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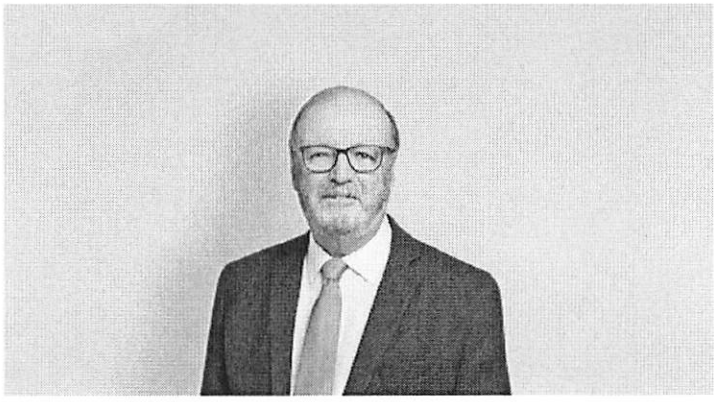

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Jacques R. Fournier's practice is focused on mediation and arbitration of complex disputes, both domestic and international, as well as providing related strategic advice.

As part of the firm's Professional Excellence Program, he mentors young lawyers specializing in litigation. He also assists firm members in preparing for hearings before the Superior Court and Court of Appeal of Québec.

Prior to joining BLG, Jacques sat as Chief Justice of the Superior Court of Québec from 2015 to 2022. He had been Associate Chief Justice since 2013 following a period as judge at the Court of Appeal in 2011. He was first appointed a judge of the Superior Court of Québec in 2002 and was designated as coordinating judge for the judicial district of Laval in 2007.

In private practice, Jacques was initially interested in real estate, administrative and security interest law. Throughout his career, he has been consistently involved with the Québec and Montréal Bar Associations. He was an instructor at the École du Barreau for ten years and also an instructor at the Université du Québec à Montréal and the Université de Montréal. He helped in facilitating training seminars for new judges as part of a program offered jointly by the Canadian Institute for the Administration of Justice and the National Judicial Institute, beginning in 2008 for Québec judges and in 2015 for federal judges. Jacques also acted as counsel for the Moisan Commission.

From 1993 to 1997, he acted as a special prosecutor in disciplinary cases. From 1997 to 1999, he was first vice president of the Barreau du Quebec and the Bâtonnier (president) of same in 1998-1999.

In addition, he was a member of the conduct committee at the Canadian Judicial Counsel.

EXHIBIT
A

Insights & Events

- Co-presenter, "Entretien avec les judges Robert Pidgeon et Jacques R. Fournier," Journée du Barreau du Québec, June 17, 2022

Beyond Our Walls

Professional Involvement

- Director, Canadian Institute for Advanced Legal Studies
- Member, Canadian Judicial Council

Awards & Recognitions

- Recognized in the 2025 edition of *The Best Lawyers in Canada* (Alternative Dispute Resolution & Family Law Mediation) and since 2024 (Corporate and Commercial Litigation).

Bar Admission & Education

- Québec, 1978

- LL.L., Université de Montréal, 1977
- B.A. History, Université de Montréal, 1974

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As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

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Our file: 301163.000028

February 21, 2025

BY EMAIL

Stephen L. Brown
Clement Rivers, LLP
25 Calhoun Street
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Charleston, SC 29401

Re: Société Asbestos Limitée (SAL)

Dear Sir:

Further to our preceding correspondence and in response to the question raised by the South Carolina Supreme Court concerning how one could "work around" the applicable provisions of the QBCRA, I will say as you most probably say in the U.S.: if you can't do it directly, then you cannot do it indirectly.

I provided you with a general opinion that I recently gave on the ins and outs of the Act.

I would also add that it is highly improbable that one could sue in a province that has no "Blocking Statute" in order for the documents to be divulged in such a province unless a cause of action could be moved by a litigator from that province for a tort or damages sustained in that province. Otherwise, the other province would have no jurisdiction over such a litigator or Abestos for that matter.

I trust that this answers your question and remain,

Yours truly.

BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.

Jacques R. Fournier
JRF/ha

EXHIBIT
B

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EXHIBIT

C

Our file: 301163.000028

November 27, 2024

BY EMAIL

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Re: Société Asbestos Limitée (SAL)

Gentlemen,

I was consulted with a view of obtaining an opinion on the Quebec Business concerns Records at LRQ chap D-12, hereinafter "**QBCRA**", and the jurisprudence that came about in applying and interpreting this statute.

In order to do so, I have done an extensive study of precedents of diverse jurisdictions including the Quebec Superior Court, the Quebec Court of Appeal, and the Supreme Court of Canada.

I have looked at the question from different perspectives: first the scope of the protection given to the documents defined in the Act and whether one could indirectly obtain information contained in the said documents, and secondly, whether the protection afforded in the Act stands on its own or if it requires the intervention of the Attorney General of Quebec as provided for in section 4.

I will also touch on the situation that could come about when the documents or copies thereof are already outside the province of Quebec.

The statute being short, I find it useful to reproduce it completely below, for ease of reference:

> *Chapter D-12*
>
> *Business Concerns Records Act*
>
> *1. In this Act, the following words mean:*
>
> *(a) "**document**" : any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory,*

report and any other writing or material forming part of the records or archives of a business concern;

*(b) "**concern**" : any business concern in Québec;*

*(c) "**requirement**" : any demand, direction, order, subpoena or summons.*

R. S. 1964, c. 278, s. 1.

2. Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Québec, remove or cause to be removed, or send or cause to be sent, from any place in Québec to a place outside Québec, any document or résumé or digest of any document relating to any concern.

R. S. 1964, c. 278, s. 2.

3. The prohibition enacted in section 2 shall not apply in the case of the removal or sending of a document out of Québec

(a) by an agency, branch, legal person or firm carrying on business in Québec, to a principal, head office, affiliated legal person or firm, agency or branch situated outside Québec, in the ordinary course of their business;

(b) by or on behalf of a natural or legal person, a partnership or an association that is not a legal person carrying on business in Québec, to a territory subject to another political jurisdiction in which the sale of the securities of such person, partnership or association has been authorized;

(c) by or on behalf of any such person, partnership or association carrying on business in Québec as a broker, security issuer or salesman within the meaning of the Securities Act (chapter V-1.1), to a territory subject to another political jurisdiction in which any such person, partnership or association has been registered or is otherwise authorized to carry on business as broker, security issuer or salesman, as the case may be;

(d) whenever such removal or sending is authorized by any law of Québec or of the Parliament of Canada, in accordance with their respective jurisdictions.

R. S. 1964, c. 278, s. 3; 2009, c. 52, s. 590.

4. Whenever there is reason to believe that a requirement has been or is likely to be made for the removal or sending out of Québec of a document relating to a concern, the Attorney General may apply to a judge of the Court of Québec, in the judicial

district where the concern in question is located, for an order requiring any person, whether or not designated in the requirement, to furnish an undertaking or security to ensure that such person will not remove or send out of Québec the document mentioned in the said requirement.

In case of urgency, the application may be filed and presented to the judge without prior service. The judge may however order the service thereof within such time, in such manner and on such conditions as he may consider expedient.

Every person having an interest in a concern may exercise the rights contemplated in this section.

R. S. 1964, c. 278, s. 4; 1965 (1st sess.), c. 17, s. 2; 1988, c. 21, s. 66; 1999, c. 40, s. 109; I.N. 2016-01-01 (NCCP).

5. Every person who, having received notice of an application to a judge of the Court of Québec under section 4, infringes the provisions of section 2, shall be guilty of contempt of court.

Every person who has furnished, or has received from the judge an order to furnish, an undertaking or security and who infringes the provisions of section 2 shall be guilty of contempt of court in addition to any obligation provided by the undertaking or security furnished or ordered by the judge.

R. S. 1964, c. 278, s. 5; 1965 (1st sess.), c. 17, s. 2; 1988, c. 21, s. 66; 1990, c. 4, s. 388; 1992, c. 61, s. 267; I.N. 2016-01-01 (NCCP).

6. (This section ceased to have effect on 17 April 1987).

1982, c. 21, s. 1; U. K., 1982, c. 11, Sch. B, Part I, s. 33.

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 278 of the Revised Statutes, 1964, in force on 31 December 1977, is repealed effective from the coming into force of chapter D-12 of the Revised Statutes.

On the first question, the Act has been interpreted by the court as having an effect so large that even indirect reference to the documents mentioned in section 1 would be considered an encroachment and could therefore give rise to the penalties provided for in the Act.

In *Le Club de Hockey Canadien Inc.* vs. *World Hockey Association*, a decision of May 28, 1973, Justice Laurent E. Bélanger of the Superior Court, who would later move on to become a Judge of the Court of Appeal, wrote:

> *"In the view of this Court, Section 2 of the Act contains a clear prohibition expressed in terms which make the obligation imperative. Section 51 of the "Interpretation Act" of this Province, 1964 R.S.Q. ch. 1 leaves no room for doubt.*
>
> *"**51.** Whenever it is provided that a thing 'shall' be done or 'must' be done, the obligation is imperative; but if it is provided that a thing may be done, its accomplishment is permissive."*
>
> *The provision should also receive a construction in conformity with the following section of the same Interpretation Act:*
>
> *"**41.** Every provision of a statute, whether such provision be mandatory, prohibitive, or penal, shall be deemed to have for its object the remedying of some evil or the promotion of some good.*
>
> *Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit."*
>
> *The Court is satisfied that the scope of section 2 is not made dependant on the on the use of the summary proceeding made available to the Attorney General or to every person having an interest in the business concern. What section 4 of that Act does is to make clear that the Attorney General and every person having an interest in a concern are entitled to make sure that there will be no violation of section 2 and to make available to them, at a very early stage, a summary procedure for an order from a district judge; the order itself can also be unusual as it may require any person, whether or not designated in the requirement, to furnish an undertaking or security. The purpose of Section 5 of the Act is to define a special penalty as a result of the above summary procedure for infringement of section 2 from the moment the notice of the summary petition was received."*

I agree entirely with this in that section 4 of the Act acknowledges the interest of the Attorney General in enforcing the protection. This is simply an application of article 79 of the *Code of Civil Procedure* that grants the Attorney General an interest to Act in matters where public interest is concerned.[1]

I further add that this was also confirmed in *Lac D'Amiante du Québec Ltée* v. *Procureur Général du Québec and l'Association des Mines d'Amiante du Ouébec*, (1989) R.D.J.287 C.A 287; where Justice Kaufman wrote:

> *But to do so would not only have been cumbersome (and, I might add, ineffective in as much as these orders could, always, be amended by the appropriate courts), but it would also have been unnecessary since section 2 (quoted above) in any case*

[1] Article 79 code de procédures civiles (version anglaise)

> *prohibits the removal of "any document or résumé or digest of any document relating to any concern" The prohibition, therefore, already exists, and section 4 is but an extension, designed to give the Act greater teeth. Viewed in this light, the order issued by the Provincial Court was perfectly legal, and it should not be set aside for this reason.*

This being said, the Court of Appeal has decided that the Act was remedial and should be read in a liberal way so as to give it full effect.

In *Renault* v. *Bell Asbestos et als and James Farrell and Leota Farrell*, (1980) C.A. 370., Justice Turgeon wrote:

> *It is with reason that the appellant cites with respect to this point an excerpt from Driedger's 'The Construction of Statutes, Toronto 1974, p, 95', which reads as follows:*
>
> *'The result of the decisions appears to be as follows: if no class can be found, the rule cannot apply and a broad construction may be favoured: if a class can be found but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary'.*
>
> *Furthermore, the business concerns Records Act is a remedial act whose purpose is to remedy abuses and furnish certain advantages to Quebec firms. Under section 41 of the Interpretation Act, such an act must be interpreted broadly and liberally in order to ensure the accomplishment of its objective and the execution of its requirements according to their true meaning, spirit and end.*

The same in the case of *Pelnar* v. *Insurance Co. of North America*, (1985) R.D.J. 354, Justice Nichols wrote:

> *To start with, the exceptions provided for in Section 3 are not applicable in this case.*
>
> *The purpose of the interdiction outlined in Section 3 is to protect documents, résumés and digests of any document relating to any concern as defined in Section 1 b) 1.e. any business concern. -This interdiction contains no exception.*
>
> *It included everyone: "No person shall".*
>
> *Therefore, according to the subject of Section 1 b) which I consider quite straightforward - neither Dr. Pelnar nor the IEOH may remit to the defending insurance companies for use to a place out-side Quebec any document, résumé and digest of any document pertaining to an Asbestos manufacturer.*
>
> *I underlined the word "pertaining" to emphasize that the interdiction covers not only the documents, résumés and digests of documents issued by such concerns but all those that involve them.*

> *For this protection to make any sense, il goes without saying that Dr. Pelnar and the IEOH should no longer disclose either by cross-examination or otherwise, the contents of such documents, résumés and digests of documents (Asbestos Corp. -vs- Eagle Picher Industries Inc., C.A.M. 500-09-001246-826, February 24th, 1984).*
>
> *As soon as a person is knowledgeable of an information through a document or a résumé of such document and this information relates to a Business Concern in the Province of Quebec, it is forbidden to transmit this information or the document itself if the requisition emanates from a legislative, legal or administrative authority outside the Province of Quebec and if the information is meant to be used outside the Province of Quebec.*
>
> *Our underlining*

The protection afforded goes beyond the physical documents. It also relates to intellectual contents of same.

Accordingly, in *Asbestos Corporation Limited* v. *Eagle Picher Industries Inc. and the Attorney General of the Province of Quebec*, (1984) C.A. 151, Justice Beauregard wrote:

> *Appellant also proposed that the judgment contravenes section 2 of the Business Concerns Records Act.*
>
> *I recall that section 2 of this Act stipulates:*
>
> *2. Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Quebec, remove or cause to be removed, or send or cause to be sent, from any place in Quebec to a place outside Quebec, any document or résumé or digest of any document relating to concern.*
>
> *Appellant suggests that the judgment orders appellant to submit itself to a procedure the effect of which is to permit the transportation, from Quebec to New Jersey. copies of the documents or a résumé or summary of these documents.*
>
> *I also accept this proposition. If Respondent obtains in Quebec a copy of these documents, what provisions of the law 0.11 prevent it from transporting them to New Jersey? Respondent could maintain that the transport is net prohibited by section 2 of the Business Concerns Records Act because the prohibition contained in that section applies only when there is a requisition from a foreign legislative, judicial or administrative authority and not when there is voluntary transport by a person in possession of these documents in Quebec.*
>
> *But respondent submits that section 2 of the Business Concerns Records Act has no application in view of section 3 of the same Act which stipulates at paragraph d):*
>
> > *The prohibition enacted in section 2 shall not apply in the case of the removal or sending of a document out of Québec.*

> *d) whenever such removal or sending is authorised by any law of Québec or of the Parliament of Canada. in accordance with their respective jurisdictions.*
>
> *Respondent proposes that indeed section 9 of the Special Procedure Act is a law of Quebec which authorises the sending of documents.*
>
> *Whatever the motives of the legislator, when it adopted this act, the act is of general application and is still in force Interpreted in light of Section 41 of the Interpretation Act R.S.Q. Ch. 1-16, Section 2 of the Business Concerns Records Act does not have as its main objective the prevention of the physical transport out of the province of Quebec, files of a business concern of Quebec at the request of a foreign authority, but the prevention of the transmission outside of Quebec, by reason of such a demand of information contained in the files of a Quebec Company.*
>
> *Section 2 provides that one cannot transmit out of Quebec a "resume or summary of a document relating to a business concern".*
>
> *However, the filing by Appellant of the documents requested by the American tribunal for inspection by Respondent or its attorneys, at appellants head office, within the framework of a suit before the foreign tribunal, joined to an examination of an agent of appellant whose testimony on these documents will be taken down by a stenographer who will translate this note for the purposes of the foreign tribunal, is equivalent. in my opinion, to the transmission out of Quebec of a "resumé or summary" of the files of Appellant.*

In the same decision, Justice Tyndale who agreed with Justice Beauregard added:

> *Obviously, it forbids production of the documents, even for inspection, before the Jersey Court by registry commission, that court in effect sits here, represented by the commissioner, and to produce to them before him or her would achieve indirectly a result of which the direct achievement is forbidden.*
>
> *Our underlines*
>
> *Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé of digest.*

This position of the Court was reaffirmed by Justice Lebel in *Walsh et al.* v. *Gaitan & Cusack*, C.A. Montréal 500-09-000262-931,1993-09-13, J.E. 93-1615:

> *The Act does not only prohibit communication of the documents proper, but also providing copies or even their inspection on the premises, as concluded in particular by the opinion of Justice Beauregard in the matter* ***Asbestos Corporation Ltd.*** *vs.* ***Eagle Picher Industries Inc****. (1984) C.A 151:*
>
> *"(Section 9 of the* ***Special Procedure Act****) enables the Superior Court of Quebec to assist a foreign tribunal in summoning witnesses and producing documents subject*

> *implicitly, however to section 2 of the **Business Concern Records Act**. Prior to exercising its discretion in application of section 9 of the **Special Procedure Act** and to aid a foreign tribunal, the Quebec Court must ascertain that aiding a foreign tribunal is not prohibited by a domestic law.*
>
> *In my opinion, the Quebec Court did not only go too far but could not even make enforceable in Quebec the conclusions of the New Jersey Court without infringing section 2 of the **Business Concerns Records Act**.*

In the same case, Justice Lebel however opens the door for documents found to be outside the Province of Quebec.

I cannot disagree with this. Summarily translated he writes at paragraph 31 of the Decision, that the law cannot protect what is already out of the province. I would be tempted to say that this only applies to documents legally found outside of the jurisdiction.

The Supreme Court of Canada reversing a decision by the British Columbia Court of Appeal did however put a limit on the protection but only for communication within Canada. This can be found in the case of *Hunt vs. T&N PLC* (1993) 4 SCR 289.

Most of the decisions cited above, with the exception provided for in the Hunt case previously cited, and the Le Club de Hockey Canadiens de Montréal case, May 28, 1973, also previously cited relate to asbestosis cases from the United States. There are other instances where the prohibition was found to apply.

In Polaris Industries Inc. vs *Radidescu*, REJB EYB-10622, the plaintiff was seeking an order to enforce a Minnesota Court order that would have had the effect of forcing the production of corporate documents from Bombardier Inc. in a trial to be held in Minnesota where the plaintiff wanted to prevent defendant from joining the ranks of Bombardier, a competitor. On the basis of section 2 of the QBCRA, Justice Lefebvre of the Superior Court of Quebec refused the order.

In *Southern New England Telephone Company* vs. *Zrihen,* 2007 QCCS, 1391, Justice Guthrie of the Quebec Superior Court, after having expressed his dislike for "blocking Acts", still enforces the QBCRA. He writes at paragraph 36 of his judgment:

> *It is the Assemblée Nationale du Québec, that must decide the fate of the BCRA and not the court of Quebec, unless the constitutionality of this legislation is challenged in the proper matter.*

It is to be noted that this decision was rendered after the Hunt case had declared that the Act could not be invoked in other Canadian jurisdictions.

The case before Justice Guthrie dealt with an order issued by a US district Court (Connecticut).

In *Aker Biomarine As at als.* vs. *Neptune Technologies and Bioresources*, 2013 QCCS 4841, Justice Castonguay of the Quebec Superior Court applies the prohibition and refuses disclosure of documents covered by the Act that was sought by an order issued by the Columbia District Court.

Finally, in *Elie* vs. *Ouimet*, 2018 QCCS 522, a family law matter, Justice Kalichman of the Superior Quebec Court, and now with the Quebec Court of Appeal, concludes that the Act applies and that a witness cannot answer questions that would violate the protection.

Therefore it is my opinion that according to the Act and the case law the protection is afforded to the documents and copies and same as well as to any reference to their content.

It also confirms that the protection exists with or without the intervention of the Attorney General.

I trust the answer to be satisfactory and remain,

Yours truly.

BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.

Jacques R. Fournier

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