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MUNICIPAL LIABILITY – FIRE SAFETY ACT THE SUPERIOR COURT RULES – THE IMMUNITY IS UPHELD – TO BE CONTINUED...

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FIRE SAFETY ACT

The *Fire Safety Act* (the "Act") came into force on September 1, 2000. Its purpose is to implement organizational arrangements pertaining to fire safety within the regional county municipalities ("RCMs") and major urban centres in Quebec. Section 8 of the Act requires them to establish a fire safety cover plan (a "Plan") which must then be approved by the Minister of Public Security.

Eleven (11) years later, 101 of the 103 regional authorities have submitted their plans for approval. To date, 77 plans have been approved¹. Once approved, the adoption of the Plan entitles regional authorities to benefit from an exemption from liability under section 47, which reads as follows:

47. The members of a fire safety service and the persons whose assistance is expressly accepted or is required under subparagraph 7 of the second paragraph of section 40, are exempt from liability for any damage that may result from their intervention during a fire or during an emergency or disaster situation in respect of which mandatory emergency procedures are set out in the fire safety cover plan pursuant to section 11, unless the damage results from their intentional or gross fault.

The exemption applies to the authority having established the service or having requested the person's intervention or assistance, except if the authority has failed to adopt a plan for the implementation of the fire safety cover plan as required or if the measures or procedures provided for in the applicable implementation plan and relating to the acts in question were not implemented as established.

(Emphasis added)

MOTION FOR A DECLARATORY JUDGMENT

On March 31, 2011, section 47 was interpreted for the first time in the *Compagnie canadienne d'assurances générales Lombard v. St-Jérôme (ville de)*² case. Sued before the Superior Court on the basis of vicarious liability for faults committed by the employees of its fire department, the Town of St-Jérôme invoked its immunity in respect of the damages suffered by Lombard's insureds.

In fact, the Town of St-Jérôme's fire department had left after fighting a fire, but the fire kept smouldering and, on the following day, a new alert was given, and these circumstances resulted in more damage.

The parties agreed to submit a motion for a declaratory judgment asking the Court to determine whether the Town benefited from the exemption from liability under section 47 of the Act in respect of the faults for which it was allegedly liable.

DECISION

The purpose of the motion was to have the Court determine which fire assistance interventions were covered by the exemption from liability. The Honourable Daniel W. Payette relied mainly on the parliamentary work surrounding the enactment of the Act to adopt a broad interpretation.

The alleged fault had occurred during a "clearing", that is, the operation during which firefighters search for possible remaining fire after the fire seems to have been quenched. Mr. Justice Payette concluded that this operation is included in the expression "intervention during a fire" and that, accordingly, any fault committed during this operation is covered by the exemption from liability, except in cases of intentional or gross fault.

¹ See the website of the ministère de la Sécurité publique for a list of the regional authorities that have submitted their draft plans for approval (French only): <http://www.securitepublique.gouv.qc.ca/securite-incendie/ssi/schema-risques/portrait-schemas.html#c3480>.

² *Compagnie canadienne d'assurances générales Lombard v. St-Jérôme (ville de)*, 2011 QCCS 1464.

Contrary to what Lombard argued, the judge was of the view that the term "intervention" cannot be limited to the intervention elements given priority in the Orientations du ministre³ (Minister's Guidelines) and must be understood in its ordinary sense, that is, [translation] "to participate in an action with intent to influence its course"⁴. Thus, the expression "during a fire" includes the "clearing" operation, even though it is carried out after the fire has been quenched. According to the Court, this operation is part of the intervention aimed at completely extinguishing the fire.

In his analysis of the term "intervention", Mr. Justice Payette drew a parallel with the *Civil Protection Act* in force since December 20, 2001. Aimed at protecting persons and property against disasters, this statute requires regional authorities to establish a civil protection plan, which is similar to the fire safety plan and grants immunity to 911 emergency centres "for any injury that may result from their interventions"⁵. The judge noted that the provisions of the *Civil Protection Act* pertaining to immunity are not limited to the intervention elements mentioned in the plan. This finding led him to conclude that, similarly, the immunity provided in fire safety matters could not be restricted to the intervention elements prioritized by the Orientations du ministre.

GROUNDS FOR APPEAL

This decision was appealed on April 29, 2011. In its reasons, Lombard first argues that a statute that denies a remedy to a plaintiff necessarily requires a restrictive interpretation.

Lombard also argues that the immunity can only cover the elements included in a Plan. According to Lombard, it is imperative to distinguish section 10 of the Act from its section 11; the former lists the elements of information which a plan must *mandatorily* include and the latter mentions the *possibility* of including information pertaining to *other* risks of losses that may require the use of resources identical to those used in the context of fire safety.

According to Lombard, the mandatory information mentioned in section 10 only concerns the four intervention areas given priority by the Orientations du ministre. As clearing operations are not thus identified while it would have been possible to include them under section 11, Lombard asks the Court to conclude that such operations cannot be covered by the immunity under section 47.

Lastly, Lombard maintains that the trial judge attached too much importance to the parliamentary work relative to the Orientations du ministre. Lombard argues that the latter are clearer and, furthermore, that they have the force of a regulation.

³ The "Orientations du ministre" give priority to the following four intervention elements: response time – intervention personnel – necessary water supply – intervention equipment. The insurance company argued that clearing, not being identified as an intervention element by the Minister, was not included in the expression "intervention" and therefore not covered by the immunity.

CONCLUSION

Subject to compliance with the provisions of the Act, the Superior Court gave a broad interpretation to section 47 when the injury suffered resulted from the intervention of the members of a fire department; the fire department and, by extension, its principal, the municipality, were covered by an exemption from liability.

In view of the significant number of recourses instituted against municipalities for faults committed in the context of an intervention by fire department members, this first decision, issued eleven (11) years after the Act came into force, is very important as it is anticipated that virtually all the regional authorities will have their coverage plans approved in the next few months.

The case is now in the hands of the Court of Appeal...

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⁴ *Compagnie canadienne d'assurances générales Lombard v. St-Jérôme (ville de)*, supra, note 2, para 128-129; *Le Nouveau Petit Robert*, 2009, sub verbo « intervention ».

⁵ *Civil Protection Act*, R.S.Q. c.S-23, Art. 52.19.

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