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Can the State Be Held Liable for Neighbourhood Disturbances?

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In *Maltais c Procureure générale du Québec*, 2020 QCCA 715, the Québec Court of Appeal rendered an important decision regarding Crown liability. Its decision clarifies whether the regime of no-fault liability for neighbourhood disturbances applies to the government. It also contains important lessons about the state's relative immunity for its general policy decisions.

Background and Facts

In 2011, Mr. Maltais was authorized to institute a class action against the Québec government on behalf of a group of residents of the Borough of Charlesbourg in Québec City. The plaintiff claimed that the Ministère des Transports du Québec (MTQ) had failed to manage the noise caused by vehicular traffic on the Laurentian Highway. He alleged that the MTQ had breached the *Environment Quality Act* (EQA) and the *Charter of Human Rights and Freedoms* (Charter). He also relied on the regime of no-fault liability for neighbourhood disturbances under article 976 of the *Civil Code of Québec* (CCQ). That regime allows a person to demand compensation from his or her neighbours when they cause abnormal or excessive annoyances under the circumstances, even if the neighbours are otherwise acting reasonably.

The Québec Superior Court dismissed Mr. Maltais' class action following a trial. Although it held that the neighbourhood disturbances regime applies to the state and acknowledged the abnormal and excessive annoyances suffered by certain residents because of noise from the Laurentian Highway, it held that the action failed owing to the relative immunity of the state, a principle of public law according to which the state cannot be held liable for its general policy decisions unless it acts in bad faith or makes irrational decisions.

The Court's Decision

Writing for a unanimous Court, Gagné J.A. upheld the judgment in first instance.

Applicability of the Neighbourhood Disturbances Regime to Annoyances Caused by Highway Traffic

The Court had to determine first whether the regime under article 976 CCQ applies to annoyances caused by highway traffic. The government claimed that the annoyances resulted from the use drivers made of the Laurentian Highway, not from the exercise of its right of ownership over it.

The Court dismissed this argument. It opined that article 976 CCQ could apply to annoyances stemming from the state's acts or omissions as the owner of property put to public use provided that there exist a connection between the conduct at the origin of the annoyances and the exercise of the government's right of ownership. In this case, that relationship was established to the Court's satisfaction. First, the annoyances resulting from passing vehicles stemmed from a use of the highway that was authorized by the government and second, the government's omission (its failure to manage the noise) was the source of the annoyances alleged by Mr. Maltais.

Applicability of the State's Relative Immunity Under the Neighbourhood Disturbances Regime, the EQA and the Charter

Mr. Maltais claimed that the state's relative immunity does not apply to liability for neighbourhood disturbances since such liability does not require evidence of the government's fault. The Court did not accept this argument.

It pointed out that the applicability of the CCQ to the state and legal persons established in the public interest does not override the general rules of public law, including the relative immunity of the state. A clear legislative text is required to set aside those rules. The Court held that article 976 CCQ, the EQA and the Charter do not contain provisions to such effect. In particular, it held that provisions stating that a law "binds the state" or "applies to the government" are not sufficient since their purpose is to set aside another type of immunity – namely, immunity from the application of laws.

Lastly, the Court held that the MTQ's alleged omissions with respect to its mitigation of noise from the Laurentian Highway stemmed from decisions implementing a general government policy based on financial, economic, social and political considerations. Accordingly, the MTQ's decisions constituted general policy decisions with regard to which the government could not be held liable since Mr. Maltais was not claiming that the MTQ had acted in bad faith or that its decisions were irrational.

Impact

The clarification that the regime of no-fault liability under article 976 CCQ applies to annoyances stemming from the public's use of state property could have significant repercussions. The Court's conclusion is not limited to highway traffic: with the same logic, nothing would prevent the regime under article 976 CCQ from applying to other public land and property (forests, waterways, etc.) and to any use of them the government may authorize.

The rule of the relative immunity of the state is likely to apply in several such cases. However, although that rule is very broad, it does not always apply. The government can always be held liable (under regimes of no-fault or fault-based liability) if the acts or omissions alleged against it do not stem from a general policy decision or if they result from operational decisions taken in the implementation of general policy decisions.

It could be very difficult to distinguish between decisions that are protected by the relative immunity of the state and those that are not, especially since evidence of the considerations involved in a decision will play a major role in how it is characterized. Neighbours of public land and property who believe they have suffered abnormal or excessive annoyances should bear in mind that the *Maltais* decision is not an overall bar to any legal action they may wish to take against the government. They should consult their legal adviser to assess the nature of the state's decisions that are causing the annoyances they are experiencing.

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