lavery
Lawyers

Employers and emergency call centre workers: your liability for property damage is limited

October 26, 2017

Authors

Charles Olivier Thibeault

Partner, Lawyer

Marie-Hélène Jolicoeur

Partner, Lawyer

In May 12, 2017, the Court of Québec[1] concluded that an emergency call centre had no liability for property damage caused by first responders who broke down the door of a residence in order to assist a user in respiratory distress. In this case, the Court held that a call centre who required the intervention of a first responders service cannot be held liable for damages caused during the ensuing intervention, despite the fact that the call centre clerk had made a mistake by not providing the first responders with the access code to open the door.

At the hearing, the facts were not contested by the call centre, which acknowledged that the access code for the front door had been provided to the call centre dispatcher but not to the first responders.

Despite that mistake, the Court dismissed the action on the basis of the exoneration of liability provided for in section 42(2) of the *Act respecting Pre-hospital emergency services*[2] (hereinafter the "Act"):

> 42. No person who acts as a first responder under this Act in accordance with the clinical intervention protocols determined by the Minister under section 39 shall incur liability for any injury that may result from his or her intervention, unless the injury is due to an intentional or gross fault. The immunity also applies to the authority having established the first responder service.
>
> Likewise, the person or body having required the intervention or assistance of a first responder service may not be held liable for any injury resulting from the intervention.
>
> [our emphasis]

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

The Court held that the scope of this provision extended to the emergency call centre as "[a] body having required the intervention or assistance of a first responder service".[3] Up until this point, the provision had never been interpreted by the courts. Therefore, the Court stated that in the absence of any evidence of intentional or gross fault, the defendants could not be held liable pursuant to the second paragraph of section 42 of the *Act respecting Pre-hospital emergency services.*[4] The clerk's failure to provide the door access code, although an error, was not intentional and cannot be characterized as a gross fault. Furthermore, the Court stated that given that the firemen had to act very quickly, it cannot be presumed that they would have used the code to open the door to the user's residence even if they had been in possession of that information. Furthermore, the evidence indicated that neighbours present at the relevant time told the first responders that they had the code for opening the door.

In short, in the absence of evidence of intentional or gross fault, an emergency call centre could not be held liable. In our view, this decision is consistent with the object of the Act as set out in section 1, namely to "ensure that persons in need of pre-hospital emergency services are at all times able to obtain an appropriate, efficient and quality response aimed at reducing the mortality and morbidity rate among the recipients of pre-hospital emergency services". Acting in concert with the first responder, the emergency call centre must also be able deliver rapid intervention by concentrating on its primary objective, which is to assist people in distress, without fear of being sued.

---

1. *Roy v. Groupe Alerte Santé inc.,* 2017 QCCQ 6729 (hereinafter the "Roy" case).
2. *Act respecting Pre-hospital emergency services,* CQLR, c. S-6.2 (hereinafter the "Act").
3. *Ibid.*, s. 42 (2).
4. *Roy,* supra note 1, para. 15.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.