



## **My child was injured in the park**

**Your child is injured while playing in a municipal park. Can the municipality be held responsible? Under what circumstances?**

### **THE FACTS**

A 13-year-old adolescent is playing soccer with friends one evening. The ball is hit out of bounds, coming to rest under a shrub; the young boy goes to fetch it. The shrub, a hawthorn, is not familiar to the boy. When he stands up to return to the field, his eye is pierced by one of the shrub's thorns. As a result of the accident, the young boy has to undergo several surgical procedures, which both disrupt and upset him and his family. Further, despite the surgeries, the boy's vision remains impaired which limits his activities, especially sports. The young man and his parents file a suit against the municipality for damages and inconvenience. The municipality denies any responsibility.

### **THE ISSUE**

Is the municipality responsible for the child's injuries?

### **THE DECISION**

The claim is allowed.

### **THE GROUNDS**

In order for the municipality to be held responsible for damages, the adolescent and his family must prove that the municipality committed an error, that there was an injury, and that there is a causal link between the two. So, on the one hand, was the municipality at fault? And on the other, were the parents negligent in carrying out their obligation to ensure the well being of their child? It was determined that the parents had not committed an error in this regard. As for the municipality, it has an obligation to the users of its public parks, to make

the best effort to ensure their safety. The municipality must act as a "responsible person" and take measures to ensure that park users are not injured. In this case, the Judge ruled that the municipality failed in its best-effort obligation, in three ways. First, the hawthorn should not have been planted so close to a soccer field; doing so puts players in unnecessary danger. Second, the municipality should have pruned the shrub in question in order to avoid the potential for injury to park users. Third, the municipality should have warned park users of the presence of the hawthorn and of its dangers. The injury to the boy having been proved, the Tribunal determined that there was a direct causal link between the municipality's error and the injury. The Tribunal allowed the request.

### **References**

*Massy v. St-Laurent (Town of)*, Superior Court (S.C.) Montréal 500-05-029725-973, April 23, 2003, Judge Danielle Richer (J.E. 2003-1530; [www.jugements.qc.ca](http://www.jugements.qc.ca)).

*Québec Civil Code*, (L.Q. 1991, c. 64), art.1376, 1457.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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