

1984, chapter 57

**AN ACT RESPECTING CERTAINS RIGHTS
OF ACTION OF VICTOR AUCLAIR IN MATTERS
OF MEDICAL OR HOSPITAL RESPONSIBILITY**

Bill 208

Introduced by Mr Reed Scowen, Member for Notre-Dame-de-Grâce

Introduced 16 May 1984

Passage in principle 8 June 1984

Passage 8 June 1984

Assented to 12 June 1984

Coming into force: 12 June 1984

Act amended: None





CHAPTER 57

An Act respecting certain rights of action of Victor Auclair in matters of medical or hospital responsibility

[Assented to 12 June 1984]

Preamble

WHEREAS Victor Auclair alleges that he suffered prejudice and became aware thereof during his hospitalization at the Hôpital Saint-Joseph de Rimouski (renamed « Centre hospitalier régional de Rimouski » in June 1983) from 2 June 1969 to 25 March 1970;

Whereas he alleges that the Centre hospitalier régional de Rimouski and two physicians practising in that hospital centre at the time of his hospitalization are responsible for the prejudice suffered by him;

Whereas in October 1971, as the defending party in an action for payment of professional services brought by one of the said physicians (no. 8110 of the records of the Provincial Court of the district of Rimouski), he constituted himself cross-plaintiff and claimed damages from the physician (no. 35-511 of the records of the Superior Court of the district of Rimouski);

Whereas in July 1972, he instituted an action in damages against the other physician and the Hôpital Saint-Joseph de Rimouski (no. 35-787 of the records of the Superior Court of the district of Rimouski);

Whereas by virtue of an agreement between the attorneys of the parties, the evidence presented in the case bearing record number 35-787 was to have been used in the cross demand bearing record number 35-511;

Whereas the case bearing record number 35-787 was being tried when, on 19 June 1974, the attorneys of the defendants requested that the case be dismissed;

Whereas that action was based on a decision rendered by the Supreme Court of Canada on 12 June 1974 in the case of *Hôpital Notre-Dame v. Patry* in which the court held that in all cases of bodily injury,

including bodily injury resulting from malpractice in a contract of medical or hospital care, the right of action is prescribed by one year;

Whereas on 19 June 1974, the court adjourned the hearing *sine die* and did not reach a verdict on the motion to dismiss the action and, from that date, no proceeding has been filed in record number 35-787, 35-511 or 8110;

Whereas in October 1974, Victor Auclair signed two documents entitled "Quittance" in which he gave full and final release in respect of any right of action against the defending physicians, their "agents, employees, assigns or personnel" owing to the facts alleged in record numbers 35-511 and 35-787;

Whereas the Act to amend certain prescriptions (1974, chapter 80) increased the prescription period applicable in matters of medical or hospital responsibility to three years, and whereas the said Act contained other provisions applicable to any cause of action having originated more than one year before its coming into force having been instituted then interrupted by reason of the application of paragraph 2 of article 2262 of the Civil Code as had been decided by the Supreme Court of Canada in the case of *Hôpital Notre-Dame v. Patry*;

Whereas, however, the said Act did not allow Victor Auclair to obtain the cancellation of the releases signed by him;

Whereas, from 1975, Victor Auclair has made constant efforts to obtain the cancellation of the releases he had signed and to be authorized to continue the proceedings he had instituted;

Whereas in record number 35-787, the action commenced at Rimouski was continued at Montréal and the said record and record numbers 35-511 and 8110 had not been transferred to the office of the Superior Court of the district of Montréal;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

Cancellation
of release

1. The deed entitled "Quittance", signed on 22 October 1974 by Victor Auclair, in which he gave full and final release in respect of any right of action against the cross-plaintiff, his agents, employees, assigns or personnel by reason of the facts alleged in the cross demand bearing number 35-511 of the records of the Superior Court of the district of Rimouski is cancelled.

Cancellation
of release

The deed entitled "Quittance", signed on 31 October 1974 by Victor Auclair, in which he gave full and final release in respect of any right of action against the defending physician, his agents, employees, assigns

or personnel by reason of the facts alleged in the case bearing number 35-787 of the records of the Superior Court of the district of Rimouski is also cancelled.

Actions to
be continued

2. Victor Auclair may continue his actions against the cross-plaintiff in the cross demand bearing number 35-511 of the records of the Superior Court of the district of Rimouski and against both defendants in the case bearing number 35-787 of the records of the Superior Court of the same district.

Action to be
continued

The physician who brought the action bearing number 8110 of the records of the Provincial Court of the district of Rimouski against Victor Auclair may continue his action.

Filing of
proceeding

3. On pain of forfeiture of the right of action, every proceeding contemplated in section 2 is continued by filing in the office of the court a useful proceeding within sixty days from 12 June 1984.

Useful
proceeding

For the purposes of this section, a notice of the intention of continuing the action is deemed to be a useful proceeding.

Pre-trial

4. A pre-trial may be held in respect of an action referred to in section 2. The pre-trial is governed by article 279 of the Code of Civil Procedure.

Calling of
pre-trial

The pre-trial may be called by the judge who presided over the case bearing record number 35-787 or by another judge assigned to resume or continue it and appointed by the chief justice of the Superior Court where the record of the case is referred to the prothonotary having jurisdiction in the district of Montréal or by the senior associate chief justice of the said court where the record of the case remains in the custody of the prothonotary having jurisdiction in the district of Rimouski.

Interest

5. The amounts awarded following an action referred to in section 2 shall bear no interest during the period comprised between 19 June 1974 to the date of filing, in accordance with section 3, of the useful proceeding relating to the action.

Prescription

6. Prescription under article 2495 of the Civil Code begins to run on the date of filing, in accordance with section 3, of the useful proceeding in the case in which the insured is prosecuted.

Coming into
force

7. This Act comes into force on 12 June 1984.