Unofficial English Translation of the Judgment of the Court

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| Droit de la famille — 211290 | | | | | 2021 QCCA 1123 |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-09-028977-205, 500-09-029017-209 | | | | |
| (550-04-019371-174) | | | | | |
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| DATE: | July 12, 2021 | | | | |
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| CORAM: | | THE HONOURABLE | | JACQUES CHAMBERLAND, J.A.  GENEVIÈVE MARCOTTE, J.A.  GUY COURNOYER, J.A. | |
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| No. 500-09-028977-205 | | | | | |
| P.A. | | | | | |
| APPLICANT – plaintiff | | | | | |
| v. | | | | | |
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| B.C. | | | | | |
| RESPONDENT – defendant | | | | | |
| and | | | | | |
| G.F. | | | | | |
| RESPONDENT – third party intervenor | | | | | |
| and | | | | | |
| ISABEL PRUD’HOMME, in her capacity as ad hoc counsel to the child | | | | | |
| REGISTRAR OF CIVIL STATUS | | | | | |
| IMPLEADED PARTY – impleaded party | | | | | |
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| No. 500-09-029017-209 | | | | | |
| P.A. | | | | | |
| APPELLANT – plaintiff | | | | | |
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| ISABEL PRUD’HOMME, in her capacity as ad hoc counsel to the child  REGISTRAR OF CIVIL STATUS | | | | | |
| IMPLEADED PARTY – impleaded party | | | | | |
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| JUDGMENT | | | | | |
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**WARNING: As this is a family matter, disclosing, publishing, or transmitting any information whatsoever that could identify the parties to this dispute or the child in question is prohibited.**

1. On September 14, 2017, the Superior Court, District of Gatineau (the Honourable Martin Bédard) allowed the appellant’s originating application and rendered a default judgment against the respondent, the child X’s mother, ordering that a DNA analysis of the child and the appellant be conducted, and in the event of confirmation that the appellant is the child’s biological father, declaring him to be the father of the child and ordering the Quebec registrar of civil status to alter the child’s act of birth and the registers of civil status accordingly.[[1]](#footnote-1)
2. On May 25, 2020, the Superior Court, District of Gatineau (the Honourable Suzanne Tessier), dismissed the respondent’s application for revocation of judgment dated September 14, 2017, but granted the respondent’s, stayed execution of the judgment, and revoked the judgment,[[2]](#footnote-2) without legal costs.
3. On July 21, 2020, Tessier J. granted the respondents’ declinatory exception, declared that the Superior Court of Quebec did not have jurisdiction to hear the proceeding on the application claiming filiation of the child X, and referred the case and the parties back to the Ontario Superior Court of Justice,[[3]](#footnote-3) without legal costs.
4. The appellant appealed from the judgment dated May 25, 2020 (file 500‑09‑028977‑205) by filing a notice of appeal and a motion for leave to appeal with the office of the Court on July 3, 2020, and from the judgment dated July 21, 2020, (file 500‑09‑029017-209) by filing a notice of appeal with the office of the Court on August 7, 2020.
5. For the reasons of Chamberland J.A., with which Marcotte and Cournoyer JJ.A. concur, **THE COURT**:

**File 500-09-028977-205**

1. **ALLOWS** P.A.’s motion for leave to appeal the judgment dated May 25, 2020, without costs;
2. **ALLOWS** the appeal in part, each party paying its own legal costs; and, rendering the judgment that should have been rendered;
3. **REPLACES** the conclusions of the judgment with the following:

[translation]

**DISMISSES** the defendant’s application for revocation of judgment; and

**GRANTS** in part the application by a third person for the revocation of judgment, limiting the revocation of the judgment dated September 14, 2017, to only the conclusions of the judgment concerning the plaintiff’s declaration of paternity, that is, paragraphs 8 and 9 of the judgment;

**THE WHOLE**, with each party paying its own legal costs.

**File 500-09-029017-209**

1. **ALLOWS** the appeal, each party paying its own legal costs;
2. **SETS ASIDE** the judgment rendered on July 21, 2020; and, rendering the judgment that should have been rendered;
3. **REPLACES** the conclusions of the judgment with the following:

[translation]

**DISMISSES** the declinatory exceptions raised by the defendant (on May 22, 2020) and by the third party intervenor (on June 15, 2020);

**THE WHOLE**, with each party paying its own legal costs.

1. And finally, **REFERS** the case back to the Superior Court so that it may proceed as soon as practicable, preferably before another judge;

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|  | | JACQUES CHAMBERLAND, J.A. |
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|  | | GENEVIÈVE MARCOTTE, J.A. |
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|  | | GUY COURNOYER, J.A. |
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| P.A. | | |
| Not represented | | |
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| Mtre Nancy Kabasele Nyota | | |
| NYOTA AVOCATE | | |
| Counsel for B.C. | | |
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| Mtre Saran Madina Cissé | | |
| SARAN CISSÉ AVOCATE | | |
| Counsel for G.F. | | |
|  | | |
| Mtre Isabel Prud’homme | | |
| CENTRE COMMUNAUTAIRE JURIDIQUE DE L’OUTAOUAIS | | |
| Counsel for Isabel Prud’homme, in her capacity as ad hoc counsel to the child | | |
|  | | |
| Date of hearing: | June 10, 2021 | |

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| REASONS OF CHAMBERLAND, J.A. |
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1. On [...] 2016, the respondent B.C. gave birth in Quebec, at the Gatineau Hospital, to X, the second of her three daughters.
2. B.C. does not know who the father of the child is. At the time of conception, in early 2016, she was no longer living with her husband, the respondent G.F.,[[4]](#footnote-4) but they were still having sexual intercourse. During the same time period, the respondent B.C. and the appellant, P.A., had been seeing each other for a few months and were also having unprotected sexual intercourse.
3. The act of birth for X issued by the Quebec authorities does not indicate the father’s name, nor does it indicate that B.C. was married.[[5]](#footnote-5)
4. B.C. ended her relationship with P.A. in February 2017.
5. The appellant states that he has not seen the child since January 23, 2017.
6. In June 2017, B.C. moved to Ontario.
7. In July 2017, P.A. instituted proceedings against B.C. and against the Quebec registrar of civil status as an impleaded party. He believes he is the biological father of the child X and applied to the Superior Court for an order that analyses of the child’s and his DNA be conducted to confirm it. He also sought an order that, in the event of a positive result, he be declared the father of the child and that the act of birth and the register of civil status be altered accordingly.
8. On September 14, 2017, the Superior Court granted his application in a default judgment rendered further to B.C.’s failure to answer the summons (Martin Bédard J.).
9. That judgment was never acted on,[[6]](#footnote-6) however, until April 16, 2020, when B.C. brought an application for its revocation. One month later, G.F. did the same after being granted intervenor status in the case.
10. On May 20, 2020, counsel for B.C. wrote to the judge to inform her that her client [translation] “consented to have the child in question undergo a DNA test”,[[7]](#footnote-7) while reserving [translation] “all her rights with respect to paragraphs 8, 9, and 10 of the judgment rendered on September 14, 2017”.[[8]](#footnote-8)
11. On May 25, 2020, the Superior Court ruled on the two motions for revocation of judgment (Suzanne Tessier J.).
12. B.C.’s motion was presented almost 30 months after the judgment concerned by the application, well after the six-month deadline set out in article 347 C.C.P*.* B.C. submitted that it was impossible for her to act earlier. The judge did not accept her submission that she became aware of the judgment only in late December 2019. Rather, the judge considered that she became aware of it on October 16, 2019, the date of her appearance before the Superior Court further to the warrant for witness issued against her at P.A.’s request. The judge noted that B.C. provided no explanation for her inaction until April 2020.
13. B.C.’s motion was therefore dismissed. There was no appeal.
14. As for G.F., the judge was of the view that his motion met the requirements of article 349 C.C.P*.* He acted within a reasonable time because he did not become aware of the judgment until early January 2020. His interests are affected by the judgment because he is the presumed father of the child and therefore, according to the judge, has a serious defence to raise against P.A.’s action. G.F.’s motion was therefore granted, and the judgment dated September 14, 2017, was revoked.[[9]](#footnote-9)
15. On July 3, 2020, P.A. filed a notice of appeal and a motion for leave to appeal that judgment (file 500-09-028977-205) with the office of the Court.[[10]](#footnote-10)
16. On July 21, 2020, following brief deliberations, the Superior Court ruled on a declinatory exception raised by both B.C. (May 22, 2020) and by G.F. (on June 15, 2020), finding that it did not have jurisdiction to hear the proceeding regarding the application claiming filiation of the child X and referred the case back to the Ontario Superior Court of Justice (Suzanne Tessier J.).
17. On August 7, 2020, P.A. appealed from that judgment (file 500-09-029017-209).
18. On August 13, 2020, P.A.’s motion for leave to appeal the first judgment rendered by Tessier J. on May 25, 2020, was referred to the panel that would hear the appeal in the second file.[[11]](#footnote-11)
19. The two appeals were consolidated for the purposes of the hearing.
20. Having set the stage, I will address the jurisdiction of the Superior Court and the revocation of judgment in turn. Indeed, if the Quebec courts do not have jurisdiction to decide the appellant’s action claiming filiation, which is a matter of public order within the meaning of the second paragraph of 167 C.C.P*.*,[[12]](#footnote-12) the Court would be poorly placed to set aside the judgment dated May 25, 2020, dismiss the motion for revocation, and thus render executory the judgment rendered on September 14, 2017, even in part.
21. Lack of subject-matter jurisdiction may be raised at any time, at trial and on appeal, and even by the Court on its own initiative.[[13]](#footnote-13) The same is true with respect to the lack of international jurisdiction of the Quebec courts in matters of filiation; it is binding on the parties to an application claiming filiation because it is an [translation] “action concerning status”, which is a matter of public order.[[14]](#footnote-14) It may be raised at any time during the proceeding, and even if the Court finds that the parties submitted to the jurisdiction of the Superior Court, that does not give it jurisdiction, nor does the parties’ failure to raise the lack of jurisdiction of the Quebec authorities.[[15]](#footnote-15)

**Jurisdiction of the Superior Court**

1. In her judgment on the declinatory exception, the trial judge relied on article 3147 C.C.Q*.* to decide the matter. That article provides that, in matters of filiation, the Quebec authorities have jurisdiction “if the child or one of his parents is domiciled in Québec”. The judge found, however, that P.A. is not one of the “parents” of the child X. According to the judge, when P.A. initially filed his action, the Superior Court of Quebec did not therefore have jurisdiction to hear the case.
2. The appellant submits that the judge erred in her interpretation of the articles of the *Civil Code* conferring jurisdiction, including article 3147 C.C.Q. He adds that in any event, through their actions and conduct, B.C. and G.F. submitted to the jurisdiction of the Superior Court of Quebec within the meaning of article 3148 C.C.Q*.* Last, he argues that the trial judge erred by failing to consider the rule set out in article 3136 C.C.Q*.*
3. The ad hoc tutor to the child X,[[16]](#footnote-16) Mtre Isabel Prud’homme, agrees with P.A.’s position and concludes her written submissions with the following sentence: [translation] “[I]t is not in the best interests of the child for the Superior Court of Quebec to decline jurisdiction” (para. 34). Counsel notes that the child was born in Quebec; the action claiming paternity was instituted in Quebec, where P.A. is domiciled and where B.C.’s last know address was; with the Court’s authorization, the action was notified to B.C. at her email address (a valid address); and last, P.A. was completely unaware of B.C.’s move to Ontario.
4. Mtre Prud’homme notes that at the time of the birth of the child X, at the time the action claiming filiation was instituted, and to this day, the child’s act of birth, prepared on the basis of the information provided by the mother in the hours or days following the birth, does not indicate the father’s name, nor the fact that B.C. was married. She adds that the birth certificate prepared by the Ontario authorities, at the request of B.C. and G.F., which indicates G.F.’s name as the father and gives X his surname, was issued only in March 2020, while the parties were still engaged in litigation in Quebec specifically concerning paternity, [translation] “in fraud of the child’s rights” (para. 23).
5. Let us consider this.
6. In my view, the appellant is correct to state that the Superior Court of Quebec has jurisdiction to rule on his action claiming filiation and for recognition of paternity of the child X.
7. Articles 531, 532, 535.1, 3090, 3135, 3136, 3141, 3142, and 3147 C.C.Q*.* are relevant to the analysis:

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| **531.** Any interested person, including the father or the mother, may, by any means, contest the filiation of a person whose possession of status is not consistent with his act of birth.  However, the presumed father may contest the filiation and disavow the child only within one year of the date on which the presumption of paternity takes effect, unless he is unaware of the birth, in which case the time limit begins to run on the day he becomes aware of it. The mother may contest the paternity of the presumed father within one year from the birth of the child.  **532.** A child whose filiation is not established by an act and by possession of status consistent therewith may claim his filiation before the court. Similarly, the father or the mother may claim paternity or maternity of a child whose filiation in their regard is not established by an act and by possession of status consistent therewith.  If the child already has another filiation established by an act of birth, by the possession of status, or by the effect of a presumption of paternity, an action to claim status may not be brought unless it is joined to an action contesting the status thus established.  The action for disavowal or for contestation of status is directed against the child and against the mother or the presumed father, as the case may be.  …  **535.1.** Where the court is seized of an action concerning filiation, it may, on the application of an interested person, order the analysis of a sample of a bodily substance so that the genetic profile of a person involved in the action may be established.  However, where the purpose of the action is to establish filiation, the court may not issue such an order unless a commencement of proof of filiation has been established by the person having brought the action or unless the presumptions or indications resulting from facts already clearly established by that person are sufficiently strong to warrant such an order.  The court determines conditions for the sample-taking and analysis that are as respectful as possible of the physical integrity of the person concerned or of the body of the deceased. These conditions include the nature and the date and place of the sample-taking, the identity of the expert charged with taking and analyzing the sample, the use of any sample taken and the confidentiality of the analysis results.  The court may draw a negative presumption from an unjustified refusal to submit to the analysis ordered by the court.  …  **3091.** Filiation is established in accordance with the law of the domicile or nationality of the child or of one of his parents, at the time of the child’s birth, whichever is more beneficial to the child.  The effects of filiation are subject to the law of the domicile of the child.  …  **3135.** Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.  **3136.** Even though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.  …  **3141.** Québec authorities have jurisdiction to hear personal actions of an extrapatrimonial and family nature when one of the persons concerned is domiciled in Québec.  **3142.** Québec authorities have jurisdiction to decide as to the custody of a child provided he is domiciled in Québec.  …  **3147.** Québec authorities have jurisdiction in matters of filiation if the child or one of his parents is domiciled in Québec.  They have jurisdiction in matters of adoption if the child or plaintiff is domiciled in Québec.. | **531.** Toute personne intéressée, y compris le père ou la mère, peut contester par tous moyens la filiation de celui qui n’a pas une possession d’état conforme à son acte de naissance.  Toutefois, le père présumé ne peut contester la filiation et désavouer l’enfant que dans un délai d’un an à compter du jour où la présomption de paternité prend effet, à moins qu’il n’ait pas eu connaissance de la naissance, auquel cas le délai commence à courir du jour de cette connaissance. La mère peut contester la paternité du père présumé dans l’année qui suit la naissance de l’enfant.  **532.** L’enfant dont la filiation n’est pas établie par un titre et une possession d’état conforme peut réclamer sa filiation en justice. Pareillement, les père et mère peuvent réclamer la paternité ou la maternité d’un enfant dont la filiation n’est pas établie à leur égard par un titre et une possession d’état conforme.  Si l’enfant a déjà une autre filiation établie soit par un titre, soit par la possession d’état, soit par l’effet de la présomption de paternité, l’action en réclamation d’état ne peut être exercée qu’à la condition d’être jointe à une action en contestation de l’état ainsi établi.  Les recours en désaveu ou en contestation d’état sont dirigés contre l’enfant et, selon le cas, contre la mère ou le père présumé.  …  **535.1.** Le tribunal saisi d’une action relative à la filiation peut, à la demande d’un intéressé, ordonner qu’il soit procédé à une analyse permettant, par prélèvement d’une substance corporelle, d’établir l’empreinte génétique d’une personne visée par l’action.  Toutefois, lorsque l’action vise à établir la filiation, le tribunal ne peut rendre une telle ordonnance que s’il y a commencement de preuve de la filiation établi par le demandeur ou si les présomptions ou indices résultant de faits déjà clairement établis par celui-ci sont assez graves pour justifier l’ordonnance.  Le tribunal fixe les conditions du prélèvement et de l’analyse, de manière qu’elles portent le moins possible atteinte à l’intégrité de la personne qui y est soumise ou au respect de son corps. Ces conditions ont trait, notamment, à la nature et aux date et lieu du prélèvement, à l’identité de l’expert chargé d’y procéder et d’en faire l’analyse, à l’utilisation des échantillons prélevés et à la confidentialité des résultats de l’analyse.  Le tribunal peut tirer une présomption négative du refus injustifié de se soumettre à l’analyse visée par l’ordonnance  …  **3091.** L’établissement de la filiation est régi par la loi du domicile ou de la nationalité de l’enfant ou de l’un de ses parents, lors de la naissance de l’enfant, selon celle qui est la plus avantageuse pour celui-ci.  Ses effets sont soumis à la loi du domicile de l’enfant.  …  **3135.** Bien qu’elle soit compétente pour connaître d’un litige, une autorité du Québec peut, exceptionnellement et à la demande d’une partie, décliner cette compétence si elle estime que les autorités d’un autre État sont mieux à même de trancher le litige.  **3136.** Bien qu’une autorité québécoise ne soit pas compétente pour connaître d’un litige, elle peut, néanmoins, si une action à l’étranger se révèle impossible ou si on ne peut exiger qu’elle y soit introduite, entendre le litige si celui-ci présente un lien suffisant avec le Québec.  …  **3141.** Les autorités du Québec sont compétentes pour connaître des actions personnelles à caractère extrapatrimonial et familial, lorsque l’une des personnes concernées est domiciliée au Québec.  **3142.** Les autorités québécoises sont compétentes pour statuer sur la garde d’un enfant pourvu que ce dernier soit domicilié au Québec.  …  **3147.** Les autorités québécoises sont compétentes, en matière de filiation, si l’enfant ou l’un de ses parents a son domicile au Québec.  En matière d’adoption, elles sont compétentes si l’enfant ou le demandeur est domicilié au Québec.  [Emphasis added.] |

1. Article 3147 C.C.Q*.* establishes the rules of international jurisdiction of the Quebec authorities in matters of filiation, while article 3091 C.C.Q*.* concerns the choice of law applicable to establish the filiation of a child.
2. Article 3147 C.C.Q*.* provides that the Quebec authorities have jurisdiction if the connecting factor mentioned applies, that is, if either the child or one of the child’s parents is domiciled in Quebec. In the absence of this connecting factor, the Quebec authorities do not have jurisdiction unless article 3136 C.C.Q*.* is applied (forum of necessity). The parties cannot, by agreement or by omitting to raise the issue, attribute international jurisdiction in matters of filiation to the Quebec courts that they do not have at the outset.
3. However, article 3147 C.C.Q*.* does not confer exclusive jurisdiction on the Quebec authorities to hear an action concerning the filiation of a child.[[17]](#footnote-17) If necessary, the Quebec court will consider the jurisdiction of a foreign authority only if, on the application of a party, and after concluding that it has jurisdiction itself, it is of the view that the other authority is in a better position to rule on the dispute (article 3135 C.C.Q*.*).
4. The interpretation of a statutory provision is a question of law. The standard of review on appeal is therefore correctness.
5. The general principles of interpretation set out in the *Civil Code* apply to the provisions of private international law in Book Ten of the *Civil Code of Québec* (articles 3076 to 3168 C.C.Q*.*).[[18]](#footnote-18) The Court must first consider the wording of the provisions, which must be read as a coherent whole.[[19]](#footnote-19) Next, the Court must determine whether the interpretation is consistent with the principles of comity, order, and fairness, which, although not binding rules, may inspire the interpretation.[[20]](#footnote-20) The Supreme Court notes that the “system of private international law is designed to ensure that there is a “real and substantial connection” between the action and the province of Quebec and to guard against the improper assertion of jurisdiction”.[[21]](#footnote-21)
6. Article 3147 C.C.Q*.* is found in Title Three, “International jurisdiction of Québec authorities”, which sets out the general and specific rules for determining the jurisdiction of the Quebec authorities when a dispute contains a foreign element”.[[22]](#footnote-22)
7. Professor Emanuelli explains that the legislature’s choice regarding the connecting factors takes into consideration the [translation] “proximity” between the legal situation at issue and the competent authority:

[translation]

157. This choice is the act of the legislature or the judge. It is the result of politico-legal considerations; thus, domicile is a connecting factor that is better adapted to Canada’s federal structure and to the fact that it is a country of immigration, that nationality. Indeed, we recall that nationality falls under federal jurisdiction, while most private international law matters fall under provincial jurisdiction, and that there is no Quebecois nationality. Accordingly, the jurisdiction of Quebec authorities cannot depend on nationality. From a practical perspective, the choice of connecting factors also corresponds to considerations of [translation] “proximity” – the connecting factors that private international law takes into account to ground the international jurisdiction of its authorities are generally those that connect the legal situation at issue to the competent authority as closely as possible. This [translation] “proximity” between the legal situation and the competent authority meets two types of requirements. It provides justification for the jurisdiction of the court seized (requirement of opportunity or effectiveness) so as to permit a judgment to have effect outside the jurisdiction (requirement of effectiveness). In addition, the [translation] “proximity” test ensures that Quebec authorities do not exercise extraterritorial jurisdiction.[[23]](#footnote-23)

[Citation omitted.]

1. The connecting factor grounding the jurisdiction of Quebec authorities in matters of filiation is the domicile of the child or of one of the child’s parents.
2. The issue in this case is therefore determining the scope of the terms “one of his parents/*l’un de ses parents*”, and more precisely, determining whether that includes the parent claiming filiation of the child, such that his or her domicile may ground the jurisdiction of the Quebec authorities. In other words, the issue is whether jurisdiction connected to the domicile of the “parent” is limited to cases where the parent’s filiation is already established (by an act, possession of status, or a presumption of paternity[[24]](#footnote-24)), or if, on the contrary, it also includes the case of a “parent” claiming filiation of the child.
3. The trial judge found that the appellant [translation] “cannot be characterized as a parent, because the subject of his action concerns a claim of filiation and acknowledgment of paternity”, on the basis of the ordinary meaning of the wording of the provision.[[25]](#footnote-25)
4. In my view, it is necessary here to go beyond the ordinary meaning of the words “one of his parents” to give them a meaning that permits the rule set out in article 3147 C.C.Q*.* to achieve its full potential, in this case, in conjunction with article 3091 C.C.Q*.*, that of favouring the establishment of the child’s filiation. With respect, it seems to me that the judge erred in refusing to characterize the person claiming the filiation of a child, with justification,[[26]](#footnote-26) as a “parent”.
5. It is common ground that we must place ourselves at the time the action was instituted to determine whether the Quebec authorities have jurisdiction pursuant to article 3147 C.C.Q*.*[[27]](#footnote-27)
6. The judgment rendered further to an action claiming filiation under article 532 C.C.Q*.* is [translation] “declaratory. The filiation it recognizes is therefore considered to have existed since the birth of the child”; the person whose paternity or maternity is recognized may even be required to pay support since the child’s birth.[[28]](#footnote-28) Accordingly, the judgment merely acknowledges or recognizes [translation] “the rights of the parties that existed at the time the trial began”.[[29]](#footnote-29) Of course, conclusions related to an application incidental[[30]](#footnote-30) to the claim of status (for example, a change of name) sometimes confer rights,[[31]](#footnote-31) but jurisdiction is examined in light of the principal action.
7. The Civil Code Revision Office proposed that the provision that has now become article 3147 C.C.Q*.* provide that the Quebec authorities have jurisdiction if the child has his or her domicile or *de facto* residence there ([translation] “The Quebec courts have jurisdiction in matters of filiation and legitimation if the child has his or her domicile or *de facto* residence in Quebec”), as the objective is the following:[[32]](#footnote-32)

[translation]

The purpose of the article, which is a subject of public order, is to give the Quebec courts broad jurisdiction based on the child’s domicile, or even on the child’s *de facto* residence in Quebec.

1. As noted by Professor Goldstein, the effect of the rule ultimately adopted is that the Quebec authorities may have jurisdiction in some cases despite the fact that the child has never set foot in Quebec:

[translation]

Under the first paragraph of article 3147 C.C.Q*.*, the Quebec courts have jurisdiction in matters of natural filiation if the child or one of the child’s parents is domiciled in Quebec. Thus, Quebec may have jurisdiction even if the child’s habitual residence is not located there, for example if an action concerning filiation is instituted by the plaintiff but the child lives with the other parent or a third party. Exceptionally, that situation could lead the court to decline jurisdiction under article 3135 C.C.Q*.*[[33]](#footnote-33)

1. Article 3147 C.C.Q*.* is found in the Chapter “Special provisions”, Division I “Personal actions of an extrapatrimonial and family nature”. At the beginning of that chapter is article 3141 C.C.Q*.* (the general rule) from which article 3147 C.C.Q*.* (a specific rule) derogates. While the first rule provides that “Québec authorities have jurisdiction to hear personal actions of an extrapatrimonial and family nature when one of the persons concerned is domiciled in Québec”, the second rule [translation] “limits the person concerned to the child and the child’s parents”.[[34]](#footnote-34) Regardless of which of the two possible interpretations of the words “the child’s parents” is accepted, the provision has a useful effect in that the “persons concerned” necessarily includes a broader range of persons than the child, the child’s parents, and the person seeking to be recognized as the child’s parent.
2. Article 532 C.C.Q*.* identifies the persons who can bring an action to claim status, that is, the “child” and “the father or the mother”, which in my view necessarily includes both the biological father and the father whose filiation is established independently.[[35]](#footnote-35) Indeed, if we had to interpret these words using the approach accepted by the trial judge with respect to article 3147 C.C.Q*.*, it would be necessary to conclude that a person claiming the paternity of a child would not be considered a “father” and would thus be prohibited from claiming paternity of the child. That reasoning is circular, and the result is absurd.
3. It is common ground that a person who claims to be the father of a child can institute an action to claim status under article 532 C.C.Q*.*
4. Logically, the same must be true for article 3147 C.C.Q*.* and the word “parents”.
5. Although the legislature chose not to limit the jurisdiction of Quebec authorities under article 3147 C.C.Q*.* in the same manner as in article 3142 C.C.Q*.* in matters of custody, it nevertheless restricted it in relation to article 3141 C.C.Q*.*, the general article applicable to personal actions of an extrapatrimonial and family nature. The interest of the child, which underlies the rules in matters of filiation, was clearly considered when article 3147 C.C.Q*.* was adopted, just like it was, but even more explicitly, when article 3091 C.C.Q*.* was adopted – “whichever is more beneficial to the child/*selon celle qui est la plus avantageuse pour celui-ci*”.
6. Like article 3147 C.C.Q*.*, article 3091 C.C.Q*.* also uses the expression “one of his parents”. The commentaries of the Minister of Justice state that [translation] “[t]he purpose of the first paragraph is to favour the establishment of filiation”.[[36]](#footnote-36) Authors Castel and Talpis add that [translation] “the legislature followed the current trend, which reflects the desire to favour the child’s well-being”.[[37]](#footnote-37) For the provision to fully favour the establishment of the child’s filiation, it would be logical to include the law of the domicile of the person claiming to be the biological father.
7. In addition, it is important not to forget that sometimes the child brings an action to claim the filial relationship. In such a case, if only the law of the domicile of the person alleged to be the child’s biological father permits the establishment of filiation by the court, it would be ill-advised to exclude its application on the ground that filiation has not already been established independently.
8. Thus, articles 532 and 3091 C.C.Q. do not appear to exclude a person claiming to be the child’s biological parent from the definition of the terms “the father or the mother” or “one of his parents”. Article 532 C.C.Q. allows this person to claim his or her filiation, and article 3091 C.C.Q. allows Quebec law to be applied if it is more beneficial to the child, when this person is the only one domiciled in Quebec.
9. In my view, it is logical and desirable that the terms “one of his parents” in article 3147 C.C.Q., be interpreted the same way, thereby including a person who, like the appellant, claims to be the child’s biological father.
10. That being said, it is necessary to recognize that permitting a person who claims to be the biological father of the child to seize the Quebec authorities of an action to claim status in regard to a child whose domicile is not in Quebec could force that child to come defend himself or herself in Quebec, which will not always be in the child’s interest (the parent whose filiation exists independently of any judicial intervention necessarily has a certain connection with the child, whether because he is the mother’s husband, because he was entered on the act of birth, or because he has uninterrupted possession of status). Conversely, the child may also want to seize the Quebec courts although he or she is not domiciled there, but the person whose son or daughter he or she claims to be is there. It is also possible for the child or the other parent (or the person whose paternity is contested) to ask the Quebec court to decline jurisdiction in favour of the authorities of another State if it considers that they “are in a better position to decide the dispute” (article 3135 C.C.Q*.*).

**Revocation of judgment**

1. Let us first consider the motion for leave to appeal, and then, if necessary, the appeal.

* The motion

1. The question arises as to whether the judgment that allows an application for revocation of judgment is subject to appeal as of right (article 30 C.C.P*.*) or with leave (article 31 C.C.P*.*).
2. The appellant submits that in view of the [translation] “very particular” nature of the judgment under appeal, it is a judgment that terminates a proceeding within the meaning of article 30 C.C.P*.* He adds, in the alternative, that if it is instead a judgment rendered in the course of a proceeding, leave to appeal should be granted.
3. The impleaded party, in her capacity as ad hoc tutor to the child, does not address this issue in her memorandum, but she supports the appellant with respect to the merits of the appeal.
4. The respondent B.C. also made no submissions on this procedural issue other than to defer to G.F.’s submissions in this regard.
5. G.F. argues that the judgment dated May 25, 2020, cannot be appealed because it does not terminate the proceeding. It simply had the effect of returning the parties to their previous state and staying the execution of the default judgment rendered on September 14, 2017. In addition, in the event that the appeal is subject to obtaining leave within the meaning of article 31 C.C.P*.*, he submits that the appeal has little chance of success, and accordingly, that the Court should not grant leave.
6. It is necessary at the outset to note the unusual, even bizarre nature of the default judgment rendered on September 14, 2017, and the equivocal nature of the judgment dated May 25, 2020.
7. For one, Bédard J., seized of an action concerning the filiation of the child X, ruled on both the appropriateness of a DNA analysis, and conditional to the result of that test, on P.A.’s paternity. Moreover Tessier J. stayed the execution of that judgment, while revoking it further to G.F.’s application, without even distinguishing between the orders concerning the DNA test (in regard to which G.F. strictly has no interest[[38]](#footnote-38)) and the conclusions regarding paternity.
8. In my view, confronted with the presence of a third-party intervenor who appears to benefit from the presumption of paternity set out in article 525 C.C.Q., and a judgment ruling on the issue of paternity, although conditional on the results of a DNA test, the judge did not want the issue to be decided without G.F.’s participation in the proceedings. She therefore rendered a judgment that had the effect of returning the presumed father (G.F.) and the possible biological father (P.A.) to the state they were in before the conditional declaration of paternity.
9. Thus, the judgment did not terminate the proceeding concerning the filiation of the child X.[[39]](#footnote-39) It simply gave it new momentum with an additional party, G.F. In this very particular context, the appeal of the judgment is therefore subject to leave in accordance with the criteria set out in the second paragraph of article 31 C.C.P*.*
10. In this regard, I am of the view that P.A.’s motion meets the criteria of article 31 C.C.P*.* The judgment dated September 14, 2017, decides two interrelated issues. The revocation of judgment concerns both the DNA analysis and the (conditional) declaration of paternity, thereby causing irremediable injury to the appellant (and to the child) in the context of a contested declaration of filiation. For the appellant, the DNA analysis is essential and irreplaceable evidence in his search for truth with respect to X’s paternity.
11. Leave to appeal must therefore be granted.
12. The appellant’s argument concerning the recognition of G.F.’s right to intervene in the action is dismissed. The child X was born “during a marriage”, which triggers the application of the presumption of paternity under article 525 C.C.Q*.* Therefore, G.F. had the interest required to intervene in the proceeding in which B.C. was seeking the revocation of a judgment declaring, in a second stage, and conditional to the result of the DNA analysis, the paternity of someone other than him.

* The appeal

1. At the time of the hearing regarding the revocation of judgment, two and a half years had already elapsed since the Superior Court ordered an analysis of the DNA of the child X and the appellant. Despite the executory and immediate nature of that order, no DNA test was ever conducted, due to B.C.’s refusal, even though in an email dated May 5, 2020, her counsel informed the Court of her client’s consent to have X undergo the test.
2. In my view, the trial judge erred in revoking the judgment dated September 14, 2017, in its entirety.
3. She should have refused to revoke the orders rendered under article 535.1 C.C.P*.* (paragraphs 6 and 7 of the judgment).
4. First, as discussed above, G.F. does not have the interest to oppose the collection of this DNA evidence in the context of the action regarding filiation instituted by P.A. The analysis is not directed at him; it is directed at the child X and the appellant.
5. Second, regarding the DNA analysis, the judgment dated September 14, 2017, does not prejudice G.F.’s rights within the meaning of article 349 C.C.P*.*
6. It is true that G.F. was not called in the action regarding the filiation of the child X instituted by P.A., but it should be noted that his name does not appear as the father on the child’s Quebec act of birth. Nor did B.C. indicate that she was married. Therefore, P.A. cannot be faulted in this respect.
7. In addition, the appeal record leaves no doubt as to the many steps taken by P.A. to execute the order made on September 14, 2017, and to the just as many obstacles he has had to overcome. He first had to take steps to find B.C., and once he found her in Ottawa in 2019, he had to take steps to convince her to go to a laboratory, all of which culminated in a warrant for witness issued by the Superior Court on October 3, 2019. Not to mention B.C.’s application for revocation of judgment dated April 15, 2020, in which she stated (under oath) that until January 2020, she had no knowledge of the judgment dated September 14, 2017, followed by G.F.’s application for revocation of judgment dated May 11, 2020.
8. When the appellant launched his action regarding the filiation of the child X in July 2017, she was only nine months old, and her act of birth still did not indicate any paternal filiation.
9. The debate crystallized on the date the legal action was instituted, and that is the date that must be used to rule on uninterrupted possession of status. *Prima facie*, it is therefore impossible for the respondent G.F. (and for B.C.) to establish sufficient possession of status to counter the appellant’s application (if the DNA test confirms his biological paternity), with respect to either the duration (9 months as compared with the 16 to 24 months generally recognized by the courts as sufficient, or its consistency with the act of birth (because the one prepared on the basis of the mother’s declarations does not indicate that he is the father of the child).
10. The presumption of paternity set out in article 525 C.C.Q*.* may be rebutted by evidence of contrary filiation, and in particular by DNA evidence establishing the biological filiation of the appellant (art. 535 C.C.Q*.*).
11. When G.F. intervened in the proceeding, the judgment dated September 14, 2017, already existed, and the order to conduct a DNA analysis was executory (which is not the case for the declaration that the appellant is the child’s father, because that declaration depends on the results of the DNA analysis).
12. In this case, the DNA analysis is essential to establishing the biological filiation of the child X as quickly as possible. The fact that B.C. had unprotected sexual intercourse with P.A. during the period the child was conceived is not contested. In fact, on May 13, 2020, B.C. acknowledged that she does not know who the biological father of the child is.
13. The DNA analysis will provide an answer to this question, at least with respect to P.A.
14. If the results of the DNA analysis are negative, the parties will know that P.A. is not the child’s father, and if they are positive, they will establish that G.F. is not the child’s biological father and that he never was. The proceeding can then continue until its conclusion in light of the defences G.F. raises in his motion for revocation of judgment.
15. In either case, the orders regarding the DNA analysis do not prejudice G.F.’s rights, whereas any delay in obtaining this evidence caused by the mere passage of time, causes great prejudice to both the appellant and the child.
16. For these reasons, I would allow the appeal in part in file 500-09-028977-205, limiting the revocation of the judgment dated September 14, 2017, to only the conclusions concerning the declaration of paternity of the appellant. I would also allow the appeal in file 500-09-029017-209, set aside the judgment rendered on May 25, 2020, and, rendering the judgment that should have been rendered, dismiss the declinatory exceptions raised by both the respondent B.C. and by the intervenor G.F., and finally, refer the case back to the Superior Court to rule as quickly as possible on this case, which has already lasted too long. Last, I propose that each party pays its own legal costs in both files considering the nature of the dispute, the mixed outcome of the appeal in file 500-09-028977-205, and the new interpretation issue raised in file 500-09-029017-209.

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| JACQUES CHAMBERLAND, J.A. |

1. *A.B. c. B.C.* (September 14, 2017), Gatineau, No. 550-04-019371-174 (Sup. Ct.), Bédard J. [↑](#footnote-ref-1)
2. *Droit de la famille – 20716*, 2020 QCCS 1653 [judgment dated May 25, 2020]. [↑](#footnote-ref-2)
3. *Droit de la famille – 201011*, 2020 QCCS 2320 [judgment dated July 21, 2020]. [↑](#footnote-ref-3)
4. In an affidavit dated August 24, 2018, also signed by G.F., B.C. stated that the couple (married on December 7, 2006, in Haiti) had been [translation] “definitively separated” since June 3, 2013, and the affidavit was made [translation] “for the sole purpose of confirming under oath her status as a separated person in fact and in law”. [↑](#footnote-ref-4)
5. On March 5, 2020, by which time B.C. and G.F. had resumed living together in Ottawa, G.F.’s name was entered on the child’s act of birth in Ontario, and from then on the child was given his surname. [↑](#footnote-ref-5)
6. Other than on August 7, 2019, when the Superior Court condemned the respondent B.C. to pay $3,000 to the appellant for expenses he incurred due to the difficulties executing the judgment dated September 14, 2017 (Dominique Goulet J.); and on August 22, 2019, at the appellant’s request, the Superior Court ordered the respondent B.C. to appear on a charge of contempt of court (Carole Therrien J.), and then issued a warrant for witness against her on October 3, 2019 (Suzanne Tessier J.). [↑](#footnote-ref-6)
7. Unfortunately, this undertaking was never acted on; B.C. withdrew it, and the dispute is still ongoing more than one year later, although the child is almost five years old. [↑](#footnote-ref-7)
8. Paragraph 8 states that, subject to the DNA test results, P.A. [translation] “is the father of the child X” and paragraph 9 orders the Quebec registrar of civil status to alter the act of birth and the registers of civil status accordingly. Paragraph 10 condemns B.C. to pay the legal costs. [↑](#footnote-ref-8)
9. In this respect, the conclusions of the judgment are equivocal, contradictory even. On the one hand, the judge stayed the execution of the judgment, and on the other, she revoked the judgment. See *Canadian Royalties inc. c. Mines de nickel Nearctic inc.*, 2017 QCCA 1287 at para. 22, leave to appeal to SCC refused, 37818 (November 15, 2018) . [↑](#footnote-ref-9)
10. On February 1, 2021, a judge of the Court refused to order the stay of that judgment (*Droit de la famille – 21111*, 2021 QCCA 176). [↑](#footnote-ref-10)
11. *Droit de la famille – 20114*, 2020 QCCA 1057 (Marcotte, J.A.). [↑](#footnote-ref-11)
12. Article 167 C.C.P*.* reads as follows:

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    | **167.** If an application is brought before a court other than the court of competent jurisdiction, a party may ask that it be referred to the competent court or, failing that, that it be dismissed.  Lack of subject-matter jurisdiction may be raised at any stage of the proceeding, and may even be declared by the court on its own initiative, in which case the court adjudicates as to legal costs according to the circumstances. | **167.** Une partie peut, si la demande est introduite devant un tribunal autre que celui qui aurait eu compétence pour l’entendre, demander le renvoi au tribunal compétent ou, à défaut, le rejet de la demande.  L’absence de compétence d’attribution peut être soulevée à tout moment de l’instance et peut même être déclarée d’office par le tribunal qui décide alors des frais de justice selon les circonstances. |

    [↑](#footnote-ref-12)
13. *Lepage c. Bérard*, 2016 QCCA 772 at para. 2. [↑](#footnote-ref-13)
14. In this regard, see Gérald Goldstein & Ethel Groffier, *Droit international privé*, t. 1 (Cowansville, Qc.: Yvon Blais, 1998), No. 126 at 300. See also *Shamji c. Tajdin*, 2006 QCCA 314, where the Court distinguished an issue concerning jurisdiction *ratione personae* from an issue concerning international jurisdiction. Henri Kélada*, Les préliminaires de défense en procédure civile* (Cowansville, Qc.: Yvon Blais, 2009) at 130. See also Jean-Gabriel Castel, *Droit international privé québécois* (Toronto, Butterworths & Co. (Canada) Ltd., 1980) at 660 and 689. [↑](#footnote-ref-14)
15. *L.(V.) c. S.(B.)*, 2002 RDF 827 at para. 21 (C.A.). It may be otherwise in some scenarios, for example in the case of a personal action of a patrimonial nature, article 3148 C.C.Q*.* expressly provides that the defendant may submit to the jurisdiction of the Quebec authorities (see *Coopers & Lybrand c. RSM Richter inc.*, 2014 QCCA 194, leave to appeal to SCC refused, 35787 (June 26, 2014). [↑](#footnote-ref-15)
16. Appointed by Tessier J. on April 27, 2020, (in case management) pursuant to article 190 C.C.Q*.* [↑](#footnote-ref-16)
17. Unlike what is set out in article 3151 C.C.Q*.*,for example, “Québec authorities have exclusive jurisdiction to hear in first instance all actions based on liability under article 3129”. [↑](#footnote-ref-17)
18. *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401 at para. 19. In this respect, the modern approach to interpretation requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87, cited in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at 41), and the *Interpretation Act*, CQLR, c. I-16, provides that a “statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit” (s. 41, para. 2) and that its provisions “are construed by one another, ascribing to each provision the meaning which results from the whole Act and which gives effect to the provision” (s. 41.1). [↑](#footnote-ref-18)
19. *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205 at para. 23 and 55; *GreCon Dimter inc. v. J.R. Normand inc.*, *supra* note 18 at para. 19; *Droit de la famille — 131294*, 2013 QCCA 883 at para. 55. [↑](#footnote-ref-19)
20. *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, *ibid.* at para. 23; *GreCon Dimter inc. v. J.R. Normand inc.*, *supra* note 18 at para. 19*.* [↑](#footnote-ref-20)
21. *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, *supra* note 19 at paras. 16 and 55; *Canada Post Corp. v. Lépine*, 2009 SCC 16, [2009] 1 S.C.R. 549 at para. 19. [↑](#footnote-ref-21)
22. *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801 at paras. 21–23; *Canada Post Corp. v. Lépine*, *supra* note 21 at para. 19. [↑](#footnote-ref-22)
23. Claude Emanuelli, *Droit international privé québécois*, 3rd ed. (Montreal: Wilson & Lafleur, 2011) at 78, No.157. [↑](#footnote-ref-23)
24. I express no opinion here on the issue of whether voluntary acknowledgement is an independent way of establishing filiation, as it binds only the person who made the acknowledgement (art. 528 C.C.Q*.*). [↑](#footnote-ref-24)
25. Judgment dated July 21, 2020, at para. 27. [↑](#footnote-ref-25)
26. The evidence in this case widely supports P.A.’s claim that he might be the father of the child X. He had unprotected sexual intercourse with B.C. during the period when the child was conceived. In February 2016, they went to the hospital together to obtain confirmation that B.C. was pregnant. At that time, she was not living with her husband and had not been for several months. At the time of the birth, the mother did not declare the name of the child’s father to the authorities. At trial, she admitted that she does not know who the child’s biological father is, which therefore does not rule out the possibility that it is the appellant, as he believes. [↑](#footnote-ref-26)
27. Patrick Glenn, “Droit international privé” in *La réforme du Code civil*, vol. “Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions transitoires” (Québec: Université Laval, 1993) at 752. On the subject of article 3166 C.C.Q*.*, he states the following: [translation] “As is the case for determining the jurisdiction of the Quebec authorities, domicile or nationality may be that of a person presumed to be a parent at the time the action is instituted” (at 773). In her work published in 1990, Professor Groffier wrote: [translation] “*Court of the domicile of the child or of the presumed parent*. Article 70 also applies in matters of filiation, that is, the Court will have jurisdiction if the parent or the child is domiciled in Quebec. Article 3510 of the Draft bill on international law is to the same effect” (Ethel Groffier, *Précis de droit international privé québécois*, 4th ed. (Cowansville, Qc: Yvon Blais, 1990) at 274, No. 284). [↑](#footnote-ref-27)
28. Alain Roy, “La filiation par le sang et par la procréation assistée” in *Commentaires sur le Code civil du Québec (DCQ)* (Cowansville, Qc: Yvon Blais, 2014), art. 532, at 98 (citation omitted). See also *L.B. c. G.R.*, J.E. 2002-1557, AZ-50141669 (C.A.): [translation] “This judgment rendered on November 21, 2001, was declaratory and did not create rights as would be the case in matters of adoption. Because the respondent has been the father since the child’s conception, we are of the view that it must be acknowledged that he must assume his obligations as parent, and in particular that imposed on him by article 585 C.C.Q*.* since at least December 22, 2000”; Article 532, para. 2, C.C.Q*.*: Michel Tétrault, *Droit de la famille*, vol. 3 “La filiation, l'enfant et le litige familial” (Montreal: Yvon Blais, 2019) at 148–153. [↑](#footnote-ref-28)
29. Hubert Reid, *Dictionnaire de droit québécois et canadien*, 5th ed. (Montreal: Wilson & Lafleur, 2015) at 365, sub verbo “*jugement déclaratif*”. [↑](#footnote-ref-29)
30. Within the meaning given to this term in article 3139 C.C.Q*.* In this regard, see e.g., *Droit de la famille — 131294*, *supra* note 19 at paras. 56 *et seq*. [↑](#footnote-ref-30)
31. The rules set out in article 3147 C.C.Q*.* [translation] “cover not only actions regarding the establishment, acknowledgment, and contestation of filiation, but also its effects, for example, in matters involving names” (Gérald Goldstein, “Droit international privé, vol. 2” in *Commentaires sur le Code civil du Québec (DCQ)* (Cowansville, Qc: Yvon Blais, 2013), art. 3147, at 176). On the fact that a judgment regarding a change of name creates rights, see: Pierre-André Côté & Daniel Jutras, “Le droit transitoire relatif à la réforme du Code civil” in *La réforme du Code civil*, vol. “Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions transitoires” (Québec: Université Laval, 1993) at 1019. [↑](#footnote-ref-31)
32. Office de révision du Code civil, *Rapport sur le Code civil du Québec*, vol. 2, t. 2 “Commentaires, livres 5 à 9” (Québec: 1977) at 1007. See also Comité du droit international privé, Office de révision du Code civil, *Rapport sur le droit international privé* (Montreal, 1975) at 132. [↑](#footnote-ref-32)
33. Goldstein, *supra* note 31, art. 3147 at 178. [↑](#footnote-ref-33)
34. *Ibid.* at 176. [↑](#footnote-ref-34)
35. In the case of a biological father, if filiation is already established, his action must be combined with an action for contestation of status. That is the appellant’s situation. [↑](#footnote-ref-35)
36. Ministère de la Justice, *Commentaires du* *ministre de la Justice : Le Code civil du Québec*, t. 2 (Québec: Les Publications du Québec, 1993), art. 3091. [↑](#footnote-ref-36)
37. Jeffrey Talpis & Jean-Gabriel Castel, “Le Code Civil du Québec : Interprétation des règles du droit international privé” in *La réforme du Code civil*, vol. 3 “Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions” (Québec: Université Laval, 1993) at 847; Glenn, *supra* note 27 at 694: [translation] “In matters of filiation, the tangible policy of favouring the interest of the child allows the court to choose the law of the domicile or of the nationality of the child or of one of the child’s parents, at the time of the child’s birth, whichever is more beneficial to the child”. [↑](#footnote-ref-37)
38. Unless it can be said that his interest consists of objecting to P.A. obtaining essential and determinative evidence in support of his action claiming filiation, which of course cannot be the case. [↑](#footnote-ref-38)
39. *Teixera c. Fuentes*, 2018 QCCA 849; *Corporation Capital Cliffton inc. c. Jean-Pierre*, 2010 QCCA 379. [↑](#footnote-ref-39)