



SUPREME COURT OF CANADA

CITATION: Mohawk Council of
Kanesatake v. Sylvestre, 2025
SCC 30

APPEAL HEARD: March 19, 2025
JUDGMENT RENDERED: October
10, 2025
DOCKET: 41131

BETWEEN:

Mohawk Council of Kanesatake
Appellant

and

**Louis-Victor Sylvestre,
Gordon Edwards,
1648-4404 Québec inc.,
Jean Demers,
Paul Boissonnault and
Marc Chénier**
Respondents

- and -

Mohawk Council of Kahnawà:ke
Intervener

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O'Bonsawin and Moreau JJ.

REASONS FOR Kasirer J. (Wagner C.J. and Karakatsanis, Côté, Rowe, Martin,
JUDGMENT: Jamal, O'Bonsawin and Moreau JJ. concurring)
(paras. 1 to 110)

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Mohawk Council of Kanesatake

Appellant

v.

**Louis-Victor Sylvestre, Gordon Edwards,
1648-4404 Québec inc., Jean Demers,
Paul Boissonnault and Marc Chénier**

Respondents

and

Mohawk Council of Kahnawà:ke

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2025 SCC 30

File No.: 41131.

2025: March 19; 2025: October 10.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O’Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

*Prescription — Extinctive prescription — Interruption of prescription —
Creditors attempting to force execution of default judgments against debtor by*

initiating seizure of movable property — Seizure unsuccessful as bailiff considering property of debtor to be exempt from seizure — Debtor later seeking declaration that rights claimed by creditors under default judgments are prescribed — Whether prescription interrupted by creditors' unsuccessful seizure — Civil Code of Québec, arts. 2892, 2894 — Code of Civil Procedure, CQLR, c. C-25.01, art. 681.

The debtor is the governing body for an Indigenous community. The creditors are a lawyer and several experts in various fields who provided professional services to the debtor between 2001 and 2003. The debtor was, around the time the services were rendered, facing considerable financial difficulties, and the creditors were not paid for some of their work. In 2004, the creditors obtained default judgments against the debtor based on their outstanding claims and, on several occasions, tried to seize the debtor's property in execution of the default judgments. In 2008, in exchange for a release from one of the seizures, the debtor acknowledged the creditors' claims against it and recognized that these attempts initially interrupted the 10-year prescription period in art. 2924 of the *Civil Code of Québec* ("C.C.Q.") that applied to the creditors' claims. Despite these enforcement efforts, the amounts remained unpaid.

In 2016, the creditors undertook measures to seize all of the debtor's movable property. A bailiff, acting on the creditors' instructions, filed a notice of execution for the seizure and served it on the debtor, in keeping with arts. 679 et seq. of the *Code of Civil Procedure* ("C.C.P."). However, the bailiff eventually considered that the property was exempt from seizure and the seizure was never carried out. The

bailiff prepared a record entitled “minutes of suspended execution”, which was not served on the debtor. The bailiff did not prepare minutes *nulla bona* attesting that he found no property to seize.

In 2020, the debtor sought a declaration from the Superior Court that the rights claimed by the creditors under the default judgments were prescribed. The debtor argued that the creditors’ unsuccessful efforts to execute the judgment in 2016 did not interrupt the 10-year prescription period. The Superior Court and the Court of Appeal both disagreed and held that prescription was interrupted by the attempted seizure of property in the debtor’s possession, even if those measures were unsuccessful.

Held: The appeal should be dismissed.

When the *C.C.Q.* and the *C.C.P.* are read in light of the applicable interpretation principles, it is plain that the notice of execution is part and parcel of the seizure as a “judicial application” that interrupts prescription pursuant to art. 2892 *C.C.Q.* The legislature intends to allow for interruption when the simplified notice of execution that begins the seizure is filed in court and served on the debtor. In the instant case, the creditors filed their notice of execution commencing the seizure of the debtor’s movable property before the end of the prescription period. Serving the notice of execution on the debtor fairly informed the latter of the creditors’ intention to seize its movable property. Therefore, when proceedings were introduced by the notice as part of the judicial application for seizure in 2016, prescription was interrupted under art. 2892 *C.C.Q.* The seizure was later suspended by a bailiff but not dismissed by a

court, so it cannot be said that the interruption of prescription was retroactively deemed to have never occurred pursuant to art. 2894 *C.C.Q.*

Article 2924 para. 1 *C.C.Q.* provides that a right resulting from a judgment is prescribed by 10 years if it is not exercised. This is a type of extinctive prescription, which brings about the extinction of a right owing to its non-use. Prescription may be interrupted civilly when the right is so exercised. Article 2892 *C.C.Q.* provides that when the judgment creditor causes a “judicial application” (sometimes also called a “judicial demand”) to be filed before the expiry of the 10-year period and served no later than 60 days thereafter, prescription is interrupted. Article 2892 *C.C.Q.* further provides that seizures are considered to be judicial applications for this purpose. Article 2894 *C.C.Q.*, however, provides that interruption does not occur if the demand is dismissed or if the proceedings are discontinued or perempted.

The law relating to forced execution of judgments is found largely in the *C.C.P.*, which governs procedure before the courts and procedure for the execution for judgments together with the *C.C.Q.* and sets out the procedural rules relating to seizure of a debtor’s property. In particular, art. 681 *C.C.P.* outlines the first steps in the execution after instructions are given to the bailiff by the creditor: execution begins when a notice of execution is filed with the court office by the bailiff, and it is then served on the debtor. The notice of execution must be in the prescribed form, which is designed to protect debtors by ensuring that they have all required information. The notice of execution in the current *C.C.P.* replaced the writs of execution under the

former *C.C.P.* and it relies on an impartial bailiff acting as an officer of the court and who is central to the seizure proceedings. Where a seizure proceeds and the debtor's property is placed under judicial control, art. 735 *C.C.P.* provides that a person may oppose a seizure and ask for its annulment, including on the grounds that the property is exempt from seizure.

The *C.C.P.*'s rules for execution of judgments and the *C.C.Q.*'s rules on interruption of prescription should be understood as forming a seamless web. The *C.C.P.* must be read together with the *C.C.Q.* in a coordinated fashion, as two civilian codes, each with a distinct, but complementary, mission. Each code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *droit commun*, or law of general application. The *C.C.Q.* is the foundation of all other laws in matters related to persons, relations between persons and property, and its exposition of the law of prescription should be interpreted to allow for its broad reach as an expression of the *droit commun*. For its part, the *C.C.P.* should be understood as expressing the *droit commun* in respect of the law of civil justice.

A coordinated reading of the *C.C.Q.* and the *C.C.P.* is essential to a contextual understanding of how and when the filing and service of a judicial application for seizure in art. 2892 *C.C.Q.* interrupts prescription. On such a reading, it is clear that the notice is the procedural act that introduces the judicial application; it is part and parcel of the proceedings of seizure undertaken for the execution of the judgment. Prescription is therefore interrupted when a notice of execution by seizure is

filed in court and served on the debtor by the bailiff at the behest of the creditor in keeping with the rules in the *C.C.P.*

In addition to its text and context, the purpose of art. 2892 *C.C.Q.* points to an interpretation of the “judicial application” of seizure that includes the notice of execution as the act that begins the proceedings. The purpose of the rule on interruption based on the judgment creditor’s initiation of the judicial application is to ensure that creditors are not sleeping on their rights. The filing and service of a judicial application for seizure interrupts prescription because these steps reliably indicate the creditor’s intention to make good on their claim before the expiry of the prescription period, which is one of the purposes of the law of extinctive prescription. The sanction of prescribing the judgment creditor’s right at the expiry of the prescription period is justified as the consequence of the creditor’s negligence and as means to promote stability in debtor-creditor relations. Article 2892 *C.C.Q.* gives voice to this purpose by identifying a sure sign of creditor diligence: the filing and service of the judicial application for seizure, in keeping with the procedural requirements in the *C.C.P.* As well, the adoption of the notice of execution by the legislature to replace the writ in the 2014 codification of the law of procedure was a measure designed to simplify the law: a return to the formalism of the writ at the expense of the simplified notice as a means to begin an application for seizure would be at odds with the modern law.

An unsuccessful seizure cannot be equated with a judicial application that is “dismissed” within the meaning of art. 2894 *C.C.Q.* and hence does not retroactively

strip the notice of execution of its interruptive effect. A judicial application being “dismissed” necessarily implies that a formal decision was rendered on it. A judicial application for seizure of property that is not opposed or contested cannot therefore be said to have been dismissed, such as when the bailiff simply suspends the proceedings and seizes no property. Treating the notice of execution as a judicial application that interrupts prescription without regard to the success of the seizure is not incompatible with art. 2894 *C.C.Q.* and does not create what amounts to an application for seizure that cannot be dismissed. A notice of execution could be challenged under the *C.C.P.* even if there were no seizure that might have been annulled if opposed under art. 735 *C.C.P.*; for example, a debtor could attack a notice of execution as an abuse of procedure under art. 51 *C.C.P.* if it is clearly unfounded or frivolous. Once established, an abuse of procedure provides the debtor with a remedy, including the power of the court to dismiss the judicial application.

Furthermore, although art. 707 *C.C.P.* directs that seizure is recorded in minutes prepared by the bailiff, it does not require that minutes be drawn up in the absence of a successful seizure. Where no property in the possession of the debtor is placed under judicial control, no minutes are required. While bailiffs may prepare minutes *nulla bona* to attest that they found no property to seize when a creditor so requests, the *C.C.P.* does not impose this requirement and a debtor suffers no prejudice if this is not done. The interruptive effect of the notice of execution cannot itself be considered a prejudice that warrants a remedy.

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APPEAL from a judgment of the Quebec Court of Appeal (Dutil, Cotnam and Moore JJ.A.), **2023 QCCA 1603**, [2023] AZ-51992193, [2023] Q.J. No. 14706 (Lexis), 2023 CarswellQue 18592 (WL), affirming a decision of Poulin J., 2022 QCCS 3332, [2022] Q.J. No. 8941 (Lexis), 2022 CarswellQue 13386 (WL). Appeal dismissed.

Nicholas Dodd, Marie-Alice D’Aoust and Wade MacAulay, for the appellant.

Eric Lalanne and Alissa Stachrowski, for the respondents.

Eric Doucet and Carle Evans, for the intervener.

The judgment of the Court was delivered by

KASIRER J. —

I. Overview

[1] In Quebec civil law, the right to the payment of money under a judgment is prescribed where the creditor fails to exercise the right in a timely manner. The period for “extinctive prescription” of rights resulting from most judgments is set at 10 years by art. 2924 of the *Civil Code of Québec* (“C.C.Q.”). If the creditor takes appropriate measures to execute the judgment in keeping with the *Code of Civil Procedure*, CQLR, c. C-25.01 (“C.C.P.”), prescription is interrupted and the 10-year clock starts again.

[2] In this instance, the respondents — a lawyer and several others — furnished professional services to the appellant, the Mohawk Council of Kanesatake (“Council”), a “council of the band” within the meaning of s. 2 of the *Indian Act*, R.S.C. 1985, c. I-5 (see also *Kanesatake Interim Land Base Governance Act*, S.C. 2001, c. 8). When those services went unpaid, the respondents obtained default judgments against the Council. Prior to the expiry of the 10-year prescription period, they sought to execute the judgments by seizing property belonging to the Council. They instructed a

bailiff who then filed a “notice of execution” with the details of the proposed seizure in court and served that notice on the debtor, in keeping with arts. 679 et seq. *C.C.P.* But there is a wrinkle here: the debtor represents an Indigenous community whose property was understood by the bailiff to be exempt from seizure. In point of fact, the seizure was never carried out.

[3] As a general rule, the filing and service of proceedings initiated by a creditor to seize their debtor’s property in execution of a judgment interrupts prescription pursuant to art. 2892 *C.C.Q.* Not surprisingly, where a judicial application is dismissed, the law deems that, retroactively, prescription was never interrupted. Article 2894 *C.C.Q.* sets this latter rule. The parties are at odds on the interpretation of these provisions of the *C.C.Q.*, on whether the creditors acted diligently to interrupt prescription and, if so, whether interruption was retroactively deemed to have never occurred when the seizure was not carried out.

[4] Does an unsuccessful attempt to seize a debtor’s property by notice of execution interrupt prescription? Both the Superior Court and the Court of Appeal answered yes. The debtor appeals, arguing that the creditors’ attempt to seize its exempt property in this case was a nullity. The notice of execution, which did not lead to a seizure of assets in the appellant’s possession, was meaningless. As a result, says the appellant, prescription was never interrupted and the 10-year prescription period has now expired. The respondents answer that the notice of execution began the proceedings for seizure and showed them to be diligent in pursuit of their judgment

claims. The filing and service of the notice interrupted prescription even though the bailiff did not complete the seizure.

[5] To resolve this appeal, the Court must undertake, in tandem, the interpretation of provisions of the *C.C.Q.* and the *C.C.P.* Specifically, this appeal draws into focus two interpretative principles that allow for a shared understanding of the law of the prescription in the *C.C.Q.* and the procedural rules in the *C.C.P.* relating to seizure of a debtor's property.

[6] Firstly, as this Court has made plain, these two enactments are both to be interpreted as codes in the civil law tradition (*Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, 2001 SCC 51, [2001] 2 S.C.R. 743, at paras. 39-40, citing *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862). Not only must the *C.C.P.* be interpreted “in keeping with the civil law tradition”, the fundamental law of civil procedure is to be read “together with the Civil Code” (Preliminary Provision, paras. 1 and 3) in a coordinated fashion, as two civilian codes, each with a distinct, but complementary, mission. The *C.C.P.*'s rules for execution of judgments and the *C.C.Q.*'s rules on interruption of prescription should be understood as forming a seamless web.

[7] Secondly, the interpretation of the *C.C.P.* enacted in 2014 must be undertaken with an eye to the purpose of the reformed law of civil justice. Specifically, the legislature introduced the “notice of execution” as part of a [TRANSLATION] “new judicial culture” that champions simple, efficient, and lower cost proceedings before the courts, including for the execution of judgments (see Comité de révision de la

procédure civile, *Une nouvelle culture judiciaire* (2001), at pp. 33-34 and 229-31). Consonant with this reform, the *C.C.P.* has abandoned the “writ of execution”, an inheritance from English law that was sometimes seen in Quebec as overly formalistic and involving unnecessary procedural steps for the enforcement of judgments. When the law of procedure was recast in a new code, the writ was replaced by the notice of execution, a more efficient procedural act simply filed in court and served on the debtor by an impartial bailiff. In resisting the effects of the notice here, the appellant argues for a return to the formalism that the legislature has plainly sought to reject in the new law.

[8] When the two codes are read in light of these principles, it is plain that the notice of execution is not a distinct procedural act but is part and parcel of the seizure as a “judicial application” that interrupts prescription pursuant to art. 2892 *C.C.Q.* The legislature intends to allow for interruption when the simplified notice of execution that begins the seizure is filed in court and served on the debtor.

[9] In this case, the respondents filed their notice of execution commencing the seizure of the Council’s movable property before the end of the prescription period, thereby showing the requisite diligence to make good on their claim. Serving the notice of execution on the debtor fairly informed the appellant of the respondents’ intention to seize its movable property. When proceedings were introduced by the notice as part of the judicial application for seizure in 2016, prescription was interrupted under art. 2892 *C.C.Q.* The seizure was later suspended by a bailiff but not dismissed by a court,

so it cannot be said that the interruption of prescription was retroactively deemed to have never occurred pursuant to art. 2894 C.C.Q.

[10] I would dismiss the appeal with costs.

II. Background

[11] The facts giving rise to the appeal are, in the main, not contested.

[12] The appellant Council is the governing body for the approximately 2,700 members of the Mohawks of Kanesatake.

[13] The respondent Louis-Victor Sylvestre is a lawyer. The other respondents are experts in various fields engaged by or on behalf of the appellant. Between 2001 and 2003, they provided professional services directly or indirectly to the appellant in connection with its contestation of a mining project planned by a third party to these proceedings. The respondents were not paid for some of their work.

[14] The appellant explains that, around this time, Kanesatake was in “political and social turmoil” and, as a result, the Council faced considerable financial difficulties (A.F., at para. 12). Its affairs were placed temporarily under third-party management.

[15] On October 26, 2004, the respondents obtained two default judgments against the appellant in the Superior Court based on their outstanding claims.

Mtre Sylvestre was awarded \$536,771.47 and the other respondents were awarded \$162,686.78. These amounts were interest bearing. In 2005, the appellant's third-party manager offered a discounted amount to settle the claims of the appellant's various creditors. The respondents refused this offer.

[16] On several occasions through 2007, the respondents tried to seize the appellant's property in execution of the default judgments. The appellant recognizes that these attempts initially interrupted prescription of the respondents' claims. In 2008, in exchange for a release from one of the seizures, the Council acknowledged the respondents' claims against it and renounced the benefit of the time elapsed against Mtre Sylvestre's claim.

[17] Notwithstanding these efforts to force execution of the appellant's debts under the default judgments, the amounts due remained unpaid. On October 24, 2016, the respondents undertook measures to seize all of the appellant's movable property and certain funds held for the appellant by third parties, namely the Caisse populaire de Kahnawake (a financial services cooperative), and the federal and provincial taxing authorities. On that date, a bailiff, acting on the respondents' instructions, filed a single notice of execution in the Superior Court for both the seizure by garnishment and for the seizure of property in possession of the appellant. On November 17 and 18, 2016, the bailiff served the notice of execution on the Caisse populaire and the two taxing authorities. The notice was served on an employee of the appellant on November 23, 2016.

[18] The notice of execution explained that the bailiff had received instructions to proceed with the seizures as measures to force execution of the default judgments, details of which were served with the notice. The notice informed the appellant that it had not voluntarily executed the judgments and explained that an arrangement could be reached with the bailiff, subject to approval, for the debtor to make payment to the bailiff in whole or by instalment. It also stated that the appellant could oppose the measures: [TRANSLATION] “You may oppose the execution measures taken against you within 15 days . . . of seizure . . . in accordance with articles 735 and 736 C.C.P.” (A.R., vol. III, at p. 176). The notice recorded that the bailiff was directed to seize [TRANSLATION] “all movable property” (in respect of the property in the hands of the appellant), and “property” that the garnishees held for the appellant (p. 181).

[19] The bailiff testified on discovery that when he presented himself at the appellant’s address with the notice, he first asked the employee of the Council for payment of the claims. When payment was not forthcoming, the bailiff remitted the notice to the employee but did not seize any property, as he was of the view that the appellant’s property was exempt from seizure. He explained that he did not prepare minutes of seizure, including minutes *nulla bona*, because there was nothing to seize.

[20] The Caisse populaire filed a declaration stating that any amounts it held for the appellant were exempt from seizure under s. 89 of the *Indian Act*. The other two garnishees declared that amounts they held were exempt from seizure under applicable legislation.

[21] Several months later, on February 14, 2017, the bailiff returned to the appellant's address at Kanesatake, whereupon Grand Chief Simon and Nicholas Dodd, counsel for the appellant, stated that the appellant owned no property situated outside of its "reserve". Shortly thereafter, appellant's lawyer informed the respondents that the Council did have an interest in land situated outside the reserve in the Laurentians which, he said, was transferred to the Council on condition that it not be subject to seizure. The respondents registered legal hypothecs against this immovable. In separate proceedings, the appellant is seeking a declaration that the land is held in trust for the Mohawks of Kanesatake and Kahnawà:ke and that the legal hypothecs are without effect. That litigation has been suspended pending the outcome of this appeal.

[22] After attending the appellant's premises, the bailiff prepared a record entitled [TRANSLATION] "minutes of suspended execution" (A.R., vol. IV, at p. 32), dated February 16, 2017, regarding the two seizures referenced in the notice of execution. The bailiff indicated that the seizure was suspended because [TRANSLATION] "Serge Simon, the Grand Chief, and Nic[h]olas Dodd, counsel, declare that they have nothing outside the reserve" (*ibid.*). The appellant says it was not notified or served with this or any other document attesting to the suspension of the seizures.

[23] In January 2017, and separate from the present proceedings, the appellant filed an amended application in the Superior Court against the respondent Sylvestre seeking to annul the seizures by garnishment and to obtain damages for abuse of procedure under the *C.C.P.* The appellant alleged that the seizures were null because

the funds were exempt from seizure. The seizure directed at the Caisse populaire was abusive because, said the appellant, the respondent Sylvestre “was fully aware” that the property was exempt from seizure (A.R., vol. V, at p. 116).

[24] In a consent judgment rendered in 2017, the Superior Court annulled the seizures by garnishment directed at the Caisse populaire and the federal and provincial taxing authorities (No. 700-17-0002128-048, Auclair J., reproduced in R.R.F., at pp. 93 et seq.). The appellant agreed to discontinue the action in damages for abuse of procedure. Consent was given without prejudice to the parties’ respective positions concerning interruption of prescription.

[25] In 2020, the appellant filed an application for a declaratory judgment, seeking, in particular, a declaration from the Superior Court that the rights claimed by the respondents under the 2004 default judgments were prescribed. Before the courts below, the appellant argued that the respondents’ efforts to execute the judgment by the seizures in 2016 did not interrupt the 10-year prescription period. The Superior Court and the Court of Appeal both disagreed. They held that prescription was interrupted by the attempted seizure of property in possession of the Council, even if those measures proved to be unsuccessful. Both courts rejected the appellant’s arguments that the 10-year period had expired, which would have extinguished the respondents’ claims under the default judgments.

[26] The application for declaratory judgment is at the origin of this appeal. The sole question remaining is whether the debts the appellant was condemned to pay by

the default judgments are prescribed by reason of the expiry of the 10-year prescription period established in art. 2924 C.C.Q., or whether prescription was interrupted in 2016 by the respondents' unsuccessful efforts to have the judgments executed.

III. Judicial History

A. *Superior Court of Quebec, 2022 QCCS 3332 (Poulin J.)*

[27] The judge of the Superior Court dismissed the application for declaratory judgment. She concluded that the respondents' claims resulting from the 2004 default judgments were not prescribed. The judicial application for seizure was properly filed and prescription was interrupted "by the service of [the] notice of execution on the [Council] on November 23, 2016" (para. 7; see also para. 29).

[28] The judge noted that a band's property situated on a reserve is exempt from seizure pursuant to s. 89(1) of the *Indian Act*. She took this into account in deciding whether the respondents had brought an application for seizure in a manner that would constitute a civil interruption of prescription under arts. 2892 and 2894 C.C.Q.

[29] Observing first that prescription can indeed be interrupted by a judicial application seeking to seize a debtor's property, the judge recognized that if the application is subsequently dismissed, interruption would retroactively be deemed to have never occurred. She decided, however, that even though the band's property was

exempt from seizure, the respondents' unsuccessful attempt to seize that property did interrupt prescription in this case.

[30] She observed that in *Investissements Pliska inc. v. Guy & Gilbert, s.e.n.c. en liquidation*, 2005 QCCA 603, the Court of Appeal held that the service of a writ of seizure by garnishment under the former *Code of Civil Procedure*, CQLR, c. C-25 ("former *C.C.P.*"), constituted a judicial demand that interrupted prescription under art. 2892 C.C.Q. Extinctive prescription is the consequence of the creditor's inaction or negligence. Prescription is thus interrupted when the creditor acts. *Pliska* confirmed that, pursuant to arts. 2892 and 2903 C.C.Q., a creditor's exercise of their right by the filing and service of a judicial application constitutes a civil interruption of prescription and restarts the prescription period.

[31] The judge agreed with the Council that when a seizure is opposed and dismissed by a court, an interruption is deemed to have never occurred pursuant to art. 2894 C.C.Q. However, wrote the judge, "[a] seizure which is unfruitful is not assimilated to a dismissed application" (para. 36). In the event of an unfruitful seizure where no property is seized, such as one that could result in minutes *nulla bona* being prepared by a bailiff, the exercise of the creditor's right nevertheless interrupts prescription.

[32] In this case, the respondents' attempted seizure on November 23, 2016, interrupted prescription. Even if the seizure was ultimately suspended by the bailiff and was thus unfruitful, it nevertheless was a judicial demand, properly filed in court and

served on the debtor, which interrupted prescription pursuant to art. 2892 C.C.Q. Execution began by the filing of the notice of execution in the office of the court; the notice was served on the appellant and notified to the creditors. The service of the notice of execution on the debtor “was part of [the] seizure process” (para. 68). Once filed and served, the notice of execution reminded the Council of the existence of the judgment debt and of the respondents’ intention to proceed with forced execution by reason of the debtor’s failure to pay. As in *Pliska*, the fact that the seizure was unsuccessful did not preclude the interruption of prescription.

[33] The judge also rejected the appellant’s argument that prescription was not interrupted because the bailiff failed to prepare proper minutes of seizure or notify the parties accordingly. No minutes were required because no property was seized. While the bailiff could have prepared minutes of seizure *nulla bona*, the C.C.P. does not impose this requirement in circumstances where no seizure actually takes place.

[34] In the result, the 10-year prescription period was interrupted. The period began to run again from November 2016, “when the seizure was exercised” (para. 75).

[35] On the other hand, the three seizures by garnishment of the appellant’s property in the hands of the Caisse populaire and the two taxing authorities were annulled by the consent judgment previously rendered by Auclair J. These judicial demands were not unfruitful seizures but should be treated as dismissed applications which, under art. 2894 C.C.Q., do not interrupt prescription.

[36] In the result, the Council's amended application for a declaratory judgment that the respondents' debts were prescribed was dismissed.

B. *Court of Appeal of Quebec, 2023 QCCA 1603 (Dutil, Cotnam and Moore JJ.A.)*

[37] The Court of Appeal unanimously dismissed the Council's appeal, concluding that prescription was interrupted by the filing and service of the notice of execution to seize the debtor's property pursuant to art. 2892 C.C.Q., notwithstanding the fact that the seizure was unsuccessful.

[38] The court agreed with the first instance judge that the bailiff was not obliged to prepare minutes of seizure or to notify the debtor that the seizure could not be performed when no seizable assets were found. Minutes are not required by law in such circumstances. Bailiffs may prepare minutes *nulla bona* when a creditor so requests, but the debtor suffers no prejudice if this is not done.

[39] In circumstances where a seizure is unsuccessful owing to an absence of seizable assets, property is not placed under judicial control and all of the debtor's assets remain in its possession. In the absence of an irregularity resulting in serious prejudice, the appellant had no grounds to seek the annulment of the seizure that was simply unsuccessful. The court made specific mention, at para. 32, that the Council did not argue that the seizure should be dismissed as an abuse of procedure.

[40] The court wrote that “under the special circumstances of this case”, the seizure should indeed be considered as unsuccessful (para. 33). Following *Pliska*, the court held that an unsuccessful seizure is not a dismissed judicial application that precludes the interruption of prescription under art. 2894 C.C.Q. The court concluded that prescription was interrupted even if the seizure proved to be unsuccessful because the respondents had “clearly expressed their intention to obtain payment of the sums that are owed to them by the appellant” (*ibid.*).

[41] The Court of Appeal held that the first judge correctly concluded that the seizures by garnishment did not interrupt prescription because they had been subsequently annulled. At the end of the day, however, prescription was interrupted as a result of the filing and service of the notice of execution bearing on the unsuccessful seizure of the property in the Council’s possession.

IV. Issues on Appeal

[42] The parties state the issues on appeal differently, but they all relate to the same fundamental question: Did the respondents’ unsuccessful attempt to seize the appellant’s property that was exempt from seizure interrupt prescription? They identify two connected matters which, when addressed in turn, allow for the proper resolution of the appeal, as well as a third concerning s. 89 of the *Indian Act*.

[43] First, did the filing and service of the notice of execution interrupt prescription pursuant to art. 2892 C.C.Q.?

[44] Second, if the notice did interrupt prescription when it was filed and served, was the notice retroactively stripped of its interruptive effect, pursuant to art. 2894 C.C.Q., when the attempted seizure proved unsuccessful because the debtor's property was exempt from seizure?

[45] Thirdly, in its judgment granting leave in this case, the Court asked the parties to provide submissions addressing the applicability of s. 89 of the *Indian Act* and whether the movable property of the applicant is "situated on a reserve".

[46] In my view, the circumstances of this case do not allow for a useful treatment of this third question. I agree with the parties that it is unnecessary to consider the full application of s. 89 of the *Indian Act* to dispose of the appeal. As was the case in the courts below, the dispute can be fully resolved by answering the questions of whether the filing and service of the notice of execution interrupted prescription and whether the fact that the seizure was unsuccessful affected that interruption. Moreover, the parties rightly suggest that addressing s. 89 without a proper factual record or meaningful guidance from the courts below would be unwise. I would leave consideration of s. 89 of the *Indian Act* to another day.

V. The Principal Provisions of the C.C.Q. and the C.C.P. Relevant to the Dispute

[47] This appeal requires the Court to consider the manner in which extinctive prescription applies to a creditor's personal right arising from a judgment. Extinctive prescription is described by the C.C.Q. as a means of "being released by the lapse of

time” (art. 2875); as such, it brings about the extinction of a right owing to its non-use or allows for the raising of a peremptory exception to an action (art. 2921). Different periods for extinctive prescription are established by law to fit different circumstances, including differently sourced debts. Article 2924 para. 1 C.C.Q. provides that “[a] right resulting from a judgment is prescribed by 10 years if it is not exercised.”

[48] Prescription may be interrupted civilly when the right is so exercised. When the judgment creditor causes a “judicial application” (sometimes called a “judicial demand”) to be filed before the expiry of the 10-year period and served no later than 60 days thereafter, prescription is interrupted. Article 2892 C.C.Q. further provides that seizures are “considered” to be judicial applications for this purpose:

2892. The filing of a judicial application before the expiry of the prescriptive period constitutes a civil interruption, provided the demand is served on the person to be prevented from prescribing not later than 60 days following the expiry of the prescriptive period.

Cross demands, interventions, seizures and oppositions are considered to be judicial applications. The notice expressing the intention by one party to submit a dispute to arbitration is also considered to be a judicial application, provided it describes the subject matter of the dispute to be submitted and is notified in accordance with the rules and time limits applicable to judicial applications.

[49] Following the interruption prompted by the judicial application, prescription begins to run again for the same period (art. 2903 C.C.Q.). The C.C.Q. provides at art. 2894 that “[i]nterruption does not occur if the demand is dismissed, or if the proceedings are discontinued or preempted.”

[50] The parties rely on various provisions of Book VIII (“Execution of Judgments”) of the *C.C.P.* to explain their respective views of the interruptive effect of an unsuccessful seizure of the debtor’s movable property under arts. 2892 and 2894 *C.C.Q.* While judgments are expected to be executed voluntarily, art. 656 para. 2 *C.C.P.* provides that “[e]xecution may be forced if the debtor refuses to comply voluntarily and the judgment has become final.” Book VIII, Title I, Chapter IV sets out the principles and general rules for forced execution of judgments by the judgment creditor.

[51] The judgment creditor is responsible for introducing the execution proceedings directly through the offices of the bailiff. Article 679 *C.C.P.* provides that “[f]orced execution is undertaken by the judgment creditor if the debtor does not execute the judgment voluntarily.” Acts necessary for executing judgments are performed not by the creditor but by a “bailiff acting as a court officer, under the authority of the court” (art. 658). As the Minister of Justice explained when the reformed law of procedure was enacted, the former “writ of execution” issued by the court in name of the Sovereign is no longer required to begin execution proceedings:

[TRANSLATION] The creditor does not need authorization from the court or a writ of execution granted in the name of the Sovereign to do so. The introduction of this rule results in the disappearance of the writ of execution provided for by the previous code.

(Ministère de la Justice, *Commentaires de la ministre de la Justice: Code de procédure civile, chapitre C-25.01* (2015) (“*Commentaires de la ministre de la justice (C.C.P.)*”), at p. 490)

[52] Practically speaking, the judgment creditor gives instructions to a bailiff to seize the debtor's property and provides the bailiff with the information necessary for the seizure (art. 680 *C.C.P.*). The bailiff must act impartially and has a general duty to provide information to all participants in the execution proceedings (art. 685 para. 1).

[53] Article 681 *C.C.P.* — one of the provisions at the heart of this dispute — outlines the first steps in the execution after instructions are given to the bailiff by the creditor. Execution “begins” when a notice of execution is filed with the court office by the bailiff; it is then served on the debtor, and finally notified to the creditor. The notice of execution itself must be in the prescribed form which is designed to [TRANSLATION] “protect debtors by ensuring that they have all required information” (*Commentaires de la ministre de la Justice (C.C.P.)*, at pp. 491-92). Charged with the creditor's instructions, the bailiff must complete the notice with the relevant information, pursuant to art. 681 *C.C.P.*, including the execution measures to be taken, such as the seizure of the debtor's property:

681. Execution begins by the filing of a notice of execution, in keeping with the model established by the Minister of Justice, with the court office.

On receiving the creditor's instructions, the bailiff completes the notice of execution by identifying the judgment to be executed, including its date, by writing in the name and contact information of the creditor, the debtor and the bailiff, and the amount of the claim, indicating, if such is the case, that the judgment has been partially executed, and by describing the execution measures to be taken. If the judgment is to be executed against an immovable, the immovable is described in accordance with the rules of the Civil Code, and its address is given.

The notice is served on the debtor and notified to the creditor.

[54] All participants in the proceedings are required to act in good faith and to cooperate in the proper execution of the judgment (art. 683 *C.C.P.*). The law requires, at this early stage, the debtor to provide the bailiff with “information on their patrimonial situation” (art. 684). Relevant to this case, the *C.C.P.* details the categories of property that are exempt from seizure (arts. 694 et seq.) and art. 701 provides that a decision made by the bailiff under the exemption from seizure rules may, on application, “be reviewed by the court”.

[55] Title II of the Book on Execution of Judgments contains special rules bearing on the “Seizure of Property”, including rules relating, in particular, to the seizure of movables in the debtor’s possession or held by another person. Article 702 *C.C.P.* provides that a judgment creditor may seize any of the debtor’s movables in their possession or held by another. The effect of seizure is to place the debtor’s property under judicial control. Article 704 para. 1 *C.C.P.* directs that the seizure of movable property be undertaken at certain hours of the day “by serving the notice of execution on the debtor and the garnishee”. Article 707 para. 1 *C.C.P.* states that “[a] seizure is recorded in minutes provided by the bailiff”. The *C.C.P.* sets forth the required contents of the minutes of seizure and stipulates, at art. 707 para. 3, that “[t]he minutes are notified to the debtor and the seizing creditor”, as well as certain others.

[56] The law relating to opposition to seizure fixes rules allowing a person to ask for the annulment in whole or in part of the seizure. Article 735 *C.C.P.* provides,

among other things, that a person may oppose a seizure and ask for its annulment if the property is exempt from seizure or if the debt is extinguished.

[57] The Preliminary Provision of the C.C.Q. is relevant to the different interpretations of arts. 2892 and 2894 C.C.Q. advanced by the parties. The *Code* lays down the law of general application (the *jus commune* or, as it is often called, in both French and English, the “*droit commun*”) in matters to which its provisions apply. One of the objectives of this provision, in the words of the Minister charged with overseeing its enactment, [TRANSLATION] “is to promote a dynamic interpretation of the Civil Code and encourage the use of its provisions to interpret and apply other legislation” (Quebec, *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993) (“*Commentaires du ministre de la Justice (C.C.Q.)*”), at p. 1). The C.C.Q. is the “foundation of all other laws” in matters relating to persons, relations between persons, and property, but other laws may complement it:

PRELIMINARY PROVISION

The Civil Code of Québec, in harmony with the Charter of the French language (chapter C-11), the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

[58] The *C.C.P.* also has a Preliminary Provision that, in the words of the Minister of Justice, [TRANSLATION] “is intended to situate the *Code of Civil Procedure* in the whole body of legislation while briefly noting the essence and objectives of procedure as well as the principles of interpretation applicable to its rules” (*Commentaires de la ministre de la Justice (C.C.P.)*, at p. 15). The provision stipulates that “[t]his Code must be interpreted and applied as a whole, in keeping with civil law tradition.” It signals that the *C.C.P.* is predicated on the “fair, simple, proportionate and economical application of procedural rules” (see, e.g., *Giroux v. Brault*, 2025 QCCA 917, at para. 20). “[T]ogether with the Civil Code”, the *C.C.P.* governs, among other matters, “procedure before the courts and procedure for the execution of judgments”:

PRELIMINARY PROVISION

This Code establishes the principles of civil justice and, together with the Civil Code and in harmony with the Charter of the French language (chapter C-11), the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs procedure applicable to private dispute prevention and resolution processes when not otherwise determined by the parties, procedure before the courts as well as procedure for the execution of judgments and for judicial sales.

This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties’ rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.

This Code must be interpreted and applied as a whole, in keeping with civil law tradition. The rules it sets out are to be interpreted in the light of the specific provisions it contains or of those of the law, and in the matters it deals with, the Code compensates for the silence of the other laws if the context so admits.

[59] With these provisions of the *C.C.Q.* and the *C.C.P.* in mind, I turn to a consideration of the two connected issues on appeal.

VI. Analysis

A. *Did the Filing and Service of the Notice of Execution Initiated by the Respondents Interrupt Prescription Pursuant to Art. 2892 C.C.Q.?*

[60] The appellant says that its theory of the case remains the same before the Court as it was in the courts below. As judgment creditors, the respondents did nothing to validly interrupt prescription in the 10-year period before its expiry. As a result, the Council should be released from its obligation to pay the debts under the default judgments. Initiating the filing and service of the notice of execution in 2016 was insufficient to interrupt prescription. This is not because the notice of execution was late but because the respondents did not diligently exercise their rights under the judgments in keeping with the requirements imposed by law.

[61] The appellant says the Superior Court and the Court of Appeal erred in law in their interpretation of the term “judicial application” in art. 2892 *C.C.Q.* and mistakenly held that prescription could be interrupted by a mere notice of execution. In this case, civil interruption of prescription can only result from the filing and service of a “judicial application” for the seizure of its property, which, according to the appellant, is the seizure itself rather than the notice of execution. When, as in this case, there is no actual seizure of property, it is particularly obvious that the notice of execution is

not the judicial application that interrupts prescription. While a seizure can be opposed before the courts by a debtor, the notice of execution cannot be contested under the *C.C.P.* The appellant argues it was deprived of its right to be informed of a change to its legal rights. When the seizure was not carried out, the appellant says it had no chance to contest the judicial application that, alone, could interrupt prescription.

[62] I respectfully disagree. The appellant has misconstrued the term “judicial application” and wrongly advances a narrow interpretation of art. 2892 *C.C.Q.* that is incompatible with the procedure regulating the seizure of property in execution of a judgment. The Superior Court and the Court of Appeal were right to hold that the notice of execution is the procedural act that introduces proceedings for seizure. The filing and service of the notice, itself part of the judicial application for seizure, interrupted prescription in 2016 pursuant to art. 2892 *C.C.Q.*

[63] When the text of art. 2892 *C.C.Q.* is understood in light of its context for the seizure of property as a means of execution of judgments in the *C.C.P.*, and its purpose as part of a simplified law of civil procedure, it is plain that the notice of execution is so bound up in the “judicial application” of seizure as to be an integral part thereof. In my respectful view, the appellant has neglected to apply the proper principles of interpretation to both the *C.C.Q.* and the *C.C.P.* in this case. This error helps explain the inappropriately narrow reading it proposes for art. 2892 *C.C.Q.*

[64] Before undertaking the interpretation of the expression “judicial application” within the meaning of art. 2892 *C.C.Q.* in earnest, I pause here to recall

the general principles of interpretation as they apply to codes in the civil law tradition. As announced in the Preliminary Provision of the *C.C.Q.*, the Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the law of general application, whether expressly or by implication. For the *C.C.Q.*, this means its interpretation is shaped by its role as the “foundation of all other laws” (Preliminary Provision, para. 2). The *C.C.Q.*’s disciplined and consistent use of concepts, and of legal vocabulary, provides an interpretive touchstone for the rest of the law (see J.-M. Brisson, “Le Code civil, droit commun?”, in *Le nouveau Code civil: Interprétation et application — Journées Maximilien-Caron 1992* (1993), 293, at pp. 305 et seq.; see also *Sharp v. Autorité des marchés financiers*, 2023 SCC 29, at para. 44; *Promark Electronics Inc. v. Bombardier Recreational Products Inc.*, 2024 QCCA 906, at para. 21). The legislature’s choice to cast the *C.C.Q.* in often open-textured language that is foundational for the rest of the law is one of the hallmarks of a civilian code that is most relevant to its interpretation here, in that the *C.C.Q.* governs the general law of prescription (*Montréal (City) v. Dorval*, 2017 SCC 48, [2017] 2 S.C.R. 250, at para. 50, per Wagner J. (as he then was), and at para. 94, per Côté and Brown JJ., dissenting, both citing *Doré*, at para. 15).

[65] I recall further that the *C.C.P.* is itself a code to be construed “in keeping with civil law tradition”, as its Preliminary Provision directs, carrying forward the explanation given by LeBel J. for the Court in *Lac d’Amiante*, at para. 35. Much like the *C.C.Q.* for the law of general application in matters to which its provisions apply, the *C.C.P.* is a foundational expression of the law of civil justice, animated by similar

principles of coherence of language that govern its interpretation. Drawing on its Preliminary Provision, Professors Pierre-André Côté and Mathieu Devinat have written that the *C.C.P.* should be understood as expressing the *droit commun* in respect of matters to which it applies, in particular in that it “compensates for the silence of the other laws if the context so admits” (Preliminary Provision, para. 3 *C.C.P.*; see *Interprétation des lois* (5th ed. 2021), at para. 1394). In comments that would apply equally to the current *C.C.P.*, Professor Daniel Jutras cited *Lac d’Amiante* in writing that the former *C.C.P.* had [TRANSLATION] “in a way the same status as the Civil Code, one on the procedural front, the other on the substantive front” (“Culture et droit processuel: le cas du Québec” (2009), 54 *McGill L.J.* 273, at p. 289). For the law of civil justice, this shaped the interpretation of the former *C.C.P.*, he wrote, as [TRANSLATION] “the place where fundamental principles and a relatively stable conceptual architecture [were] consistently expressed” (*ibid.*). The *C.C.P.* sets in place, in the form of a code, the fundamental law of civil justice; it supplements other laws in such matters, including the *C.C.Q.*, unless the legislature directs otherwise. In that sense, the *C.C.P.* is relevant to a proper interpretation of art. 2892 *C.C.Q.* which relies on it, contextually, to fill out the meaning of a “judicial application” of seizure that, when filed and served in a timely manner, interrupts prescription.

[66] Scholars have pointed out that interpretative markers of a legislative provision’s text, context, and purpose associated with the so-called modern approach to statutory interpretation can assist in the interpretation of codes in the civil law tradition (see, e.g., Côté and Devinat, at paras. 100 et seq.). That said, the principles of

interpretation developed in connection with statute law, including those that reflect an understanding of an ordinary statute as a “law of exception” in common law and public law settings, must be adjusted to accommodate the place of civilian codes as foundational expressions of law in respect of matters to which they apply (*Doré*, at para. 15). Despite its legislative form, a civilian code is not to be interpreted as an ordinary statute. It must be read as an enactment that gives voice to the *droit commun*, thereby serving “the equivalent function to the unlegislated common law in the Common law tradition” (J. E. C. Brierley and R. A. Macdonald, eds., *Quebec Civil Law: An Introduction to Quebec Private Law* (1993), at para. 97). This is true even though not all general principles of law are explicitly stated in the code (see Preliminary Provision, para. 1 C.C.Q.; *Cie Immobilière Viger Ltée v. Giguère Inc.*, [1977] 2 S.C.R. 67, at p. 76; for the C.C.P., see *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41, [2010] 2 S.C.R. 592, at paras. 30-31).

[67] A civilian code also connotes [TRANSLATION] “the ideas of system, rationality and consistency” that guide its interpretation and that are not present in all statute law (*Côté and Devinat*, at para. 1070). The [TRANSLATION] “high level of abstraction generally chosen” for many — but not all — codal provisions encourages a reading that reflects a code’s broad mission as the foundation of other laws, a feature not characteristic of so-called statutes “of exception” (*ibid.*; see also paras. 102 and 107). While the text is of course to be respected, a code must be read as a whole, in light of the goal to state the general law, giving a heightened importance to the purpose of the code, as against its letter (Brierley and Macdonald, at paras. 109-13, citing in

particular F. P. Walton, *The Scope and Interpretation of the Civil Code of Lower Canada* (1907)). Writing extrajudicially long before the formal statement in the Preliminary Provision of the C.C.Q., P. B. Mignault observed of the role of codal language in its interpretation: [TRANSLATION] “. . . the more general the rule, the more the courts have latitude to adapt it to circumstances that constantly vary and that the legislature cannot predict in advance” (“Le Code civil de la Province de Québec et son Interprétation” (1935), 1 *U.T.L.J.* 104, at p. 114). The Minister responsible alluded directly to the relationship between letter and spirit for the C.C.Q.’s interpretation when commenting on its Preliminary Provision: [TRANSLATION] “. . . the Civil Code is not to be interpreted literally, but by seeking the spirit of its provisions and, when the text is silent, by using its object as the source of a broader rule” (*Commentaires du ministre de la Justice (C.C.Q.)*, at p. 2).

[68] The C.C.Q.’s exposition of the law of prescription, including the circumstances by which a judicial application interrupts prescription, should be interpreted to allow for its broad reach as an expression of the *droit commun*. The fact that the “judicial application” is used as part of the foundational law of prescription in the C.C.Q. has sustained the widely held view that the term as used in art. 2892 should receive a generous and liberal interpretation given its place as part of the general law (see *Serge Morency et Associés inc. v. Mayrand*, 2010 QCCA 1190, 72 C.B.R. (5th) 126, at para. 20; *Sudaco, S.p.A. v. Connexions commerciales internationales CT inc.*, 2012 QCCA 2254, at para. 24; *Société canadienne des postes v. Rippeur*, 2013 QCCA 1893, at para. 36; *Bausch Health Companies Inc. v. California State Teachers’*

Retirement System, 2021 QCCA 1547, at paras. 21-22). These principles suggest that the appellant’s narrow interpretation of judicial application in art. 2892 C.C.Q., divorced from its context in the C.C.P., is inappropriate for determining whether prescription is interrupted in this case.

[69] It is true, as the appellant observed in argument, that art. 2892 C.C.Q. makes no explicit mention of the “notice of execution” and states that it is the “judicial application”, not a notice, that must be filed and served to interrupt prescription. But the very text of the provision indicates that the legislature proposes an expansive understanding of what constitutes a judicial application. The decision by the legislature to treat a seizure, for example, as a judicial application with interruptive effect in art. 2892, is notable. While one might think of a seizure of property as a means of forced execution of a judgment rather than a distinct judicial application, art. 2892 para. 2 C.C.Q. deems it to be a judicial application for the purposes of interruption of prescription (C. Belleau, “L’exécution des jugements”, in D. Ferland and B. Emery, eds., *Précis de procédure civile du Québec* (7th ed. 2025), vol. 2, 1157, at paras. 2-2606 and 2-2608). The “judicial application” is not a narrow concept, as the text of art. 2892 C.C.Q. itself makes most plain.

[70] The context relevant to the interpretation of art. 2892 C.C.Q. also confirms that the notice of execution is indissociable from the judicial application for seizure. Because the law relating to forced execution of judgments is found largely in the C.C.P., a contextual interpretation of the judicial application for seizure in art. 2892

C.C.Q. turns, in part, on the connections between the law of general application, the law of civil justice and the interpretative principles relevant to the interplay of the two codes. Specifically, understanding how the filing and service of a judicial application for seizure can interrupt prescription under art. 2892 *C.C.Q.* rests on a coordinated interpretation of these two foundational legislative instruments.

[71] Respectfully said, the appellant has neglected to give proper effect to how this coordinated interpretation should proceed. As noted, the legislature states expressly that the *C.C.P.* governs procedure before the courts and procedure for the execution for judgments “together with the Civil Code” (Preliminary Provision, para. 1). Speaking to this direction, author Catherine Piché wrote that interpreting the procedural rules in the *C.C.P.* and the *C.C.Q.* should proceed [TRANSLATION] “together” and not in isolation from one another (“La Disposition préliminaire du *Code de procédure civile*” (2014), 73 *R. du B.* 135, at p. 147), echoing LeBel J.’s earlier emphasis on “the links between civil procedure and Quebec law as a whole” for a proper understanding of the law (*Lac d’Amiante*, at para. 40).

[72] This coordinated reading of the two codes is essential to a contextual understanding of how and when the filing and service of a judicial application for seizure in art. 2892 *C.C.Q.* interrupts prescription. Article 2892 *C.C.Q.* imposes two cumulative conditions for when a judicial application interrupts prescription: [TRANSLATION] “. . . the filing of the judicial application before the expiry of the prescription period and its service within 60 days of the expiry of the prescription

period” (*Daniel v. Mont St-Hilaire (Ville de)*, 2016 QCCA 493, 54 M.P.L.R. (5th) 118, at para. 25). However, the provision is silent on how, procedurally, filing and service are brought about. It falls to the *C.C.P.*, as the foundational expression of the general law of civil procedure relating to seizure, to fill that gap.

[73] According to the relevant provisions of Book VIII of the *C.C.P.*, the judgment creditor, when faced with the refusal of the debtor to voluntarily execute the judgment, can undertake proceedings for forced execution by giving instructions to the bailiff to seize the debtor’s property (art. 680 paras. 1 and 2). The judicial application for seizure in art. 2892 *C.C.Q.* “begins by the filing of a notice of execution” in the prescribed form (art. 681 para. 1 *C.C.P.*). Article 681 *C.C.P.* provides the procedural mechanism through which the rule on interruption of prescription in art. 2892 *C.C.Q.* operates. When the two codes are read together, it is clear that the notice is thus the procedural act that introduces the judicial application; it is part and parcel of the proceedings of seizure undertaken for the execution of the judgment. Other judicial applications may begin otherwise, but a coordinated interpretation of arts. 2892 *C.C.Q.* and 681 *C.C.P.* signals that prescription is interrupted when a notice of execution by seizure is filed in court and served on the debtor by the bailiff at the behest of the creditor in keeping with the rules in the *C.C.P.* The appellant is mistaken to say that the notice and the judicial application are separate for the purposes of identifying what interrupts prescription under art. 2892 *C.C.Q.*

[74] Bailiffs have rightly been described as the [TRANSLATION] “prime movers in the execution of judgments” (J. Deslauriers, “L’exécution des jugements selon le nouveau *Code de procédure civile*”, in S. Guillemard, ed., *Le Code de procédure civile: quelles nouveautés?* (2016), 159, at p. 162). But the bailiff, central to the proceedings of seizure that give rise to the interruption of prescription, is not even mentioned in the text of art. 2892 *C.C.Q.* The bailiff’s involvement in execution, and specifically in respect of the preparation, filing and service of the notice, is fixed principally in the *C.C.P.*, not the *C.C.Q.* (Belleau, at paras. 2-2620 to 2-2628). The legislature reinforces the role of the notice as part of the judicial application by imposing duties on the bailiff. Notably, while the bailiff responds to the initiative of the creditor, they must act impartially and as an officer of the court. As a matter of fairness to the debtor, the bailiff must complete the notice of execution with details of the judgment to be executed, the contact information of the creditor, and the amount of the claim, among other matters set out in arts. 681 para. 2 and 685 *C.C.P.* Thereafter, service of the notice triggers obligations for the debtor to provide the bailiff with information, including information on their financial situation (art. 684 *C.C.P.*). The link between the requirements for interruption and the requirements for seizure is made more manifest still by the rules on the filing and service of the notice. The requirement for timely filing in court and for service of the notice on the debtor in art. 2892 *C.C.Q.* — essential conditions for interruption of prescription — is procedurally the responsibility of the bailiff under arts. 681 para. 3 and 682 *C.C.P.* These are plain examples of the *C.C.Q.* and the *C.C.P.* operating “together” as the latter’s Preliminary Provision requires.

[75] In addition to its text and context, the purpose of art. 2892 C.C.Q. points to an interpretation of the “judicial application” of seizure that includes the notice of execution as the act that begins the proceedings. There is longstanding recognition that the purpose of the rule on interruption based on the judgment creditor’s initiation of the judicial application is to ensure that creditors are not sleeping on their rights.

[76] This purpose of art. 2892 C.C.Q. — a reflection of the “spirit” or “object” of the provision, relevant to its interpretation in keeping with para. 2 of the C.C.Q.’s Preliminary Provision — is not a matter of controversy. The legislature directed that the filing and service of a judicial application for seizure interrupts prescription because these steps reliably indicate the creditor’s intention to make good on their claim before the expiry of the 10-year prescription period. Scholars and courts have always identified this as one of the purposes of the law of extinctive prescription. The law sanctions the creditor’s non-use of their right, as Professor Pierre Martineau explained: [TRANSLATION] “It is therefore the failure to exercise one’s right . . . that leads to the disappearance of that right. Prescription is identified as the sanction for negligence on the part of the holder of a right” (*Traité élémentaire de droit civil: La prescription* (1977), at para. 232; see also C. Gervais, *La prescription* (2009), at p. 4). The sanction of prescribing the judgment creditor’s right at the expiry of the 10-year period is justified as the consequence of the creditor’s negligent conduct and as a means to promote stability in debtor-creditor relations (see *Dorval*, at para. 2; see also *Gauthier v. Beaumont*, [1998] 2 S.C.R. 3, at para. 48). Helpfully, in *Mayrand*, Thibault J.A. connected the meaning of “judicial application” to the justification for interrupting

prescription under art. 2892 C.C.Q.: [TRANSLATION] “Thus, if plaintiffs, by means of their proceeding, clearly demonstrate their intention to exercise their right by seizing the court in one way or another, we may properly consider ourselves to be in the presence of a judicial demand that can interrupt prescription” (para. 21).

[77] This purpose of sanctioning a creditor’s failure to exercise their rights with an adverse consequence is not unique to Quebec law. Writing about French law, Professor Jean Carbonnier observed that [TRANSLATION] “[p]rescription is not so much a time limit for acting and exercising one’s rights as a time limit for not acting and for neglecting them” (“Notes sur la prescription extinctive” (1952), *Rev. trim. dr. civ.* 171, at p. 172). Such a consequence is not limited to the civil law. Indeed, in the recent Ontario appeal of *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32, at para. 76, Jamal J. highlighted the relevance of creditor diligence as a purpose of the modern law of limitation, relying on, in particular, *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60, [2015] 3 S.C.R. 801, at para. 57, per Côté J., for a majority on this issue, and *Novak v. Bond*, [1999] 1 S.C.R. 808, at paras. 64-67, per McLachlin J., as she then was, for the majority.

[78] Article 2892 C.C.Q. gives voice to this purpose by identifying a sure sign of creditor diligence: the filing and service of the judicial application for seizure, in keeping with the procedural requirements in the C.C.P. This is especially true in matters relating to extinctive prescription of rights under a judgment, where a court has already decided that the creditor has a valid legal right to claim. In article 681 C.C.P.,

the legislature has designated the notice of execution as the procedural act that, at the behest of the creditor, “begins” the judicial application for seizure to make good on a confirmed judgment claim. The appellant would have the Court ignore the notice as a plain sign of the creditors’ diligence. This is a further reason to reject a narrow interpretation of art. 2892 C.C.Q. in this appeal.

[79] As a final argument in support of its view that the notice of execution cannot interrupt prescription, the appellant says that its position is consistent with the law’s treatment of “writs of execution” under the former C.C.P. Under the regime of the writ, argues the appellant, it was always understood that the “writ itself does not constitute the execution of the judgment”, but execution only took place when the bailiff seized the debtor’s property (A.F., at para. 79, quoting *Commercial Acceptance Corporation v. Tournay*, [1964] B.R. 896, at p. 899). The notice of execution under the new law is, for the appellant, functionally analogous to the former writ. The courts below erred in concluding that the notice, rather than the seizure itself, was a judicial application that interrupted prescription.

[80] I respectfully disagree. Whatever the effect of service of the writ on interruption of prescription may have been under the former law, the appellant has misinterpreted art. 2892 C.C.Q. when read together with the reformed C.C.P. The appellant has misconstrued the role the notice of execution plays in introducing the judicial application that interrupts prescription pursuant to art. 2892 C.C.Q. Importantly, the appellant has neglected the policy reason for which the legislature

adopted the notice of execution in the reformed law of civil procedure. Specifically, it is a measure designed to simplify the law.

[81] Quebec law relating to seizure of property does indeed have ancient roots in English law through the writ of execution, reflecting what this Court has described elsewhere as the historically “mixed sources of the Quebec law of procedure” (*Globe and Mail*, at para. 45; see also *Lac d’Amiante*, at para. 39). Prior to the reform of the law of procedure, a judgment creditor was obliged to seek the authorization of a court to obtain a writ of execution in the name of the Sovereign before undertaking the seizure of property (see *Commentaires de la ministre de la Justice (C.C.P.)*, at p. 490; R. Laher, “Le crépuscule du bref d’exécution” (2012), 46 *R.J.T.* 411, at p. 426). This writ was often thought of as a technical device inherited from English law that, historically at least, sat awkwardly within the civilian compass of Quebec law (see J.-M. Brisson, *La formation d’un droit mixte: l’évolution de la procédure civile de 1774 à 1867* (1986), at pp. 45 and 92). But the impetus to abandon the writ was not, it would seem, entirely a problem of sources, even within a new code of procedure to be interpreted “[i]n the civil law tradition” (*Lac d’Amiante*, at para. 39).

[82] Hybridity — sometimes called “mixity” in civilian doctrine — remains a feature of some of the law of civil justice in Quebec, even in the reformed law expressed in a code in the civil law tradition (see Jutras, at pp. 276-77; Piché, at pp. 177-78; R. Jukier, “The Impact of Legal Traditions on Quebec Procedural Law: Lessons from Quebec’s New Code of Civil Procedure” (2015), 93 *Can. Bar Rev.* 211, at pp. 242-43,

citing in particular this Court's decisions in *Globe and Mail* and *Lac d'Amiante*). When the writ was replaced by the notice of execution in the 2014 codification of the law of procedure, it was less by reason of its common law lineage and more because of its perceived incompatibility with the new judicial culture based on simplified, efficient and low-cost civil justice. The writ of execution was understood to be unnecessarily formalistic and thus out-of-step with the aspiration that a modernized code would bring simplicity, efficiency, fairness and accessibility to civil justice, with the notice of execution being [TRANSLATION] "more flexible than the writ and more economically advantageous" (Laher, at p. 440; see also p. 437, citing Comité de révision de la procédure civile, at pp. 33-34). In 2014, replacing the writ with the notice of execution was seen by the Minister of Justice as an effort to modernize Quebec law comparable to efforts made elsewhere in Canada. The Minister cited work undertaken by the Uniform Law Conference of Canada designed to render the enforcement of judgments to be creditor-driven, involve a bailiff-like enforcement officer and eliminate inefficient and unnecessary procedural steps (*Commentaires de la ministre de la Justice (C.C.P.)*, at p. 490, citing Uniform Law Conference of Canada, *Uniform Civil Enforcement of Money Judgments Act*, 2005 (online), ss. 40 to 44).

[83] Whether or not, under the former law, the issuance of the writ of execution interrupted prescription, the law is now clear. Seizure is now a proceeding introduced by the simplified notice of execution, filed in the court by the bailiff and served on the debtor with the requisite information (arts. 681, 702 and 703 *C.C.P.*). The notice interrupts prescription because it begins the judicial application for seizure and forms

part of the application which, as art. 2892 C.C.Q. directs, interrupts prescription upon filing and service. The notice retains some residual aspects of court formalities associated with the common law writ but, in its new guise, the notice of execution relies simply and directly on an impartial bailiff and fits happily with Quebec's renewed culture for civil justice. The role of the court in the renewed law of execution is changed and there is no pretence of a command by writ of execution ordered in the name of the Sovereign. By arguing for a return to the formalism of the writ, at the expense of the simplified notice as a means of beginning an application for seizure, the appellant appears to ally itself with an eclipsed view of civil justice in which form triumphs over substance — where “form takes precedence over substance”, as this Court once warned — in a manner that would be at odds with the modern law (*Duquet v. Town of Saint-Agathe-des-Monts*, [1977] 2 S.C.R. 1132, at p. 1140; see also S. Guillemard and S. Men  tre  y, *Comprendre la proc  dure civile qu  b  coise* (2nd ed. 2017), at para. 21).

[84] Applied to this case, the notice of execution, filed and served on the appellant, signalled on its face that the respondents had commenced a seizure of the movable property of the appellant. The Superior Court and the Court of Appeal were therefore correct to hold that the notice of execution, once filed and served, meant the judicial application for seizure had commenced through the creditors' initiative to take up their claims and that it had interrupted prescription. Their interpretation of art. 2892 C.C.Q., that the notice introduces the judicial application for seizure, is perfectly consonant with the codal provision's text, context and purpose interpreted in the civil law tradition.

[85] In this case, there is no dispute that the notice of execution was filed in the office of the court and served on the debtor, with the required details of the default judgments. I would add that, in the notice of execution served on the debtor, the bailiff made plain, in writing, that the appellant owed the money and had the opportunity to repay it rather than face the consequences of the proposed seizure: [TRANSLATION] “You may obtain release of seizure by paying the amount you are ordered to pay in the judgment, including execution costs (art. 710 C.C.P.)” (A.R., vol. III, at p. 176).

[86] In short, there is no sign of any irregularity in the notice that began the judicial application for seizure as directed by art. 2892 C.C.Q., read together with art. 681 C.C.P., and no sign of serious prejudice suffered by the appellant. I see no merit in the appellant’s complaint that it was somehow deprived of its “right to be informed” when its legal rights were “drastically changed” (outline of argument, at p. 1, in appellant’s condensed book, tab 1). I disagree with the appellant that it was “entitled to assume that the Respondents’ claims were prescribed because it had no information that would suggest otherwise” (p. 2). The notice provided the appellant with precise information of the nature and extent of its debt before the expiry of the prescription period.

[87] The notice of execution interrupted prescription, subject to the judicial application being dismissed. I would add that, in this case, both the filing and service occurred within the prescription period, so it is unnecessary to decide which event fixes interruption here. What remains to be determined is whether the notice of execution

was retroactively stripped of its interruptive effect pursuant to art. 2894 C.C.Q. when the seizure was suspended because the bailiff considered that the property targeted was exempt from seizure. I turn to that question now.

B. *Was the Notice of Execution Retroactively Stripped of its Interruptive Effect, Pursuant to Art. 2894 C.C.Q., When the Attempted Seizure Proved Unsuccessful Because the Debtor's Property Was Exempt From Seizure?*

[88] The appellant says — and there is no dispute on this point — that where a judicial application to seize a debtor's property in execution of judgment is dismissed, interruption of prescription does not occur pursuant to art. 2894 C.C.Q. There is broad consensus too that when the judicial application is dismissed, interruption is retroactively deemed to have never occurred (*Kokorogiannis (Succession de) v. Popescu*, 2014 QCCA 329, at para. 7; see Gervais, at p. 135; Martineau, at paras. 202 and 318).

[89] I recall that after the notice of execution of seizure in the prescribed form was served on the appellant on November 23, 2016, the bailiff did not proceed with the seizure of any property in the appellant's possession. He testified on discovery that he asked the appellant's representative for payment and, upon refusal, decided not to seize any property because he believed it to be exempt from seizure. The bailiff returned several months later and was told that there was no property to be seized. At that time, he did prepare a document, entitled [TRANSLATION] "minutes of suspended execution" recording that the seizure was suspended. That document was not served on the appellant (A.R., vol. IV, at p. 32).

[90] The appellant argues that even if the effect of the filing and service of the notice of execution initially interrupted prescription under art. 2892 C.C.Q., the judicial application for seizure was null because the property was considered by the bailiff to be exempt from seizure. The notice announced proceedings to seize property that does not form part of the appellant's common pledge of property to its creditors. In the circumstances, the judicial application was thus a nullity and should be treated as "dismissed" within the meaning of art. 2894 C.C.Q. Accordingly, the interruption of prescription should be retroactively deemed to have never occurred and the prescription period declared expired.

[91] Furthermore, says the appellant, the failure to serve minutes of seizure, or to prepare minutes correctly, also renders a seizure null. The bailiff failed to prepare and serve minutes *nulla bona* recording that no property was seized, and failed to serve the minutes recording the suspension of the notice of execution on the appellant. These defects rendered the seizure proceedings null. The judicial application for seizure cannot, in the circumstances, have interrupted prescription.

[92] I disagree with the appellant on both points. The judicial application for seizure was not dismissed by a court or comparable adjudicator but merely suspended by a bailiff and thus art. 2894 C.C.Q. does not apply. The seizure announced by the notice of execution was unsuccessful, to be sure, but that did not annul the judicial application for seizure or strip the notice of execution of its interruptive effect. The fact that the bailiff did not prepare minutes *nulla bona* or serve the minutes of suspension

on the appellant is of no consequence. First, the law did not require minutes to be prepared and, second, the omission did not result in serious prejudice to the appellant. In particular, the interruptive effect of the notice cannot be considered a prejudice that warrants a remedy here.

[93] To begin, the dismissal of a judicial demand within the meaning of art. 2894 C.C.Q. necessarily implies that a formal decision was rendered on the judicial application. As the Court of Appeal stated in *Pliska*, an application is dismissed when the adjudicator [TRANSLATION] “refuses to recognize the claims of a party and declares them unfounded” (para. 26).

[94] The judicial application for seizure of the property in the appellant’s possession was not opposed or contested and, accordingly, it could not be “dismissed” within the meaning of art. 2894 C.C.Q. (Auclair J. did render judgment on the seizure by garnishment of property in the hands of the Caisse populaire and the taxing authorities but that decision had no bearing on the unsuccessful seizure of the property in the hands of the appellant). The bailiff simply suspended the proceedings and seized no property. When the notice that began the judicial application for seizure was filed and served, prescription was interrupted and the 10-year clock started afresh.

[95] I note that we are not in a situation where the judicial application is annulled because the underlying debt has been extinguished, which would be an instance where annulment and dismissal would coincide in that there is no debt left to prescribe. Article 735 para. 1(2) C.C.P. acknowledges this: “A person may oppose the

seizure or the proposed sale of property and ask for the annulment in whole or in part of the seizure or the sale proceedings if . . . the debt is extinguished . . .”; however, that is not the case here. It is true that, had the seizure proceeded, it might have been annulled if opposed by the appellant on the grounds the property was exempt from seizure (art. 735 para. 1(1) *C.C.P.*). In that case — a matter also not before us — one might ask whether a seizure that has been annulled is the equivalent of one that has been dismissed, as the Court of Appeal suggested in *Pliska*, at para. 30, but I need not decide this point here. I would leave that question to another day.

[96] What *Pliska* does make plain is that an unsuccessful seizure cannot be equated with a judicial application that is “dismissed” within the meaning of art. 2894 *C.C.Q.* I agree with the judge of the Superior Court, confirmed on this point on appeal in the case before us, that “[t]he fact that no property could be seized should not preclude the interruption of . . . prescription” (para. 70). As the Court of Appeal wrote, “the situation should be considered as an unsuccessful seizure, which interrupted prescription as the respondents clearly expressed their intention to obtain payment of the sums that are owed to them by the appellant” (para. 33; see also para. 24).

[97] In essence, the appellant argues that a creditor who seeks to enforce payment of a debt should not be allowed to interrupt prescription when the debtor’s property is exempt from seizure. This conflates, in my view, the existence of the debt and the right of the creditor to claim payment, on the one hand, with the means available to the debtor for repaying it at a given moment in time, on the other.

[98] A person can of course contract a debt even if they have no property in hand to repay it. A person can contract a debt if all the property they have in hand is exempt from seizure. Similarly, the debt or the right to claim it is not extinguished simply because, at the moment the creditor seeks repayment, the debtor's assets are exempt from seizure. If that were the case, persons whose property is exempt from seizure could escape liability for debt in all cases simply by waiting out the relevant prescription period.

[99] In support of its view, the appellant invokes the theory of the patrimony based on the debtor's property being the common pledge of its creditors under art. 2644 C.C.Q. The appellant relies specifically on art. 2645 C.C.Q. which provides that a personal obligation of a debtor does not charge, for its performance, the debtor's property that is exempt from seizure. "It is precisely because of the exclusion of exempt property from a debtor's pledge", argues the appellant, "that there is no unfairness when a creditor's attempts to seize such property are annulled and prescription of their judgment debts continues uninterrupted" (A.F., at para. 112).

[100] I disagree. The fact that a debtor's property may be, at a given moment in time, exempt from seizure as part of the common pledge has no impact on the existence of the obligation as part of the debtor's patrimony.

[101] The doctrine of the common pledge is predicated on the debtor's patrimony being "dynamic"; the patrimony is a fund of rights and obligations that changes over time. Professor Sylvio Normand writes that: [TRANSLATION] "Fluctuations in the

composition of a person's patrimony are inevitable; they have no effect on its existence" (*Introduction au droit des biens* (3rd ed. 2020), at p. 22). I would add that those fluctuations — outside of insolvency and the like — do not, as a general rule, impugn the existence of the rights and obligations which make up a debtor's patrimony.

[102] A debtor's patrimony, as a pledge to repay obligations, may be asset poor, or the property may be exempt from seizure, but this does not mean that, at a future moment, the debtor might not have available assets to meet their present obligations. As explained in *Quebec Civil Law*, "the patrimony is presented as a universality of changing contents, one projected into the future but always subject to the satisfaction of debts owed as they fall due even when the asset is, in time, acquired posterior to the debt incurred" (para. 131). It is true that exemptions from seizure may limit the prospects of how far the debtor's property might go to meet their obligations at the time of the execution of judgment by a creditor. But the existence of the debt is not compromised by the fact that the creditor may find forcing execution difficult (paras. 681-82). All of this militates against the position of the appellant here; the existence of the debts the Council owes to the respondents is a distinct matter from whether it has available assets to pay those debts at a given moment. I note that the trial judge in *Pliska* sensibly commented that it would be unfair to tie the existence of a creditor's claim to a requirement that the debtor has the present funds to repay it (see *Guy & Gilbert v. Investissements Pliska Inc.*, 2004 CanLII 49188 (Que. Sup. Ct.), at para. 24, per Wagner J. (as he then was)).

[103] In our case, the seizure was “unsuccessful”, as both the Superior Court and the Court of Appeal observed, in that the proceedings announced by the respondents in the notice of execution never went forward and no property — exempt or otherwise — was seized. What did happen is that the judgment creditors took clear action to show their intention to make good on their claims under the default judgments by filing the notice of execution on October 24, 2016. This was followed by service of that notice on the appellant on November 23, 2016, within the time period fixed by law. At that moment, by the very terms of the notice served upon it, the appellant was apprised of the source of the debt (details of the default judgments were annexed to the notice).

[104] The Council also knew, by the written terms of the notice served, of the amounts owed and of its opportunity to obtain release from the debts [TRANSLATION] “by paying the amount you are ordered to pay in the judgment, including execution costs (art. 710 C.C.P.)” (A.R., vol. III, at p. 176). The notice specified, pursuant to art. 702 para. 2 C.C.P., the property belonging to the Council that was targeted: [TRANSLATION] “Seizure of all movable property”, in addition to the funds in the hands of the garnishees (p. 181). The notice also informed the Council that it would have the right to oppose the measure of execution [TRANSLATION] “within 15 days after notification of the minutes of seizure” pursuant to arts. 735 and 736 C.C.P. (p. 176). When the seizure of the property held by the Council did not take place, there was nothing to oppose and, as the Court of Appeal observed, the Council suffered no prejudice. In keeping with his duty of impartiality, the bailiff included in the notice served the message to the debtor that it could contact the bailiff should any further

information be required. In other words, the bailiff fully informed the appellant of the impending seizure and of its rights and duties in respect of the proposed measure.

[105] The appellant also argues that treating the notice of execution as a judicial application that interrupts prescription without regard to the success of the seizure, as did the courts below, is incompatible with art. 2894 *C.C.Q.* in that it would create what amounts to an application for seizure that cannot be dismissed. A notice of execution cannot be dismissed, says the appellant, because “there is no provision of the CCP that allows a party to oppose or contest a notice of execution, and no way to challenge a notice of execution even where it is fundamentally flawed” (A.F., at para. 68 (emphasis deleted)).

[106] Here again, said respectfully, the appellant is mistaken.

[107] It is wrong to say that a notice cannot, on its own, be challenged under the *C.C.P.* As part of the new culture of civil justice designed to allow courts to ensure fair, efficient and simplified proceedings before the courts, a debtor could attack a notice of execution as an “abuse of procedure” under art. 51 *C.C.P.* if, for example, it is clearly unfounded or frivolous. Once established, an abuse of procedure provides the debtor with a remedy: art. 53 *C.C.P.* states that the court may, for example, dismiss the judicial application if it concludes that the creditor has committed an abuse. Other remedies for abuse may be requested, including damages. Finally, as the trial judge noted in *Pliska*, creditors will be inhibited from filing a notice of execution without justification

because they will likely be condemned to pay the costs in any event (paras. 23-24; see also Belleau, at para. 2-2884).

[108] Lastly, the appellant's argument that the judicial application is a nullity because the bailiff did not prepare minutes *nulla bona* is without merit. Article 707 para. 1 *C.C.P.* directs that "seizure is recorded in minutes prepared by the bailiff" but does not require that minutes be drawn up in the absence of a successful seizure, such as when a seizure has been attempted but not carried out as in this case. Indeed, the purpose of art. 707 *C.C.P.* is to set out the circumstances of a seizure that has been undertaken and, notably, to identify the property that has been placed under judicial control (*Commentaires de la ministre de la Justice (C.C.P.)*, at p. 513), which the text of the provision makes plain.

[109] In our case, as the Court of Appeal noted at para. 32 of its reasons, no property in the possession of the debtor was placed under judicial control (art. 702 para. 3 *C.C.P.*); consequently, there was no successful seizure, which explains why there were no minutes required. While the creditors could have asked the bailiff to prepare minutes *nulla bona*, the respondents did not do so (C.A. reasons, at para. 31). I also recall that the bailiff has, under art. 685 *C.C.P.*, a duty of impartiality toward all participants in execution proceedings, including a general duty to provide information to them. No breach of that duty was alleged. Here, the appellant was made aware of the fact that a seizure was imminent when the bailiff served the notice of execution on November 23, 2016 by the very terms of the notice. I disagree with the appellant's

assertion that it was misled by the notice. It did allude to the possibility of contesting a seizure after notification of the minutes of seizure once a seizure had taken place. But I repeat, the seizure was not carried out, which explains why there were no minutes required. In any event, I agree with the Court of Appeal that the appellant suffered no prejudice as a result of this alleged omission (paras. 31-32).

VII. Disposition

[110] I propose that the appeal be dismissed, with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Dionne Schulze, Montréal.

Solicitors for the respondents: De Grandpré Chait, Montréal.

Solicitor for the intervener: Mohawk Council of Kahnawà:ke Legal Services, Mohawk Territory of Kahnawà:ke (Que.).