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Editor's Comments

It is our pleasure to send you the 4th edition of our Insurance law Newsletter.

It features a comment on the recent judgment of the Supreme Court of Canada in the case of Westmount vs. Rossy[1] where our highest court reaffirmed that the Automobile Insurance Act must be given a broad and liberal interpretation.

We would also like to take this opportunity to remind you that we offer continued education seminars that are recognized by the Chambre de l'assurance de dommages and the Quebec Bar on insurance law and civil liability matters.

Please do not hesitate to contact us to learn more on these seminars.

Mtre Paul A. Melançon

City of Westmount v. *Rossy*[1]: The Supreme Court of Canada favours a broad and liberal interpretation of the *Automobile Insurance Act*

Mtre Julia De Rose*

The facts of the case are the following: in August 2006, Gabriel Anthony Rossy was killed when a tree fell onto the automobile he was driving on a public road in the City of Westmount.

Following this unfortunate accident, the deceased's family introduced proceedings against the City of Westmount (the "**City**") before the Superior Court, holding the City responsible for the damages caused by its tree falling.

Conversely, the City opposed that the event in question was an automobile accident pursuant to the *Automobile Insurance Act*[2] (the "**AIA**") and moved for the Court to dismiss Rossy's claim.

The Judgments

- ***The Superior Court of Quebec***[3]

Faced with the City's motion to dismiss the suit, the Superior Court prevented the Rossys' civil suit from moving any further, as it interpreted the AIA broadly. According to the Court, the AIA is remedial legislation of a social nature; hence, this type of interpretation was required in order to ensure that its main goal was achieved, namely, indemnifying victims of automobile accidents. As it applied the criteria established by the Court of Appeal in *Productions Pram Inc.* v. *Lemay*[4], the Superior Court reaffirmed that the causal link required by the AIA is not a traditional causal link:

1. it is sufficient that an accident occurs while an automobile is being used in order for the AIA to apply, even if the vehicle does not play an active role in the accident;
2. accident victims must be indemnified in accordance with the AIA even if an automobile is not the direct cause of the harm suffered by the victim;

3. requiring anything further would be contrary to achieving the AIA purpose, which is the indemnification of automobile accident victims.

- ***The Court of Appeal of Quebec***[5]

The Rossy family appealed this decision before the Court of Appeal of Quebec.

Reversing the Superior Court's ruling, the Court of Appeal judged that the AIA was not meant to prevent the rules of regular civil liability from applying to all accidents involving automobiles. The Court decided that the mere fact that a victim was *inside* an automobile at the time of an accident is not sufficient to give rise to an automatic indemnity under the AIA. Expressing the view that harm was caused to the victim while he was using an automobile, not *because of* such use, the Court decided that the Rossys were not barred from suing for damages before the civil courts. The Court of Appeal thus allowed the appeal and ordered the continuation of the proceedings before the Superior Court.

- ***The Supreme Court of Canada***

Disposing of the City's appeal from the Court of Appeal's decision, the Supreme Court decided that the claim introduced against the City was inadmissible. The heat of the debate centered on the scope of the AIA's applicability as well as the analysis of the need for a causal link and of the terms "*caused by*" in considering the role of the automobile in the accident.[6]

The Supreme Court restated that the AIA "*was primarily designed to provide compensation to victims of automobile accidents for death and injury to the person, without regard to fault.*"[7] It specified that the AIA should be interpreted broadly in order to ensure that its goal is achieved and that automobile accident victims are indemnified.[8]

In its review of the principles established in case law and doctrine regarding indemnification pursuant to the AIA, the Court repeated the criteria established by the Court of Appeal in *Productions Pram Inc.* v. *Lemay*[9]:

- *"The identification of a causal link remains a matter of logic and fact, and depends on the circumstances of each case.*
- *For the Act to apply, it is not necessary for the vehicle to have entered directly into physical contact with the victim.*
- *It is not necessary for the vehicle to have been in motion when the damage occurred. Whether the vehicle's role was active or passive is not determinative of causation.*
- *Whether the act that caused the damage was voluntary or involuntary is of no consequence.*
- *The mere use of the vehicle, that is, its use, handling and operation, is sufficient for the Act to apply. The meaning of "damage caused by the use of the automobile" is broader than that of "damage caused by the automobile".*
- The damage need not have been produced by the vehicle directly. It is enough that the damage occur in the general context of the use of the *vehicle (p. 1742).*

  Pram therefore confirms that the Act must be given a broad and liberal interpretation. Pram was applied soon after being rendered by the Court of Appeal, in a case in which the facts (a lamppost falling on a car, possibly on a highway) are strikingly similar to those in the present appeal (Succession André Dubois v. Ministère des Transports du Québec, C.A. Québec, No. 500-09-001027-937, March 25, 1997, aff'g Sup. Ct., No. 500-05-000204-907, April 30, 1993, Deslongchamps J.). Pram teaches that, in determining whether the Act applies, a court must not look for a traditional causal link between fault and damage as is routinely done in delictual or quasi-delictual civil liability cases. The principles from Pram are a useful guide to the interpretation of these provisions and should be reaffirmed."[10]

These criteria were established long before the Rossys brought their suit against the City and suggested that any involvement of an automobile in an accident causing bodily harm or death would be sufficient to allow a victim to be indemnified pursuant to the AIA, and prevented any other legal recourse in connection with the event.

In deciding that the Rossys' claim was admissible in this case, the Court of Appeal did not apply the case law for such matters, and favoured a more restrictive reading of the provisions of the AIA. The Supreme Court, however, chose to interpret the provisions of the AIA broadly in accordance with its social purpose, as the following paragraphs of the judgment indicate:

> *"Each case must be considered on its facts. However, at a minimum, an accident arising out of the use of a vehicle as a means of transportation will fall within the definition of "accident" in the Act and will therefore be "caused by an automobile" within the meaning of the Act. Any civil action in connection with the damage caused by that accident will be barred and victims will have to file a claim with the SAAQ. The vehicle's role in the accident need not be an active one. The mere use or operation of the vehicle, as a vehicle, will be sufficient for the Act to apply. This interpretation follows from a straightforward application of the principles developed in Pram. It is in line with the jurisprudence and the literature, and it gives effect to the objective of the legislative scheme.*

> *On the facts of this case, the Act applies to Mr. Rossy's accident. Although the vehicle may have been stationary or moving through an intersection, the evidence on the record is that Mr. Rossy was using the vehicle as a means of transportation when the accident occurred. This is enough to find that the damage arose as a result of an "accident" within the meaning of the Act and that the no-fault benefits of the scheme are triggered. Therefore, the respondents' civil claim is barred and they must turn instead to the SAAQ for compensation.*
>
> *The Court of Appeal erred in interpreting the Act too narrowly. Such an interpretation risks unduly restricting the intended application of Quebec's no-fault scheme and must therefore be rejected."*[11]

The highest court in the country thus reaffirmed that victims of automobile accidents may not simply opt for a civil suit: they are bound by the indemnification schemes provided for them under the AIA, even if an automobile plays only an accessory role in the accident.

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1. 2012 SCC 30;
2. R.S.Q., c. A-25;
3. 2008 QCCS 4471;
4. [1992] 1738 (C.A.);
5. 2010 QCCA 2131;
6. *City of Westmount v. Rossy*, 2012 SCC 30, par. 22;
7. *Ibid.*, par. 18;
8. *Ibid.*, paras. 19 and 21;
9. *Infra*, note 5;
10. *City of Westmount v. Rossy*, 2012 SCC 30, paras. 27 and 28 (Emphasis added.);
11. *Ibid.*, paras. 52-54 (Emphasis added.);

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