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Force Majeure: When and How to Determine the Urgency to Act

Floods, forest fires, tornadoes, extreme heat... Québec has been struck by numerous natural disasters in the past few months, which have caused significant damage. These situations are worrying enough on their own and often require immediate responses, but they also add a degree of complexity when it comes time for elected officials to make informed decisions.

While these events are relatively uncommon, they do require municipalities to be able to react quickly and commit public funds to handle them. To that end, municipalities have certain powers that give them room to manoeuvre during crises. However, there can be a fine line between a true emergency that requires an exception to the rule, and a simple pressing need to do something like carry out work.

Unforeseeable and insurmountable

Here, we will focus on sections 573.2 of the *Cities and Towns Act*¹ and 937 of the *Municipal Code*.² These sections refer to “irresistible force,” though the more common term is “force majeure” (note that this is similar to, but distinct from, “acts of God;” the latter describes events that are specifically natural in origin, while the former describes events that are natural or human in origin). Under these sections, a force majeure event must “imperil the life or health of the population” or “seriously damage the municipal equipment” for the mayor to be able to bypass the tendering procedure.

According to authors Marc-André LeChasseur and Jean Paquette, natural disasters such as floods, fires, and earthquakes can qualify as force majeure events. In their book *Conflits d'intérêts et inhabilité en milieu municipal*,³ they explain that the event must be unforeseeable, unavoidable, and insurmountable. The contract must therefore be concluded in the general interest of the municipality to mitigate the consequences that following procedure would have had.

This interpretation of a force majeure event, used in the two laws cited above, directly echoes that of section 1470 of the *Civil Code of Québec* (though it uses the term “superior force” instead of “irresistible force”). By virtue of the requirement of consistency,⁴ this term must be interpreted the same way.

Reasonable urgency and breach of contract

In cases of force majeure, the civil law approach has more than once included extreme weather events as a valid defence to a breach of contract.⁵ Nevertheless, the emergency must reasonably be considered as such.

In *Québec (Procureure générale) v. McKinnon*,⁶ the Québec Court of Appeal considered a contract to transport people by hydrofoil across the river separating the municipality of Saint-Augustin, in the Basse-Côte-Nord region, from the other shore, where there is an airport. Citizens could cross in the winter, when the ice was frozen, but not in the summer.

Although the Court of Appeal recognized that the contract was for the safety of the municipality’s residents, the fact that the transportation was offered daily and every year meant that it was not unforeseeable, unavoidable, or insurmountable.

Conversely, in other decisions, the Court of Appeal has recognized that the work required to supply a municipality with water before winter,⁷ or to treat phenol-contaminated water threatening a source of drinking water,⁸ was considered urgent.

Human or natural activity

Given the above, we can determine that a force majeure event related to human or natural activity can open the door to accelerated management of the crisis as long as it meets the aforementioned criteria.

Many will remember the ice storm that hit Québec in the winter of 1998. Needless to say, a large number of municipalities faced extraordinary situations. In that particular case, the majority of hard-hit municipalities declared a state of emergency, an exceptional status that also allows for faster management of necessary work. This subject may be addressed in a future article.

¹ CQLR, c. C-19.

² CQLR, c. C-27.1.

³ Marc-André LeChasseur and Jean Paquette, *Conflits d'intérêts et inhabilité en milieu municipal*, Cowansville, Éditions Yvon Blais, 1997, p. 21.

⁴ *Québec (Procureure générale) v. McKinnon*, 2015 QCCA 397; *Lessard v. Guadeloupe (Municipality of)*, 2008 QCCQ 4391.

⁵ *Coffrage Alliance Ltd. v. Procureure générale du Québec*, 2018 QCCS 3782, para. 51 (appeal dismissed); *Arbo Service Inc. v. Val-des-Monts (Municipality)*, 1999 CanLII 11417 (QC CS); 2750-0552 *Québec Inc. v. St-Charles-de-Drummond (Municipality)*, 2001 CanLII 25196 (QC CS).

⁶ 2015 QCCA 397.

⁷ *Gaudreault v. Barriault*, 1988 CanLII 1242 (QC CA).

⁸ *St-Alfred (Municipality of) v. Onyx Industries Inc.* 2008 QCCA 558.