IN FACT AND IN LAW EXPRESS

JULY 2012

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WHEN A TREE FALLS: THE SUPREME COURT OF CANADA CONFIRMS THE LARGE AND LIBERAL INTERPRETATION THAT MUST BE GIVEN TO QUEBEC'S *AUTOMOBILE INSURANCE ACT*

By Jonathan Lacoste-Jobin and Alexis Devroede-Languirand

In a unanimous decision rendered on June 22nd, the Supreme Court of Canada confirms the principles previously established by the Court of Appeal: Quebec's *Automobile Insurance Act*[1] ("Act") must be given a large and liberal interpretation. In this case, the Court confirms that the mere use of a vehicle as a means of transportation will be sufficient for the Act to apply even if the vehicle is not the cause of the accident.

Facts

In August 2006, a tree located on the territory of the City of Westmount ("**City**") fell on a vehicle in which Gabriel Anthony Rossy ("**Rossy**") was, killing him. Mr. Rossy's parents and three brothers filed an action in damages alleging that the City failed to maintain the tree, which it owned.

The City presented a motion to dismiss this action. It argued that the damages claimed resulted from an accident caused by an automobile as defined in the Act and that, as such, any civil liability action was barred by virtue of the regime established by the Act for compensation for bodily injuries, regardless of who is at fault.

The Issue

The Supreme Court had to determine if the death of Mr. Rossy resulted from an accident within the meaning of section 1 of the Act, i.e. "any event in which damage is caused by an automobile, by the use thereof or by the load carried in". If so, the claim would fall under Quebec's automobile insurance scheme and this would justify the dismissal of the action filed by the family. If not, the action filed by the Rossy family on the basis of the general principles of civil liability should be allowed to continue.

Judicial History

Superior Court Judge Steve J. Reimnitz granted the City's motion and dismissed the action on the basis of the principles set out in *Productions Pram inc.* c. *Lemay*[2], a decision rendered by the Court of Appeal 20 years ago. This issue had never before been considered by the Supreme Court.

The Court concluded that there was no need to look for the causal link required in civil law to determine if it was an "accident" caused by an automobile, as defined in the Act. The fact that the damage arose within the general context of the use of the vehicle was sufficient for the Act to apply.

On November 22nd, 2010, the Court of Appeal[3] reversed that decision. It concluded that the plaintiffs' injury was not caused by an automobile, its use or its load. Based on the reasoning of the Court of Appeal, an injury could not be considered a "damage caused by an automobile" simply because the victim was in a vehicle at the time of the accident. The civil law regime should therefore apply to the case and the family's civil action was not *prima facie* inadmissable.

Supreme Court of Canada Decision

In a unanimous ruling rendered by a seven-judge bench[4] and drafted by Justice Louis LeBel, the Supreme Court reversed the judgment of the Court of Appeal and upheld the decision of the Superior Court. The Court concludes, among other things, that the Act is considered as a remedial legislation and, hence, it must be given a large and liberal interpretation to ensure that its purpose is served, i.e. compensation for bodily injury regardless of who is at fault.

In its decision, the Supreme Court confirms the principles established by the Québec Court of Appeal in *Productions Pram* and reiterates that with respect to an accident caused by an automobile, as defined in the Act, there is no need to resort to traditional notions of causation. According to the Court, doing so would place the burden of proving that the vehicle was the actual cause of the injury on the victim, thereby defeating the main objective of the Act:

> "[28] *Pram* therefore confirms that the Act must be given a broad and liberal interpretation. (…) *Pram* teaches that, in determining whether the Act applies, a court must not look for a traditional causal link between fault and damage as is routinely done in delictual or quasi-delictual civil liability cases. The principles from *Pram* are a useful guide to the interpretation of these provisions and should be reaffirmed."

Analyzing the case law, the doctrine and the legislative scheme, Mr. Justice LeBel concludes that the role of the vehicle in the accident does not need to be an active one: "the mere use or operation of the vehicle, as a vehicle, will be sufficient for the Act to apply"[5].

In the circumstance of this case, the Supreme Court rules that although the vehicle driven by Mr. Rossy may have been stationary when the tree fell on it, Mr. Rossy was using the vehicle as a means of transportation when the accident occurred. This is enough to find that the damage arose as a result of an "accident" within the meaning of the Act.

Therefore, any accident arising out of the use of a vehicle as a means of transportation will be considered as having been "caused by an automobile", as defined in the Act and, as such, any civil liability action related to the injuries caused by this accident will be barred. From now on and in similar cases, the victims will have to file their claims with the *Société de l'assurance automobile du Québec.*

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1. R.S.Q., c. A-25.
2. [1992] R.J.Q. 1738 (C.A).
3. *Rossy* v. *Westmount (Ville de)*, 2010 QCCA 2131.
4. *Westmount (City)* v. *Rossy*, 2012 SCC 30: Chief Justice McLachlin as well as Justices LeBel, Deschamps, Fish, Abella, Cromwell and Karakatsanis.
5. Par. 52 of the decision.