

## Municipal Liability and Short Prescription

By Odette Jobin-Laberge



On May 7, 2001, the Quebec Court of Appeal handed down an important judgement in the case of *Ville de Montréal v. Tarquini*<sup>1</sup>, casting doubt over the proper interpretation of article 2930 C.C.Q. which renders the short prescriptions provided in municipal legislation inapplicable to bodily injury cases.

The Court had to determine whether the widow and children of the victim could take advantage of the three-year prescription period of the *Civil Code* of Quebec or if they were submitted to a much shorter six-month prescription.

The Court was divided on the issue, which calls into question the nature of the legal remedy available to the victim's next-of-kin and the 1932 Privy Council's decision in the *Regent Taxi* case.

Justice Chamberland held that the widow and children are each "another person" within the meaning of article 1457 C.C.Q., but he was also of the view that only the immediate victim, and not they, had suffered bodily injuries. Therefore, as the widow and her children (the "ricochet" victims) had suffered only material or moral damages, the exception provided at article 2930 C.C.Q. must be narrowly interpreted in favour of only those victims whose physical integrity has been directly impaired.

Justice François Pelletier was of the opinion that notwithstanding that the legislator may have deliberately created a distinction in the *Civil Code* between bodily injuries and moral or material damages, bodily injuries

may have moral or material consequences for the immediate victim and may also be the source of such damages for the ricochet victims. In his view, the law as stated in the *Regent Taxi* case should not be reformulated and the exception contained in article 2930 C.C.Q. also applies to the victim's widow and children.

Justice Otis concurred with Justice Pelletier regarding the issue of prescription.

The liability aspect of the case concerned the victim's fatal fall off a bicycle, apparently caused by the bicycle's front wheel becoming detached and/or by a slight unevenness in the bicycle path created by the root of a tree. Justice Pelletier was of the view that the real cause of Mr. Martin's fall was probably the detaching of the wheel, which had perhaps been poorly secured, and he also believed that the slight unevenness in the configuration of the terrain was not dangerous and would normally have caused only a slight bump. He noted that other cyclists had crossed the same spot without difficulty.

Justice Chamberland was of the same opinion.

Justice Otis was of the view that the evidence did not support a finding that the wheel had become detached and she accepted the ruling of Judge Alphonse Barbeau (the judge of first instance) that liability should be shared equally, since the victim had not been wearing a helmet. However, she overturned Judge Barbeau's ruling that the City's liability should be further reduced by 50% for the ordinary risks of life, on the grounds that such a ruling was not justified by the evidence.

**To summarize:** the action was dismissed because two of the three justices of the Court of Appeal held that the City was not liable for the victim's fall, given that the unevenness in the path had merely provided



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the occasion for the injury. On the issue of prescription, two of the three justices were of the opinion that the heirs may have a personal action for their own damages resulting from the victim's bodily injuries, and this action is protected by the exception provided at article 2930 C.C.Q. However, Justice Chamberland held that where the physical integrity of a victim has not been directly impaired, article 2930 C.C.Q. does not allow the Court to disregard the application of a short prescription period regarding the issue of moral or material damages.

**A case worth following:** an application may be filed seeking leave to appeal to the Supreme Court of Canada.

Given Justice Chamberland's strong dissenting opinion, it may be appropriate to bear this decision in mind in similar cases, either to ensure that actions are filed on time or, where applicable, that prescription is raised as a ground of defence.

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