

Supreme Court of Canada clarifies principles governing extracontractual solidary liability in Québec

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In this Update

- On June 8, 2018, the Supreme Court of Canada (the Court) rendered its decision in *Montréal (Ville) v. Lonardi*, 2018 SCC 29
- In this case, Montréal sought a finding of solidary (joint and several) liability against all identified rioters who participated in the vandalism of police vehicles during a riot
- The majority of the Court refused to find the rioters solidarily liable for the damages caused to the vehicles
- The Court adopted a narrow view of the provisions of the *Civil Code* governing solidary liability (articles 1480 and 1526), including with respect to what constitutes a “single injury” and “joint participation in a wrongful act,” all while clarifying that solidary liability can only apply in cases of joint participation in a wrongful act when it is impossible to determine who actually caused the injury
- In a situation such as this one where all the faults are extracontractual, the Court confirmed that solidary liability can only be applied pursuant to the conditions set out in articles 1480 and 1526 of the *Civil Code*

On June 8, 2018, the Supreme Court of Canada (the Court) rendered its decision in *Montréal (Ville) v. Lonardi*, 2018 SCC 29. In this case, Montréal was seeking a finding of solidary (joint and several) liability against all identified rioters who participated in the vandalism of police vehicles during a riot.

The majority of the Court refused to find the rioters solidarily liable for the damages caused to the vehicles and, in doing so, adopted a restrictive interpretation of the provisions of the Québec *Civil Code* that provide for solidary liability in claims that do not arise from a contract (extracontractual claims). Indeed, the majority concluded that extracontractual solidary liability can only be imposed in the following situations:

1. Where the fault of two or more persons caused a single injury; or,
2. Where it is impossible to determine the person who actually caused an injury in a situation where:
 1. There is joint participation in a wrongful act that resulted in the injury; or,
 2. Persons have committed separate faults, each of which may have caused the injury.

Background

On April 21, 2008, the Montréal Canadiens beat the Boston Bruins 5-0 in Game 7 of the first round of the Stanley Cup playoffs, leading to celebration in the streets of downtown Montréal. That celebration ultimately led to rioting and the vandalizing of 15 Montréal police vehicles.

Approximately 20 persons were identified by police as having participated in the damage to the vehicles. Montréal instituted civil actions for each damaged vehicle, seeking solidary liability of all persons identified as having participated in damaging the vehicle in question, regardless of their degree of participation. While Montréal was successful in obtaining findings of liability with respect to these persons, the Courts below refused to impose solidary liability, and Montréal appealed to the Supreme Court on this issue.

Reasons and conclusions

The key question to be answered by the Court was whether article 1480 of the *Civil Code* only applies in situations where it is impossible to determine which person actually caused the injury. Montréal argued that this requirement only applied when persons had committed separate faults, each of which may have caused the injury. In a situation where there was joint participation by several persons in a wrongful act that resulted in the injury, Montréal argued that solidary liability could be imposed even if it was possible to determine which person actually caused the injury.

While this point of view was adopted by Justice Côté in her dissent, the majority of the Court disagreed and favoured an interpretation that restricts solidary liability under article 1480 of the *Civil Code* to situations where it is impossible to determine who actually caused the injury. In their view, it would be inconsistent with the central role of causation in civil law to hold a defendant liable for damages that he or she was known not to have caused.

Here, there was evidence that each of the defendants had indeed caused some damage to the vehicles, but there was also evidence that other persons were responsible for the actions that ultimately destroyed the vehicles. The persons who ultimately destroyed the vehicles were in some cases not defendants in the civil actions, because they could not be identified, but this did not satisfy the requirement applied by the Court that determining causation be impossible.

That said, in her dissent Justice Côté highlighted the injustice for victims of the approach adopted by the majority, focusing on a vehicle where the person who did set fire to it, leading to its destruction, was identified and sued as a defendant. In that case, while Montréal was seeking solidary liability of all seven defendants in the amount of \$20,707.53, namely the value of the vehicle, it obtained only an aggregate amount of \$11,000 on an individual basis. Justice Côté pointed out in particular that the defendant who ultimately destroyed the vehicle was only condemned to pay \$4,000 in damages for the precise reason that he set fire to an extremely damaged vehicle that was not worth more than that at that point.

Moreover, the Court also adopted a narrow view of the notion of “joint participation in a wrongful act,” requiring evidence of awareness of the defendant of the acts or omissions that were found to be wrongful, as well as evidence of an intent to take part in such acts or omissions. Here, while every defendant was indeed a participant in the riot and a participant in the vandalism of police vehicles, the Court found that there was insufficient evidence of common intention, considering that the defendants did not know each other, were not in contact with each other and committed wrongful acts at different times without the

knowledge of the other defendants.

Again, Justice Côté challenged the majority's view on this issue, highlighting the evidence that small groups formed to focus on damaging individual vehicles until their ultimate destruction, all within a short period of time and in a single location, leading in her view to a connection between their individual acts of vandalism sufficient to conclude that they jointly participated in a wrongful act.

The Court also excluded the possibility of imposing solidary liability on the basis that the defendants caused a single injury to the police vehicles. Montréal argued that the lower Courts erred in segmenting the damages caused by each individual to a particular vehicle rather than considering the ultimate outcome of these successive acts of vandalism, namely the destruction of the vehicle.

The Court disagreed and refused to disturb the trial judge's assessment of the distinct and identifiable injuries caused by each defendant individually, thus precluding the existence of a single injury caused by multiple defendants. In her dissent, Justice Côté also disagreed with this conclusion of the Court, and would have found that the defendants' conduct in damaging the police vehicle caused a single injury, namely its ultimate destruction.

Finally, the Court refused to rely on the *in solidum* obligation developed by case law to support solidary liability. The Court clarified that *in solidum* obligations can only arise in situations where there are separate contractual faults, or in situations where there are faults that are both contractual and extracontractual. In a situation such as this one where all the faults are extracontractual, solidary liability can only be applied pursuant to the conditions set out in articles 1480 and 1526 of the *Civil Code*, as restrictively interpreted by the Court in this judgment.