



PRAEVENTIO

© Work of Claude Théberge

August 2020 | Volume 21 | n° 4

TABLE OF CONTENTS

Amendments to the Civil Code of Québec – Watch Out for New Time Limits	1
Postponement of the Coming Into Force of the New Family Law Provisions	3
Mentoring: An Essential Risk Management Component	4

The secret to mastery in any field is to forever be a student.

Martin Palmer

AMENDMENTS TO THE CIVIL CODE OF QUÉBEC – WATCH OUT FOR NEW TIME LIMITS

On June 12, 2020, the amendments relating to the prescription of civil actions for sexual aggression, violence suffered during childhood and spousal violence came into force. More specifically, the *Act to amend the Civil Code, in particular to make civil actions for sexual aggression, violence suffered during childhood and spousal violence imprescriptible* (hereinafter the “Act”)¹ pertains to articles 2926.1 and 2930 of the *Civil Code of Québec*.²

The Act amends article 2926.1 para. 1 of the *Civil Code of Québec*, such that, now, “actions for damages for bodily injury resulting from an act which could constitute a criminal offence are made imprescriptible if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse”.³

Furthermore, article 2926.1 para. 2 of the *Civil Code of Québec* now reads as follows:

“However, an action against an heir, a legatee by particular title or a successor of the author of the act or against the liquidator of the author’s succession must, under pain of forfeiture, be instituted within three years after the author’s death, unless the defendant is sued for the defendant’s own fault or as a principal. Likewise, an action brought for injury suffered by the victim must, under pain of forfeiture, be instituted within three years after the victim’s death.”⁴

As for article 2930 of the *Civil Code of Québec*, the legislature replaced the words “of less than 3 years, 10 years or 30 years, as the case may be, cannot affect a prescriptive period provided for in this Book” by “that is less than that provided for in this Book, cannot defeat a prescriptive period provided for in this Book”.⁵

Lastly, the transitional provisions of the Act state that “an action that was dismissed before 12 June 2020 solely on the grounds of prescription being acquired may be reinstated before a court within three years after that date” provided that:

“(1) the action is an action for damages for bodily injury resulting from an act which could constitute a criminal offence;

(2) the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse; and

(3) the action is not prescribed under the second paragraph of article 2926.1 of the Civil Code, as amended by section 2, on the date on which it is reinstated”.⁶

To summarize, here is a table comparing the former and new provisions of the *Civil Code of Québec*:

Articles of the C.C.Q.	Former text	New text
Art. 2926.1, para. 1	An action for damages for bodily injury resulting from an act which could constitute a criminal offence is prescribed by 10 years from the date the victim becomes aware that the injury suffered is attributable to that act. However, the prescriptive period is 30 years if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse.	An action for damages for bodily injury resulting from an act which could constitute a criminal offence is prescribed by 10 years from the date the victim becomes aware that the injury suffered is attributable to that act. Nevertheless, such an action cannot be prescribed if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse.
Art. 2926.1, para. 2	If the victim or the author of the act dies, the prescriptive period, if not already expired, is reduced to three years and runs from the date of death.	However, an action against an heir, a legatee by particular title or a successor of the author of the act or against the liquidator of the author's succession must, under pain of forfeiture, be instituted within three years after the author's death, unless the defendant is sued for the defendant's own fault or as a principal. Likewise, an action brought for injury suffered by the victim must, under pain of forfeiture, be instituted within three years after the victim's death.
Art. 2930	Notwithstanding any provision to the contrary, where an action is based on the obligation to make reparation for bodily injury caused to another, the requirement that notice be given prior to bringing the action or that the action be instituted within a period of less than 3 years, 10 years or 30 years, as the case may be, cannot affect a prescriptive period provided for in this Book.	Notwithstanding any provision to the contrary, where an action is based on the obligation to make reparation for bodily injury caused to another, the requirement that notice be given prior to bringing the action or that the action be instituted within a period that is less than that provided for in this Book, cannot defeat a prescriptive period provided for in this Book.
Articles of the Act ⁷	Former text	New text
Section 4 (Transitional and final provisions)		Article 2926.1 of the Civil Code, amended by section 2, applies to all actions for damages for bodily injury resulting from an act which could constitute a criminal offence if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse, regardless of any prescriptive period applicable before the coming into force of this Act.

Articles of the Act ⁷	Former text	New text
Section 5 (Transitional and final provisions)		An action that was dismissed before 12 June 2020 solely on the grounds of prescription being acquired may be reinstated before a court within three years after that date if (1) the action is an action for damages for bodily injury resulting from an act which could constitute a criminal offence; (2) the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse; and (3) the action is not prescribed under the second paragraph of article 2926.1 of the Civil Code, as amended by section 2, on the date on which it is reinstated.
Section 6 (Transitional and final provisions)		This Act comes into force on 12 June 2020.

- 1 *An Act to amend the Civil Code, in particular to make civil actions for sexual aggression, violence suffered during childhood and spousal violence imprescriptible*, S.Q. 2020, c.13.
- 2 CQLR, c. CCQ-1991, arts. 2926.1 and 2930.
- 3 *Supra*, note 1, Explanatory notes, para. 1.
- 4 *Id.*, s. 2, para. 2.
- 5 *Id.*, s. 3.
- 6 *Id.*, s. 5.
- 7 *Supra*, note 1.

POSTPONEMENT OF THE COMING INTO FORCE OF THE NEW FAMILY LAW PROVISIONS

On July 1, 2020, several provisions of the *Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* (hereinafter the “Act”) were to come into force.¹

The Act has the following objectives:

- promote the best interests of the child;
- address family violence;

- help to reduce child poverty;
- make Canada’s family justice system more accessible and efficient.²

That being said, because of the pandemic related to COVID-19, the amendments to the *Divorce Act* have been postponed to March 1, 2021 to allow the various levels of government to make the necessary adjustments. Similarly, the amendments to the *Family Orders and Agreements Enforcement Assistance Act* and the *Garnishment, Attachment and Pension Diversion Act* will come into force over the next two or three years.³

Keep an eye out! 

- 1 Order fixing July 1, 2020 as the day of coming into force of certain provisions of the *Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, P.C. 2019-1143. The order is available at: <http://gazetteducanada.gc.ca/rp-pr/p2/2019/2019-08-21/pdf/g2-15317.pdf>
- 2 *Id.*
- 3 Order Amending Order in Council P.C. 2019-1143 of August 7, 2019 by Replacing “July 1, 2020” with “March 1, 2021”, P.C. 2020-407. The order is available at: <http://gazetteducanada.gc.ca/rp-pr/p2/2020/2020-06-10/pdf/g2-15412.pdf>; Government of Canada, Department of Justice, *Strengthening and modernizing Canada’s family justice system*, June 5, 2020. Found at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/01.html>

MENTORING: AN ESSENTIAL RISK MANAGEMENT COMPONENT

With the start of the new school year fast approaching, our focus has shifted to one of the many forms of learning, namely, mentoring. While our education has provided us with a critical mass of knowledge, the appeal of mentoring lies in its ability to impart skills that are learned primarily in the “field”. Examples include the management of difficult files or clients, customer solicitation or billing. To the extent that a portion of the claims handled by the Insurance Fund concern a lack of legal knowledge, it is reasonable to view mentoring as an effective career development and professional liability risk management strategy.¹

In light of the above, we will define mentoring and then discuss the factors that contribute to a successful mentoring relationship. Lastly, we will discuss the link between mentoring and the prevention of malpractice proceedings.

Definition of Mentoring

The Bar of Montreal defines mentoring as follows: “Mentoring is a relationship in which mentors invest their time and share their knowledge and skills with less experienced persons who wish to benefit from this exchange and take steps to make it happen”.²

The mentoring relationship can take many forms. It can be very structured, for example, with a logbook to track the progress of the mentee and meetings set at regular intervals. It can also

be informal. Moreover, nothing prevents a mentoring relationship from evolving according to the respective expectations of the mentor and the mentee. In this article, we will focus on a structured mentoring relationship.

Factors for Mentoring Success

The success of a mentoring relationship is based on several factors:

- **The establishment of specific, quantifiable and realistic objectives.** It is up to the mentee to determine the goals they wish to achieve. Compliance with the three characteristics mentioned above will make it easier to assess their progress towards the achievement of their objectives. Similarly, this step allows the mentee to direct their choice to the mentor that seems most appropriate. Even so, there is nothing to prevent a mentee from having several mentors depending on their chosen objectives;
- **Good self-awareness, especially on the part of the mentor.** Before making the decision to act as a mentor, the lawyer must ensure they have the knowledge and experience to support the mentee in their career development. If not, the lawyer should decline the request, explaining the reasons for the refusal;
- **The establishment of parameters for the mentoring relationship.** At the first mentoring meeting, it is important to discuss the parameters of the relationship. In this regard, we suggest putting the agreement in writing. In this way, participants

will avoid any misunderstandings or disappointments that may arise from the relationship. Among the topics that should be addressed are the following:

- The mentee’s goals;
- The respective expectations of the mentoring relationship;
- The responsibilities assumed by each person;
- The time devoted to the relationship (duration of meetings and frequency). In this respect, the mentoring relationship requires an investment of time for both the mentor and the mentee. Therefore, it is important to establish an efficient way to manage your time and be transparent on the issue;
- Confidentiality of the information exchanged. Participants must determine whether the topics discussed in the meetings remain confidential or can be disclosed. That said, the mentee must not feel that an issue shared with their mentor can hinder their career development. This is especially true if the mentor is a lawyer working at the same firm as the mentee;
- Maintaining professional secrecy in the event that the mentor is not a member of the mentee’s firm;
- The nature of the subjects that are the subject of the mentoring relationship;
- The way to settle disagreements;
- The duration and end of the mentoring relationship.

■ **The development of a relationship based on trust.** The openness and transparency that each of the participants demonstrates when discussing the parameters of the mentoring relationship is the first step in building trust. Thereafter, flexibility, respect and frankness are essential to the smooth functioning of the relationship;

■ **The use of active listening and constructive feedback techniques.** In the same way, effective com-

munication helps to build trust. This requires the mentor to be a good listener and to resist the temptation to make long monologues setting out all the mentor's knowledge. The mentor should also favour open-ended questions that encourage the mentee to find solutions. In addition, active listening techniques help to reduce the mentee's defensiveness, although it is up to the mentee to place themselves in a learning and open-minded mode;

■ **The establishment of a tool to assess progress.** The mentee's progress should be monitored on a regular basis, allowing for any necessary adjustments to be made. In a similar vein, it may be a good idea to keep summaries of meetings. In this regard, the Bar of Montreal's *Mentor's Guide* contains a sample meeting report form and a sample review of the mentoring relationship form that can be adapted to the needs and particular characteristics of the mentoring relationship.



Link between mentoring and the prevention of malpractice proceedings

Let's go back to our original premise, that mentoring contributes to the management of professional liability risks. One question remains: How?

Part of the answer undoubtedly lies in the sharing of knowledge and the resulting improvement in the quality of the professional services. Indeed, mentoring is a powerful two-way learning tool. Certainly, by sharing skills and experiences and guiding the mentee, the mentor promotes the mentee's professional risk management. In doing so, the mentor places themselves in a learning position, since by supporting their colleague, they have no choice but to refresh their knowledge of the law as well as the strategies and attitudes to adopt in their daily practice. Thus, mentoring undoubtedly contributes to reducing the risk of malpractice proceedings.

In short, mentoring is a win-win situation not only for the participants in the relationship, but also for the future of our profession. We leave you with this quote from Confucius: "A wise man learns from his mistakes, but a wiser man learns from the mistakes of others." 

References:

Lawyers' Professional Indemnity Company, *Managing a mentoring relationship*, 2002. Found at:
https://www.practicepro.ca/wp-content/uploads/2018/03/Mentoring_Booklet.pdf

Bar of Montreal, *Mentor's Guide*, February 2011. Found at:
<http://www.barreaudemontreal.qc.ca/loads/Guides/Guide%20du%20mentor%20ENG.pdf>

- 1 Between January 1, 2015 and December 31, 2019, 10.9% of the claims processed by the Insurance Fund related to knowledge of the law.
- 2 Bar of Montreal, *Mentor's Guide*, February 2011, p. 3. Found at: <http://www.barreaudemontreal.qc.ca/loads/Guides/Guide%20du%20mentor%20ENG.pdf>

Service de prévention

NOTICE

M^e Guylaine LeBrun
Claims Prevention Coordinator
and Counsel

Professional Liability Insurance Fund of the Barreau du Québec

445 Saint-Laurent Blvd., Suite 300

Montreal (Québec) H2Y 3T8

Telephone: 514-954-3452

Fax: 514-954-3454

E-mail: guylaine.lebrun@farpbq.ca

E-mail: judith.guerin@farpbq.ca

Visit our web site at: www.farpbq.ca

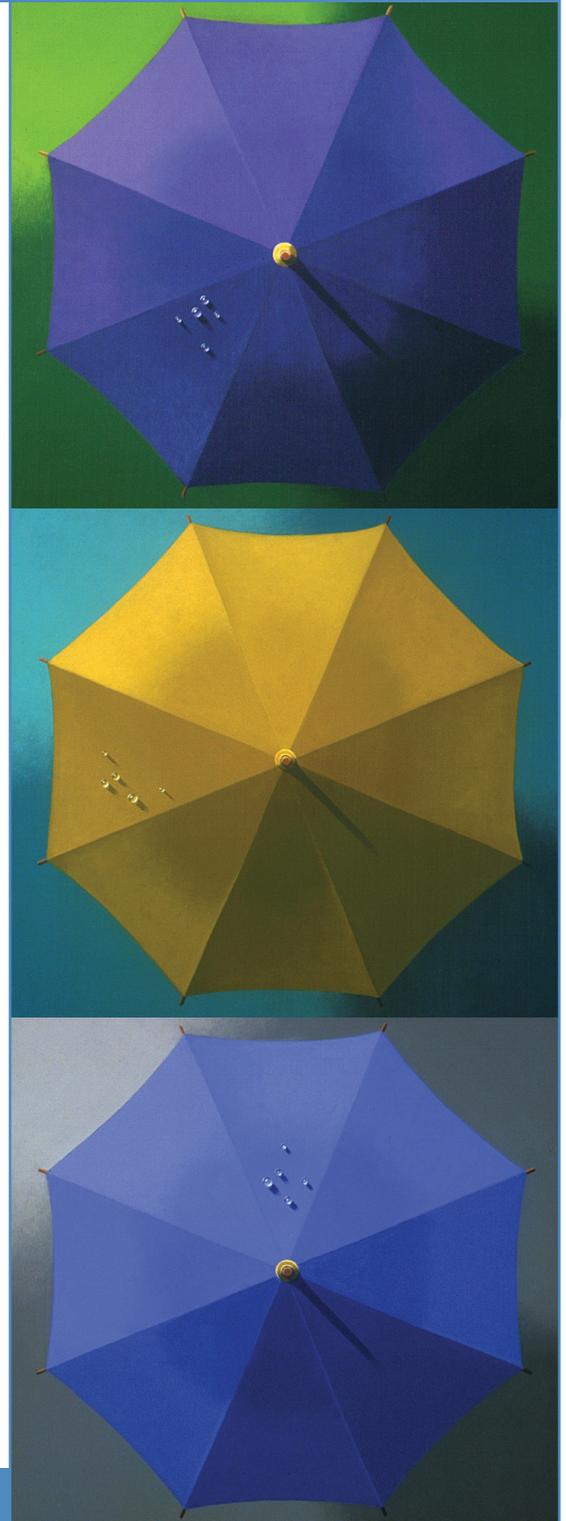
Une version française est aussi disponible sur demande. / A French version is available upon request.

All published Praeventio bulletins are available at the following address: www.farpbq.ca/en/bulletin.html

M^e Judith Guérin
Claims Prevention Lawyer

Assurance
responsabilité
professionnelle

Barreau



This publication is an information tool which has been compiled for the purpose of minimizing the risks of legal claims for professional fault. Its content shall not be considered to be an exhaustive study of the topics covered, legal advice, nor as suggesting minimum standards of professional conduct. Where the context permits, the masculine gender includes women as well as men.

This Loss Prevention Bulletin is published by the Professional Liability Insurance Fund of the Barreau du Québec.