Québec, Canada

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In Québec, private law matters operate under the civil law tradition. The concept of damages is codified in the Civil Code of Québec.[1] Articles 1457 and 1458 of the CCQ provide that when one fails to honor their contractual undertakings or commits a fault, he is liable for any bodily, moral, or material injury he causes to the other party and is bound to make reparation for the injury. Subsequent articles of the CCQ outline principles for evaluating and awarding damages. Damages are also provided in other statutes, such as the Charter of Human Rights and Freedoms,[2] the Competition Act,[3] and the Consumer Protection Act.[4]

A. Overview

For someone to be found liable under Québec civil law, there must be a fault (a violation of a contract, an unlawful act, negligence, omission, etc.), damages, and a causal link between the fault and the

[1] Civil Code of Québec, CQLR c. CCQ-1991 (hereinafter "CCQ").

[2] Charter of Human Rights and Freedoms, CQLR c. C-12.

[3] Competition Act, R.S.C. 1985, c. C-34.

[4] Consumer Protection Act, CQLR c. P-40.1.

claimed damages. Québec law does not contemplate a difference between "direct" and "consequential" damages. Any damages (including loss of profit, business interruption or reputational harm, for example) might be compensated if there is a causal link between them and the wrongdoing.

The entitlement to seek compensation from the liable party is not confined to the immediate victim but may extend to any individual who suffers harm, provided that they can substantiate that their harm is a direct and immediate result of the initial injury inflicted.

The two principal types of damages that injured parties may claim are compensatory and punitive damages. In determining compensatory damages, courts are governed by the principle of *restitution in integrum*, which seeks to place the claimants in the position that they would have been had the contract been executed adequately or the fault not committed.

While courts evaluate and determine most compensatory damages, parties can also introduce penalty clauses that predetermine the damages that the debtor must in certain situations.

For contractual damages according to Article 1607 of the CCQ, the debtor need only repair the damages suffered by the creditor if the damages are the immediate and direct consequence of the breach of the contract. In other words, there must be a causal link between the breach of the contract and the harm suffered. Causality is often a question of fact. Loss of profit, business interruption, and reputational harm all can be direct and foreseeable damages depending on the particular facts of a case.

According to Article 2804 of the CCQ, the burden of proving harm before a court demands evidence that renders the existence of fault more probable than its nonexistence, that is 50% +1.

B. Compensatory Damages

There are two types of harm in Québec civil law that can form the basis of compensatory damages: pecuniary harm and non-pecuniary harm.

1. Pecuniary Harm

Pecuniary harm covers economic losses such as lost income, property damage, or medical costs. As a general principle, the compensation awarded must not exceed the value of the loss suffered. It can also cover future losses, when such losses are foreseeable and not merely hypothetical.

For contractual claims, Article 1611 paragraph 1 of the CCQ stipulates that adequate monetary reparation must take into account both losses sustained and lost profits. In calculating lost profits, when the evidence is precise, the courts will look at the amount that the plaintiff would have reasonably expected to receive had the contract been executed.[5] When this level of precision is not possible, courts will make calculations based on the financial status of the company or enterprise as well as the state of the market.[6]

Article 1611 paragraph 2 of the CCQ authorizes courts to award damages to the victim for future material and moral losses. Courts are encouraged to avoid speculation and make an evaluation based on a degree of certainty. Courts will not compensate for future prejudice that is uncertain, unquantifiable, too distant, or too unpredictable.[7]

2. Non-Pecuniary Prejudice

Non-pecuniary damages cover psychological or moral harm, pain and suffering, or loss of enjoyment of life. Although this type of prejudice is more commonly seen in extra-contractual matters, damages may be awarded in contractual matters based on the moral damage caused to the injured party's reputation, dignity, or privacy.[8] The amounts for damages compensating moral prejudice are usually quite modest.[9]

C. Punitive Damages

Punitive damages may only be awarded for specific statutory violations. For example, some infringements of the Québec Charter of Human Rights and Freedoms and the Consumer Protection Act allow for punitive damages.

Article 1621 paragraph 1 of the CCQ provides that "where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfill their preventive purpose." Punitive damages are distinct from compensatory damages in that they do not seek to compensate the victim for the prejudice that they suffered, but rather to sanction acts that contravene a specific provision.

The act in question must be intentional, which means that the faulty party must have had knowledge that the consequences would be immediate or very likely.[10] Negligence on the part of the offending party is not on its own

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[5] VINCENT KARIM, *LES OBLIGATIONS*, v.2, para. 2572 (6th ed. 2024).

[6] *Id.*; *Entreprises de réfrigération LS Inc.* c. *Hôpital général Juif Inc.*, 2016 QCCS 3396.

[7] Karim, *supra* note 5, at para. 2572.

[8] PIERRE-GABRIEL JOBIN AND NATHALIE VEZINA, *LES OBLIGATIONS*, para. 784 (7th ed. 2013); *Nathan* c. *Société hypothécaire Scotia*, 2008 QCCS 2367.

[9] Jobin and Vézina, *supra* note 8, at para. 784; *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC).

[10] Karim, *supra* note 5, at para. 2888.

sufficient to justify punitive damages.[11]

Punitive damages are assessed in the light of all appropriate circumstances. The court will take into consideration the gravity of the debtor's fault, his financial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, whether the payment of the compensatory damages is wholly or partly assumed by a third person.

D. Liquidated Damages

Penal clauses operate similar to liquidated damages provisions and are authorized in Article 1622 paragraph 1 of the CCQ. These clauses are accessory obligations used when the parties want to pre-determine damages that a creditor may claim from the debtor when an obligation is not met. These types of clauses, which can have both a compensatory and dissuasive purpose, are only enforceable if the obligations of the underlying contract have been breached or not performed. Where there is a partial execution of the contract, damages can be reduced to avoid unjustly enriching one party at the expense of the other.[12] The creditor cannot claim both the penalty and the specific performance of the obligation.

Article 1623 of the CCQ stipulates that a creditor who invoke a penal clause need not prove that he has suffered an injury to be entitled to the amount of the penalty.

Penal clauses that are against public order will be declared to be null and have no effect. Penal clauses also cannot be invoked when a breach results from a fortuitous event or a "force majeure."[13]

E. Unjust Enrichment

Article 1493 of the CCQ states that "a person who is enriched at the expense of another shall, to the extent of his enrichment, indemnify the other for the latter's correlative impoverishment, if there is no justification for the enrichment or the impoverishment." This type of damage is awarded when there is a pecuniary, material, moral, or intellectual enrichment or impoverishment that flows directly from one's contractual rights.[14] In

[11] *Id.*; *Québec (Curateur public) v. Syndicat national des employés de l'hôpital St-Ferdinand*, 1996 CanLII 172 (SCC).

[12] Karim, *supra* note 5, at para. 2945.

[13] JEAN-LOUIS BAUDOUIN AND YVON RENAUD, CODE CIVIL DU QUÉBEC ANNOTE, 1622/16 (CAIJ 2021); *Portes Overhead Door de Montréal (1965) ltée c. Construction Broccolini Inc.*, REJB 1995-28795 (QC CQ),

[14] Karim, *supra* note 5, at para. 4842.

order to reclaim recourse for unjust enrichment, there must be:[15]

- an enrichment;
- an impoverishment;
- a correlation between the enrichment and the impoverishment;
- absence of justification;
- absence of fraud; and
- absence of other recourse.

Because it applies only when no other remedies are available, this type of claim is relatively rare. Once the criteria are met, either the amount of enrichment or impoverishment will be awarded, whichever is lowest.[16]

[15] Baudoin, *supra* note 13, at para. 1493/2.

[16] *Id.* at para. 1493/5.