

# Newsletter



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Avocats • Lawyers

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## The concept of “gross fault” and the exemption of liability of a city following the re-ignition of a fire

*In Intact, compagnie d'assurances c. Ville de Montréal (2017 QCCS 3753) rendered on June 26, 2017, the Superior Court had to determine whether the City of Montreal firefighters had committed a gross fault, thus preventing the city from invoking the exemption of liability provided for in section 47 of the Fire Safety Act (CQLR c S-3.4).*

In April 2011, tenants in a Montreal home were awakened during the night by smoke coming from their kitchen. Upon arrival at the scene, the firefighters concluded that smoke was coming from the back of the stove. Having moved it from the wall, they found that the electrical plug had melted. The firemen then made an opening in the wall to check the inside of the wall and the vertical uprights; they removed the carbonization found therein. Firefighters later evacuated the smoke from the dwelling and confirmed that the place was safe. Despite the absence of smoke detectors, the firefighters allowed the tenants to return to their homes. Approximately one hour later, a tenant noticed that flames were coming out again behind the stove and in the cabinets.

The second fire caused damage to the property of the claimants and of the insureds of the subrogated insurers in demand. The City argued in defense that since it had adopted a fire safety cover plan, as provided for in the *Fire Safety Act*, it should benefit from the exemption of liability provided for in the Act. The plaintiffs argued that the exemption of liability could not apply since the firefighters had committed one or more gross faults or several faults amounting to gross negligence. Article 47 provides for the exemption of the defendants' liability “unless the damage results from their intentional or gross fault.”

The Court first concluded that the origin of the second fire was located behind the stove and cabinets and that its cause was the first fire that had not been completely extinguished. The



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Court then analyzed the various faults alleged by the plaintiffs. It concluded that (1) firefighters made a first mistake when collecting information upon arrival; (2) they did not follow the “beyond any trace of carbonization” [our translations] rule of exploration as they failed to touch the wall near where the first fire was detected; and (3) they were negligent in letting the tenants return to the dwelling while there were no smoke alarms on site.

The Court held that the third fault was not causal to the damages that occurred. The Court had to determine whether the other faults constituted gross faults.

After reviewing certain authorities on the interpretation of the concept of

gross fault, the Court concluded that there would be gross fault if the behavior of the firemen was “below that of the least careful and stupid fireman”. Even though the Court found that the firefighters were incompetent or negligent, the Court could not conclude that they acted “as the worst of firefighters” and were “indifferent to the consequences of their actions”. The Court also rejected plaintiffs' argument that the accumulation of wrongdoings by the firefighters constituted gross fault.

The Court concluded that the city benefited from the exemption of liability provided for by the law, thus justifying the Court to dismiss the actions brought against it.

