

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation:** Immeubles Jacques Robitaille inc. v. Québec (City),2014 SCC 34, [2014] 1 S.C.R. 784 | **Date:** 20140502**Docket:** 35295 |

Between:

Immeubles Jacques Robitaille Inc.

Appellant

and

City of Québec

Respondent

**Official English Translation**

**Coram:** McLachlin C.J. and LeBel, Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**(paras. 1 to 39) | Wagner J. (McLachlin C.J. and LeBel, Abella, Rothstein, Moldaver and Karakatsanis JJ. concurring) |

immeubles jacques robitaille *v.* québec (city), 2014 SCC 34, [2014] 1 S.C.R. 784

Immeubles Jacques Robitaille inc. Appellant

v.

City of Québec Respondent

**Indexed as:** Immeubles Jacques Robitaille inc. ***v.*** Québec (City)

2014 SCC 34

File No.: 35295.

2014: February 20; 2014: May 2.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for quebec

 *Municipal law — By-laws — Offences — Estoppel — Operation of commercial parking lot by company in zone where such use prohibited — Statement of offence issued against company for non-conforming use under zoning by-law — Company admitting to non-conforming use but raising doctrine of estoppel — Circumstances in which defendant can rely on doctrine of estoppel to avoid penal liability — Cities and Towns Act, CQLR, c. C-19, s. 576 — Act respecting land use planning and development, CQLR, c. A-19.1, s. 227.*

 The City issued a statement of offence against the company IJR for operating a commercial parking lot on its property, a use that violated the applicable zoning by-law in the sector in question. The company admitted to the non-conforming use but raised the doctrine of promissory estoppel. In support of its argument, the company relied on a number of actions of the City, including: the wording of a clause in a contract of sale entered into with the City, which provided for the preservation of the company’s existing rights; the nature of certain work done by the City; compensation paid to the company by the City for loss of parking income due to freeway construction work next to the property; the collection by the City of municipal taxes, at a non-residential rate, on the property in question; and the installation of a sign on the public road to indicate the existence of the public parking lot. At trial, the company was convicted of violating the zoning by-law. The company appealed to the Superior Court, which acquitted it, but the Court of Appeal subsequently restored the conviction.

 *Held*: The appeal should be dismissed.

 In the public law context, promissory estoppel requires proof of a clear and unambiguous promise made to a citizen by a public authority in order to induce the citizen to perform certain acts. In addition, the citizen must have relied on the promise and acted on it by changing his or her conduct. However, the doctrine of estoppel must yield to an overriding public interest and may not be invoked to prevent the application of an express legislative provision. The public interest is taken into account in adopting a zoning by-law, and the by-law’s penal provisions ensure that it is complied with. The penal recourse exists to enable a municipality to enforce zoning by-laws, which are adopted to ensure harmonious development of the urban area. In this case, the by-law is clear, and it creates a strict liability offence on grounds related to the public interest and does not authorize the municipality to consent to a non-conforming use. As a result, the doctrine of estoppel is of no assistance to the company.

 Furthermore, the duality of recourses available to municipalities for the enforcement of zoning by-laws — the penal recourse and the civil recourse, including the one provided for in s. 227 of the *Act respecting land use planning and development* — is not a source of injustice. Each of the recourses is clearly defined, and they have different purposes. Moreover, neither of them results in *res judicata* as regards the other, and the mere possibility of a civil proceeding under s. 227 being unsuccessful does not raise a reasonable doubt as to the defendant’s guilt in a penal proceeding.

**Cases Cited**

 **Referred to:** *Ville de Montréal v. Chapdelaine*, [2003] R.J.Q. 1417; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281; *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50; *St. Ann’s Island Shooting and Fishing Club Ltd. v. The King*, [1950] S.C.R. 211; *Re Multi-Malls Inc. and Minister of Transportation and Communications* (1976), 14 O.R. (2d) 49; *Sous-ministre du Revenu du Québec v. Transport Lessard (1976) Ltée*, [1985] R.D.J. 502; *Aurchem Exploration Ltd. v. Canada* (1992), 91 D.L.R. (4th) 710; *Kenora (Town) Hydro Electric Commission v. Vacationland Dairy Co-operative Ltd.*, [1994] 1 S.C.R. 80; *Mascouche (Ville) v. Thiffault*, 1996 CanLII 6503; *Laurentide Motels Ltd. v. Beauport (City)*, [1989] 1 S.C.R. 705; *Loblaw Québec Ltée v. Alimentation Gérard Villeneuve (1998) inc.*, [2000] R.J.Q. 2498; *City of Verdun v. Sun Oil Co.*, [1952] 1 S.C.R. 222; *Sainte-Barbe (Municipalité de la paroisse) v. Cadieux*, 2004 CanLII 20665; *Québec (Ville de) v. Société immobilière du Québec*, 2013 QCCA 305 (CanLII); *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299.

**Statutes and Regulations Cited**

*Act respecting land use planning and development*, CQLR, c. A-19.1, arts. 145.1, 227.

*Cities and Towns Act*, CQLR, c. C-19, s. 576.

*Civil Code of Québec*, art. 1376.

*Règlement de l’arrondissement La Cité sur le zonage et l’urbanisme*, Règlement VQZ-3, arts. 40, 83, 359.

*Règlement no 2613*.

**Authors Cited**

Giroux, Lorne, et Isabelle Chouinard. “Les pouvoirs municipaux en matière d’urbanisme”, dans Collection de droit, vol. 7, *Droit public et administratif*. Cowansville, Qué.: Yvon Blais, 2013-2014, 439.

Hétu, Jean, et Yvon Duplessis. *Droit Municipal: Principes généraux et contentieux*, vol. 1, 2e éd. Brossard, Qué.: CCH, 2002 (feuilles mobiles mises à jour octobre 2013).

LeChasseur, Marc-André. *Le zonage en droit québécois*. Montréal: Wilson & Lafleur, 2006.

Villaggi, Jean-Pierre. *L’Administration publique québécoise et le processus décisionnel: Des pouvoirs au contrôle administratif et judiciaire*. Cowansville, Qué.: Yvon Blais, 2005.

 APPEAL from a judgment of the Quebec Court of Appeal (Rochette and Doyon JJ.A. and Viens J. (*ad hoc*)), 2013 QCCA 219, 6 M.P.L.R. (5th) 36, SOQUIJ AZ-50934762, [2013] J.Q. no 840 (QL), 2013 CarswellQue 835, setting aside a decision of Pronovost J., 2012 QCCS 806, SOQUIJ AZ-50836989, [2012] J.Q. no 1839 (QL), 2012 CarswellQue 1924, which set aside a decision of Judge Gaumond, 2011 QCCM 167, SOQUIJ AZ-50759379, [2011] J.Q. no 6633 (QL), 2011 CarswellQue 6499. Appeal dismissed.

 David Bernier and William Noonan, for the appellant.

 Isabelle Chouinard, *Marc Desrosiers* and *Kathy Lévesque*, for the respondent.

 English version of the judgment of the Court delivered by

1. Wagner J. — The appellant, Les Immeubles Jacques Robitaille inc., is appealing a decision of the Quebec Court of Appeal dated February 7, 2013 to restore a conviction entered by the Municipal Court of Québec, which had ordered the appellant to pay a $200 fine for violating a zoning by-law. Since 1998, the appellant has owned a piece of property on which it operates a commercial parking lot. This is a non-conforming use under the zoning by-law that has been in force since 1979. It would have been possible for the appellant to avoid penal liability by proving the existence of acquired rights, but it has not succeeded in doing so.
2. The appeal relates exclusively to the circumstances in which the doctrine of estoppel can be relied on in order to avoid penal liability.
3. For the reasons that follow, I would dismiss the appeal.
4. Estoppel is of no assistance to a litigant who wishes to avoid the application of a clear legislative provision, including, as in the instant case, one that establishes a strict liability regulatory offence. Moreover, the possibility of a court’s refusing to order the cessation of a non-conforming use in a civil proceeding under the *Act respecting land use planning and development*, CQLR, c. A-19.1, cannot on its own constitute a reasonable doubt for the purpose of defending against a charge with respect to a strict liability penal offence. Finally, the facts of this case support neither the due diligence defence nor the defence of officially induced error.
5. Facts and Judicial History
6. The appellant owns property located at what would be 800 to 816 Côte d’Abraham in the city of Québec, which it purchased on December 3, 1998. A commercial parking lot has been operated on the property since 1995, and it is managed by a mandatary specializing in such work.
7. Since the by-law entitled *Règlement no 2613* came into force on June 18, 1979, the operation of a parking lot for commercial purposes on the property in question has been a non-conforming use under the zoning rules that apply in the sector. The appellant admits at the outset that its use of the property is prohibited in the zone in which the property is located (A.F., at para. 26).
8. In October 2001, the respondent paid the appellant $3,240 in compensation for having to relocate certain parking spaces because of freeway construction work next to the property. In July 2002, the appellant sold the respondent a piece of the property. The deed of sale provided for the [translation] “preservation of the vendor’s present rights” and the construction, at the respondent’s expense, of stairs and of a vehicle entrance to provide access to the parking lot on the remainder of the property still owned by the appellant. The respondent also collected municipal taxes, at a non-residential rate, on the property in question. Finally, the respondent installed signs on the public road to indicate that there was a parking lot on the appellant’s property. These, in summary, are the actions of the municipality on which the appellant relies in support of its argument based on the doctrine of estoppel.
9. In July 2008, a statement of offence was issued against the appellant for permitting or tolerating a non-conforming use and thereby contravening arts. 40, 83 and 359 of the *Règlement de l’arrondissement La Cité sur le zonage et l’urbanisme*, City of Québec By-law VQZ-3 (“By-law”). The offence in question is one of strict liability, and the minimum fine for a first offence is $200. The appellant pleaded not guilty, and a penal proceeding was instituted against it in the Municipal Court under s. 576 of the *Cities and Towns Act*, CQLR, c. C-19:

 **576.** Penal proceedings for an offence under a provision of this Act, the charter, a by-law, a resolution or an order of the council may be instituted by the municipality.

1. The respondent could also have proceeded under s. 227 of the *Act respecting land use planning and development* by requesting that the Superior Court order the cessation of the non-conforming use:

 **227.** The Superior Court may, at the request of the Attorney General, the responsible body, the municipality or any other interested person, order the cessation of

 (1) a use of land or a structure incompatible with

 (*a*) a zoning, subdivision or building by-law . . . .

1. In the Municipal Court, the appellant admitted to the non-conforming use but invoked the existence of acquired rights. It called as a witness the treasurer of the Congrégation de Saint-Vincent de Paul, who had frequented an establishment located on the property in question. The treasurer stated that he had consulted some colleagues, who had told him that parking spaces had been rented somewhat informally since 1970 to people who worked in a building on the other side of the street. In a letter dated October 21, 2009 to the parking lot manager, the treasurer wrote that the Congrégation had offered [translation] “occasional” parking since the early 1970s.
2. This was the only evidence obtained by the appellant to support its arguments concerning the use of the property as a commercial parking lot before 1979.
3. The Municipal Court judge found that these observations constituted hearsay and that they indicated an accessory use (2011 QCCM 167 (CanLII)). He rejected the defence of acquired rights on the basis that there was no evidence establishing that the operation of a parking lot had been the principal use prior to the adoption of the zoning by-law in 1979. Moreover, the judge held, the fact that the respondent had tolerated the use over the years could not be a basis for a finding of acquired rights. Because the elements of the offence had been established, the judge convicted the appellant of the offence with which it was charged and fined it $200.
4. The appellant appealed its conviction to the Quebec Superior Court (2012 QCCS 806 (CanLII)), where it once again unsuccessfully raised the defence of acquired rights. It also raised the doctrine of estoppel, relying on the statement of Rochon J.A. of the Quebec Court of Appeal in *Ville de Montréal v. Chapdelaine*, [2003] R.J.Q. 1417 (“*Chapdelaine*”), that in the context of the proceeding under s. 227 of the *Act respecting land use planning and development*, there is a certain discretion that arises out of the doctrine of estoppel. In support of its arguments, the appellant also relied on the wording of the clause in the contract of sale entered into with the respondent on July 2, 2002, which provided for the [translation] “preservation of . . . present rights”, and it stressed the nature of the work done by the respondent (construction of stairs and of a vehicle entrance to provide access to the parking lot), the compensation paid by the latter for loss of parking income and the installation of a sign on the public road to indicate the existence of the public parking lot.
5. The Superior Court judge who heard the case acquitted the appellant. He expressed the opinion that the respondent’s unilateral decision to institute a penal proceeding rather than the proceeding under s. 227 of the *Act respecting land use planning and development* had made it impossible for the appellant to plead estoppel, and found that there was a reasonable doubt in the appellant’s favour. It would have been open to the Superior Court, in the context of a request under s. 227, to deny the request by exercising its discretion in such matters.
6. The Court of Appeal allowed the respondent’s appeal and restored the conviction (2013 QCCA 219, 6 M.P.L.R. (5th) 36). It found that the Superior Court judge had erred in law, as he had had no choice but to convict the respondent once he was satisfied that it had committed an offence and could not validly claim to have acquired rights. The mere fact that a request for an order to cease the non-conforming use could have been made under s. 227, together with the accompanying risk that the request might be denied, could not raise a reasonable doubt as to the appellant’s penal liability.
7. Issues
8. This appeal raises the following questions:

A. Can the doctrine of estoppel be relied on in a penal proceeding instituted to enforce a municipal zoning by-law?

B. Do the respondent’s actions ground a defence that is available in the penal law context?

1. Analysis
	1. Can the Doctrine of Estoppel Be Relied on in a Penal Proceeding Instituted to Enforce a Municipal Zoning By-law?
2. According to the appellant, the doctrine of estoppel can be raised as a defence in a penal proceeding instituted to enforce a zoning by-law. The reason for this is that the Superior Court has a certain discretion (arising, in the appellant’s view, out of the doctrine of estoppel) when considering a request under s. 227, and the appellant argues that that court should also have a similar discretion in a penal proceeding. In the appellant’s opinion, it would be unfair not to apply the doctrine of estoppel in such a case, since a penal proceeding is less advantageous to it when compared with a civil proceeding. According to the appellant, a civil proceeding could, in exceptional circumstances, be decided in its favour despite a non-conforming use, which could result in conflicting judgments should it be convicted in a penal proceeding. The appellant submits that the respondent could exert economic pressure on it by fining it repeatedly even though the civil proceeding was decided in the appellant’s favour.
3. The respondent argues that a party cannot raise the doctrine of estoppel in the face of a clear legislative provision, regardless of whether the recourse is civil or penal in nature. It also submits that the application of this doctrine must be considered in light of the other principles of administrative law.
	* 1. Estoppel in the Context of a Strict Liability Offence
4. In the public law context, promissory estoppel requires proof of a clear and unambiguous promise made to a citizen by a public authority in order to induce the citizen to perform certain acts. In addition, the citizen must have relied on the promise and acted on it by changing his or her conduct (*Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281 (“*Mount Sinai*”), at paras. 45-46, quoting *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50; J.-P. Villaggi, *L’Administration publique québécoise et le processus décisionnel: Des pouvoirs au contrôle administratif et judiciaire* (2005), at p. 329).
5. However, the doctrine of estoppel must yield in the public law context to an overriding public interest and may not be invoked to prevent the application of an express legislative provision (*Mount Sinai*, at para. 47; *St. Ann’s Island Shooting and Fishing Club Ltd. v. The King*, [1950] S.C.R. 211, at p. 220).
6. Furthermore, although the doctrine of estoppel has been applied against public authorities in the past, the promises made by the representatives of the authorities in those cases were not unlawful, or were actually consistent with a statutory discretion (*Re Multi-Malls Inc. and Minister of Transportation and Communications* (1976), 14 O.R. (2d) 49 (C.A.); *Sous-ministre du Revenu du Québec v. Transport Lessard (1976) Ltée*, [1985] R.D.J. 502 (C.A.); *Aurchem Exploration Ltd. v. Canada* (1992), 91 D.L.R. (4th) 710; *Kenora (Town) Hydro Electric Commission v. Vacationland Dairy Co-operative Ltd.*, [1994] 1 S.C.R. 80).
7. As Binnie J. stated in *Mount Sinai*, “[p]ublic law estoppel clearly requires an appreciation of the legislative intent embodied in the power whose exercise is sought to be estopped” (para. 47). In the case at bar, the appellant argues that owing to estoppel, it was not open to the respondent to issue the statement of offence against it under the zoning by-law (A.F., at para. 85). The offence in question in the instant case results from the combined effect of arts. 40, 83 and 359 of the By-law:

 [translation]

 **359.** [Offences]

Every person who contravenes the provisions of this by-law is guilty of an offence and liable on conviction:

. . .

Where the offender is a legal person, the sanctions to be imposed are as follows:

(1) for a first offence, a minimum fine of $200 and costs . . . .

1. The penal recourse exists to enable a municipality to enforce zoning by-laws, which are adopted to ensure harmonious development of the urban area (M.-A. LeChasseur, *Le zonage en droit québécois* (2006), at p. 1). Moreover, [translation] “zoning is established for the benefit of each of the various owners in a zone, and unlawful use by one owner is generally at the expense of the rights of the others” (*Mascouche (Ville) v. Thiffault*, 1996 CanLII 6503 (Que. C.A.), at p. 4). In my opinion, the public interest must be taken into account in adopting a zoning by-law, and the by-law’s penal provisions ensure that it is complied with. Given how explicit this provision is, the doctrine of estoppel is of no assistance to the appellant.
2. The application of public law promissory estoppel could force a public authority to exercise a discretion in a particular way (Villaggi, at p. 329). The adoption or amendment of a municipal by-law generally falls within the discretion of the municipal council (J. Hétu and Y. Duplessis, *Droit Municipal: Principes généraux et contentieux* (2nd ed. (loose-leaf)), vol. 1, at para. 11.25; *Laurentide Motels Ltd. v. Beauport (City)*, [1989] 1 S.C.R. 705, at p. 722). However, the same is not true of ensuring compliance with municipal by-laws: [translation] “Although it is generally agreed that municipal authorities have a broad discretion in exercising their power to adopt by-laws, the situation is quite different when it comes to the enforcement of by-laws: at that stage, any discretion must give way to the principle of equality before the law” (*Loblaw Québec Ltée v. Alimentation Gérard Villeneuve (1998) inc.*, [2000] R.J.Q. 2498 (C.A.), at para. 79, citing *City of Verdun v. Sun Oil Co.*, [1952] 1 S.C.R. 222).
3. Although a municipality is not under an obligation to do everything it can to ensure compliance with its by-laws and cannot be compelled to enforce them (s. 576 of the *Cities and Towns Act*; Hétu and Duplessis, at para. 8.203), neither can it grant citizens a right to non-conforming uses on its territory. The authorization by a municipal employee or elected official of a use that violates a provision of a by-law cannot create rights or oust the applicable standards set out in the by-law (Hétu and Duplessis, at para. 8.207; *Sainte-Barbe (Municipalité de la paroisse) v. Cadieux*, 2004 CanLII 20665 (Que. Sup. Ct.), at para. 66).
4. Insofar as the appellant in the case at bar is arguing that the substance of the promise was an authorization to violate the zoning by-law (a “promise” that flowed from the respondent’s actions or from a tolerance on its part), the only possible conclusion is that such a promise cannot lead to the application of public law estoppel. Since a municipality cannot deviate from its zoning by-laws or authorize such a deviation (with the exception of minor exemptions under s. 145.1 of the *Act respecting land use planning and development*), it cannot be forced to do so by means of the doctrine of estoppel.
5. As the Quebec Court of Appeal rightly concluded in *Québec (Ville de) v. Société immobilière du Québec*, 2013 QCCA 305 (CanLII), at paras. 61-62:

[translation] The effect of “promissory estoppel” is to prevent an authority from deviating from its undertakings. However, there is an important qualification to this doctrine, namely that the authority in question may not make undertakings that are contrary to law or to the public interest. This is what the Supreme Court held in *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)* . . . .

In my opinion, therefore, the doctrine of “promissory estoppel” would not have been available if no exception had been applicable. If a citizen is subject to the *By-law*, a municipality must [require that it be complied with].

1. Analogies with other penal offence schemes are not without relevance in this regard. For example, a public authority cannot be precluded from issuing a statement of offence against an individual who allegedly contravened the highway safety code on the basis that the authority has never done so before or that some of its representatives suggested to the individual that his or her conduct was acceptable. Strict liability regulatory offences are adopted in the public interest (*R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299), are specific and have the force of law — including against the public authority that adopted and enforces them. The doctrine of public law estoppel cannot prevent their being applied.
2. In short, the doctrine of estoppel cannot be relied on as a defence in the case of a regulatory offence. It is well established that this doctrine cannot be raised in a public law context in the face of a clear legislative provision. In the instant case, the by-law is clear, and it creates a strict liability offence on grounds related to the public interest and does not authorize the municipality to consent to a non-conforming use.
3. Nor, it should be added — although it is not necessary to do so to decide this appeal, which arises in a penal law context — can estoppel be raised as a defence in a civil proceeding relating to an express provision of a by-law in which a non-conforming use is at issue. The principle that estoppel cannot be raised in the face of an express legislative provision is valid both in the penal law context and in that of a civil proceeding.
	* 1. Duality of Recourses Established by the Legislature
4. The legislature has given municipalities two types of recourses for enforcing zoning by-laws, one that is penal in nature and another that is civil in nature. A municipality is free either to issue a statement of offence and institute a penal proceeding in order to sanction a use that contravenes its planning by-laws, or to bring a civil proceeding, such as the one provided for in s. 227 of the *Act respecting land use planning and development*. Section 227 provides that the Superior Court may order the cessation of a use of land or a structure that is incompatible with a zoning by-law. It also authorizes the court to order, at the owner’s expense, the demolition of the structure or the carrying out of works to bring the use of the structure into conformity with the by-law.
5. This duality of recourses is a legislative choice that must be preserved and that is not a source of injustice. Each of the recourses is clearly defined, and they have different purposes. Whereas the purpose of the penal proceeding is essentially to punish past conduct by means of a fine and to deter the non-conforming use in the future, the civil proceeding can result in an order that a particular use cease for the future, although it is more cumbersome, complex and costly (L. Giroux and I. Chouinard, “Les pouvoirs municipaux en matière d’urbanisme”, in Collection de droit, vol. 7, *Droit public et administratif* (2013-14), 439). Instituting the penal proceeding enables the municipality to raise the question of acquired rights before initiating the civil proceeding, which could have serious consequences for the owner if the court were to order the cessation of the use of the structure, or the carrying out of works at the owner’s expense in order to bring the use of the structure into conformity with a by-law.
6. As I mentioned above, the two recourses have different purposes. Moreover, as the Quebec Court of Appeal properly noted in the instant case, neither of them results in *res judicata* as regards the other. Although a municipality could theoretically persist in issuing penal statements of offence after the Superior Court has refused to order the cessation of a non-conforming use in a civil proceeding, the doctrine of abuse of process would be available to remedy such abuse, which, it bears mentioning, nevertheless remains highly hypothetical. I should also point out that there must be exceptional circumstances before a court will refuse to order the cessation of a non-conforming use under s. 227 of the *Act respecting land use planning and development* (*Chapdelaine*).
7. Furthermore, the Court of Appeal was right to conclude that the mere possibility of the Superior Court’s refusing to order the cessation of a non-conforming use in a proceeding under s. 227 of the *Act respecting land use planning and development* does not raise a reasonable doubt as to the person’s guilt in a different proceeding in a penal law context. The elements of a strict liability offence in the latter context do not cease to exist simply because the court exercised its discretion judicially in the civil proceeding.
	1. Do the Respondent’s Actions Ground a Defence That Is Available in the Penal Law Context?
8. It is important to recall that this case concerns a strict liability offence (Hétu and Duplessis, at para. 8.220). Nothing in the words of art. 359 of the By-law indicates that the legislature intended to create either an absolute liability offence or a *mens rea* offence. This means that it is open to a defendant to raise a due diligence defence and to try to prove that all possible and reasonable precautions were taken to avoid committing the offence. There is no evidence with respect to such precautions in the case at bar, however.
9. It was possible for the appellant to avoid penal liability by proving the existence of acquired rights. However, both the Municipal Court judge and the Superior Court judge found that the appellant had not discharged its burden of proof in this regard and therefore could not rely on this defence. The Court of Appeal was right not to intervene on this point. The evidence adduced by the appellant concerning the use of the parking lot before June 18, 1979 was not sufficient to establish the existence of acquired rights.
10. Nor could the appellant use the respondent’s tolerance as a basis for a defence of error induced by the actions or words of the respondent’s representatives, that is, of officially induced error.
11. Finally, it should be borne in mind that, if the respondent’s actions caused injury to the appellant, it would always have been open to the appellant to bring an action in damages (since municipalities are, by virtue of art. 1376 of the *Civil Code of Québec*, subject to the rules with respect to obligations). For example, a municipality may be liable if one of its employees has provided an incorrect interpretation of its by-laws (Hétu and Duplessis, at para. 11.30). Although I will not decide whether the facts of this case might have lent themselves to such an action, I would note that the appellant was not without recourse.
12. For these reasons, I would dismiss the appeal with costs.

 *Appeal dismissed with costs.*

 Solicitors for the appellant: Hickson Noonan, Québec.

 Solicitors for the respondent: Giasson et Associés, Québec.