



SUPREME COURT OF CANADA

CITATION: Westmount (City) v. Rossy, 2012 SCC 30

DATE: 20120622

DOCKET: 34060

BETWEEN:

City of Westmount

Appellant

and

Richard Rossy, Sharon Rossy, Justin Rossy, Luke Rossy, Nicholas Rossy and

Société de l'assurance automobile du Québec

Respondents

CORAM: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Cromwell and Karakatsanis JJ.

REASONS FOR JUDGMENT:
(paras. 1 to 55)

LeBel J. (McLachlin C.J. and Deschamps, Fish, Abella,
Cromwell and Karakatsanis JJ. concurring)

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WESTMOUNT (CITY) v. ROSSY

City of Westmount

Appellant

v.

**Richard Rossy,
Sharon Rossy, Justin Rossy, Luke Rossy, Nicholas Rossy and
Société de l'assurance automobile du Québec**

Respondents

Indexed as: Westmount (City) v. Rossy

2012 SCC 30

File No.: 34060.

2012: February 13; 2012: June 22.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Cromwell and Karakatsanis JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

*Insurance — Automobile insurance — No-fault public automobile
insurance scheme — Tree falling on vehicle causing driver's death — Type of causal*

link necessary between damage and automobile — Whether driver’s injuries were “caused by an automobile, by the use thereof or by the load carried in or on an automobile”? — Automobile Insurance Act, R.S.Q., c. A-25, s. 1 “accident”, “damage caused by an automobile”.

Civil procedure — Exception to dismiss action — Tree falling on vehicle causing driver’s death — Driver’s family members filing action in damages against city where accident occurred — Whether civil claim barred by virtue of public automobile insurance scheme’s application — Code of Civil Procedure, R.S.Q., c. C-25, arts. 75.1, 165(4) — Automobile Insurance Act, R.S.Q., c. A-25, s. 83.57.

R was killed when a tree fell on the vehicle he was driving in the City of Westmount. R’s parents and three brothers filed an action in damages against the City on the basis of civil liability under the *Civil Code of Québec*. They alleged that, as the owner of the tree, the City had failed to properly maintain it. The City moved to dismiss the action under arts. 165(4) and 75.1 of the *Code of Civil Procedure*. It argued that the injury resulted from an accident caused by an automobile and, therefore, that any compensation for personal injury was governed by the *Automobile Insurance Act* (“Act”). The Superior Court granted the City’s motion and dismissed the action. The Court of Appeal concluded that an injury is not “damage caused by an automobile” simply because the victim was in a vehicle at the time of the accident. It found that the motion’s allegations led to the conclusion that there was nothing to

connect R's injuries with the fact that he was in a vehicle. It allowed the appeal and held that the case could proceed in the Superior Court.

Held: The appeal should be allowed.

The Act is considered remedial legislation. Therefore, it must be interpreted in accordance with s. 41 of the *Interpretation Act*. It must be given a large and liberal interpretation to ensure that its purpose is attained. The Court of Appeal's decision in *Productions Pram inc. v. Lemay*, [1992] R.J.Q. 1738, 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 the Act and should be reaffirmed. 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 Société de l'assurance automobile du Québec. 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 R's accident. Although the vehicle may have been stationary or moving through an intersection, the evidence on the record is that R 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 civil claim is barred and R's parents and brothers must turn instead to the Société de l'assurance automobile du Québec 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.

Cases Cited

Applied: *Productions Pram inc. v. Lemay*, [1992] R.J.Q. 1738;
distinguished: *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405;
Citadel General Assurance Co. v. Vytlingam, 2007 SCC 46, [2007] 3 S.C.R. 373;
considered: *Periard v. Ville de Sept-Iles*, [1985] I.L.R. 7557; *McMillan v. Thompson (Rural Municipality)* (1997), 144 D.L.R. (4th) 53; **referred to:** *Lumbermens Mutual Casualty Co. v. Herbison*, 2007 SCC 47, [2007] 3 S.C.R. 393; *Québec (Procureur général) v. Villeneuve*, [1996] R.J.Q. 2199; *Bédard v. Royer*, [2003] R.J.Q. 2455; *Compagnie d'assurance Victoria du Canada v. Neveu*, [1989] R.R.A. 226; *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.

Statutes and Regulations Cited

Automobile Accident Insurance Act, R.S.S. 1978, c. A-35, s. 40.2(1).

Automobile Insurance Act, R.S.Q., c. A-25, s. 1 “accident”, “automobile”, “damage caused by an automobile”, Title II, ss. 5-7, 69, 83.57, Title III.

Civil Code of Québec, S.Q. 1991, c. 64.

Code of Civil Procedure, R.S.Q., c. C-25, arts. 75.1 [rep. 2009, c. 12, s. 3], 165(4).

Interpretation Act, R.S.Q., c. I-16, s. 41.

Manitoba Public Insurance Corporation Act, C.C.S.M. c. P215, ss. 70(1) “accident”, “bodily injury caused by an automobile”, 72.

Revised Regulation (1984) under the Insurance (Motor Vehicle) Act, B.C. Reg. 447/83, s. 79(1) [am. 335/84, Sch., item 19, and 379/85, Sch., item 31].

Authors Cited

Baudouin, Jean-Louis, et Patrice Deslauriers. *La responsabilité civile*, 7^e éd., vol. I, *Principes généraux*. Cowansville, Qué.: Yvon Blais, 2007.

Gardner, Daniel. “L’interprétation de la portée de la *Loi sur l’assurance automobile*: un éternel recommencement” (2011), 52 *C. de D.* 167.

Gardner, Daniel. “La *Loi sur l’assurance automobile*: loi d’interprétation libérale?” (1992), 33 *C. de D.* 485.

Rousseau-Houle, Thérèse. “Le régime québécois d’assurance automobile, vingt ans après” (1998), 39 *C. de D.* 213.

APPEAL from a judgment of the Quebec Court of Appeal (Thibault and Dufresne JJ.A. and Cournoyer J. (*ad hoc*)), 2010 QCCA 2131, [2010] R.J.Q. 2338, [2010] J.Q. n° 12046 (QL), 2010 CarswellQue 12485, setting aside a decision of Reimnitz J., 2008 QCCS 4471 (CanLII), [2008] J.Q. n° 9318 (QL), 2008 CarswellQue 9489. Appeal allowed.

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.

The judgment of the Court was delivered by

LEBEL J. —

I. Introduction

[1] This appeal arises out of a tragic accident. In August 2006, a tree in the City of Westmount (“City”) fell on a vehicle that Gabriel Anthony Rossy was in, killing him. Mr. Rossy’s parents and three brothers (“the respondents”) filed an action

in damages against the appellant, the City, on the basis of civil liability under the *Civil Code of Québec*, S.Q. 1991, c. 64. The question before this Court is whether the respondents' action against the City is barred. If the claim falls under Quebec's automobile insurance scheme, any compensation arising from the incident would be governed by that scheme and this would preclude a civil action. In order for the claim to fall under Quebec's automobile insurance scheme, thereby preventing the respondents from suing the City, Mr. Rossy's death must have resulted from an "accident" within the meaning of the *Automobile Insurance Act*, R.S.Q., c. A-25 ("Act"), that is, an event in which injury or damage was "caused by an automobile, by the use thereof or by the load carried in or on an automobile" (s. 1, "damage caused by an automobile"). This is the crux of the appeal.

[2] For the reasons that follow, I conclude that the respondents' claim is barred. The injury was an "accident" within the meaning of the Act. I would allow the appeal and dismiss the action against the City.

II. Facts

[3] The facts of this case are straightforward. One summer evening in 2006, Mr. Rossy was killed when a tree fell on the vehicle he was driving, according to the evidence in the record. The respondents started an action in the Quebec Superior Court against the City as the owner of the tree, alleging that the City had failed to properly maintain it. The respondents specifically pleaded that "[t]he cause of the

incident was totally independent of the operation of the automobile and the liability is not precluded by Quebec's no fault system of automobile insurance" (A.R., at p. 30).

[4] The City moved to dismiss the action under arts. 165(4) and 75.1 of the *Code of Civil Procedure*, R.S.Q., c. C-25. It argued that the injury resulted from an accident caused by an automobile and, therefore, that any compensation for personal injury was governed by the Act. Because the automobile insurance scheme applied, it argued, the respondents were precluded from suing the City under the general law of civil liability.

III. Judicial History

A. *Quebec Superior Court, Reimnitz J., 2008 QCCS 4471 (CanLII)*

[5] The motion judge began by setting out the principles from the relevant authorities. He noted that the Act is remedial legislation of a social nature, which must be given full effect. In this respect, the Act must be construed broadly and liberally in order to promote its primary purpose, which is to compensate victims of traffic accidents generally. However, this interpretation must be plausible and logical, having regard to the wording of the Act.

[6] The motion judge stated that, in order to fall under the Act, an accident must occur in the normal course of the vehicle's use. If it does, there is no need to look for a traditional causal link. At para. 17, he endorsed the following comments

by Baudouin J.A. in *Productions Pram inc. v. Lemay*, [1992] R.J.Q. 1738 (C.A.), at p. 1741:

[TRANSLATION] . . . the causal link required by the Act is *sui generis*, and . . . in characterizing that link, it is unhelpful to rigidly adhere to any of the traditional doctrinal constructs of *causa causans*, *causa proxima*, adequate causation, proximate causation and equivalence of conditions. Those theories are very helpful in the general law, particularly where the judge must assess the causal relationship between fault and damage. They are not helpful here.

[7] Further, the vehicle need not play an active role in the ensuing damage. Section 1 of the Act refers not only to damage “caused by an automobile” but also to damage “caused . . . by the use thereof or by the load carried in or on an automobile”. Thus, the motion judge reasoned, it is not necessary for the damage to be caused directly by the vehicle itself, as long as the damage arises within the general context of the vehicle’s use. He stated that requiring a victim to prove that the vehicle was the effective cause of the injury would constitute an undue burden that would frustrate the remedial purpose of the Act.

[8] Finally, the motion judge endorsed the view that the decisions of this Court raised by the City — *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405; *Citadel General Assurance Co. v. Vytlingam*, 2007 SCC 46, [2007] 3 S.C.R. 373; *Lumbermens Mutual Casualty Co. v. Herbison*, 2007 SCC 47, [2007] 3 S.C.R. 393 — were not based on the same applicable legislation.

[9] For these reasons, the motion judge granted the City’s motion and dismissed the action on the basis of the principles set out in *Pram*.

B. Quebec Court of Appeal, Thibault and Dufresne J.J.A. and Cournoyer J. (ad hoc), 2010 QCCA 2131, [2010] R.J.Q. 2338

[10] The Court of Appeal framed the issue as follows: Given that the facts alleged in the motion to institute proceedings are assumed to be true, is the applicable law the Act or the general law of civil liability under the *Civil Code of Québec*?

[11] The Court of Appeal began by noting that whether a causal link exists, that is whether the injury was “damage caused by an automobile” as defined in the Act, is a question of [TRANSLATION] “logic and fact” (para. 14). This, it said, is one of six principles set out by Baudouin J.A. in *Pram*.

[12] The Court of Appeal acknowledged that the purpose of the Act is to compensate an accident victim for damage caused by an automobile, but it was of the view that the Act was not designed to dispense with the principles of civil liability in every case in which the victim was in a vehicle. It cited several cases in which courts have held that the Act was inapplicable, finding that those cases demonstrate that [TRANSLATION] “the courts have made good use of logic and common sense in light of the facts of each case” (para. 30).

[13] The Court of Appeal concluded that the respondents’ injury was not caused by an automobile, its use or its load. It allowed the appeal and held that the

case could proceed in the Superior Court. It stated that, as some courts have held, an injury is not “damage caused by an automobile” simply because the victim was in a vehicle at the time of the accident. It agreed that for the purposes of the motion, the respondents’ allegations had to be assumed to be true. Unlike the motion judge, however, the Court of Appeal found that the allegations led to the conclusion that there was nothing to connect Mr. Rossy’s injuries with the fact that he was in a vehicle:

[TRANSLATION] At the stage of a motion to dismiss, the allegations in the pleading become crucial, since they must be assumed to be true. Here, the Rossy family allege in paragraphs 4 and 5 of their motion to institute proceedings, first, that Gabriel Anthony’s death was caused solely by the fall of a tree and, second, that the City is liable for the injury suffered as a result of its failure to maintain the tree, which it owned. It is true that the young man was in an automobile when the tree fell on it, but there is nothing that can connect the injury he suffered with the fact that he was in an automobile. The automobile is merely what he happened to be in when the tree fell. He could just as well have been walking, cycling, rollerblading, etc., and suffered the same injury. But the result would have been different if, for example, the falling tree had caused the automobile in which Gabriel Anthony was travelling to crash into the tree or to swerve off course and become involved in an accident. [para. 40]

IV. Analysis

A. *Issue*

[14] The main issue in this appeal is the scope of the Act and whether the respondents’ claim is barred by virtue of its application in this case. To resolve it, the

Court must determine what is “damage caused by an automobile, by the use thereof or by the load carried in or on an automobile” for the purpose of s. 1 of the Act.

[15] As a preliminary procedural matter, given that this issue was raised on a motion to dismiss the action in damages under arts. 75.1 and 165(4) of the *Code of Civil Procedure*, the Court of Appeal correctly noted that, in order to determine whether the Act applies to this case, the facts alleged in the respondents’ initial action must be deemed to be true under art. 165(4). In accordance with art. 75.1, the court may consider transcripts of the evidence given by the parties on discovery to assist in determining what facts are being alleged. Although art. 75.1 was repealed in 2009 (S.Q. 2009, c. 12, s. 3), it was still in force at the time the motion was heard in the Superior Court.

[16] In this case, the discovery transcripts indicate that one of the respondents gave evidence to the effect that Mr. Rossy was “in the street driving” when the accident occurred (A.R., at p. 113). It is unclear, however, whether the vehicle was stationary or moving through an intersection at the moment of impact. What does appear to be undisputed is that Mr. Rossy was travelling from point A to point B when the accident occurred. These are the facts that must be considered to determine whether the Act applies to bar the respondents’ civil action.

B. *Legislative Scheme*

(1) Background

[17] The Act came into force in 1978 in response to growing dissatisfaction with the system of civil liability for automobile accidents that existed at the time. In 1971, the Quebec government had established a committee to study and report on the extent to which victims of automobile accidents were being compensated, either through civil actions or through the existing insurance scheme. The committee's report found that a large number of victims went uncompensated, that trying to obtain compensation could take years and that the cost of obtaining compensation was in the tens of thousands of dollars (see e.g. D. Gardner, "L'interprétation de la portée de la *Loi sur l'assurance automobile: un éternel recommencement*" (2011), 52 *C. de D.* 167; T. Rousseau-Houle, "Le régime québécois d'assurance automobile, vingt ans après" (1998), 39 *C. de D.* 213; *Québec (Procureur général) v. Villeneuve*, [1996] R.J.Q. 2199 (C.A.), at p. 2205, *per* Brossard J.A.).

[18] As a result, the Quebec government implemented a no-fault public automobile insurance scheme to be administered by the Société de l'assurance automobile du Québec ("SAAQ"). The new scheme was primarily designed to provide compensation to victims of automobile accidents for death and injury to the person, without regard to fault. The provisions of Title II of the Act eliminated the expense and uncertainty of trying to recover damages by way of private civil actions. However, the other part of the scheme, Title III, retained a fault-based regime for property damage caused by a vehicle and also required private insurance for such damages (*Bédard v. Royer*, [2003] R.J.Q. 2455, at para. 24, *per* Gendreau J.A.; J.-L.

Baudouin and P. Deslauriers, *La responsabilité civile* (7th ed. 2007), vol. I, *Principes généraux*, at pp. 929-35).

[19] The purpose of the Act was described by Baudouin J.A. in *Pram* as follows:

[TRANSLATION] [The Act's] purpose is essentially to ensure that victims of automobile accidents are compensated for their bodily injuries regardless of who is at fault. It also removes the assessment of damages from the courts and entrusts it to the Société de l'assurance automobile du Québec [p. 1740]

In interpreting the provisions at issue, the Court must bear in mind the objectives of the Act, the broad reach it was intended to have, and the context in which it was enacted.

[20] Under the provisions of the Act set out in the Appendix, the respondents are entitled to compensation for Mr. Rossy's death if it was the result of an "accident". "Accident" means "any event in which damage is caused by an automobile" (s. 1). For the purposes of this appeal, the only relevant portion of the definition of "damage caused by an automobile" is "any damage caused by an automobile, by the use thereof or by the load carried in or on an automobile". If this scheme applies to the respondents' claim, their civil claim against the City would be barred by virtue of s. 83.57, which operates to prevent all those compensated under the Act from claiming civil liability remedies.

[21] As I have already mentioned, the Act is considered remedial legislation. Therefore, it must be interpreted in accordance with s. 41 of the *Interpretation Act*, R.S.Q., c. I-16. It must be given a “large and liberal” interpretation to ensure that its purpose is attained.

[22] This appeal therefore turns on the following question: Were Mr. Rossy’s injuries “caused by an automobile, by the use thereof or by the load carried in or on an automobile”? As we will see, the difficulty in interpreting this phrase has resulted mainly from the notions of causation that the words “caused by” evoke.

(2) Case Law

[23] The case law on this issue is extensive. Although there have been conflicting or diverging decisions, several judgments of the Quebec Court of Appeal provide guidance regarding the meaning of causation in the context of the Act. The Court of Appeal considered the causation requirement in 1985 in *Periard v. Ville de Sept-Îles*, [1985] I.L.R. 7557. It cautioned against reading the components of the general scheme of civil liability into Quebec’s automobile insurance scheme. In that case, the claimant’s wife, who was standing between a stopped school bus and her own vehicle, died when the vehicle was struck from behind by a truck. Crête C.J.Q. explained that under the Act there is no need to seek legal causation once it has been established that a traffic accident involving one or more vehicles caused bodily injury:

[TRANSLATION] In my view, in light of the provisions of the A.I.A., when a traffic accident involving one or more automobiles causes bodily injury, it becomes unnecessary to identify the cause of the accident from a legal perspective.

I repeat, the Act says “regardless of who is at fault . . .” and without a court action.

The legislature does not speak in vain. The *Automobile Insurance Act* is a remedial statute that must be given its full effect, and no distinctions should be made where the Act makes none. [p. 7559]

[24] The court concluded that the Act applied to the accident and that the claimant’s civil action was therefore barred. Tyndale J.A., concurring in the result, emphasized the purpose of the Act in interpreting the words “caused by”:

. . . in view of the overall economy of the 1978 reforms and of the Statute itself, physical cause was intended. The system is, after all, a “no-fault” insurance scheme. For example, in case of collision between an automobile and a pedestrian, even if the sole juridical cause of the damage is the fault of the pedestrian, I do not think he is excluded from compensation by the Régie [now the SAAQ]. [p. 7559]

The Court of Appeal expressed a similar view on causation in *Compagnie d’assurance Victoria du Canada v. Neveu*, [1989] R.R.A. 226 (Que.).

[25] Seven years after *Periard*, the Court of Appeal revisited the issue in *Pram*, and firmly rejected the application of a traditional civil law notion of causation. In that case, a cameraman was seriously injured when a low-flying aircraft he was videotaping from a moving vehicle hit the vehicle’s windshield. In his opinion, Baudouin J.A. cited *Periard* with approval and went on to formulate

[TRANSLATION] “three fundamental rules” for identifying the causal link necessary to establish that an “accident” has occurred within the meaning of the Act:

[TRANSLATION] The first is that the causal link required by the Act is *sui generis*, and that in characterizing that link, it is unhelpful to rigidly adhere to any of the traditional doctrinal constructs of *causa causans*, *causa proxima*, adequate causation, proximate causation and equivalence of conditions. Those theories are very helpful in the general law, particularly where the judge must assess the causal relationship between fault and damage. They are not helpful here.

...

The second is that the type of causality that must apply to the case cannot be determined without regard for the purposes of the Act, which, it should not be forgotten, is remedial social legislation.

The third is that it is important to go back to the legislation itself. The Act mentions damage caused not only by an automobile (which might suggest that the automobile must play an active role), but also by a load carried in or on an automobile or “*by the use thereof*”. [Emphasis in original; pp. 1741-42.]

[26] Therefore, Baudouin J.A. concluded, there is no need to resort to traditional notions of causation, since the Act must be construed broadly and liberally in light of its objectives, the remedial and social nature of the scheme and the wording of the Act itself. Further, such an interpretation is consistent with prior jurisprudence, and is plausible and logical:

[TRANSLATION] It seems to me therefore that if, first, the legislature’s purposes, second, the social and remedial nature of the Act and, third, the prevailing line of authority are taken into account, the Act must indeed be construed broadly and liberally. However, this construction must remain plausible and logical having regard to the wording of the Act. [p. 1741]

[27] Baudouin J.A. analysed the jurisprudence and distilled from it the following principles with respect to causation in the context of the Act:

- 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).

[28] *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.

(3) Authors

[29] Commentators have also considered the definition of “damage caused by an automobile” for the purposes of Quebec’s automobile insurance scheme. Professor Gardner, for example, emphasizes the conceptual difference between the causation requirement in the law of civil liability and causation in the context of the Act. He notes that to import a concept of causation from the law of civil liability into the Act would place the burden of proving that the vehicle was the actual cause of the injury on the victim, thereby defeating the main objective of the Act:

[TRANSLATION] To frame the issue of whether the Act applies by referring to the general law criteria for causality is, in our opinion, unacceptable. To require the victim to prove that the automobile was the

determining cause of the damage he or she suffered is far too heavy a burden, one that frustrates the remedial purpose of the Act. The general law system, which is based on fault, is concerned above all else with determining who is responsible for the accident. It is only once this step is completed that the focus shifts to compensating the victim. An objective liability system is based on the opposite premise: the victim comes first. With this in mind, we do not see why the general law meaning of the word “cause” should be applied automatically to the *Automobile Insurance Act*. A simple example serves to show that these two systems are incompatible. A Quebecer driving along a country road is injured when a tree branch breaks and falls on his automobile. In light of the decisions in which courts have interpreted the *Automobile Insurance Act*, it can be asserted that this Quebecer will receive compensation from the SAAQ. However, if the general law theory of adequate causality were applied, it seems clear that the automobile’s movement was not the determining cause of the damage. Instead, the appropriate course of action would be to sue the owner of the tree under article 1054, paragraph 1, of the *Civil Code of Lower Canada* in order to obtain compensation. In a case in which the *Automobile Insurance Act* applies, what must be demonstrated is a sufficiently close relationship between the presence of the automobile and the damage.

(D. Gardner, « *La Loi sur l’assurance automobile: loi d’interprétation libérale?* » (1992), 33 *C. de D.* 485, at p. 495)

[30] In *La responsabilité civile* (vol. I, *Principes généraux*), Baudouin and Deslauriers emphasize the remedial nature of the legislative scheme. They state that, given that nature, what is considered an “accident” under the Act must be interpreted broadly. They explain that the types of accidents covered by the Act are not limited to routine traffic accidents but, rather, that the Act covers [TRANSLATION] “any incident resulting in damage in which an automobile is involved” (p. 942). Therefore, it will suffice, “to meet the requirements established by the courts, that an automobile be involved, in one way or another, in the occurrence of the damage” (p. 947).

(4) Comparative Law: Decisions From Other Canadian Jurisdictions

[31] In interpreting the words of the Act, it can be helpful to consider how similar provisions have been interpreted in other jurisdictions. Manitoba provides a useful comparison since it has a “no-fault” automobile insurance scheme modelled after the Quebec regime. Saskatchewan’s legislation has similarly worded definitions, but allows an insured to choose between no-fault coverage and tort-based coverage (s. 40.2(1) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35). This suggests a different legislative intent than the one behind the Quebec scheme at issue here. Therefore, considering judicial interpretation of the Saskatchewan provisions would not prove as useful.

[32] With respect to the Manitoba legislative scheme, the enabling statute, *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (“MPICA”), defines “accident” in s. 70(1) as “any event in which bodily injury is caused by an automobile”. “Bodily injury caused by an automobile” is defined as follows:

“bodily injury caused by an automobile” means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

Section 72 provides that compensation under the scheme precludes a civil action:

72. Notwithstanding the provisions of any other Act, compensation under this Part stands in lieu of all rights and remedies arising out of bodily injuries to which this Part applies and no action in that respect may be admitted before any court.

[33] As we can see, the *MPICA* also contains the words “caused by”. The expression “bodily injury caused by an automobile” is defined, there too, by reference not just to injury caused by the vehicle, but also to injury caused by the use of an automobile and by its load.

[34] The words of the *MPICA* were considered by the Manitoba Court of Appeal in *McMillan v. Thompson (Rural Municipality)* (1997), 144 D.L.R. (4th) 53. In that case, Helper J.A. acknowledged that Manitoba’s automobile insurance scheme was modelled after Quebec’s scheme:

The evidence indicates that the Quebec plan, a “pure no-fault system” which has been in existence since 1978, was reviewed by Kopstein P.J. and referred to by the legislators. There can be little doubt that the Manitoba legislation was modelled on the Quebec plan. It is worded similarly, but is not identical to that plan. [p. 64]

[35] In her analysis of the phrase “caused by”, Helper J.A. began by identifying the purpose of the legislation:

The legislated scheme is focused on injuries. It is not directed to accidents, nor to the cause of accidents. That focus is clear in s. 70(1). Section 72, which eliminates the concept of fault, supports that conclusion. The legislative emphasis on the injuries suffered by a victim, and its failure to refer at all to the cause of an accident, are important

factors to consider in interpreting the phrase “caused by” and in determining the scope of the scheme. [p. 65]

She considered that focusing on the proximate cause of the injuries would be contrary to the purpose of the scheme:

Surely the legislation is to be interpreted in a manner that results in equality and equity. A restrictive interpretation of the words “caused by” would defeat many of the objectives identified by the legislators prior to the introduction of the enactment: the introduction of a simplified insurance scheme, the elimination of litigation for bodily injuries received in the use of an automobile and the desire to ensure that all victims receive timely compensation. It was not the legislative intent to introduce a cumbersome two-step system which necessitates a trial on the issue of negligence in all accidents involving an automobile and thus perpetuates the uncertainty of the result for a victim. Nor could it have been the legislative intent to provide different remedies for victims depending upon the proximate cause of an accident. The exact opposite intent is clear from the reading of Part 2 and from an examination of the debates and the Report. [p. 67]

Finally, she concluded that the words “caused by” could not be given a restricted meaning:

I cannot state too strongly that the focus of the plan is on the relationship between the bodily injuries sustained and an automobile or its use. That focus serves as the starting point from which the interpretation of the phrase “caused by” proceeds. The respondents’ submission is focused on the cause of the accident — liability or fault. The clear words of the legislation [do] not support that perspective of the plan’s operation [p. 68]

[36] Helper J.A. readily distinguished this Court’s decision in *Amos*:

In the *Amos* case, it was not an automobile accident but rather an external event, a shooting, which caused the injury. In the case at bar, the injuries resulted from an accident which occurred while the automobile was being driven in the ordinary course of events. The phrase in *Amos* was an “injury caused by an accident that arises out of the . . . use of a vehicle . . .”. The court was required to find that the injury in question arose from the plaintiff’s use of a vehicle despite the fact that the vehicle was not involved in an accident.

The motions judge erred in applying the reasoning in *Amos* to the question he was required to answer. Both the circumstances in which the injuries occurred in that case and the legislation under consideration are entirely distinguishable from the circumstances in which the injuries occurred in the case at bar and the phrase in question. Major’s reasons for giving the words “arising out of the use of an automobile” a broad interpretation and for commenting on the phrase “caused by” do not impact on the present case given those different circumstances. [p. 72]

[37] She then summarized the extent to which a causal link must be established:

. . . where the words “caused by” are used, there must be some link between the injuries sustained and the use of the automobile. An ordinary reading of s. 70(1) leads to the same conclusion. The legislation does not require more. It does not seek out causation in terms of the accident. It specifically eliminates the concept of fault. In light of the elimination of fault, there is no support for the submission that the proximate cause of an automobile accident determines the application of Part 2. [p. 76]

[38] This Court’s decisions in *Amos* and *Vytlingam* merit some commentary since the respondents contend that these decisions support a narrow view of causation and, therefore, provide the answer to the question before us.

[39] In *Amos*, the appellant had been seriously injured in California when he was shot during an attack in which six individuals attempted to break into the van he

was driving. The appellant did not stop, but tried to escape. He was shot in the spinal cord, but managed to keep driving until he had distanced himself from his assailants.

[40] The appellant was insured under a standard automobile insurance policy with the Insurance Corporation of British Columbia, a provincial Crown corporation established to provide universal automobile insurance to motorists in that province. The statutory provision at issue was s. 79(1) of the *Revised Regulation (1984) under the Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83, as amended by B.C. Reg. 335/84, Schedule, item 19, and B.C. Reg. 379/85, Schedule, item 31:

79. (1) Subject to subsection (2) and sections 80 to 88, 90, 92, 100, 101 and 104, the corporation shall pay benefits to an insured in respect of death or injury caused by an accident that arises out of the ownership, use or operation of a vehicle and that occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.

[41] The question before the Court in that case was whether the appellant's injuries were "caused by an accident that arises out of the ownership, use or operation of a vehicle". The Court then developed the following two-part test to be applied in interpreting s. 79(1):

1. Did the accident result from the ordinary and well-known activities to which automobiles are put?
2. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the appellant's injuries and the ownership, use or operation of his vehicle, or is the connection between the injuries and the ownership, use or operation of the vehicle merely incidental or fortuitous? [Emphasis deleted; para. 17.]

[42] The Court concluded that the first part of the test had been met, since the appellant had been driving the van when the injuries occurred. It also determined that the van was not merely the “*situs*” of the shooting since the shooting was a direct result of the assailants’ failed attempt to gain entry into the appellant’s van. Therefore, the appellant’s injuries arose out of the ownership, use or operation of the van, which met the second part of the test. The Court stated, “Generally speaking, where the use or operation of a motor vehicle in some manner contributes to or adds to the injury, the plaintiff is entitled to coverage” (para. 26).

[43] In *Vytlingam*, the respondents were driving on a highway when their vehicle was struck by a large boulder dropped from an overpass. They suffered devastating injuries. There was no question that the respondents were entitled to benefits under their policy. However, they also sought to recover civil damages from their insurer under the policy’s “inadequately insured motorist” coverage on the basis that one of the two tortfeasors was an inadequately insured motorist. The issue was whether the use of that individual’s vehicle in transporting the tortfeasors and the boulders to and from the overpass was enough to conclude that the respondents’ injuries were sufficiently connected to the use or operation of the tortfeasor’s vehicle, and therefore that the claim was based on a tort committed by a “motorist”. If so, the respondents’ insurer would be obliged to pay under the inadequately insured motorist

coverage, that is, to stand in the shoes of the tortfeasor and pay the amount the tortfeasor ought to have paid by way of civil damages.

[44] The relevant portion of the insurance policy read:

. . . the insurer shall indemnify an eligible claimant for the amount that he or she is legally entitled to recover from an inadequately insured motorist as compensatory damages in respect of bodily injury to or death of an insured person arising directly or indirectly from the use or operation of an automobile. [Emphasis added by Binnie J.; para. 5.]

[45] Therefore, the tortfeasor had to be at fault “as a motorist” for this provision to apply (para. 5). In other words, unlike in *Amos* and unlike in the present appeal, the provision required the presence of an at-fault motorist. Moreover, *Vytlingam* did not concern statutory no-fault benefits.

[46] The Court held that the provision required an unbroken chain of causation linking the conduct of the motorist, as a motorist, to the injuries in respect of which the claim was made. The vehicle had to be implicated in those injuries in a manner that was more than merely incidental or fortuitous. Although the vehicle contributed in some manner to the tortfeasor’s ability to commit the tort that caused the injuries, the Court found that the tortfeasor nevertheless did not commit the tort in his capacity as an at-fault “motorist” within the meaning of the policy. The dropping of the boulder constituted an activity severable from the use or operation of the vehicle.

[47] Both *Amos* and *Vytlingam* can be distinguished from the case at bar. First, neither of those cases dealt with the kind of broad remedial legislation in force in Quebec. Although the insurance scheme in *Amos* also provided no-fault benefits, claimants were entitled to commence civil actions with respect to pain and suffering and economic loss. The availability of civil actions indicates a different legislative intent, one not nearly as broad as Quebec's scheme. In *Vytlingam*, only part of the insurance scheme involved no-fault benefits, as civil actions were provided for in some cases. Further, *Vytlingam* was not directly concerned with the provincial scheme, but was decided on the basis of the wording of the respondents' insurance policy.

[48] Second, the facts of the three cases vary considerably. In *Vytlingam*, there was a clear intervening act — the tort — that was completely severable from the motorist's use or operation of the vehicle. Notably, and unlike Mr. Rossy in the instant case, the insured was not making use of the vehicle at all at the time of the accident. In *Amos*, even though the damage was caused by a gunshot wound, the Court still found that the motorist was covered on the basis that the use or operation of the vehicle had added to the injuries in some way. Although *Amos* is different from this appeal in many respects, the result in *Amos* nevertheless supports a broad view of causation and not the narrow approach the respondents propose.

[49] Finally, the provisions at issue in *Amos* and *Vytlingam* were worded differently from the one in the case at bar. In *Amos*, the issue was whether the injuries

were “caused by an accident that arises out of the ownership, use or operation of a vehicle”. In *Vytlingam*, the Court had to determine whether an at-fault motorist’s actions had led to damage “arising directly or indirectly from the use or operation of an automobile”. This appeal turns on whether the incident that killed Mr. Rossy was an “accident” within the meaning of the Act, that is, whether it was an event in which there was “any damage caused by an automobile, by the use thereof or by the load carried in or on an automobile”.

[50] With respect to the difference between the expressions “caused by” and “arising out of” the Court stated in *Amos* that “[t]he phrase ‘arising out of’ is broader than ‘caused by’, and must be interpreted in a more liberal manner” (para. 21). The respondents in the present case argue that the same should be said of the provision at issue here. Had the legislature intended to create a sweeping provision, it could have used the words “arising out of” instead of “caused by”.

[51] As we have seen, the facts and the applicable legislative scheme in *Amos* differ substantially from the ones at issue in this appeal. Further, the words of a provision cannot be interpreted in isolation. The legislative scheme provides the necessary context for their interpretation. This contextual approach is especially relevant in the case of remedial legislation such as Quebec’s no-fault insurance scheme. It would be incongruous to construe broader legislation — the Act at issue in this appeal — more narrowly than the scheme at issue in *Amos*. *Vytlingam* and *Amos*

are of interest from a comparative perspective but do not resolve the issue of statutory interpretation that the Court must settle in this appeal.

C. Applicable Test and Outcome

[52] 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.

[53] 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.

[54] 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.

V. Disposition

[55] As a result, the appeal is allowed with costs, the judgment of the Superior Court is restored and the respondents' action is dismissed.

APPENDIX

Automobile Insurance Act, R.S.Q., c. A-25

1. In this Act, unless otherwise indicated by the context,

“accident” means any event in which damage is caused by an automobile;

“automobile” means any vehicle propelled by any power other than muscular force and adapted for transportation on public highways but not on rails;

“damage caused by an automobile” means any damage caused by an automobile, by the use thereof or by the load carried in or on an automobile, including damage caused by a trailer used with an automobile, but excluding damage caused by the autonomous act of an animal that is part of the load and injury or damage caused to a person or property by reason of an action performed by that person in connection with the maintenance, repair, alteration or improvement of an automobile;

...

5. Compensation under this title is granted by the Société de l’assurance automobile du Québec regardless of who is at fault.

6. Every person who suffers bodily injury in an accident is a victim.

7. Every victim resident in Québec and his dependants are entitled to compensation under this title, whether the accident occurs in Québec or outside Québec.

...

69. If the victim is a minor and has no dependants on the date of his death, his mother and father are entitled to equal shares of a lump sum indemnity. . . .

If the victim is of full age and has no dependants on the date of his death, the indemnity shall be paid to his succession except where the property of the succession is to be taken by the State.

...

83.57. Compensation under this title stands in lieu of all rights and remedies by reason of bodily injury and no action in that respect shall be admitted before any court of justice.

Subject to sections 83.63 and 83.64, where bodily injury was caused by an automobile, the benefits or pecuniary benefits provided for the compensation of such injury by the Act respecting industrial accidents and occupational diseases (chapter A-3.001), the Act to promote good citizenship (chapter C-20) or the Crime Victims Compensation Act (chapter I-6) stand in lieu of all rights and remedies by reason of such bodily injury and no action in that respect shall be admitted before any court of justice.

Appeal allowed with costs.

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