

## Insurance Law

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### Can a Paid Party Be Exempt From Liability Under the *Fire Safety Act*?

In the case of *J. Noël Francœur inc. c. Industrielle Alliance, assurances auto et habitation inc.*, **2020 QCCA 1676**, the Court of Appeal was called upon to interpret certain provisions of the *Fire Safety Act* [FSA], more particularly section 47 which contains an exemption from liability for persons who in certain circumstances assist firefighters during their operations.

The facts in appeal were not contested. Essentially, the firefighters of Ville de Drummondville requested the assistance of Appellant, an excavation contractor, during their firefighting operations. Following a contracting protocol developed by the Ville, the firefighters asked the Appellant to demolish the remains of the damaged building and to remove the debris left at the end of the firefighting operations. While Appellant was carrying out the excavation work, an oil spill occurred contaminating the soil. In appeal liability was not an issue rather, whether Appellant benefited from the exoneration of liability provided for in section 47 FSA. While the Court of Appeal agreed with the trial judge that there was no exemption, it did not agree with all of the reasons.

Based on its analysis of sections 40 and 47 the Court of Québec was of the view that it applies in two situations: when a person offers its assistance, which is

accepted by the firefighters, and when the firefighters ask for assistance where they don't have sufficient personnel available. The Court of Appeal was of the view that this analysis is incompatible with those provisions which read as follows:

40. Firefighters may, in the performance of their duties, enter any premises affected or threatened by fire, a disaster or any other emergency, and any adjacent premises, for the purpose of fighting the fire, responding to the emergency or providing assistance.

Firefighters may also, in the performance of their duties and under the authority of the person directing operations,

[...]

(7) accept or require, where the firefighting personnel available is insufficient, the assistance of any person capable of providing assistance;

[...]

#### IMPORTANT

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47. The members of a fire safety service and the persons whose assistance is expressly accepted or is required under subparagraph 7 of the second paragraph of section 40, are exempt from liability for any damage that may result from their intervention during a fire or during an emergency or disaster situation in respect of which mandatory emergency procedures are set out in the fire safety cover plan pursuant to section 11, unless the damage results from their intentional or gross fault.

The exemption applies to the authority having established the service or having requested the person’s intervention or assistance, except if the authority has failed to adopt a plan for the implementation of the fire safety cover plan as required or if the measures or procedures provided for in the applicable implementation plan and relating to the acts in question were not implemented as established. [The Court’s emphasis]

The Court of Appeal stated that the exemption only applies if firefighters don’t have enough personnel and they must resort to external aid. It also disagreed with the trial judge who concluded that an urgent situation

must exist as a precondition for the application of section 47. Relying on *Compagnie canadienne d’assurances générales Lombard c. St-Jérôme (Ville de)*, **2011 QCCS 1464**) it concluded that a broader interpretation must be given to the word “intervention” to include the work carried out by Appellant. The latter’s services were requested given the insufficient means immediately at the disposal of the firefighters. The notion of urgency is not a precondition for the application of section 47. The Court of Appeal agreed with the trial judge that the services must be provided gratuitously which was not the case. As such, the appeal was dismissed.

The Court of Appeal summed it up by concluding that it is possible for a contractor to assist firefighters without there being a contract of service or without remuneration. In such circumstances, the company may invoke the exoneration provided for in the FSA. The determining factor is not whether it is a company or an individual, rather whether the services requested are gratuitous or are for remuneration.

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