

City of Westmount (appellant) v. Richard Rossy, Sharon Rossy, Justin Rossy, Luke Rossy,  
Nicholas Rossy and Société de l'assurance automobile du Québec (respondents)  
(34060; 2012 SCC 30; 2012 CSC 30)

**Indexed As: Rossy v. Westmount (City)**

Supreme Court of Canada  
McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Cromwell and Karakatsanis, JJ.  
June 22, 2012.

**Summary:**

A tree fell on a car killing the driver. The driver's parents and three brothers (plaintiffs) sued the City of Westmount on the basis of civil liability under the Civil Code of Québec, for failure to properly maintain the tree. The city moved to dismiss the action, arguing that the action against it was barred because it fell under Quebec's automobile insurance scheme (Automobile Insurance Act).

The Quebec Superior Court, in a decision with neutral citation 2008 QCCS 4471, granted the city's motion and dismissed the action. The plaintiffs appealed.

The Quebec Court of Appeal, in a decision reported [2010] R.J.Q. 2338; 2010 QCCA 2131, allowed the appeal, ruling that the case could proceed in the Superior Court. The city appealed.

The Supreme Court of Canada allowed the appeal and dismissed the action against the city. The plaintiffs' claim was barred. The injury was an "accident" within the meaning of the Act.

**Insurance - Topic 5057.1**

Automobile insurance - Compulsory government schemes - Bodily injury and death benefits - Accident defined - A tree fell on a car killing the driver - The driver's family (plaintiffs) sued the City of Westmount on the basis of civil liability under the Civil Code of Québec - An issue arose as to whether the plaintiffs' action against the city was barred - If the claim fell under Quebec's automobile insurance scheme, any compensation arising from the incident would be governed by that scheme such as to preclude a civil action - In order for the claim to fall under the insurance scheme, the driver's injuries would have to have resulted from an "accident" within the meaning of the Automobile Insurance Act (Que.), i.e., were the driver's injuries "damage caused by an automobile, by the use thereof or by the load carried in or on an automobile"? - The Supreme Court of Canada ruled that the plaintiffs' claim was barred - The injury was an "accident" within the meaning of the Act.

**Insurance - Topic 5064**

Automobile insurance - Compulsory government schemes - Bodily injury and death benefits - "Ownership, use or operation" of a vehicle - [See **Insurance - Topic 5057.1**].

**Statutes - Topic 8506**

Remedial statutes - General principles - Interpretation - The Supreme Court of Canada stated that the Automobile Insurance Act of Quebec was considered remedial legislation, therefore, it had to be interpreted in accordance with s. 41 of the Interpretation Act (Que.) - It had to be given a "large and liberal" interpretation to ensure that its purpose was attained - See paragraph 21.

### **Words and Phrases**

**Accident** - The Supreme Court of Canada discussed the meaning of this word as it was found in s. 1 of the Automobile Insurance Act, R.S.Q., c. A-25 - See paragraphs 17 to 55.

### **Words and Phrases**

**Damage caused by an automobile, by the use thereof or by the load carried in or on an automobile** - The Supreme Court of Canada discussed the meaning of this phrase as it was found in s. 1 of the Automobile Insurance Act, R.S.Q., c. A-25 - See paragraphs 17 to 55.

### **Cases Noticed:**

Productions Pram Inc. v. Lemay, [1992] R.J.Q. 1738 (C.A.), appld. [para. 6].  
Amos v. Insurance Corp. of British Columbia, [1995] 3 S.C.R. 405; 186 N.R. 150; 63 B.C.A.C. 1; 104 W.A.C. 1; 127 D.L.R.(4th) 618, dist. [para. 8].  
Vytlingam v. Farmer et al., [2007] 3 S.C.R. 373; 368 N.R. 251; 230 O.A.C. 364; 2007 SCC 46, dist. [para. 8].  
Herbison v. Lumbermens Mutual Casualty Co., [2007] 3 S.C.R. 393; 368 N.R. 292; 230 O.A.C. 395; 2007 SCC 47, refd to. [para. 8].  
Québec (Procureur général) v. Villeneuve, [1996] R.J.Q. 2199, refd to. [para. 17].  
Bédard v. Royer, [2003] R.J.Q. 2455, refd to. [para. 18].  
Periard v. Sept-Iles (Ville), [1985] I.L.R. 7557, refd to. [para. 23].  
Compagnie d'assurance Victoria du Canada v. Neveu, [1989] R.R.A. 226, refd to. [para. 24].  
Succession André Dubois v. Québec (Ministère des Transports), C.A. Québec, No. 500-09-001027-937, March 25, 1997, affing. Sup. Ct., No. 500-05-000204-907, April 30, 1993, refd to. [para. 28].  
McMillan v. Thompson (Rural Municipality), [1997] 3 W.W.R. 1; 115 Man.R.(2d) 2; 139 W.A.C. 2; 144 D.L.R.(4th) 53 (C.A.), refd to. [para. 34].

### **Statutes Noticed:**

Automobile Accident Insurance Act, R.S.S. 1978, c. A-35, sect 40.2(1) [para. 31].  
Automobile Insurance Act, R.S.Q., c. A-25, sect. 1 [para. 2, Appendix]; sect. 83.57 [para. 20, Appendix].  
Civil Code of Québec, S.Q. 1991, c. 64, generally [para. 1].  
Code of Civil Procedure, R.S.Q., c. C-25, art. 75.1, art 165(4) [para. 4].  
Insurance (Motor Vehicle) Act Regulations (B.C.), B.C. Reg. 447/83, sect. 79(1) [para. 40].  
Interpretation Act, R.S.Q., c. I-16, sect. 41 [para. 21].  
Manitoba Public Insurance Corporation Act, R.S.M. 1987, c. P-125; C.C.S.M. c. P-215, sect. 70(1), sect. 72 [para. 32].

**Authors and Works Noticed:**

- Baudouin, Jean-Louis and Deslauriers, Patrice, *La responsabilité civile* (7e éd. 2007), vol. I, Principes généraux, pp. 929 to 935 [para. 18]; 942, 947 [para. 30].
- Gardner, Daniel, *L'interprétation de la portée de la Loi sur l'assurance automobile: un éternel recommencement* (2011), 52 C. de D. 167, generally [para. 17].
- Gardner, Daniel, *La Loi sur l'assurance automobile: loi d'interprétation libérale?* (1992), 33 C. de D. 485, p. 495 [para. 29].
- Rousseau-Houle, Thérèse, *Le régime québécois d'assurance automobile, vingt ans après* (1998), 39 C. de D. 213, generally [para. 17].

**Counsel:**

- André Legrand and Dominic Dupoy, for the appellant;
- Julius H. Grey, Politimi Karounis and Lynne-Marie Casgrain, for the respondents, Richard Rossy et al.;
- No one appeared for the respondent, Société de l'assurance automobile du Québec.

**Solicitors of Record:**

- Norton Rose OR, Montreal, Quebec, for the appellant;
- Grey, Casgrain, Montreal, Quebec, for the respondents, Richard Rossy et al.

This appeal was heard on February 13, 2012, before McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Cromwell and Karakatsanis, JJ., of the Supreme Court of Canada. The following decision was delivered for the court, in both official languages by LeBel, J., on June 22, 2012.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon