. Canada (AG)* , [2011] 1 SCR 396 , par.30.

[42] All decision makers have a " *limited duty of care* " to the place of persons representing one and more of the Stage Manager interventions can be seen as to fulfill this duty. See this limited duty to assist, *Ménard v. Gardner*, JE 2012-1772 (CA), para. 48 to 51. It is obvious that this duty has limits and complicates the task of any decision maker must take care to exercise so as to be perceived by advocating a party representative only.

[43] See *Union prehospital (FSSS-CSN) v. Urgences-Santé Corporation*, JE 2016-376, s. 136 and *Université du Québec à Trois-Rivières v. Larocque* , [1993] 1 SCR 471, p.493 and 494. See also: *Montreal (City of) (Côte-St-Luc - Hampstead - Montreal West) c. blue collar union grouped in Montreal* , J .E . 2006-7 46 (CA)., *The Communications, Energy and Paperworkers Local 847 (CLC) v. Society Hood paper packaging division*, JE 2012-48 (CA), *Union of passes blue representing Montreal, local 301 v. Beaconsfield (city of)*, JE 2015-1928 (CA) and *Montreal East (City of) v. Union of blue collar REGR oUPS of Montreal, local 301*, I 2 015- 1929 (CA). It is worth noting that all these decisions were made in the context of arbitration. The administrative courts may be subject to practical constraints that would prevent new makers are seized of the case, as illustrated by the judgment in Case *Executive Committee of the Collège des médecins du Québec c. PILORGE* , supra, note 35.