

LEGAL BULLETIN

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Damages in matters of family violence, a means of redress and support for victims —
Droit de la famille, 2024 QCCQ 236 (CanLII)

Introduction

Family violence leaves an indelible mark on victims that no amount of compensation can fully erase. However, when the court grants a victim's request, the award of damages can constitute official recognition of their suffering, material and moral support, and a means of partial redress for the damages suffered.

In this case law bulletin, we will analyze a Superior Court decision in which the victim filed a claim for damages for the injury resulting from the family violence she had suffered at the hands of the father of her children.



Case Background

The plaintiff claims to have been a victim of family violence by the father of her children between 2016 and 2023, with a 16-month interruption from 2017 to 2019 due to his incarceration.

During the period leading up to the father's imprisonment, the mother claims that she was subjected to [TRANSLATION] "explicit death threats," "harassment, and denigration" on his part. After his release, the children's father returned to his violent behaviour in the fall of 2021. He resumed acts of violence against the mother, including threats and criminal harassment. For example, in 2022, she received 171 messages from him during her parental leave. He was required to comply with non-contact measures with the mother, but he broke them in the summer of 2023. From a procedural standpoint, he is wasting the plaintiff's time. In fact, he failed to appear at a trial that was scheduled to take place in August 2023, leading to its postponement until May 2024. In light of the above, the plaintiff is demanding redress for the injury suffered.

The merits of the victim's claim for damages

Article 1457 of the Civil Code, which governs extracontractual civil liability, requires three elements to be present in order for damages to be awarded: fault, injury and causal link. When these conditions are met, the court is justified in granting the claim and awarding the damages sought.

In this case, the family violence suffered by the plaintiff had a profound impact on her physical and emotional health, undermined her financial stability, and disrupted her professional life.

It is therefore necessary to examine the merits of the claim in light of the provisions of the Court's decision.

A. The father's fault: family violence and procedural irregularities

The father's fault stems from the acts of family violence he inflicted on the plaintiff over many years,

as set out in the section on the facts.¹ It also stems from his failings during the proceedings. The father demonstrated bad faith through his uncooperative and confrontational attitude. This conduct made the handling of the case [TRANSLATION] “more cumbersome and complicated,” leading, for example, to two procedural changes made by the mother’s lawyer, as well as multiple interventions by the father’s former lawyer and the Court.

The father also deliberately avoided supervised visits and ignored the Zoom access required for the scheduled meetings, which required several follow-ups and legal interventions. In light of these facts, the Court considers that the fault was indeed committed.

Analysis of the damages suffered by the mother.

B. The plaintiff has suffered huge damages

Family violence always leaves deep scars on the victim, particularly when it is long-term and is accompanied by repeated violations of protective measures and procedural violence. As a result of the violence she suffered, the plaintiff developed post-traumatic stress disorder, which led to prolonged sick leave from 2019 to 2021. While working as a repair technician for a company, she had to be placed on disability insurance.

When she returned to work, she was unable to resume her duties due to the severity and persistence of her psychological issues, despite consultations funded by IVAC. Despite her efforts to reintegrate the workforce by joining an agency, she was laid off again and had to rely on unemployment insurance for a short period.

She says she is exhausted, living in constant fear, deeply affected psychologically and financially, while having to ensure her own safety and that of her children.

In light of all these factors, the Court finds that the plaintiff suffered real and serious damages. What about the causal link?

C. The Court’s acceptance of the causal link

It is undeniable that the injury suffered by the plaintiff was directly caused by the father of her children. After subjecting her to years of family violence, he continued his abusive behavior by implementing a strategy of procedural violence intended to break her further. In these circumstances, the moral, physical, and material damages she claims are fully recognized by the Court.

In its analysis, the Court referred in particular to a previous decision involving facts similar to those of the plaintiff, in which a victim of harassment and threats in a context of family violence was awarded damages. In that case, the Court found that there had been significant moral injury and had awarded punitive damages in addition to compensatory damages.² The same applied in A. c. B.,³ also cited as a reference.

In light of these precedents and the evidence submitted, the judge concluded that the plaintiff’s claim for \$40,000 in compensation for moral and material damages was well founded.

In addition, based on Chicoine,⁴ the Court reiterated the power conferred upon it by the legislature to punish serious breaches committed during proceedings. In this case, the perpetrator of family violence was found guilty of significant breaches before the Court. Thus, rather than awarding compensation for the reimbursement of extrajudicial costs, as requested by the plaintiff, the Court chose to impose a penalty proportionate to the seriousness of the breaches found.

Consequently, the Court [TRANSLATION] “ordered the defendant to pay the plaintiff the sum of \$62,514.74, with interest at the legal rate and the additional compensation provided for in article 1619 CCQ, as of the date of this judgment.”

¹ Les faits traduisant la violence conjugale ont été présentés dans la première partie dédiée aux faits.

² Drouin c. Parent, 2020 QCCQ 1571.

³ A. c. B., 2010 QCCS 5024

⁴ A. c. B., 2010 QCCS 5024

Conclusion

Article 342 of the Code of Civil Procedure, which gives the court the power to punish breaches that occur during proceedings, provides real protection for victims, for whom legal proceedings are often a psychologically and financially stressful experience. Furthermore, knowing that the harm she has suffered can be recognized by the court and result in the award of damages also helps to strengthen survivors' confidence in the judicial system.

There has been an increase in the number of court rulings ordering perpetrators to pay damages to their victims. This progress demonstrates the justice system's recognition of the suffering endured and the need to provide redress and protection to victims of violence.

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Recherches Appliquées et
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