



# I was injured while playing golf

**While taking part in a golf tournament you were hit in the forehead by a golf ball as you were getting ready to make your tee shot on the 11<sup>th</sup> hole. Can the golfer whose ball hit you be required to compensate you for the damages you suffered?**

## THE FACTS

In May 1999, a woman participated in a “Vegas” style golf tournament where a four-some always plays the team’s best ball. At the start of the 11<sup>th</sup> hole, the woman was hit in the forehead by a ball hit by another golfer teeing-off at the 10<sup>th</sup> hole, more than 120 yards away. A thick forest about 50 feet across, and made up of mature 40-foot trees, separates the two holes. The victim of the incident claims \$66,000 against the golfer as compensation for her damages. The defendant recognizes that he missed his shot but maintains that he exhibited reasonable conduct and cannot be held responsible. He mentions that he did yell ‘fore’ (the accepted term for “heads-up” in the game of golf), as soon as he realized that the ball was headed towards the 11th fairway. He maintains that golfers must accept certain risks connected with playing the game and asserts that if responsibility must be assigned with respect to the accident, it falls on the golf club, given the course’s bad design.

## THE ISSUE

Is the golfer responsible for the woman’s damages?

## THE DECISION

The claim is allowed in part. The Tribunal awards the victim \$41,500 to be paid by the defendant.

## THE GROUNDS

Tribunals do recognize that individuals who play sports must accept certain known risks related to a particular activity. In this case,

the Tribunal does not believe that the woman should have known that at that particular spot, she could be hit in the forehead by a golf ball. A large forest separates the fairways and the probability that a ball could pass through this protective zone is low. Further, the defendant made a mistake. He is an experienced golfer; he can hit the ball a long way, and he knows the course well. In this case, he made a bad shot, sending the ball in the wrong direction. The Tribunal believes that the defendant yelled “fore” much too late and that his manner of play was, to say the least, imprudent. He is responsible even if his act was not intentional. The golf club may also be responsible for a portion of the damages, but the defendant must take action against them for compensation. The claimant has the right to a \$500 payment for expenses related to the accident. Further, the Tribunal awards her \$30,000 for loss of salary since she could not work for a period of time, \$6,000 for the aesthetic hardship she suffered, which is to say the scar over her eyebrow, and finally, \$5,000 for pain, suffering and inconvenience, since she is more prone to headaches and now must take medication.

## References

*Gamache v. Dumont*, Superior Court (SC), Bedford 460-05-000601, November 12, 2001, Judge: J.G. Dubois (J.E. 2001-2191; www.jugements.qc.ca)

*Civil Code of Québec*, (S.Q. 1991, c. 64), article 1457.

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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