

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

October 19, 2017

The Supreme Court of Canada rules: the indirect victim's right is subject to a three-year prescription

Montréal (Ville) c. Dorval, 2017 CSC 48 arose from the assassination of Maria Altagracia Dorval by her former husband, in October 2010. Shortly before she was murdered, she had made distress calls to the Montréal police. In 2013, Ms. Dorval's father, sister and sister-in-law filed before the Superior Court a personal claim for damages against the City of Montréal, alleging that its police services should have responded to the victim's calls for help.

The City responded with an exception to dismiss, alleging that the action was prescribed under s 586 of the *Cities and Towns Act [CTA]* (six-month prescription). The City argued that the three-year prescription for "bodily injury" under art 2930 of the *Civil Code of Québec [CCQ]* could not apply since the plaintiffs, as indirect victims, were claiming damages for moral and material injuries.

The plaintiffs replied by claiming that their action was "based on the obligation to make reparation for bodily injury

caused to another", using the very words of art 2930 CCQ.

At trial, Francine Nantel J. granted the City's exception to dismiss: the Dorvals had not sustained "bodily injury" since their personal physical integrity had not been damaged.

That decision was reversed by the Court of Appeal, since the Dorvals' action was indeed "based on the obligation to make reparation for bodily injury caused to another" and therefore not prescribed.

On October 13, the Supreme Court of Canada dismissed the City's appeal. As stated by Wagner J., "for the purposes of [art 2930 CCQ], it is the *nature of the initial interference* rather than the head of damages being claimed that results in the injury being characterized as 'bodily injury' and that constitutes the source or basis of the action" [our emphasis]. Therefore, as indirect victims claiming damages for moral and material injuries, the plaintiffs can base their claim



Marcel-Olivier Nadeau
418 579-3115
514 393-7447
monadeau@rsslex.com

Mr. Nadeau is a litigator whose practice focuses on civil and commercial litigation and insurance law.

He also represents RSS in the Saguenay area, from our office in Chicoutimi.

Our newsletters aim to bring to your attention the contemporary legal issues which we believe are and should be of interest to the public at large and under no circumstances are they to be considered as legal opinions. The newsletters are merely intended to alert readers to interesting topics and/or new developments in law. © RSS 2017. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, unless the identity of the RSS newsletter is mentioned in writing on the face of the reproduction.



Robinson Sheppard Shapiro

on that provision since the *initial injury* was the bodily harm sustained by Ms. Dorval, as direct victim. According to the highest court in the land, this large and liberal interpretation is consistent with the legislature's objectives of protecting the integrity of the person and ensuring full compensation for those whose personal integrity has been interfered with, whether direct or indirect victims.

The matter was referred back to the Superior Court for a hearing on the merits.

The Supreme Court thereby shed light on a controversial question: the short prescription of s 586 *CTA* does not apply to an indirect victim whose right to compensation arises from bodily injury to the direct victim. Both fall under the scope of art 2930 *CCQ*.

