

# COUR SUPÉRIEURE

(Action collective)

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

N° : 500-06-000977-195

DATE : 30 JUIN 2022

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**SOUS LA PRÉSIDENTE DE L'HONORABLE CHRISTIAN IMMER, J.C.S.**

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**DENIS GAUTHIER**

Demandeur

c.

**BOMBARDIER INC.**

et

**ALAIN BELLEMARE**

et

**JOHN DI BERT**

Défendeurs

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## JUGEMENT RECTIFICATIF

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- [1] **VU** le jugement rendu le 25 mai 2022 dans le présent dossier;
- [2] **VU** que le jugement contient une erreur quant aux pièces qui étaient débattues dans le cadre des objections formulées;
- [3] **VU** que le débat ne portait pas comme tel sur la pièce P-49 mais bien à des demandes se rapportant à des éléments contenus dans cette pièce;
- [4] **VU** que de ce fait que le jugement porte sur plus que ce qui a été demandé;
- [5] **VU** l'article 338 C.p.c.;

[6] **VU** qu'il y a lieu de rectifier le jugement;

**LE TRIBUNAL :**

[7] **RECTIFIE** le jugement prononcé le 25 mai 2022 afin que les paragraphes 17, 22, 27, 38 et 45, ainsi que le titre 3.1 se lisent comme suit :

[17] Lors de l'interrogatoire, Di Bert souscrit à des engagements de fournir de l'information supplémentaire. Les défendeurs transmettent l'engagement #1 le « BOD Meeting : Third Quarterly Report Summary & 2017 F3 Forecast » [...] qui fait partie à présent de la pièce P-49. Une objection est formulée au moment de la transmission, soulevant à nouveau le fait que cette demande de documents dépasse le cadre d'un interrogatoire mené en vertu de l'article 105 C.p.c.

3.1 Les pièces P-43, P-44, P-45, P-46 et P-48

[22] Or, en l'instance, le Tribunal estime que les demandes visant les pièces P-43, P-44, P-45, P-46 et P-48 n'excèdent pas les limites fixées par cette jurisprudence.

[27] Cela étant, à la lecture des sections G, H, I et L de la déclaration sous serment de Di Bert, il ressort sans équivoque que les documents qui étaient recherchés sont ciblés, circonscrits, et visent directement à tester la véracité des allégations de la déclaration de Di Bert. Ils se rattachent précisément à l'allégation. Le Tableau suivant fait la corrélation entre la description de la pièce et l'allégation à laquelle la pièce se rattache.

Pièce	Paragraphe de la déclaration sous serment
(Ligne enlevée)	(Ligne enlevée)
P-43: Board of directors meeting slide presentation for 2018 Budget Review presented on December 12, 2007	<p>47. <u>In December</u> of a given fiscal year and further to the completion of the exercise undertaken to prepare the upcoming fiscal's year's consolidated <u>annual budget</u> and 5 year Strategic Plan, <u>the Board is called upon to approve them;</u></p> <p>69. As it concerns the 2018 fiscal year, <u>Bombardier's budget planning exercise was finalized on December 2017, date at which the Corporation's Board approved the annual consolidated budget for 2018 and Bombardier's annual guidance ("2018 Guidance");</u></p>

		<p>70. <u>Further to its approval by the Board, the 2018 Guidance was announced on December 14, 2017 and presented to the public at the December 14, 2017 Investor Day (Exhibit P-8, as summarized on pp. 11 and 14);</u></p>
	<p>P-44: First quarterly report summary and 2018 F1 Forecast Presentation to Bombardier's Board of Directors, dated May 2, 2018;</p>	<p>52. (...) <u>the quarterly reports are presented to the Corporation's Audit Committee and Board.</u></p> <p>83. The work undertaken by the FP&amp;A group in accordance with the process described above to finalize the F1 forecast took into account information known to the Corporation and its Business Units at the time, including as it pertained to the BT Issues.</p>
	<p>P-45: Board of directors meeting 2018 F2 Forecast and quarterly summary, dated August 1, 2018</p>	<p>85. As is always the case, throughout the F2 process, I oversaw the work of the Corporate Head of FP&amp;A to finalize Bombardier's F2 forecast <i>in anticipation of its presentation to the Corporation's Board;</i></p> <p>88. On August 2018, <u>I presented [...] the Q2 results and F2 Forecast to Bombardier's Board. I informed the Board that the Q2 results exceeded expectations and the 2018 FCF Guidance was reaffirmed. [...]</u></p> <p>89. It is worth emphasizing that the 2018 FCF Guidance had been reaffirmed even when the worse-case stress test scenario had been taken into account. This is true because even contemplating BT and the Corporation posting FCF performance significantly lower than their forecast, there were appropriate contingencies to support the 2018 FCF Guidance.</p> <p>94. The work undertaken by the FP&amp;A group in accordance with the process described above to provide the F2 forecast took into account all of the information known to the Corporation and its Business Units at the time.</p> <p>95. For all the reasons described above, on August 2018, when Bombardier reaffirmed its 2018 FCF Guidance, there was no indication whatsoever that the Corporation's year-end FCF would be significantly lower than the number included in F2, that BT would experience a</p>

	<p>P-46: Third Quarterly report summary 2018 F3 Forecast Presentation to Bombardier's Board of Directors dated November 7, 2018;</p> <p>P-48: "BT Business Review" dated September 27, 2018</p>	<p>significant FCF shortfall in Q3 or that BT's financial projections had not taken into account all of the information known to it about its business, including the 3 projects. Furthermore, there was reasonable basis to reaffirm the 2018 FCF Guidance.</p> <p>98. <u>The BT FCF shortfall occurred in Q3 2018 was caused by events which occurred after August 2, 2018, mostly in the last weeks of Q3 2018, and which were unforeseen. The delays with the 3 Projects were all unexpected and foreseeable at the time of the finalization of the F2 2018 forecast and publication of the Q2 2018 results.</u></p> <p>99. It was only at the end of the first week of October 2018, following the accounting process described in this affidavit, that Bombardier was in a position to know the exact amount of the FCF shortfall, relative to internal plan, for Q3 2018.</p> <p>102. <u>It is only in the fourth week of October, following a detailed review of all cash flows anticipated from all Business Units in Q4 2018, that Bombardier was in a position to determine that FCF generation in Q4 2018 would not suffice to make up for the Corporation's Q3 shortfall, relative to internal plan.</u> However, this did not yet allow for Bombardier to appreciate what impact, if any, this would have on Bombardier's consolidated 2018 FCF Guidance.</p> <p>103. <u>This impact on the 2018 FCF Guidance was assessed during the first week of November 2018 in the days preceding the November 6-7 Board meetings and release of the Q3 results.</u></p> <p>104. On November 6, 2018, I presented the Q3 results to the Finance and Risk Management Committee and the Board.</p> <p>105. <u>On November 7, 2018, I presented the Q3 2018 results to the Audit Committee and the Q3 2018 results and F3 forecast to the Board.</u></p>
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[38] Les objections relatives aux pièces P-43, P-44, P-45, P-46 et P-48 sont donc rejetées.

[45] **REJETTE** les objections quant aux pièces P-43, P-44, P-45, P-46, P-48 et les objections 6.7, 6.8 et 6.15;

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CHRISTIAN IMMÉR, J.C.S.

Me Elizabeth Meloche  
Me Shawn Faguy  
FAGUY & CIE, AVOCATS INC.  
Avocats du demandeur

Me Jean Bertrand  
Me François-David Paré  
Me Francesca Taddeo  
Me Giacomo Marchisio  
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Avocats du défendeur