



Case in Brief: *Denis v. Côté*

Judgment of September 27, 2019 | On appeal from the Court of Appeal and Superior Court of Quebec  
Neutral citation: 2019 SCC 44

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***A journalist can only be forced to reveal a source if it's absolutely necessary and in the public interest, the Supreme Court has said.***

Mr. Côté was a former Quebec politician. In 2016, he was arrested on charges related to possible political corruption from 2000 to 2012.

Ms. Denis was a journalist with Radio-Canada. Between 2012 and 2016, she gave four television reports about the possible corruption. The reports contained sensitive information that Ms. Denis got from confidential sources.

Mr. Côté said the criminal charges were an “abuse of process” (a misuse of the courts). He asked for a “stay of proceedings” (a suspension of the charges that is usually permanent). He said that if he knew who Ms. Denis’ sources were, he could identify who was responsible for the leaks. He could then prove that the government was trying to hurt his case, which would justify staying the charges. Mr. Côté got a legal order to make Ms. Denis reveal her sources.

Ms. Denis refused. She said she didn’t even know the identities of the people who gave her information for two of the reports.

The Court of Quebec judge said Ms. Denis didn’t have to reveal her sources, because she didn’t know who they were. The Superior Court said the Court of Quebec judge made a mistake. This was because Ms. Denis *did* know the sources for two of the four reports. It said she had to provide that information. When Ms. Denis appealed, the Court of Appeal said it didn’t have the power to decide the issue. This was because the law said only the first decision (the Court of Quebec’s) could be appealed, which already happened at the Superior Court. The Court of Appeal said she could ask for permission to appeal to the Supreme Court, though.

The Supreme Court had to look at two appeals from Ms. Denis. The first was about whether the Court of Appeal was right to decide it didn’t have the power to look at her appeal. The second was what should actually happen with it. The Supreme Court hearing was postponed once because the Crown (the prosecution) had new evidence and wanted to change its arguments. The Court didn’t postpone a second time when the Crown asked.

The majority at the Supreme Court agreed that the Court of Appeal didn’t have the power to decide Ms. Denis’ appeal. However, it said the original court (the Court of Quebec) should look at the whole issue again.

The majority said people only have a right to appeal if a written law says so. In this case, no law said an appeal to a second court was allowed for an issue like Ms. Denis’. (That is, one that didn’t decide whether someone was guilty of something, or involve putting them in jail.) This made sense, because having one level of appeal helps cases move more quickly.

The majority didn’t decide whether Ms. Denis had to reveal her sources. It said the Court of Quebec should look at everything again. This was because the Crown had new evidence and wanted to change its arguments. An appeal court is supposed to decide if a lower court decision should stand. That means looking at whether the lower court made the right decision, based on the facts and arguments before it. It can’t do that if suddenly there are new facts and arguments. That’s one reason why parties normally can’t introduce new facts and arguments on appeal. (Another reason is that it’s unfair to the other side.)

This was the first time the Court looked at new rules to protect journalists’ confidential sources. The majority gave some guidance on how the rules should be used. It said the person who didn’t want to reveal a source has to show they are a “journalist” and their source is a “journalistic source” under the *Canada Evidence Act*. The person who wants the information has to show they can’t really get it any other way. They also have to show that the public has a greater interest in making sure the crime is prosecuted than it does in protecting the confidential source. The majority said that revealing journalists’ confidential sources should only be a last resort.

The Court previously looked at journalists’ confidential sources in [R. v. Vice Media Canada Inc.](#) That case fell under the old rules.

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**Breakdown of the decision:** *Majority:* Chief Justice Richard [Wagner](#) dismissed the appeal on the Court of Appeal's jurisdiction and allowed the appeal on the practical issues in part (Justices [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) agreed) | *Dissenting:* Justice Rosalie Silberman [Abella](#) would have quashed the subpoena which ordered the journalist to reveal the identities of her sources

**More information (case # 38114):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [decision on summons](#) (Court of Quebec) | [first appeal](#) (Superior Court of Quebec, in French only) | [second appeal](#) (Court of Appeal of Quebec, in French only)

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