



---

***The City of Montreal had to pay a company for services it provided even though municipal contract rules weren't followed, the Supreme Court has said.***

The City of Montreal was planning a big event in May 2007 to launch its transportation plan. Less than a month before the event, city officials realized they needed help. They contacted Octane, a public relations and communications firm. Mr. Thériault, who worked in the mayor's office, asked Octane to do some work. Octane got another company, PGB, to help. Octane sent the city an estimate for about \$83,000 for the work PGB would do. The event was a success. Octane paid PGB the \$83,000.

Octane sent invoices to the city for its services. The city paid three of them, but refused to pay the one for PGB's work. It said there was no contract between the city and Octane, and Octane made the contract with PGB on its own.

In May 2010, Octane sued the city to get the \$83,000. On top of there being no contract, the city said because the services were for more than \$25,000, by law it had to invite other companies to bid. Because rules were broken, it said the contract wasn't allowed and it didn't have to pay. Octane added Mr. Thériault to the lawsuit, in the hope that he might be ordered to pay if the city wasn't.

The trial judge said there was a contract between Octane and the city. But he said rules were broken. This meant the contract had to be annulled (cancelled and treated like it never existed). Annulling the contract meant Octane should get "restitution of prestations" (the last word pronounced "press-TAY-shuns"). "Restitution" means giving something back when a person has gained something they shouldn't have from someone else. A "prestation" is a payment, either in money or services. So "restitution of prestations" means giving back a payment that shouldn't have been made. It is meant to return everyone to their original positions. Since the city couldn't return the exact services Octane provided, it had to pay their fair value. The trial judge said only the city had to pay, not Mr. Thériault.

The Court of Appeal agreed. It said that since the contract had to be annulled, the parties had to be put back in their original positions. The majority added that even if no contract ever existed, this could still be done under the rules of "receipt of a payment not due." Under these rules, a court can make someone give back a payment if it wasn't owed and was either made by mistake or to prevent something bad from happening. It is another way to get restitution of prestations.

The majority at the Supreme Court said the city had to pay Octane the \$83,000 based on receipt of a payment not due.

A major question was whether the rules on restitution of prestations applied to cities and towns. The city argued that special rules applied to municipal governments, to protect the public interest (and public money). All three levels of court said restitution of prestations applied to cities and towns. The Supreme Court majority said the public interest was protected. This was because courts could decide not to order restitution of prestations (or to order a different amount) if someone would get an advantage that they shouldn't.

The majority said the trial judge made a legal mistake in deciding there was a contract. Since the city didn't follow the proper process to agree to a deal, no contract ever existed under the law. Because no contract existed, it couldn't be annulled. That meant restitution couldn't be ordered on the basis of a null (annulled) contract. But restitution can be based on other things. The majority agreed that it could be based on the city receiving a payment that wasn't due. The "payment" was the events services Octane provided through PGB. Octane provided the services because it believed it had to. It thought (mistakenly) it had a contract with the city. That meant it should get an equal value for its services back.

The majority didn't need to decide whether Mr. Thériault should pay because it said the city had to. But it said officials like him might have to pay in some situations.

This case was decided based on specific rules of Quebec's *Civil Code*. The Supreme Court recently looked at "receipt of a payment not due," in a different context, in [\*Threfall v. Carleton University\*](#).

---

**Breakdown of the decision:** *Majority:* Chief Justice Richard [Wagner](#) and Justice Clément [Gascon](#) dismissed the city's appeal (Justices [Abella](#), [Karakatsanis](#), [Rowe](#), and [Martin](#) agreed) | *Dissenting:* Justices Suzanne [Côté](#) and Russell [Brown](#) said the conditions to recover a payment not due weren't met because Octane knew the relevant rules weren't being followed; they would have allowed the city's appeal and dismissed Octane's appeal (Justice [Moldaver](#) agreed)

**More information (case # 38066 & 38073):** [Decision](#) | Case information ([38066](#), [38073](#)) | [Webcast of hearing](#)

**Lower court rulings** (in French only): [trial](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)

---