

To carry out their mission of maintaining peace, order and public security, police officers are required to limit citizens' rights and freedoms using the coercive power of the state. Because the risk of abuse is undeniable, it is important **that there always be a legal basis for the actions taken by police officers; in the absence of such justification, their conduct is unlawful and cannot be tolerated.** In exercising their powers, **police officers are therefore bound by strict rules of conduct that are meant to prevent arbitrariness and unjustified restrictions on rights and freedoms. Police officers who deviate from these rules have no public law immunity.** Under Quebec law, **a police officer, like any other person, is held civilly liable for the injury caused to another by his or her fault**, in accordance with art. 1457 C.C.Q., which imposes on every person "a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, **so as not to cause injury to another**". A police officer commits a civil fault where he or she acts in a manner that departs from the conduct of a reasonable officer in the same circumstances. Police conduct must be assessed according to the test of the normally prudent, diligent and **competent police officer** in the same circumstances; this test recognizes the largely discretionary nature of police work.

The standard of conduct that a reasonable police officer is expected to meet corresponds to an obligation of means: it is not enough to show that the officer's conduct was unlawful. Nevertheless, the mere fact that there is a legal basis for **a police officer's actions does not necessarily exempt the officer from civil liability. Police officers are obliged to have an adequate knowledge and understanding of criminal and penal law, of the offences they are called upon to prevent and repress and of the rights and freedoms protected by the Charters. They must be able to exercise judgment with respect to the applicable law and cannot rely blindly on the training and instructions received, which, although they must be considered in assessing an officer's conduct, are not conclusive in themselves. Police officers cannot avoid personal civil liability simply by arguing that they were merely carrying out an order that they knew or ought to have known was unlawful. Therefore, they will sometimes commit a civil fault if they act unlawfully, even where their conduct is otherwise consistent with the training and instructions received, with existing policies, directives and procedures and with the usual practices.** It is all a matter of context: the question is whether a reasonable police officer would have acted in the same manner. Police officers will generally not be civilly liable for enforcing a provision — presumed to be valid at the time of the events — that is subsequently declared invalid, provided that they do not otherwise commit a fault in exercising their powers. However, it does not follow that the existence in law — or the scope — of an offence must be assumed in a civil liability action on the basis of bare assertions to this effect made by the state, a legal person established in the public interest or one of their representatives.

As for the STM, it has **no public law immunity.** The general rules of extracontractual civil liability are, in principle, applicable to a legal person established in the public interest, unless that person shows that a specific rule of public law derogates from them. **A legal person established in the public interest does not incur civil liability where it makes or passes a regulation or bylaw that is subsequently held to be invalid, unless its decision to do so was made in bad faith or was irrational.** It may nonetheless **be civilly liable if it makes an error of law** in implementing its own regulations or bylaws. In the instant case, the training provided to police officers by the STM is part of the implementation of Bylaw R036. In this respect, the STM cannot avoid the rules in art. 1457 C.C.Q. It committed a direct fault in the implementation of the bylaw by providing training that

suggested to police officers called upon to enforce its bylaws that holding the handrail was an obligation pursuant to a bylaw. Once the STM undertook to provide police officers with training, it had to ensure that the training would be appropriate and that it would reflect the law. If the police officer was at fault for believing that holding the handrail was an obligation, the STM was equally at fault for misinterpreting the bylaw and providing training accordingly.

Kosoian was entitled to refuse to obey an unlawful order and therefore committed no fault that would justify an apportionment of liability under art. 1478 para. 2 C.C.Q. Unless a statutory provision or common law rule clearly imposes it, there is no obligation to identify oneself to, or indeed to cooperate with, a police officer. To conclude that Kosoian must be apportioned a share of the liability would amount to saying that there is, in all circumstances, a rule of conduct **requiring compliance with an unlawful order given by a police officer, even where the order is based on an offence that simply does not exist in law. A well-informed person whose rights are infringed must be able to respond — within reason — without being held civilly liable.** Similarly, Kosoian cannot be faulted for not doing anything to mitigate the injury she suffered. **A reasonable, prudent and diligent person is not under an obligation to obey an unlawful order.** The duty to mitigate must sometimes be displaced where it conflicts with respect for rights and freedoms. **In a free and democratic society, no one should accept — or expect to be subjected to — unjustified state intrusions. Interference with freedom of movement, just like invasion of privacy, must not be trivialized.**

[6] In a free and democratic society, police officers may interfere with the exercise of individual freedoms only to the extent provided for by law. **Every person can therefore legitimately expect that police officers who deal with him or her will comply with the law** in force, which necessarily **requires them to know the statutes, regulations and bylaws they are called upon to enforce. Police officers are thus obliged to have an adequate knowledge and understanding of the statutes, regulations and bylaws they have to enforce.** Police forces and municipal bodies have a correlative obligation to provide police officers with proper training, including with respect to the law in force. Under Quebec law, **a breach of these obligations may, depending on the circumstances, constitute a civil fault.**

[37] Under Quebec civil law, s. 48 of the Police Act, CQLR, c. P-013.1, specifically entrusts police officers with the mission of maintaining peace, order and public security and preventing and repressing crime and offences under the law and municipal bylaws. In doing so, **police officers help to ensure the safety of persons and property and to safeguard rights and freedoms** (see, e.g., A. R. Nadeau, Droit policier: Loi sur la police annotée et règlements concernant la police (12th ed. 2008), at p. XIII).

[38] In carrying out their mission, police officers are required to limit these same rights and freedoms using the coercive power of the state, including by detaining or arresting individuals and by conducting searches or seizures. The risk of abuse is undeniable. That is why, in a society founded on **the rule of law, it is important that there always be a legal basis for the actions taken by police officers (Dedman v. The Queen, 1985 CanLII 41 (SCC), [1985] 2 S.C.R. 2, at pp. 28-29; R. v. Sharma, 1993 CanLII 165 (SCC), [1993] 1 S.C.R. 650, at pp. 672-73).** In the absence of such justification, **their conduct is unlawful and cannot be tolerated.**

[39] **In exercising these powers, police officers are therefore bound by strict rules of conduct that are meant to prevent arbitrariness and unjustified restrictions on rights and freedoms**

(Hill v. Hamilton/Wentworth Regional Police Services Board, 2007 SCC 41, [2007] 3 S.C.R. 129, at para. 71; Jauvin v. Québec (Procureur général), 2003 CanLII 32249 (QC CA), [2004] R.R.A. 37 (C.A.), at para. 46). **Police officers who deviate from these rules may be civilly liable. They have no public law immunity in this regard** (Jauvin, at para. 42; Régie intermunicipale de police des Seigneuries v. Michaelson, [2005] R.R.A. 7 (Que. C.A.), at para. 22; Popovic v. Montréal (Ville de), 2008 QCCA 2371, [2009] R.R.A. 1, at para. 63).

[40] **Under Quebec law, a police officer, like any other person, is held civilly liable for the injury caused to another by his or her fault**, in accordance with art. 1457 of the Civil Code of Québec (“C.C.Q.”). **The officer’s employer is bound to make reparation for the injury if the fault was committed in the performance of the officer’s duties**, pursuant to arts. 1463 and 1464 C.C.Q. In short, there are no exceptional rules applicable to the police (M. Lacroix, “Responsabilité civile des forces policières”, in *JurisClasseur Québec — Responsabilité professionnelle*, by A. Bélanger, ed., fasc. 13, at para. 6; J.-L. Baudouin and C. Fabien, “L’indemnisation des dommages causés par la police” (1989), 23 R.J.T. 419, at p. 422).

[42] Under Quebec civil law, art. 1457 C.C.Q. **imposes on every person “a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another”**. **An extracontractual civil fault occurs where a person who is endowed with reason fails in this duty by acting in a manner that departs from the conduct of a reasonable, prudent and diligent person in the same circumstances** (St. Lawrence Cement Inc. v. Barrette, 2008 SCC 64, [2008] 3 S.C.R. 392, at para. 21; Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214, at para. 24; J.-L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile* (8th ed. 2014), vol. 1, at Nos. 10182 and 10195; V. Karim, *Les obligations* (4th ed. 2015), vol. 1, at paras. 2505, 2508 and 2514 (2015). In this sense, fault is a [translation] “universal concept” that applies in any lawsuit based on art. 1457 C.C.Q. (St. Lawrence Cement, at para. 33, citing P.-G. Jobin, “La violation d’une loi ou d’un règlement entraîne-t-elle la responsabilité civile?” (1984), 44 R. du B. 222, at p. 223).

[45] It is well established that police conduct must be assessed according to the test of the normally prudent, diligent and **competent police officer** in the same circumstances (Chartier v. Attorney General of Quebec, 1979 CanLII 17 (SCC), [1979] 2 S.C.R. 474, at pp. 512-13, per Pratte J., dissenting in part, but not on this point; Hill, at para. 72; Jauvin, at paras. 44 and 59; Michaelson, at para. 22; Popovic, at para. 63; Lacombe v. André, 2003 CanLII 47946 (QC CA), [2003] R.J.Q. 720 (C.A.), at para. 41; St-Martin v. Morin (Succession de), 2008 QCCA 2106, [2008] R.J.Q. 2539, at para. 101; Lacroix, “Responsabilité civile des forces policières”, at paras. 14-15). Professors Baudouin and Fabien provide the following explanation of the approach to be taken by a court ruling on a police officer’s alleged fault:

[translation] A court that has to judge a police officer’s conduct must begin by assessing the facts in abstracto against the ideal, abstract standard of a police officer of ordinary prudence, diligence and skill. This standard is not necessarily the result of observing the average conduct of the coworkers of the police officer in question. In determining this standard, the court can consider empirical data. However, it is not bound by such data and can project onto the standard its own idea of what seems socially desirable. The “prudent administrator” of the Civil Code is not a sociological fact, but a normative creation.

The standard of conduct that is applied to determine whether a police officer committed a fault is not one of excellence. It is an average standard, neither the best nor the most mediocre.

Next, it is important to properly place the “yardstick police officer” in the same external circumstances as the police officer whose conduct is being assessed. The circumstances of place (temperature, visibility, urgency, etc.) and time must be considered.

(Baudouin and Fabien, at pp. 423-24; see also C. Massé, “Chronique — Arrestation illégale et brutalité policière: dans quelles circonstances la responsabilité des policiers peut-elle être engagée?” (2013), Repères, May 2013 (available online in La référence), at p. 2.)

[48] **A violation of such statutory or regulatory rules of conduct can often, absent special circumstances, be considered a civil fault** (see *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, [2013] 3 S.C.R. 600, at para. 96; *Compagnie d'assurance Continental du Canada v. 136500 Canada inc.*, [1998] R.R.A. 707 (Que. C.A.), at p. 712). This will particularly be the case where a provision itself lays down an **elementary standard of prudence or diligence** (*Morin v. Blais*, 1975 CanLII 3 (SCC), [1977] 1 S.C.R. 570, at p. 580; *Harvey v. Trois-Rivières (Ville de)*, 2013 QCCA 772, [2013] R.J.Q. 650, at paras. 56-62). Nevertheless, under Quebec law, conduct that is unlawful does not systematically constitute a civil fault (*St. Lawrence Cement*, at paras. 21 and 34; *L. (J.) v. Gingues*, 2008 QCCA 2242, 93 C.C.L.T. (3d) 67, at para. 5; see, in this regard, Baudouin, Deslauriers and Moore, vol. 1, at No. 1-191; Karim, at para. 2519; M. Tancelin, *Des obligations en droit mixte du Québec* (7th ed. 2009), at para. 634; N. Vézina, “Du phénomène de pollution lumineuse appliqué à l’observation des astres jurisprudentiels: responsabilité objective, responsabilité subjective et l’arrêt *Ciment du Saint-Laurent*”, in G. Bras Miranda and B. Moore, eds., *Mélanges Adrian Popovici: Les couleurs du droit* (2010), 357, at pp. 369-83; M. Lacroix, *L’illicéité: Essai théorique et comparatif en matière de responsabilité civile extracontractuelle pour le fait personnel* (2013), at p. 160; M. Lacroix, “Le fait générateur de responsabilité civile extracontractuelle personnelle: continuum de l’illicéité à la faute simple, au regard de l’article 1457 C.c.Q.” (2012), 46 R.J.T. 25, at pp. 37-38; Jobin, at pp. 224-29).

[49] In other words, while, as stated in [art. 1457 para. 1 C.C.Q.](#), a reasonable person must of course comply with the rules of conduct imposed by law, these rules do not create obligations of result under the general rules of civil liability (with regard to this concept, see Crépeau, at pp. 11-12). In *St. Lawrence Cement*, the Court rejected the proposition that the violation of statutory or regulatory rules constitutes an objective “civil fault” that requires a form of strict liability regardless of the prudence and diligence exercised by the person who caused the injury, having regard to the circumstances:

[50] Under Quebec civil law, it is not enough to show that a police officer’s conduct was unlawful. The obligation resting on the officer remains an obligation of means, even where compliance with the law is in issue. To obtain reparation, the plaintiff must first establish the existence of fault within the meaning of [art. 1457 C.C.Q.](#), that is, a departure from the conduct of a reasonable police officer in the same circumstances. This is not to say that the general rules of civil liability are lax. As I will explain below, the standard of conduct expected of police officers is justifiably high: **a police officer who acts unlawfully cannot easily escape civil liability by relying on his or her ignorance or misunderstanding of the law.**

[51] **In addition, the mere fact that there is a legal basis for a police officer’s actions does not**

necessarily exempt the officer from civil liability (see *Infineon*, at para. 96; Baudouin, Deslauriers and Moore, vol. 1, at No. 1-192). **In exercising their discretion, police officers must act reasonably and comply with the general obligation of prudence and diligence toward others that is incumbent on them in the circumstances,** pursuant to [art. 1457 C.C.Q.](#) (in the common law, see *Hill*, at para. 41).

[52] Before proceeding any further, I will clarify one point. This appeal concerns an action based on [art. 1457 C.C.Q.](#), not on [s. 49](#) para. 1 of the [Charter of human rights and freedoms, CQLR, c. C-12](#) (“[Quebec Charter](#)”). As a result, I do not have to consider the concept of unlawful interference under [s. 24](#) of the [Quebec Charter](#), which states that “[n]o one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure”. I prefer to leave consideration of the standard applicable to **unlawful interference** under [s. 24](#) for another day, when the Court has the benefit of full submissions on the matter.

[53] In my view, Constable Camacho committed a civil fault by ordering Ms. Kosoian to identify herself and by arresting her and conducting a search based on a non-existent offence, namely disobeying the pictogram indicating that the handrail should be held.

[54] Before examining the facts of this case more closely, I will deal with the following points: (1) police officers’ obligation, under the general rules of civil liability, **to have an adequate knowledge and understanding of the law;** and (2) the scope of the presumption of validity in this context.

(1) Obligation of Police Officers to Know and Understand the Law

[55] **Police officers are obliged to have an adequate knowledge and understanding of criminal and penal law, of the offences they are called upon to prevent and repress and of the rights and freedoms protected by the Charters.** They also have an obligation to know the scope of their powers and the manner in which these powers 2. In order to promote the quality of the police department in its relations with the public, a police officer shall promote, to the extent of his capabilities, the development of his profession through the exchange of knowledge and through participation in upgrading courses and training programs.

3. This Code is intended to ensure better protection of the public by developing high standards of public service and professional conscience within police departments and to ensure the respect of human rights and freedoms including those set out in the [Charter of human rights and freedoms \(chapter C-12\).](#)

6. A police officer must avoid any form of abuse of authority in his relations with the public. ([Code of ethics of Québec police officers](#), [ss. 2](#), [3](#) and [6](#) para. 1) are to be exercised. A police officer whose application of the law departs from that of a reasonable police officer in the same circumstances **commits a civil fault. In this respect, an officer who arrests someone on the basis of a non-existent offence may be civilly liable.**

[56] In *Chartier*, Pratte J., dissenting, but not on this point, stated the following in this regard: **“The authority of a police officer is not of course unlimited; he must know its limits, and if he disregards or ignores them, he commits a fault: ignorance of what a person is supposed to know is not an excuse . . .”** (p. 513 (emphasis added); see also the majority reasons, at p. 498). This Court also discussed this duty in *R. v. Grant*, [2009 SCC 32](#), [2009] 2 S.C.R. 353: **“While police are not expected to engage in judicial reflection on conflicting precedents, they are**

rightly expected to know what the law is” (para. 133 (emphasis added); see also *R. v. Le*, 2019 SCC 34, at para. 149). The Court also emphasized this point in *R. v. Genest*, 1989 CanLII 109 (SCC), [1989] 1 S.C.R. 59, at p. 87: “While it is not to be expected that police officers be versed in the *minutiae* of the law concerning search warrants, they should be aware of those requirements that the courts have held to be essential for the validity of a warrant” (see also *R. v. Kokesch*, 1990 CanLII 55 (SCC), [1990] 3 S.C.R. 3, at pp. 32-33; *Gounis v. Ville de Laval*, 2019 QCCS 479, at para. 112 (CanLII); *Simard v. Amyot*, 2009 QCCS 5509, at para. 41 (CanLII)).

[57] Under Quebec civil law, **the obligation of police officers to have an adequate knowledge and understanding of the statutes, regulations and by-laws they are called upon to enforce** is also reflected in several provisions of the *Code of ethics of Québec police officers*, CQLR, c. P-13.1, r. 1, which set out the standard of conduct expected of a reasonable police officer in the context of civil liability (see Baudouin, Deslauriers and Moore, vol. 2, at Nos. 2-1 and 2-2; O. Jobin-Laberge, “Norme, infraction et faute civile”, in *Service de la formation permanente — Barreau du Québec*, vol. 137, *Développements récents en déontologie, droit professionnel et disciplinaire* (2000), 31, at p. 33). **Police officers are subject to stringent requirements in this regard, particularly when it comes to respect for rights and freedoms:**

[58] In other words, while police officers are not held to an obligation of result with regard to knowledge of the law, the applicable standard is a high one. **Citizens rightly expect them to have an adequate knowledge and understanding of the statutes, regulations and by-laws they are called upon to enforce and of the limits of their authority** (see, e.g., *Bellefleur v. Montréal (Communauté urbaine)*, [1999] R.R.A. 546 (Que. Sup. Ct.), at p. 550; *R. v. Rouleau*, 2002 CanLII 7572 (C.Q.), at para. 103). **Police officers cannot claim to carry out their mission — to maintain peace, order and public security and to prevent and repress crime and offences under the law and by-laws (*Police Act*, s. 48 para. 1) — without having an adequate knowledge and understanding of the fundamental principles of criminal and penal law, of the rights and freedoms protected by the Charters and of the offences they are called upon to repress, and without knowing the limits of their authority** (see P. Patenaude, “De la recevabilité des preuves obtenues au moyen de l’utilisation par la police de techniques modernes d’enquête et de surveillance”, in *Police, techniques modernes d’enquête ou de surveillance et droit de la preuve*, by P. Patenaude, ed., at pp. 1-2).

[59] The training and instructions given to police officers, as well as internal police force policies, directives and procedures, must be considered in assessing an officer’s conduct, although they are not conclusive in themselves. A reasonable police officer must know that they do not have the force of law (see *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190, at paras. 44-46). Similarly, the usual practices are at most a relevant factor. As the (2) Presumption of Validity and Non-existence of an Offence

Court stated in *Roberge* in the context of a civil liability action arising out of an error of law made by a notary, “[i]t is not sufficient . . . that the common professional practice be followed in order to avoid liability. That practice has to be demonstrably reasonable” (p. 434). **The mere fact that an error of law is repeated does not make it excusable.**

[60] **As professionals responsible for law enforcement, police officers must be able to exercise judgment with respect to the applicable law. They cannot rely blindly on the training and instructions given to them, nor can they mechanically follow internal policies, directives and**

procedures or usual police practices.

[61] **Similarly, it is well established that police officers cannot avoid personal civil liability simply by arguing that they were merely carrying out an order that they knew or ought to have known was unlawful** (*Chartier*, at p. 498; *Chaput v. Romain*, 1955 CanLII 74 (SCC), [1955] S.C.R. 834, at p. 842; *Pelletier v. Cour du Québec*, 2002 CanLII 41229 (QC CA), [2002] R.J.Q. 2215 (C.A.), at para. 37; Lacroix, “Responsabilité civile des forces policières”, at para. 16). Baudouin, Deslauriers and Moore put this point aptly: [] **“In the civil context, it is disobedience of an unlawful order that must be considered the normal conduct of a prudent and diligent person, and not the reverse”** (vol. 1, at No. 1-206; see also G. Viney and P. Jourdain, *Traité de droit civil: Les conditions de la responsabilité* (2nd ed. 1998), by J. Ghestin, ed., at p. 502). The same is true of the training and instructions given to police officers and of internal police force policies, directives and procedures.

[62] Of course, police officers are not lawyers and are not held to the same standards as lawyers (*Hill*, at para. 50). For example, they are not themselves expected to carry out thorough research or to engage in extensive reflection concerning the subtleties of conflicting case law (see *Grant*, at para. 133). Moreover, where a question of law is controversial, a police officer’s conduct should not be found to constitute fault insofar as it is based on an interpretation that is reasonable and consistent with the training and instructions given to the officer (see, by analogy, *Roberge*, at p. 436).

[63] That being said, *the expectations that exist for police officers* remain high. **Where there is uncertainty about the law in force, it is incumbent on them to make the inquiries that are reasonable in the circumstances, for example by suspending their activities in order to consult with a prosecutor or by rereading the relevant provisions and the available documentation.** In principle, an error will be judged less severely if it is made during an emergency response, or in a situation where public safety is at stake, rather than in the context of a carefully planned operation or the routine application of a by-law. In other words, unless the circumstances require immediate intervention, it is not appropriate to act first and make inquiries later. I note that — **even in an emergency — the fact that conduct seems dangerous to a police officer does not permit the officer to presume the existence of an offence** (see Baudouin and Fabien, at pp. 423-24).

[64] **In short, police officers sometimes commit a civil fault if they act unlawfully, even where their conduct is otherwise consistent with the training and instructions they have received, with existing policies, directives and procedures and with the usual practices.** It is all a matter of context: the question is whether a reasonable police officer would have acted in the same manner. In assessing a police officer’s conduct, a court must therefore [] “give significant weight to the external circumstances” and “avoid the perfect vision afforded by hindsight” (*Dubé v. Gélinas*, 2013 QCCS 1681, at para. 68 (CanLII); see also *Hill*, at para. 73; *Gounis*, at para. 29; *Boisvenu v. Sherbrooke (Ville de)*, 2009 QCCS 2688, at para. 79 (CanLII)).

[65] In this regard, I emphasize that a police officer’s conduct must be assessed in light of the law in force *at the time of the events* (*Hill*, at para. 73; *St-Martin*, at para. 94; *L. (J.)*, at para. 5; *Communauté urbaine de Montréal v. Cadieux*, [2002] R.J.D.T. 80 (Que. C.A.), at paras. 39-41). An officer can hardly be faulted for applying a provision that was presumed to be valid, applicable and operative at the relevant time (*Guimond v. Quebec (Attorney General)*, 1996 CanLII 175 (SCC), [1996] 3 S.C.R. 347, at para. 14).

[66] This brings me to the presumption of validity on which the opinion of the majority of the Court

of Appeal is based, at least in part.

[68] Indeed, under the presumption of validity, it is presumed that a provision was “in fact . . . validly enacted and therefore is to be given legal effect unless and until a court with the jurisdiction to do so declares it to be invalid” (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 523 (emphasis in original)). **The presumption of validity thus places the burden on a challenger to demonstrate the invalidity of a provision rather than on the regulatory body that adopted the provision to justify it** (*Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at para. 25; Sullivan, at p. 523). In the meantime, the requirements of the provision must be satisfied (*Breslaw v. Montreal (City)*, 2009 SCC 44, [2009] 3 S.C.R. 131, at para. 23). Moreover, in the municipal context in Quebec, s. 364 of the *Cities and Towns Act*, CQLR, c. C-19, and art. 452 of the *Municipal Code of Québec*, CQLR, c. C-27.1, specifically state that **every by-law remains in force and executory until it has been annulled by a competent authority** (see J. Héту and Y. Duplessis, with L. Vézina, *Droit municipal: Principes généraux et contentieux* (2nd ed. (loose-leaf)), vol. 1, at p. 8151)).

[107] In the present case, the STM argues that it enjoys the public law relative immunity that attaches to the exercise of a regulatory power (see *Entreprises Sibeca*, at para. 27; *Welbridge Holdings Ltd. v. Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] S.C.R. 957, at pp. 966 and 968-70). **A legal person established in the public interest generally incurs no civil liability where it makes or passes a regulation or by-law that is subsequently held to be invalid, unless its decision to do so was made in bad faith or was irrational** (*Entreprises Sibeca*, at paras. 23-27; *Papachronis v. Ste-Anne-de-Bellevue (Ville)*, 2007 QCCA 770, 38 M.P.L.R. (4th) 161, at para. 25; Héту and Duplessis, vol. 2, at pp. 11152-57; see also, outside the municipal context, *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 90; *Hinse v. Canada (Attorney General)*, 2015 SCC 35, [2015] 2 S.C.R. 621, at para. 23). The purpose of this immunity is to preserve the latitude that a legal person established in the public interest must have in order to make policy decisions in the **interests of the community** (*Entreprises Sibeca*, at para. 24; *Welbridge*, at p. 968; *Laurentide Motels Ltd. v. Beauport (City)*, 1989 CanLII 81 (SCC), [1989] 1 S.C.R. 705, at pp. 722 and 725).

[132] Average citizens will, of course, often prefer to be cautious and to comply with an order given by a police officer even where they have doubts about its lawfulness (*Grant*, at para. 170). They will identify themselves and graciously accept a statement of offence, subject to contesting it later. In fact, they run serious risks if they refuse to comply because they believe that the offence alleged against them is non-existent or invalid. If they are mistaken, they could, for example, be convicted of a criminal offence: **wilfully obstructing a peace officer** (s. 129 of the *Criminal Code*, R.S.C. 1985, c. C46; see, e.g., *Vigneault v. La Reine*, 2002 CanLII 63720 (Que. C.A.), aff'g 2001 CanLII 25420 (Que. Sup. Ct.)).

[137] I also cannot fault Ms. Kosoian for not doing anything to mitigate the injury she suffered (art. 1479 C.C.Q.). **To do so, she would have had no choice but to obey an unlawful order. This is not what is required of a reasonable, prudent and diligent person.** The duty to mitigate must sometimes be displaced where it conflicts with respect for rights and freedoms (see Baudouin,

Deslauriers and Moore, vol. 1, at No. 10624). Therefore, while I agree with the quantification of damages of the dissenting Court of Appeal judge, I do not accept his conclusion that a share of the liability should be imposed on Ms. Kosoian. Since he found that the offence alleged against her was non-existent, he should not have focused on her behaviour.

Police Act, R.S.O. 1980, c. 381, s. 57 [rep. 1990, c. 10, s. 148(1)]:

57. The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and commencing proceedings before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.

Criminal Code, s. 495 :

495. (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence;

Child Abuse

Child abuse includes sexual abuse, violence, physical/emotional abuse, neglect, abandonment, and situations **placing the child at risk**.

Reckless endangerment of children: cc s218

Emotional abuse

Criminally negligent acts towards a child

Placing a child in need of protection at risk

Any act or omission by any person towards a child that does or may have the potential to cause physical, psychological or emotional harm to a child

Elder Abuse is any action or lack of action that causes harm to an older adult. It often occurs in a relationship where there is an expectation of trust, such as between family members, caregivers, advisors, etc.

Elder Abuse:

forced confinement, humiliation, intimidation, social isolation, and being treated like a child failure to ensure proper medical care.

Psychological Abuse: Includes verbal assaults, humiliation, intimidation, social isolation, and being treated like a child.

Dear Staff Sergeant Crystal Kelly (#5182), Halton Regional Police Service:

I am supplying you with an information. It contains criminal code violation information.

Due to the fact that a very large number of Police Officers are refusing to receive this information verbally, or otherwise, I would kindly like to remind you of code of conduct, specifically from the schedule in O. Reg. 268/10: GENERAL under Police Services Act, R.S.O. 1990, c. P.15, s2 (1) (c):

2 (1)(c) **Neglect of Duty**, in that he or she,

(vi) **fails to report a matter that it is his or her duty to report,**

(vii) **fails to report anything that he or she knows concerning a criminal or other charge,**

The following are likely words you may resonate with, or understand fully:

Police Officers have stated "I'd love to speak out, but I can't, I'd lose my job". If they whistle blow the system, the system is going to find a way to punish them.

"They'll get a desk job, you don't want a desk job".

"They can give you a job you're going to hate, they can make you quit."

"However, for the most part, you still will have a job. Police Officers and other Peace Officers are afraid to speak up because they are in the system."

"At what point do you speak out?" --- "When your freedoms are all gone?, when people are getting hurt like in the US?"

Police Officers have flatly stated that the RCMP is really corrupt, and mentioned that there is a cover up in the Nova Scotia murders. "There is no reasonable information and they are not telling us what they know."

"I will lose my certification if I speak out."

"If you are not on the same page as management, they will punish you."

"They can make your life so miserable, you just want to quit. A lot of us are on board."

"Career ending move." (by speaking out)

HOWEVER, you are needed and respectfully requested and respectfully demanded to investigate fully the following INFORMATION. In effect, this is a NOTICE OF DEMAND - to investigate the Premier and Lieutenant Governor of Ontario for criminal code violations.

On the first page that follows, please take note of names of Police Officers who have been approached in some manner, and let it be known that they showed some form of contempt for this information.

Child Abuse: Child abuse includes sexual abuse, violence, physical/emotional abuse, neglect, abandonment, and situations placing the child at risk.

Reckless endangerment of children: cc s218

Emotional abuse Criminally negligent acts towards a child Placing a child in need of protection at risk

Any act or omission by any person towards a child that does or may have the potential to cause physical, psychological or emotional harm to a child

Elder Abuse: forced confinement, humiliation, intimidation, social isolation, & being treated like a child

failure to ensure proper medical care.

Psychological Abuse: Includes humiliation, intimidation, social isolation, & being treated like a child.

The Information is as follows: