



# My child has been injured

**When leaving school one day, your five-year-old is injured by ice falling from the roof of a building. The building is adjacent to the only road leading to the school; the school has access to the road by virtue of a servitude granted to the School Board. Who is responsible for the damages in this case – the owner of the building or the School Board?**

## THE FACTS

The school that five-year-old Maxim attends is located behind two private properties. The road that leads from the street to the school is subject to a right-of-way granted to the School Board, and is in fact, the only way to get to the school. In January 2001, Maxim was waiting in line for the school bus with other students. He was standing on the road that runs along the wall of one of the buildings. Suddenly, snow and ice came loose from the building's roof and fell on to the child, injuring him badly. Maxim's parents are suing the owner of the property for damages while the owner of the property is in turn, suing the School Board.

## THE ISSUE

Who is responsible for the accident and to what extent?

## THE DECISION

The Court rules unanimously that both the property owner and the School Board are responsible. Further, the Court assigns the property owner responsibility for 75% of the damages; the remaining 25% is the responsibility of the School Board.

## THE GROUNDS

Snow accumulation on the roof of a building is a property owner's responsibility. However, the owner could free himself of the responsibility if he is able to demonstrate that he has acted in a reasonable and prudent manner. The evidence showed that the proprietor of the building had done nothing to ensure the safety of pedestrians using the school's access road. The owner's negligence was the direct cause of the harm to the child. He is liable for 75% of the damages. The property owner argues that, by virtue of the right-of-way, the School Board has an obligation to ensure the safety of the students in its care. The School Board's fault lies in its failure to act. The School Board was aware of the source of danger because, several years earlier, it had made note of it. The School Board either unconsciously or through negligence ignored the situation. This failure to act makes the School Board partially responsible and in the Court's opinion, liable for 25% of the damages.

## References

*Toussaint v. Tremblay*, S.C. (Québec) 200-05-015624-013, 2003/12/09. Judge : Mr. Lacroix (J.E. 2004-201; www.jugements.qc.ca)

*Civil code of Québec*, L.Q. 1991, c. 64, art. 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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