

Newsletter



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Avocats • Lawyers

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The right to claim the costs of bringing property up to standards

In a recent decision (Ville de Longueuil c. Environnement Routier NRJ inc., 2018 QCCS 3102), the Superior Court seems to have determined that a plaintiff is entitled to the extra costs of bringing a structure up to standards after it has been damaged. But is it really so?

On February 10, 2015, the bucket of a snow-removal truck collides with a pedestrian overpass belonging to the City of Longueuil. The overpass is heavily damaged and has to be rebuilt. The City files a claim against the company that had been hired to carry out the snow removal and its subcontractor, the owner of the truck.

However, applicable standards had changed between the time the overpass was built and the moment it was damaged: therefore, the replacement structure had to be stronger and wider.

The parties agreed on three points: the defendants were responsible for the damage; the overpass had been damaged beyond repair; and the new structure had to be compliant with the updated standards.

The sole issue at stake was therefore whether the City was entitled to the total cost of reconstruction including the cost of upgrading to the new standards (\$2.5 million) or the depreciated value of the overpass at the time of the accident (\$775,000).

Considering that the City was not getting any richer from the whole process and that it had to comply with the upgraded standards in rebuilding the overpass, the Court ruled that it was entitled to the full costs of reconstruction.

Although this decision could lead to the conclusion that a plaintiff is always entitled to the costs of bringing the property up to standards, the case does not seem to set aside the long-established principles of damage appraisal, under which a court must fully compensate



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the plaintiff, stopping short of making him better off than before the damage.

Each case has its own merits and, in this case, the Court came to the conclusion that the damage award payable by defendants was not making the City any richer, since “the overpass is not likely to be sold to a third party and the City will therefore never make a profit from such a situation” (*Ville de Longueuil c. Environnement Routier NRJ inc.*, para 28; our translation).

The decision rendered in this case does not seem to depart from established principles.

In the end, the particular facts of each case remain the deciding criteria for insurers, professionals and courts that must compensate the victim and restore the situation that prevailed prior to the occurrence of the damage, but without enriching the victim (*Ibid*, para 20).

