



## **MY CHILD IS BLAMED FOR AN ACCIDENT**

**Your child is taking part in a dangerous game with a group of friends. One of them is injured and blames your child for the accident. As a parent, can you be held liable as the guardian and person with parental authority over your child?**

### **THE FACTS**

On August 15, 1997, a group of friends decided to get together and make a homemade bomb. The boys were all between 10 and 11 years old. The bomb was made with several ingredients, including milk and chlorine. After adding the milk to the mixture, it exploded. Four of the five children ended up splattered all over with chlorine, especially the plaintiff's son, who got some in his face and his eyes. That boy identified the defendant's son as the boy primarily responsible for making the bomb. The mother of the injured child therefore sued the defendant in her capacity as the person with parental authority and as guardian of her minor son for the damages sustained. The plaintiff claimed \$2,542.63. The defendant argued that she had not committed any fault in the custody, supervision or education of her child, and she maintained that the only fault committed by her son was that he took part in making the bomb, which was no worse than the fault committed by the other children present.

### **THE ISSUE**

Is the mother responsible for the damage?  
Did her son commit a fault?

### **THE DECISION**

The judge dismissed the claim.

### **THE GROUNDS**

In order to discharge her responsibility as the person with parental authority, the defendant had to prove that she did not commit any fault in the custody, supervision or education of her son. Firstly, the bomb was

made without her knowledge. Her son is a child with normal behaviour: he is polite, obedient and usually respectful of rules. The mother has instilled good values in him and nothing would lead her to believe that her son would take part in making a homemade bomb that afternoon. She was therefore not liable for the damage as the person with parental authority. Secondly, in order to refute her liability as guardian, it must be established that her son had not committed a fault that would render her liable in damages. According to the judge, both young boys were equally credible. None of the other children who participated in making the bomb testified to corroborate the version of either boy involved in the dispute. The plaintiff had the burden of establishing what happened and she did not succeed in proving that on the balance of probabilities the defendant's son was primarily at fault in the unfortunate event. The judge found that it was a «common venture» and that each boy who took part in making the bomb must bear the consequences of his actions.

### **References**

*Lachance-Guérin v. Joyal*, Court of Québec – Civil Division (C.Q.) Québec 200-32-023855-009, May 22, 2001, Judge: Jean Bécu (AZ-50086734, B.E. 2001BE-933)

*Civil Code of Québec*, (S.Q. 1991, chapter 64), sections 1457 and 1459.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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