Translated from the original French

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| Baribeau c. Roy | | | | | | 2021 QCCQ 1655 |
| COURT OF QUÉBEC | | | | | | |
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| CANADA | | | | | | |
| PROVINCE OF QUEBEC | | | | | | |
| DISTRICT OF | | QUÉBEC | | | | |
| LOCALITY OF | | | QUÉBEC | | | |
| Civil Division | | | | | | |
| **No.:** | **200-22-083491-183** | | | | | |
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| **DATE**: | **February 26, 2021** | | | | | |
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| PRESIDING: | | | |  | THE HONOURABLE JACQUES TREMBLAY, J.C.Q. | |
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| glenn baribeau | | | | | | |
|  | | | | | | |
| Plaintiff | | | | | | |
| **v.** | | | | | | |
| camille roy  -AND-  vincent roy  -AND-  annie deschênes | | | | | | |
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| Defendants | | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | |
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| **JUDGMENT** | | | | | | |
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1. Glenn Baribeau claims $37,000 jointly and severally from Camille Roy and her parents, Vincent Roy and Annie Deschênes, for unjustifiable arrest, illegal detention for seven hours, and unlawful and intentional interference with his fundamental rights.
2. His claim can be broken down as follows:

* Psychological damages (post-traumatic stress, depression) $25,000
* Exemplary damages $10,000
* Psychologiqcal treatment, miscellaneous expenses     $2,000

**Total**: $37,000

1. At the hearing, the claim was reduced to a lump sum of $29,000.
2. The defence submitted that Camille Roy, 13 years of age, was in the custody and under the supervision and educational responsibility of the Vision de Saint-Augustin-de-Desmaures school at the time of the event.
3. The defendants deny a causal connection between the damages and the fault alleged.
4. As parents, Vincent Roy and Annie Deschênes state that they committed no fault in the custody, supervision and education of their daughter Camille. They learned only on May 23, 2017, at the same time as the plaintiff, of the corrected version of events given by their daughter. In their view, the plaintiff had the opportunity to comment on the facts in the media, thereby reducing his damages.

**THE FACTS**

1. On May 14, 2017, Camille Roy was training with her companions by climbing the Cap-Blanc staircase from Rue Champlain in Quebec City. She was then 13 years old. She went off into a nearby business establishment for a few minutes. She came out stating that she had been the victim of an assault and an attempted kidnapping. She said that only her mastery of Taekwondo had allowed her to escape from her attacker.
2. On that Mother’s Day marked by fine weather, the event created a stir in the area. The police responded and took Camille Roy’s complaint.
3. With the description of a suspect, the police arrested the plaintiff, Glenn Baribeau, at his residence. He was taken to police headquarters without being able to reassure his 77-year-old mother, with whom he lives. His arrest took place in front of a crowd of people, journalists and his neighbours.
4. At the end of the day, he was released with a promise to report to the authorities upon demand.
5. Days later, he was told that the defendant, Camille Roy, had completely made up the attack.

**ISSUES IN DISPUTE**

1st issue: Is the defendant entitled to an anonymous judgment and to the sealing of the case file?

2nd issue: Is the plaintiff entitled to damages as compensation for the moral damage he suffered during the May 2017 events?

3rd issue: Is the plaintiff entitled to punitive damages?

4th issue: Are Camille Roy’s parents, Annie Deschênes and Vincent Roy, jointly and severally liable for the damages awarded to Mr. Glenn Baribeau?

5th issue: Does the handling of the case file by the police give rise to an exemption from liability for Camille Roy and her parents?

**ANALYSIS AND DECISION**

**1st issue: Is the defendant entitled to an anonymous judgment and to the sealing of the case file?**

1. In this case, the legal recourse involves the issue of civil liability pursuant to the unfounded report of an assault. This report led to the plaintiff’s arrest, hence the action for damages following the complaint’s withdrawal.
2. When the events occurred, they gave rise to major media coverage given the scarcity of local news that Sunday in May.
3. The anonymity request was made during the hearing. It is not supported by separate proof other than that submitted on the merits of the application by both the plaintiff and the defendant.
4. The defendant’s young age reduces the risk of harm she might run were she an adult, and that would result directly from a condemnation in this case. The isolated nature of the admitted fault and Camille Roy’s subsequent irreproachable conduct are mitigating factors increasing with time.
5. The rule is that proceedings are open and the judgment rendered clearly identifies the parties involved, as set out in section 11 of the *Code of Civil Procedure of Quebec* (C.C.P.).[[1]](#footnote-1)

**11.**  Civil justice administered by the courts is public. Anyone may attend court hearings wherever they are held, and have access to court records and entries in the registers of the courts.

An exception to this principle applies if the law provides for in camera proceedings or restricts access to the court records or to certain documents filed in a court record.

Exceptions to the principle of open proceedings set out in this chapter apply despite section 23 of the Charter of human rights and freedoms (chapter C-12).

1. However, the Court may make an exception to this principle. The defendants ask that it use its discretion in this regard to protect the defendant’s anonymity and, accordingly, that of her parents.
2. Section 12 of the C.C.P*.* sets out the criteria for granting such confidentiality.

**12.**The court may make an exception to the principle of open proceedings if, in its opinion, public order, in particular the preservation of the dignity of the persons involved or the protection of substantial and legitimate interests, requires that the hearing be held in camera, that access to a document or the disclosure or circulation of information or documents specified by the court be prohibited or restricted, or that the anonymity of the persons involved be protected.[[2]](#footnote-2)

1. The Court clearly has discretionary power to issue a confidentiality order. This power is not unlimited and may not be exercised arbitrarily.
2. The plaintiff opposes this, arguing that he has a right to open court proceedings and to publicize an eventual judgment because his reputation has been damaged and he seeks by every means to restore it. In this regard, he cites two decisions: *Marcovitz v. Bruker*[[3]](#footnote-3) and *Globe and Mail v. Canada (Attorney General) et al.*[[4]](#footnote-4)
3. The judgment of the Court of Appeal appears more relevant because it deals with personal information set out in the context of an application for divorce and the exercise of a religious practice. The confidentiality order was nevertheless refused.
4. The Court must issue a confidentiality order if there is a serious risk for an important interest in the context of the litigation and there is no other reasonable option to eliminate this risk.[[5]](#footnote-5) The risk must be significant and real. Shame, discomfort, embarrassment or fear of being inconvenienced are insufficient.[[6]](#footnote-6)
5. The interest to be protected must surpass that of the defendant. A dimension of public interest must justify the confidentiality order.[[7]](#footnote-7)
6. Léo Ducharme adds:

[translation]

Disclosure of his identity must be likely to cause him harm exceeding the harmful effects of the resulting affront to the public character of the administration of justice. In principle, the harm involved must be other than that resulting for a portion of the invasion of his privacy caused by the disclosure of personal and intimate facts (…)[[8]](#footnote-8)

1. The confidentiality request was made at trial. The names of the defendant and her parents appeared in the court ledger from the time the file was instituted.[[9]](#footnote-9) Thus, the request appears to be late.[[10]](#footnote-10)
2. The Court dismisses the request for confidentiality of the pleadings and the judgment in view of the defendant’s age. The effect that her fault might have on her possible career is too uncertain to justify setting aside the open court rule. The need to protect the defendant’s privacy is not being argued and it is not threatened in this case.[[11]](#footnote-11)
3. The judgment creates an opportunity to make known the legal outcome of an event that was highly publicized at the time. The plaintiff has the right for the judgment to be circulated and to clearly identify him as the victim of a false report.
4. The defendant’s safety is not threatened by the disclosure of information contained in a judgment that might condemn her.
5. The identification of the parties to the judgment shall therefore be maintained in accordance with the general rule, as has been the case since the start of the proceedings.

**2nd issue: Is the plaintiff entitled to damages as compensation for the moral damage he** **suffered** **during the May 2017 events?**

1. The originating application was for $37,000, including $25,000 in moral damages. On November 13, 2018, the plaintiff reduced his overall claim to $29,000, without dividing this amount (PG-2).
2. Psychologist Hélène Roberge’s professional fees amount to $540 for three appointments and preparing a report filed as exhibit P-2. These disbursements are the immediate and direct consequence of the report made concerning the plaintiff and his arrest.[[12]](#footnote-12)
3. The claim for moral damages is now $20,000 after the $8000 overall reduction.
4. At the hearing, the plaintiff referred the Court to a Superior Court judgment[[13]](#footnote-13) in support of the portion of the claim concerning the unjustifiable arrest. He came to a compensation figure of $1000 per hour he was deprived of his liberty. The amount awarded would therefor be $8000.
5. In the opinion of author Sophie Morin,[[14]](#footnote-14) the average amount of compensation awarded for unjustifiable arrest, custody or charges would be about $24,500 based on pre-2011 case law. In most of the cases, however, the author states that the amount is less than $20,000.[[15]](#footnote-15)
6. Mr. Baribeau certainly experienced intense stress following his arrest. He was concerned about his mother, who lives with him and whom he had to leave without news about him. He was also concerned about keeping the job he has had since 1984. His reputation for service in his community was damaged, especially with respect to his dedication to working with youth. Being held in a cell for over five hours resulted in palpitations, shaking, sweating and discomfort.
7. Following his arrest, he was led, in view of his immediate circle (relatives and neighbours) over a distance of 75 feet and then subjected to questioning and being photographed at the police station. He had to hand over his clothes and undergo a DNA test and an examination of his chest.
8. His arrest was filmed and shown on several media outlets, which is how his co-workers found out.
9. He has since suffered from insomnia. He fears being arrested again and jailed, which would put him into contact with individuals wishing him harm. He has lost confidence and pride in his relationships with the neighbourhood and is distracted at work while driving heavy machinery.
10. However, no charges were laid against him. He left the police station freely having promised to remain available to the authorities. That same evening, televised reports said he had been cleared and released.
11. He was treated properly by the police. He was taken at his word. He was not threatened or mistreated.
12. A few months later, he was able, with his counsel, to remedy his situation and present himself as the victim of an unfounded report. The defendant, Camille Roy, apologized to him in a letter and reiterated this apology at the hearing.
13. A portion of his damages results from the police decision to question him and take him to the police station to do so. The Court does not know the grounds used to identify him.
14. His residence is a few hundred feet from the place where the events allegedly occurred. At no time did Camille Roy formally identify him as the perpetrator of the assault.
15. The deprivation of his liberty and damage to his reputation were of short duration and the indirect result of Camille Roy’s unjustifiable conduct. The error of the police officers, who considered him a suspect, was in no way explained and caused by the defendant, Camille Roy. A portion of the damages he suffered results from an error made in good faith by the police authorities, in the absence of evidence to the contrary.
16. In this context, compensation of $10,000 for moral damages suffered at the time of his arrest is reasonable. To this is added the $540 in fees paid to the psychologist, Hélène Roberge.

**3rd issue: Is the plaintiff entitled to punitive damages?**

1. Section 1621 of the *Civil Code of Québec* sets out certain limits for awarding punitive damages. Such damages are awarded only where provided for by law:

**1621.** Where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfil their preventive purpose.

Punitive damages are assessed in the light of all the appropriate circumstances, in particular the gravity of the debtor’s fault, his patrimonial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the reparatory damages is wholly or partly assumed by a third person.

1. In this case, Mr. Glenn Baribeau bases his request for punitive damages on section 49 of the *Charter of human rights and freedoms*:[[16]](#footnote-16)

**49.**Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

1. The onus is on Mr. Baribeau to demonstrate that he was the victim of an intentional and unlawful interference with his fundamental rights.
2. Camille Roy did not report him directly. She was not asked to identify him or confront him as being her attacker. The defendant is already condemned to pay moral damages arising from the experience causing the plaintiff to suffer without reason.
3. The risk of Ms. Roy reoffending is very low. She did not have a tendency to lie or invent stories to draw attention to herself or shift responsibility to others.
4. At the time of the events, she was 13 years old and without employment enabling her to face a condemnation for punitive damages. According to the evidence, she has no assets.
5. The interference with the plaintiff’s fundamental rights is indirect. It is not the result of an intentional or malicious attitude on Camille Roy’s part, whether in relation to section 4, 24 or 25 of the *Charter of human rights and freedoms*:

**4.**Every person has a right to the safeguard of his dignity, honour and reputation..

**24.**No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

**25.** Every person arrested or detained must be treated with humanity and with the respect due to the human person.

1. Pursuant to Ms. Roy’s statements, even though they were false, the police officers investigated and, in doing so, arrested the plaintiff and took him to police headquarters for questioning.
2. The Court therefore dismisses the request for a condemnation of the defendant Camille Roy to pay punitive damages.

**4th issue: Are Camille Roy’s parents, Annie Deschênes and Vincent Roy, jointly and** **severally liable for the damages awarded to Mr. Glenn Baribeau?**

1. Camille Roy admits her fault and that damages were caused to Mr. Glenn Baribeau as a result of this fault. Are Camille’s parents, co-defendants, jointly and severally liable with their daughter?
2. The first paragraph of article 1459 of the *Civil Code of Québec*[[17]](#footnote-17) (C.C.Q.) establishes a presumption of liability in regard to them:

**1459.**A person having parental authority is bound to make reparation for injury caused to another by the act, omission or fault of a minor under his authority, unless he proves that he himself did not commit any fault with regard to the custody, supervision or education of the minor.

1. Have the parents proved they did not commit any fault with regard to their responsibility for custody, supervision and education?
2. The Roy parents have three children whom they regularly involve in charitable activities. No evidence has been adduced that Camille has delinquent tendencies. She attends a quality school and is currently enrolled in the PROTIC program at Les Compagnons de Cartier school.
3. She is disciplined and does various sports, including Taekwondo, skiing, soccer and swimming. Her participation in these sports activities is often at competitive levels. Her school results are consistent and show good progress in acquiring skills, with no trace of indiscipline.
4. On the day of the false report, the Roy parents were not at the scene, but arrived quickly when notified. They accompanied Camille without overprotecting her or encouraging her to lie.
5. Upon discovering the falseness of the report, the parents blamed their daughter for her wrongful conduct and punished her. With Camille, they met with a psychologist to ensure they understood what had happened. The police officers who met with Camille did not make negative comments or issue warnings to the parents about their daughter.
6. During her cross examination, Camille Roy spoke calmly and answered sensitive questions calling her into question. She took responsibility for her fault and did not tend to downplay it. She experienced remorse and sadness for the harm suffered by Mr. Baribeau and has apologized.
7. The parents-defendants were heard at the hearing. They met their burden of proof and persuaded the Court that, as educators, they committed no fault that would have affected the behaviour of their daughter Camille in May 2017.

**5th issue: Does the handling of the case file by the police give rise to an exemption from liability for** **Ms. Camille Roy and her parents?**

1. The defendants argued that the identification of Mr. Baribeau as the suspect was not the act of Camille Roy and that the error in this regard serves to break the causal link and reduce the damages that would be awarded.
2. No evidence was submitted of police negligence resulting in an error in the identification of the suspect or of his mistreatment after his arrest.
3. In any event, Mr. Baribeau’s unconditional release at the end of the day on May 14, 2017, does not allow for a finding of wrongdoing on the part of the police department.
4. The plaintiff correctly invokes the Supreme Court of Canada judgment in *Hill*,[[18]](#footnote-18) cited by Judge Jean-Yves Lalonde in *Lupien c.* *Aumont*:[[19]](#footnote-19)

52                              Police, like other professionals, exercise professional discretion. No compelling distinction lies between police and other professionals on this score. Discretion, hunch and intuition have their proper place in police investigation. However, to characterize police work as completely unpredictable and unbound by standards of reasonableness is to deny its professional nature. Police exercise their discretion and professional judgment in accordance with professional standards and practices, consistent with the high standards of professionalism that society rightfully demands of police in performing their important and dangerous work.

…

54                               Courts are not in the business of second-guessing reasonable exercises of discretion by trained professionals. An appropriate standard of care allows sufficient room to exercise discretion without incurring liability in negligence. Professionals are permitted to exercise discretion. What they are not permitted to do is to exercise their discretion unreasonably. This is in the public interest.

(iii)   Confusion with the Standard of Care for Arrest

55                               Recognizing a duty of care in negligence by police to suspects does not raise the standard required of the police from reasonable and probable grounds to some higher standard, as alleged. The requirement of reasonable and probable grounds for arrest and prosecution informs the standard of care applicable to some aspects of police work, such as arrest and prosecution, search and seizure, and the stopping of a motor vehicle. A flexible standard of care appropriate to the circumstances, discussed more fully below, answers this concern.[[20]](#footnote-20)

1. That said, the causal connection between Camille Roy’s fault and the harm suffered by Mr. Baribeau is not broken.
2. Author Vincent Karim teaches:

[translation]

For the causal connection to be broken, the subsequent fault must be greater than or at least equal to the first one. Otherwise, the courts recognize the two faults and proceed with an apportionment of liability.[[21]](#footnote-21)

1. He goes on, requiring specific evidence to break the causal connection:

[translation]

[H]e must first demonstrate that the causal connection between the fault he initially committed, and the harm suffered by the plaintiff was completely stopped by the *novus actus interveniens*; next, he must establish that the subsequent fault created a new direct causal connection with the harm suffered. The objective of this proof is to show that the initially committed fault is not directly related to the harm suffered by the plaintiff.[[22]](#footnote-22)

1. Even supposing the existence of a second fault committed by the police department, this does not establish a new causal connection. The identification of Mr. Baribeau as a suspect resulted from Camille Roy’s complaint and the summary description of the man whom she allegedly encountered and who allegedly assaulted her.
2. Section 1478 C.C.Q. stipulates:

**1478.** Where an injury has been caused by several persons, liability is shared between them in proportion to the seriousness of the fault of each.

The victim is included in the apportionment when the injury is partly the effect of his own fault.

1. The Court has limited the damages awarded to the allegations against Camille Roy, targeting the moral prejudice that Mr. Baribeau suffered as a result of the events of May 14, 2017, and its immediate consequences. There can be no apportionment of liability given the absence of evidence of fault on the part of the Québec City police department.
2. The cross-examination of Camille Roy demonstrated that she was able, on May 14, 2017, to foresee the consequences of her false report and gauge the foreseeable outcome of a suspect’s arrest, namely, the moral prejudice that this would cause him.

**FOR THESE REASONS, THE COURT:**

**GRANTS** Mr. Glenn Baribeau’s proceeding;

**ORDERS** Camille Roy to pay Glenn Baribeau $10,540, with interest at the legal rate of 5% plus the additional indemnity set out in article 1619 of the *Civil Code of Québec* as of November 14, 2017, and the legal costs;

**DISMISSES** Glenn Baribeau’s proceeding against Vincent Roy and Annie Deschênes, without legal costs.

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| **Mtre Marc Bellemare** | | |
| Bellemare AVOCATS | | |
| Box: **87** | | |
| Counsel for the plaintiff | | |
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| **Mtre Jean Deschênes** | | |
| Deschênes et Doiron Avocats. | | |
| 352 Saint-Jérôme Ave., Matane, Quebec G4W 3B1 | | |
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| Counsel for the defendants | | |
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| Date of the hearing: | September 23, 2020 | |

1. *Code of Civil Procedure*, CQLR, c. C-25.01. [↑](#footnote-ref-1)
2. *Ibid.* [↑](#footnote-ref-2)
3. 2005 QCCA 835 at paras. 99 *et seq*. (overturned on appeal by the Supreme Court of Canada, but not contradicted on this point: *Bruker v. Marcovitz*, 2007 SCC 54) [↑](#footnote-ref-3)
4. 2010 SCC 41, [2010] 2 SCR 592 at para. 90. [↑](#footnote-ref-4)
5. *A.B. v. Bragg Communications Inc*., 2012 SCC 46 at para. 11. [↑](#footnote-ref-5)
6. *E.R. c. Robinson*, 2018 QCCS 103 at para. 21; see also: *Langevin c. TH Construction inc*., 2016 QCCQ 14897 at para. 244. [↑](#footnote-ref-6)
7. *Ibid. at* paras. 15 and 16. [↑](#footnote-ref-7)
8. Léo Ducharme, *L'administration de la preuve*, 4th ed., (Montreal: Wilson & Lafleur, 2010) at para. 138. [↑](#footnote-ref-8)
9. *Cadotte c. Industrielle Alliance assurances et services financiers inc.*, 2016 QCCS 5603; *J.L. c. A.N*., 2007 QCCS 3226. [↑](#footnote-ref-9)
10. *Langevin c. TH Construction inc*., *supra* note 6 at paras. 242 and 243. [↑](#footnote-ref-10)
11. *A.B. v. Bragg Communications Inc.*, *supra* note 5. [↑](#footnote-ref-11)
12. *Civil Code of Québec* (C.C.Q.), S.Q. 1991, c. 64, art. 1607. [↑](#footnote-ref-12)
13. *Lupien c. Aumont*, 2016 QCCS 5050 at paras. 70 to 77. [↑](#footnote-ref-13)
14. Sophie Morin, *Le dommage moral et le préjudice extrapatrimonial*, (Cowansville, Qc.: Yvon Blais, 2011) 121 to 125. [↑](#footnote-ref-14)
15. See also *Dion c. Légaré*, 2019 QCCQ 8185 at para. 83. [↑](#footnote-ref-15)
16. CQLR, c. C-12. [↑](#footnote-ref-16)
17. CCQ-1991. [↑](#footnote-ref-17)
18. *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, [2007] 3 SCR 129. [↑](#footnote-ref-18)
19. 2016 QCCS 5050 at para. 42. [↑](#footnote-ref-19)
20. *Supra* note 14. [↑](#footnote-ref-20)
21. Vincent Karim, *Les obligations*, 5th ed., vol. 1, (Montreal: Wilson & Lafleur, 2020) 1226 at para. 2991. [↑](#footnote-ref-21)
22. *Ibid.*,at 1227, para. 2993*.* [↑](#footnote-ref-22)