# Prescription and Indirect Victims of Bodily Injury: the Supreme Court Rules

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**On October 13, 2017, the Supreme Court of Canada rendered an important decision[1], putting an end to a jurisprudential and doctrinal debate on civil liability and prescription in the field of municipal liability.**

## Facts

In October 2010, Ms. Maria Altragracia Dorval ("***Dorval***") was murdered by her ex-spouse. The respondents, who were close relatives of Dorval, blamed the police officers of the City of Montreal ("***City***") for failing to follow up on Dorval's complaints in the weeks preceding her murder.

In October 2013, the respondents instituted an action in damages against the City, as principal of the police officers. In a motion to dismiss, the City argued that the six-month time limit for prescription set out in article 586 of the *Cities and Towns Act*[2] ("***CTA***") applied and that the respondents' action was prescribed.

According to the City, the respondents were not direct victims of bodily injury and could nottherefore take advantage of the three-year prescription period set out in article 2930 of the *Civil Code of Quebec*[3] ("***C.C.Q.***"), which states, in particular, that an action based on bodily injury is prescribed by three years, notwithstanding any contrary provision.

The respondents, in turn, argued that, even as indirect victims, they did benefit from prescription under article 2930 C.C.Q. on the basis that the purpose of the recourse is to compensate for damages arising from a bodily injury.

## Issue in dispute

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Was the respondents' recourse as indirect victims extinguished because they failed to comply with the prescription period of six months under the CTA, or did they also benefit from the three-year prescription period provided in article 2930 C.C.Q.?

## Case law and doctrine

The disputed issue, while dealing with the prescription period, raised the question of how the injury was to be characterized. In this case, did the indirect victims suffer a bodily injury?

The issue of characterizing the injury gave rise to two different lines of authority in the case law and doctrine.

The first line of authority characterizes the injury, whether it be bodily, moral or material, on the basis of the consequences of the interference suffered by the victim. Thus, it focuses on determining the effects of the wrongful act, downstream, and on characterizing the injury as a function of the damages suffered. In this case, since the damages suffered by the indirect victims were not bodily in nature, they were not victims of bodily injury, but rather, of moral or material injury.

The second line of authority characterizes the injury on the basis of the type of interference itself, and therefore upstream. The focus here is on characterizing the wrongful act itself, i.e., whether it pertains to the physical integrity of the person, his or her property, or psychological integrity. Next, the consequences of this interference are characterized as pecuniary or non-pecuniary damages. In this case, given the nature of the interference was a bodily injury, the injuries suffered by the victim's relatives would also be characterized as bodily in nature, causing them pecuniary and non-pecuniary damages, depending on the death's impact on those persons.

## Proceedings in the lower courts

The Superior Court granted the City's motion and dismissed the respondents' action, holding that it was prescribed. Following the first line of authority, the court found that only immediate victims can take advantage of the three-year prescription period conferred by article 2930 C.C.Q., since only they have suffered a "bodily injury".

The Court of Appeal, following the second line of authority, held instead that the respondents' action was not prescribed. It found that the injury must be characterized according to the type of interference that caused it, and not based on the nature of the damages claimed. Accordingly, since the respondents' action was founded on a bodily injury, it was therefore covered by the three-year prescription period under article 2930 C.C.Q.

## Supreme Court of Canada

In a majority judgment written by Justice Wagner, the Court found that the basis of the action brought by the respondents was the reparation of Dorval's bodily injury resulting from the City's wrongful interference with her physical integrity. It therefore held that article 2930 C.C.Q. must be interpreted in favour of the indirect victims of a bodily injury.

In reaching this conclusion, the Supreme Court first considered the decision of the Court of Appeal in the *Tarquini* case.[4] In that matter, the plaintiff claimed damages from the City of Montreal as a result of the death of her spouse in a bicycle accident. As in this case, the City of Montreal pleaded the short prescription period under the CTA. The Court of Appeal found that the plaintiff's recourse was not prescribed on the basis that the bodily injury in question under article 2930 C.C.Q. did not

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solely contemplate the injury suffered by the immediate victim, but rather, any damages resulting from a bodily injury, including those of indirect victims.

Next, the Supreme Court, acknowledging that the expression "bodily injury" must be interpreted as resulting from interference with a person's physical integrity, opted to resolve the issue by reference to the basis of the action as instituted, in accordance with the second line of jurisprudential and doctrinal authority. It submitted that the characterization of the victims' action, whether as direct or indirect, is determined on the basis of the type of interference alleged, whether bodily, material or moral. As for the consequences thereof, they correspond to the heads and the characterization of the damages claimed.

The Supreme Court indicated that the purpose of article 2930 C.C.Q. is to protect personal integrity and ensure the full indemnification of victims. Consequently, eliminating the distinction between direct and indirect victims favours the achievement of this objective by conferring on all victims the benefit of an extended prescription period.

Furthermore, the Supreme Court was of the view that to distinguish between immediate victims and collateral victims would have the effect of creating two different prescription periods for the same wrongful act. This inconsistency is avoided by favouring a broad interpretation of article 2930 C.C.Q. The Court also noted that, since the *Tarquini* decision, both the doctrine and case law had preferred this interpretation, favouring the stability of the law.

The Court held that "any civil liability action instituted to claim reparation for the direct and immediate consequences of interference with a person's physical integrity must be based on the obligation to make reparation for bodily injury caused to another"[5] within the meaning of article 2930 C.C.Q., whether it be the recourse of the direct victim or indirect victim. Thus, indirect victims are also entitled to the prescription period of three years.

## Dissent

We note that Justices Côté and Brown, preferring the first line of authority referred to above, issued a dissenting opinion. In their opinion, since the respondents were not direct victims of interference with physical integrity, they could not rely on article 2930 C.C.Q. Accordingly, they found that the respondents' action was based instead on the obligation to compensate for the moral and material injury they had suffered as a result of the death of their relative, and not on the bodily injury which was in fact suffered by Dorval alone. Only a person having suffered interference with his or her own physical integrity could benefit from the three-year prescription set out in article 2930 C.C.Q.

In our view, the country's highest court has clearly resolved the debate on this issue.

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1. *Montréal (Ville de)* c. *Dorval*, 2017 SCC 48
2. *Cities and Towns Act*, C.Q.L.R., c. C-19
3. *Civil Code of Quebec*, C.Q.L.R., c. CCQ-1991
4. *Montréal (Ville)* c. *Tarquini*, [2001] RJQ 1405
5. *Montréal (Ville de)* c. *Dorval*, 2017 SCC 48, para. 55

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