

**SUPREME COURT OF CANADA**

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| **Citation:** Montréal (Ville) *v.* Lonardi, 2018 SCC 29, [2018] 1 S.C.R. 104 | **Appeal Heard:** October 3, 2017  **Judgment Rendered:** June 8, 2018  **Docket:** 37184 |

Between:

**Ville de Montréal**

Appellant

and

**Davide Lonardi, Simon Côté Béliveau,**

**Jonathan Franco and Jean-François Hunter**

Respondents

**And Between:**

**Ville de Montréal**

Appellant

and

**Ali Rasouli**

Respondent

**And Between:**

**Ville de Montréal**

Appellant

and

M**ohamed Moudrika, Jean-Philippe Forest Munguia**

**and Jonathan Beaudin Naudi**

Respondents

**And Between:**

**Ville de Montréal**

Appellant

and

**Éric Primeau, Steve Chaperon, Illiasse Iden,**

**Johnny Davin, Natna Nega, Nathan Bradshaw**

**and Maxime Favreau Courtemanche**

Respondents

**And Between:**

**Ville de Montréal**

Appellant

and

**Natna Nega**

Respondent

**And Between:**

**Ville de Montréal**

Appellant

and

**Benjamin Kinal, Jonathan Beaudin Naudi,**

**Simon Légaré and Daniel Daoust**

Respondents

**Official English Translation**

**Coram:** McLachlin C.J. and Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 92) | Gascon J. (McLachlin C.J. and Karakatsanis, Wagner, Brown and Rowe JJ. concurring) |
| **Dissenting Reasons:**  (paras. 93 to 139) | Côté J. |

Montréal (Ville) *v.* Lonardi, 2018 SCC 29, [2018] 1 S.C.R. 104

Ville de Montréal Appellant

*v.*

**Davide Lonardi,**

**Simon Côté Béliveau,**

**Jonathan Franco and**

Jean‑François Hunter Respondents

‑ and ‑

Ville de Montréal Appellant

*v.*

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‑ and ‑

Ville de Montréal Appellant

*v.*

**Mohamed Moudrika,**

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**Jonathan Beaudin Naudi** Respondents

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**Indexed as:** Montréal (Ville) ***v.*** Lonardi

2018 SCC 29

File No.: 37184.

2017: October 3; 2018: June 8.

Present: McLachlin C.J. and Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

on appeal from the court of appeal for quebec

*Civil liability — Apportionment of liability — Damages — Solidarity — Civil action being instituted against rioters for damage done to patrol cars — Whether rioters are solidarily liable for whole of damage done to patrol car during riot because they jointly took part in wrongful act within meaning of art. 1480 of Civil Code of Québec — Whether rioters committed common fault or contributory faults as result of which they are solidarily liable under art. 1526 of Civil Code of Québec — Whether rioters are liable in solidum — Civil Code of Québec, arts. 1480, 1526.*

On the night of April 21, 2008, the Montréal Canadiens were playing the Boston Bruins in the playoffs. When the Canadiens won the game and eliminated their archrivals, the jubilant crowd went out to celebrate downtown. The spontaneous gathering was initially festive, but turned into a riot as the evening progressed. Numerous acts of mischief were committed over a period of more than three hours. These included the vandalizing of 15 patrol cars belonging to the police department of Ville de Montréal (“City”). Nine of the cars were total losses; the other six required major repairs.

The police investigation, helped in particular by photographs and videos, led to the identification and arrest of a number of rioters, including about 20 people who had damaged or destroyed several of the City’s patrol cars. The City decided to institute one civil action per vehicle, with the exception of one action relating to two vehicles that had been damaged by two individuals acting in concert. In each action, it grouped together all the identified rioters who had done damage to the vehicle or vehicles in question. It sought to have the defendants in each case held solidarily liable for the whole of the damage done to the specific patrol car and to its equipment, regardless of the nature or seriousness of the wrongful act each of them had committed.

In the six cases at issue in this appeal, the Court of Québec ordered each defendant to make reparation for the specific damage caused by his own acts. It declined to find the defendants in each action solidarily liable, with the exception of two defendants who had acted together to set fire to a patrol car. It also ordered each defendant to pay punitive damages. In a unanimous decision, the Court of Appeal held that the facts of these cases did not support the application of arts. 1480 and 1526 of the *Civil Code of Québec*, which provide for solidarity in cases of extracontractual fault.

*Held* (Côté J. dissenting): The appeal should be dismissed.

*Per* McLachlin C.J. and Karakatsanis, Wagner, Gascon, Brown and Rowe JJ.: In Quebec civil law, solidarity is not presumed. In cases of extracontractual fault, solidarity exists only where it is provided for by law. Articles 1480 and 1526 of the *Code* set out the circumstances in which there is a solidary obligation to make reparation for injury caused by an extracontractual fault.

In the case of art. 1480 *C.C.Q.*, two conditions must be met for it to apply. First, it must be impossible to determine which person actually caused the injury. Second, there must have been either “join[t participation] in a wrongful act which has resulted in injury” or “separate faults each of which may have caused the injury”. These two conditions that must be met for art. 1480 *C.C.Q.* to apply are cumulative.

The words “in either case” in art. 1480 *C.C.Q.* indicate that the article imposes solidarity only where it is impossible to determine who committed the fault that caused the injury and that this is true in both of the situations in which this article applies: that of joint participation in a wrongful act and that of separate faults. This is the interpretation that is most consistent with the words of the article as well as with the scheme and object of the statute and the intention of the legislature. It is consistent with the scheme of our civil liability system to interpret art. 1480 *C.C.Q.* such that, in every case, solidarity can be imposed only if it is impossible to identify the person who committed the fault that caused the injury. To limit this outcome to cases involving separate faults, while excluding those involving joint participation in wrongful acts from the scope of this provision, would place the provision in conflict with the central role of causation in the scheme of extracontractual liability established by the *Code*.

It was in the name of fairness that the legislature chose not to leave a victim without recourse where two or more persons have jointly taken part in a wrongful act or have committed separate faults and it is impossible to determine who committed the fault that actually caused the injury. Article 1480 *C.C.Q.* thus has the effect, where the conditions for its application are met, of shifting the burden of proof with respect to causation. But it does not justify holding a defendant liable for damage that is known not to have been caused by his or her fault on the basis that the victim cannot identify the person who caused the damage in question.

Article 1480 *C.C.Q.* concerns, in part, joint participation in wrongful acts. However, although the current legislative provisions governing extracontractual solidarity do codify the pre-existing case law, it would be wrong to say that all the decisions in which the term “common venture” was used would now automatically fall within the scope of art. 1480 *C.C.Q.* It is under art. 1526 *C.C.Q.*, not under art. 1480 *C.C.Q.*, that solidary liability can now be imposed on those who commit common or contributory faults where the evidence shows which person committed the fault that actually caused the injury, for which the courts formerly sometimes used the expression “common venture”.

The existence of a common intention is required for the concept of joint participation in a wrongful act in the context of the new scheme of art. 1480 *C.C.Q.*, just as it was for the common venture concept in that of the former *Code*. This intention may be tacit, but at the very least, the defendant must have been aware of the acts or omissions that constituted the wrongful act and must have intended to take part in them. In determining whether there was a common intention, a court should avoid defining the wrongful act so broadly that the common intention no longer bears any relation to reality. The specific circumstances of the cases at issue in this appeal do not show that the rioters acted with a common intention, either express or tacit. There is no doubt that groups formed in the course of the riot. But the trial judge held in analyzing the evidence that this was not true where the respondents were concerned. With a few exceptions, which the judge rightly dealt with differently, the respondents did not know and were never in contact with one another, and their acts were committed at different times during the riot without the knowledge of the other respondents. These are findings of fact that are not open to review on appeal unless a palpable and overriding error was made in making them. They are valid regardless of whether the wrongful act was participation in the riot or participation in the total destruction of a vehicle.

It follows that, for two compelling reasons, the respondents cannot be found solidarily liable under art. 1480 *C.C.Q.* First, the trial judge found that the evidence made it possible to link each of the faults committed by the respondents to a specific injury. This finding is amply supported by the evidence that was considered in each case. Second, the faults of the respondents involved in each of the actions instituted by the City did not constitute joint participation in a wrongful act given that the respondents in question did not have a common intention.

As to art. 1526 *C.C.Q.*, for it to apply, the fault of two or more persons must have caused a single injury. Given that the trial judge made no palpable and overriding error that would taint his finding that a single injury did not result from the rioters’ separate faults, there is no reason to intervene. The trial judge found no causal connection between each respondent’s participation in the riot and the total destruction of the patrol cars. Rather, he found that there were many distinct and identifiable injuries, each caused by a fault that was just as distinct and identifiable, and that he linked to a particular rioter. At most, the rioters’ faults contributed to the context in which the patrol cars were subsequently destroyed. While it is true that a fault that is not causally connected to the damage in question cannot ground an obligation to make reparation for the injury, it can nonetheless, as in these cases, form the basis for an award of punitive damages. However, the trial judge’s remarks in this regard cannot be taken out of context and used to contradict his clear finding that there was no causal connection between each rioter’s faults and the whole of the injury that was suffered.

Finally, neither the academic literature nor the case law includes cases in which the principles related to the obligation *in solidum* have been applied to faults that are, as in the instant cases, exclusively extracontractual. Unlike in cases involving separate contractual faults or faults that are both contractual and extracontractual, the solidarity of debtors who have committed extracontractual faults is governed by a complete legislative framework set out in arts. 1480 and 1526 *C.C.Q.* It is not appropriate to circumvent the comprehensive legislative scheme governing solidarity in cases of extracontractual fault and to seek to obtain similar effects by way of liability *in solidum*.

*Per* Côté J. (dissenting): Rioters who act together to do damage to property must be held solidarily liable for reparation of the whole of the injury suffered by the victim in respect of that property. In the circumstances, the conduct of all the individuals who took part in the destruction of a given patrol car constituted joint participation in a wrongful act. Their conduct ultimately led to the total loss of the vehicle, and these individuals are therefore solidarily liable for reparation of that injury under art. 1480 *C.C.Q.*

Article 1480 is new law. It codified the case law from before the *Civil Code of Québec* came into force. It is clear from the case law in question that it is not necessary, in order to find the rioters solidarily liable, to establish that they had a clear intention to commit mischief or had plotted to do so. When the *Civil Code of Lower Canada* was in force, the courts did not hesitate to impose joint and several liability on a group of persons who had acted spontaneously, but whose actions or attitudes were connected with and inseparable from the damage the victim had suffered. It is thus possible, in cases involving spontaneous acts, to find that a collective fault has been committed even though the group did not plan its actions in advance or expressly agree to them.

The riot of April 21, 2008, viewed as a whole, cannot constitute joint participation in a wrongful act, as it was an event that was too vast for there to be a sufficient nexus between the actions of all the participants. Every person who committed a fault that night could not be found solidarily liable for the whole of the damage. This does not mean that wrongful acts in which smaller groups jointly took part during the riot cannot be identified, though. But the trial judge did not decide this issue.

In these cases, small groups of individuals did in fact form during the riot. Each of those groups attacked a single patrol car until it was completely destroyed. Given the individual conduct of the persons who did damage to the same property together with the bandwagon atmosphere that resulted, there is no doubt that their actions, whose ultimate purpose was, collectively, to destroy a single patrol car, were connected. Though the acts were not identical and were not always committed at exactly the same time, they were a series of related acts that were committed in the same place within a short period of time and in relation to the same property. The persons who participated in the destruction of a given patrol car thus jointly took part in a wrongful act. Moreover, their joint participation in a wrongful act resulted in injury: the total loss of the patrol car.

It is not a matter here of questioning the trial judge’s findings that the riot as a whole was not a common venture and that there was no causal connection between the riot as a whole and the destruction of the various vehicles. However, the trial judge erred in law in defining joint participation in a wrongful act. His findings of fact lead to the conclusion that the rioters in question jointly took part in wrongful acts during the riot and that each of the acts they took part in resulted in the destruction of a patrol car. All in all, those findings were sufficient to hold the rioters in question solidarily liable for reparation of the whole of that injury, and it was therefore unnecessary to identify separate faults within this collective fault and link each one to a portion of the damage done by the group. Once a finding of solidarity has been made, art. 1478 *C.C.Q.* instead requires that the seriousness of the faults committed by the defendants who have been found solidarily liable be assessed in order to apportion liability among them. This means that the identification of individual faults and the determination of their nature and seriousness are relevant only to the apportionment of liability among the persons who jointly took part in the wrongful act and do not affect the question whether those persons are solidarily liable to the victim.

There are many examples of cases decided in the context of the *Civil Code of Lower Canada* in which the members of a group that had taken part in a common venture were held jointly and severally liable even though it had been shown on a balance of probabilities which person had actually caused the injury. Logically, the same conclusion applies even where it is possible to identify a member of the group who directly caused only a portion of the injury. This is because it is the collective fault that is agreed to be the source of the injury regardless of which person directly caused the injury. This is the very case law the legislature codified in enacting arts. 1480 and 1526 *C.C.Q.* There is no indication that the legislature intended to add another requirement to the concept of joint participation in a wrongful act, as defined by the courts, when it codified that concept in the *Civil Code of Québec*.

The legislature did not intend to make the application of art. 1480 *C.C.Q.* subject to the requirement that it be impossible to determine the identity of the person who caused the injury. This interpretation is consistent with the wording of the article, with the legislature’s intention to codify the earlier case law and with the scheme and object of the legislation. But even if that were the case, the requirement in question would not affect the outcome of this appeal. It would then have to be found that the combined conduct of the various rioters in question constituted a common fault, a type of fault that also leads to a finding of solidary liability, but under art. 1526 *C.C.Q.* instead.

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By Gascon J.

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By Côté J. (dissenting)

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APPEAL from a judgment of the Quebec Court of Appeal (Duval Hesler C.J. and Émond and Hogue JJ.A.), 2016 QCCA 1022, [2016] AZ‑51296257, [2016] J.Q. no 6476 (QL), 2016 CarswellQue 5327 (WL Can.), affirming the decisions of Coutlée J.C.Q., 2014 QCCQ 4916, [2014] AZ‑51084816, [2014] J.Q. no6758 (QL), 2014 CarswellQue 7068 (WL Can.), 2014 QCCQ 4915, [2014] AZ‑51084815, [2014] J.Q. no 6775 (QL), 2014 CarswellQue 7064 (WL Can.), 2014 QCCQ 4920, [2014] AZ‑51084820, [2014] J.Q. no 6778 (QL), 2014 CarswellQue 7070 (WL Can.), 2014 QCCQ 4919, [2014] AZ‑51084819, [2014] J.Q. no 6777 (QL), 2014 CarswellQue 7067 (WL Can.), 2014 QCCQ 4902, [2014] AZ‑51084349, [2014] J.Q. no 6760 (QL), 2014 CarswellQue 7065 (WL Can.), 2014 QCCQ 4921, [2014] AZ‑51084821, [2014] J.Q. no 6761 (QL), 2014 CarswellQue 7066 (WL Can.). Appeal dismissed, Côté J. dissenting.

Jean‑Nicolas Legault‑Loiselle, Hugo Filiatrault and Pierre Yves Boisvert, for the appellant.

Mélany Renaud, for the respondents Davide Lonardi, Jonathan Franco and Maxime Favreau Courtemanche.

Nataly Gauvin, for the respondent Jean‑François Hunter.

Roberto T. De Minico and Ayda Abedi, for the respondent Jean‑Philippe Forest Munguia.

Louise Desautels, for the respondent Éric Primeau.

No one appeared for the respondents Simon Côté Béliveau, Ali Rasouli, Mohamed Moudrika, Jonathan Beaudin Naudi, Steve Chaperon, Illiasse Iden, Johnny Davin, Natna Nega, Nathan Bradshaw, Benjamin Kinal, Simon Légaré and Daniel Daoust.

English version of the judgment of McLachlin C.J. and Karakatsanis, Wagner, Gascon, Brown and Rowe JJ. delivered by

Gascon J. —

1. Overview
2. This appeal illustrates the apparent conflict that sometimes exists between two core principles of extracontractual liability in Quebec civil law. The first of these principles is that of full compensation for injury. The second is the principle that, unless an exception applies, a person is liable for reparation only of injuries caused by his or her own fault.
3. The *Civil Code of Québec* (“*C.C.Q.*” or “*Code*”) establishes a scheme that strikes a balance between these principles. Article 1457 of the *Code* provides for full compensation for injury caused by a fault. Article 1525 para. 1 provides that solidarity between debtors is not presumed. Articles 1480 and 1526 set out the circumstances in which there is a solidary obligation to make reparation for injury caused by an extracontractual fault.[[1]](#footnote-1) The *Code* thus lays down the general principle that a person is liable only for damage he or she causes, but qualifies this principle to favour full compensation of a victim who suffers a single injury as a result of extracontractual faults committed by two or more persons. However, because solidarity represents a deviation from the general principle, it must be applied strictly (see D. Lluelles and B. Moore, *Droit des obligations* (2nd ed. 2012), at No. 2581).
4. The central issue in this appeal requires the application of these principles. It may be summed up as follows: To what extent can a rioter who has caused property damage be held solidarily liable to the victim for damage done to the same property by other rioters?
5. I agree with the Court of Appeal and the Court of Québec that the facts of these cases do not support the application of the articles of the *Code* that provide for solidarity in cases of extracontractual fault. The evidence is such that it is possible to determine what specific damage to the victim’s property was caused by each of the identified rioters. That being the case, this legislative scheme cannot be circumvented by imposing liability *in solidum* in this context either. The appeal must therefore be dismissed.
6. Facts
7. Hockey is a tradition that is of particular significance in Montréal. Every spring when the Canadiens are in the playoffs, the city’s mood varies with the success or failure of its team. On the night of April 21, 2008, the Canadiens were playing the Boston Bruins. The rivalry between the two teams is legendary. Excitement was at a fever pitch. It was the seventh game of the series, and the teams were tied. When the Canadiens won the game and eliminated their archrivals, the jubilant crowd went out to celebrate downtown. The spontaneous gathering was initially festive, but unfortunately turned into a riot as the evening progressed. Numerous acts of mischief were committed over a period of more than three hours. These included the vandalizing of 15 patrol cars belonging to the police department of the appellant, Ville de Montréal (“City”). Nine of the cars were total losses; the other six required major repairs.
8. The police investigation, helped in particular by photographs and videos, led to the identification and arrest of a number of rioters, including about 20 people who had damaged or destroyed several of the City’s patrol cars. The City decided to institute one civil action per vehicle, with the exception of one action relating to two vehicles that had been damaged by two individuals acting in concert. In each action, it grouped together all the identified rioters who had done damage to the vehicle or vehicles in question. It sought to have the defendants in each case held solidarily liable for the whole of the damage done to the specific patrol car and to its equipment, regardless of the nature or seriousness of the wrongful act each of them had committed.
9. The rioters’ faults were varied and involved several different types of mischief against the vehicles, from kicking a door to arson. Some of them were committed at the start of the riot, while others were committed a few hours later. Except in a few isolated cases, the defendants acted spontaneously and independently and did not know one another.
10. Judicial History
    1. Court of Québec (2014 QCCQ 4902, 2014 QCCQ 4915, 2014 QCCQ 4916, 2014 QCCQ 4919, 2014 QCCQ 4920 and 2014 QCCQ 4921 (Collectively “QCCQ”))
11. Judge Coutlée heard all 10 of the City’s actions. In a first case, he dismissed the City’s claim for lack of evidence (2014 QCCQ 4922). In three others, he found that the defendants had committed a common fault and ordered them solidarily to pay an amount corresponding to the whole of the damage done to the patrol car or cars in question. In two of those three cases, the defendants had acted together to, among other things, set fire to a vehicle (2014 QCCQ 4917; 2014 QCCQ 4918). In the third, the two defendants had acted together to shatter the windows of two patrol cars (2014 QCCQ 4923). In all three cases, each of the defendants was also ordered to pay punitive damages.
12. This appeal concerns the other six cases, in which the judge ordered each defendant to make reparation for the specific damage caused by his own acts. However, the judge declined to find the defendants in each action solidarily liable, with the exception of two defendants who had acted together to set fire to a patrol car. He rejected the City’s argument that the defendants had jointly taken part in a wrongful act and were therefore solidarily liable under art. 1480 *C.C.Q.* He found that the evidence made it possible to specifically identify each individual who had caused the various injuries at issue and that this barred the application of that article. He added that for there to be a common venture, there must be a clear intention to engage in one, whereas these cases involved spontaneous acts by individuals who, for the most part, did not know one another and had not acted simultaneously.
13. The judge therefore identified the distinct damage caused by each fault in order to determine the fair compensation each defendant would have to pay the City. In view of the seriousness of all the wrongful acts committed during the riot, he also ordered each defendant to pay punitive damages.
    1. Quebec Court of Appeal (2016 QCCA 1022)
14. The City appealed the six judgments of the Court of Québec in which the defendants had not all been found solidarily liable. In its appeal, the City limited the issue to the application of solidarity; fault and the quantification of the injury were not raised. In a unanimous decision, the Court of Appeal affirmed the trial court’s judgments.
15. The Court of Appeal began by reiterating that solidarity is not presumed and that it may be imposed in cases of extracontractual fault only where this is provided for by law. After reviewing the principles developed by the courts in the context of the *Civil Code of Lower Canada* (“*C.C.L.C.*” or “former *Code*”), the Court of Appeal concluded that [translation] “the courts imposed solidarity only where a single injury had resulted from [separate] faults or where it was impossible to determine which fault had caused which injury or which portion of the injury” (para. 37 (CanLII)). In the current *Code*, all the legislature did was to codify the existing case law on extracontractual solidarity.
16. Articles 1480 and 1526 *C.C.Q.* apply only in cases involving a single injury. The Court of Appeal stressed that Quebec’s civil liability system does not have a punitive purpose. Both the wording of art. 1480 *C.C.Q.* and the spirit of the system indicate that this article imposes solidarity only where it is impossible to determine which fault caused the damage.
17. Because the evidence made it possible to link each fault to specific damage that represented only a portion of the City’s injury, the Court of Appeal upheld the trial judge’s conclusion that the defendants should not be held solidarily liable for the whole of the damage done to a given patrol car during the riot. It also dismissed the incidental appeals of certain defendants against the award of punitive damages.
18. Issues
19. All things considered, the City’s appeal raises three questions:
20. Are the respondents solidarily liable for the whole of the damage done to a patrol car during the riot because they jointly took part in a wrongful act within the meaning of art. 1480 *C.C.Q.*?
21. Did the respondents commit a common fault or contributory faults as a result of which they are solidarily liable under art. 1526 *C.C.Q.*?
22. Are the respondents liable *in solidum*?
23. I note that the respondents did not file an incidental appeal to contest the award of punitive damages. Only the issue of solidarity was argued in this Court.
24. Analysis
25. In Quebec civil law, solidarity is not presumed (art. 1525 para. 1 *C.C.Q.*; J.‑L. Baudouin and P.‑G. Jobin, *Les obligations* (7th ed. 2013), by P.‑G. Jobin and N. Vézina, at No. 612; M. Cumyn, “Responsibility for Another’s Debt: Suretyship, Solidarity, and Imperfect Delegation” (2010), 55 *McGill L.J.* 211, at p. 215). As the Court of Appeal mentioned, in cases of extracontractual fault, solidarity exists only where it is provided for by law. To succeed, the City must therefore show that the respondents’ faults come within the scope of art. 1480or art. 1526 *C.C.Q.* In my view, they do not. Furthermore, the concept of liability *in solidum* does not apply in a situation like this one involving a number of faults that are all extracontractual*.* The three questions must accordingly be answered in the negative.
    1. Article 1480 C.C.Q.
26. Article 1480 *C.C.Q.* reads as follows:[[2]](#footnote-2)

**1480.** Where several persons have jointly taken part in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it, they are solidarily liable for reparation thereof.

1. Two conditions must be met for this article to apply. First, it must be impossible to determine which person actually caused the injury. Second, there must have been either “join[t participation] in a wrongful act which has resulted in injury” or “separate faults each of which may have caused the injury”. Neither of these conditions is met here. The solidary liability being claimed by the City on this basis has not been established.
   * 1. Impossibility of Determining Who Committed the Fault That Caused the Injury
2. Article 1480 *C.C.Q.* imposes solidarity in two specific situations: “[w]here several persons have jointly taken part in a wrongful act which has resulted in injury” and where “several persons . . . have committed separate faults each of which may have caused the injury”.
3. Both at trial and in the Court of Appeal, the City argued that the requirement, set out at the end of art. 1480 *C.C.Q.*, that it be impossible to determine which of the people involved caused the injury applies only in the second situation, that is, where there are separate faults. In this Court, the City shifted the focus of its argument to the characterization of the respondents’ fault and the injury it had suffered. The two conditions that must be met for art. 1480 *C.C.Q.* to apply are cumulative, however. They cannot be disregarded. Therefore, even where two or more persons have jointly taken part in a wrongful act, whatever it may have been, the article will not apply if it is possible to determine who actually caused the injury.
4. Under the modern approach to statutory interpretation, it is well established that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Canada (Attorney General) v. Thouin*, 2017 SCC 46, [2017] 2 S.C.R. 184, at para. 26, quoting *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, in turn quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). In addition, the Quebec legislature has provided that statutes must generally receive such fair, large and liberal construction as will ensure that they are coherent, that their provisions have meaningful effect and that their objects are attained (*Interpretation Act*, CQLR, c. I‑16, ss. 41 and 41.1).
5. The judges of the courts below held that the words “*dans l’un ou l’autre cas*” in the French version of art. 1480 *C.C.Q.* (“in either case” in the English version) indicate that the article imposes solidarity only where it is impossible to determine who committed the fault that caused the injury and that this is true in both of the situations in which this article applies. I agree that this is the interpretation that is most consistent with the words of the article as well as with the scheme and object of the statute and the intention of the legislature.
   * + 1. Wording of Article 1480 C.C.Q.
6. The issue of interpretation that arises with respect to the words of art. 1480 *C.C.Q.* is whether the phrase “*dans l’un ou l’autre cas*” in the French version refers to both the concept of joint participation in a wrongful act (“*fait collectif fautif*”) and that of separate faults (“*fautes distinctes*”), or only to the concept of separate faults.
7. The first proposition reflects the most natural reading of the French version of the article. However, from a grammatical standpoint, the French wording may leave some room for doubt. According to the Office québécois de la langue française, the phrase “*l’un ou l’autre*” indicates [translation] “a choice between two or more things” (Banque de dépannage linguistique, April 2018 (online)).[[3]](#footnote-3) In theory, therefore, these words could relate only to the situation in which there are a number of separate faults.
8. As the Court of Appeal observed, however, the English version of art. 1480 *C.C.Q.* is unequivocal. The phrase “in either case” conveys a choice between only two things, not between an indefinite number of things (*Canadian Oxford Dictionary* (2nd ed. 2004), by K. Barber, “either”; *Gage Canadian Dictionary* (rev. and exp. ed. 1997), by G. D. de Wolf et al., “either”; *Guide to Canadian English Usage* (2nd ed. 2007), by M. Fee and J. McAlpine, “either . . . or, neither . . . nor”). The English version therefore excludes the possibility that the requirement that it be impossible to identify the person who committed the fault that caused the injury applies only to the situation in which there are separate faults, the number of which is indeterminate.
9. The English and French versions of Quebec statutes are equally authoritative (*Charter of the French language*, CQLR, c. C‑11, s. 7(3), consistently with s. 133 of the *Constitution Act, 1867*; see *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at p. 879). Here, the English version of art. 1480 *C.C.Q.* does not conflict with the French version; rather, it confirms the most natural reading of the French words. It follows that the only possible interpretation is that the words “*dans l’un ou l’autre cas*” link that requirement to both the scenarios contemplated in art. 1480 *C.C.Q.*, that is, both that of joint participation in a wrongful act and that of separate faults.
10. This interpretation is also the one that is most consistent with the scheme and object of the statute and with the intention of the legislature.
    * + 1. Scheme and Object of the Statute and Intention of the Legislature
11. The general civil liability framework set out in art. 1457 *C.C.Q.* is based on the concept of fault. Unless an exception applies, a person is accordingly liable to pay compensation only for damage caused by his or her own fault (J.‑L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile* (8th ed. 2014), at No. 1‑161; P. Deschamps, “Faute personnelle”, in *JurisClasseur Québec — Collection droit civil — Obligations et responsabilité civile* (loose‑leaf), vol. 1, by P.-C. Lafond, ed., fasc. 17, at para. 96).
12. It is consistent with the scheme of our civil liability system to interpret art. 1480 *C.C.Q.* such that, in every case, solidarity can be imposed only if it is impossible to identify the person who committed the fault that caused the injury. To limit this outcome to cases involving separate faults, while excluding those involving joint participation in wrongful acts from the scope of this provision, would place the provision in conflict with the central role of causation in the scheme of extracontractual liability established by the *Code*.
13. It was in the name of fairness that the legislature chose not to leave a victim without recourse where two or more persons have jointly taken part in a wrongful act or have committed separate faults and it is impossible to determine who committed the fault that actually caused the injury (Baudouin, Deslauriers and Moore, at No. 1‑725; L. Khoury, “Lien de causalité”, in *JurisClasseur Québec — Collection droit civil — Obligations et responsabilité civile* (loose‑leaf), vol. 1, by P.‑C. Lafond, ed., fasc. 21, at para. 32). As the Minister of Justice mentioned, art. 1480 *C.C.Q.* resolves the problem of apportionment of liability among those who are at fault (Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 906). He added that, in the cases contemplated in art. 1480 *C.C.Q.*, the rule of solidarity applies [translation] “to protect the victim, because, in the circumstances, the victim is unable to establish a causal connection between the injury he or she suffered and the causal fault” (*ibid.*). The legislature has thus ensured that the victim does not bear the consequences of evidentiary difficulties that can be attributed to the situation in which he or she has been placed by the persons who committed the faults (see also P. Deschamps, “Cas d’exonération et partage de responsabilité en matière extracontractuelle”, in *JurisClasseur Québec — Collection droit civil — Obligations et responsabilité civile* (loose‑leaf), vol. 1, by P.‑C. Lafond, ed., fasc. 22, at para. 15; Khoury, at para. 32).
14. Where it can be shown which fault caused which injury, however, there is no indication that the legislature had any intention of deviating from the general principle of civil liability that a person is liable for reparation only of injuries caused by his or her own fault.
15. Indeed, in cases of extracontractual liability, it cannot be said that the requirement provided for in art. 1480 *C.C.Q.* that it be impossible to determine who committed the fault that caused the injury does not apply in situations involving joint participation in wrongful acts. If that were the case, it would have been redundant for the legislature to seek by means of that article to impose solidarity on those who jointly take part in such an act*.* That is already provided for in art. 1526 *C.C.Q.*, according to which “[t]he obligation to make reparation for injury caused to another through the fault of two or more persons is solidary where the obligation is extra‑contractual.”
16. The purpose of art. 1480 *C.C.Q.* is instead to impose solidary liability on two or more persons for the whole of the injury in situations in which, because of evidentiary difficulties, the application of the general principles of extracontractual liability would not result in solidarity (see *Simard v. Lavoie*, 2005 CanLII 48674 (Que. Sup. Ct.), at paras. 8‑10). Article 1480 *C.C.Q.* thus has the effect, where the conditions for its application are met, of shifting the burden of proof with respect to causation (*St‑Jean v. Mercier*, 2002 SCC 15, [2002] 1 S.C.R. 491, at para. 118; Khoury, at para. 32). In other words, the article relieves the victim of the burden of proving which person actually caused an injury where it is impossible for him or her to do so. This is an adaptation of the burden of proof in respect of causation — as a constituent element of civil liability — that is justified by necessity.
17. To some, the essence of art. 1480 *C.C.Q.* thus boils down to the creation of a sort of [translation] “presumption of solidarity” to the effect that each person who commits a fault is liable for the whole of the injury suffered (*Larouche v. Simard*, 2009 QCCS 529, [2009] R.J.Q. 768, at para. 200; see also V. Karim, *Les obligations* (4th ed. 2015), vol. 1, at para. 3456; Baudouin and Jobin, at No. 615).
18. One thing is clear, however. The liability provided for in art. 1480 *C.C.Q.* favours compensation of the victim. This objective is readily understandable in cases in which fault is established but it is impossible to prove a causal connection between the fault and the injury suffered by the victim. But it is hard to justify imposing liability for the whole of the injury where the evidence shows that a given fault caused only part of the injury or where it would have been possible for the victim to adduce such evidence.
19. The legislative history supports this interpretation of art. 1480 *C.C.Q.* At the time of the reform of the former *Code*, Quebec’s Civil Code Revision Office proposed an earlier version of the article that did not include either the concept of joint participation in a wrongful act or the words “in either case” (Committee on the Law of Obligations, *Report on Obligations* (1975), at pp. 376‑79). The addition of the concept of joint participation in a wrongful act coincided with the addition of the words “in either case”, which suggests that the legislature intended both situations contemplated in art. 1480 *C.C.Q.*, that of joint participation in such an act and that of separate faults, to be subject to the requirement that it be impossible to identify the person who caused the injury.
20. In summary, the wording of art. 1480 *C.C.Q.*, the scheme and object of the statute, and the legislature’s intention all suggest that this article applies only where it is impossible to identify the person who committed the fault that caused the injury. Moreover, this interpretation has been adopted by the commentators, by this Court in *St‑Jean*, and by the Quebec courts (*Code civil du Québec: Annotations — Commentaires 2017-2018* (2nd ed. 2017), by B. Moore, ed., et al., at p. 1258; Baudouin and Jobin, at No. 617; F. Levesque, *L’obligation in solidum en droit privé québécois* (2010), at p. 235; Khoury, at para. 32; N. Vézina and L. Langevin, “Les modalités de l’obligation”, in Collection de droit de l’École du Barreau du Québec 2017‑2018, vol. 6, *Obligations et contrats* (2017), 115, at p. 125 (footnote 84); *St‑Jean*, at paras. 118‑20; *Lavoie*, at paras. 9 and 15; *Assurances générales des Caisses Desjardins inc. v. Morissette*, [2005] R.R.A. 1273 (C.Q.), at paras. 37‑39). No commentator or court has supported the interpretation proposed by the City in the courts below.
    * + 1. Application to the Instant Cases
21. In these cases, the trial judge found that the evidence made it possible to link each of the faults committed by the respondents to a specific injury. This finding is amply supported by the evidence that was considered in each case. It is therefore not appropriate to hold the respondents solidarily liable under art. 1480 *C.C.Q.* for the whole of the damage done to a particular patrol car during the riot. Article 1480 does not justify holding a defendant liable for damage that is known not to have been caused by his or her fault on the basis that the victim cannot identify the person who caused the damage in question. It is of course unfortunate that the person who committed a fault sometimes cannot be found. But in Quebec civil law, such a situation does not in itself justify imposing additional liability on persons who committed separate faults that, according to the evidence accepted by the trier of fact, caused separate injuries.
22. What the City does in its submissions is effectively to challenge the trial judge’s finding on the causal connection between the various faults that were committed and the injury each of them caused. In each of the cases, however, his thorough analysis of the evidence linked each respondent’s wrongful act to the injury it had directly caused, namely the *partial* destruction of the patrol car in question. The trial judge found no causal connection between those wrongful acts and the *total* destruction of the vehicle, the injury for which the City was seeking compensation. In his analysis, he also made a point of stating that the fact that the rioters had encouraged one another had not contributed to or caused the aggregate injury complained of by the City.
23. Whether a causal connection exists is a question of fact that is not open to review by an appellate court unless a palpable and overriding error has been made in answering it (*Benhaim v. St‑Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352, at para. 36; *St‑Jean*, at paras. 104‑5). The City has failed to establish such an error. When all is said and done, what it is asking is that we substitute our assessment of the evidence for that of the trial judge. Doing so would be consistent neither with the law in this regard nor with this Court’s role.
    * 1. Joint Participation in a Wrongful Act That Resulted in Injury
24. For art. 1480 *C.C.Q.* to apply, the City therefore had to establish that it was impossible to determine who had committed the fault that caused *the* injury *at issue*, which was not the case here. It also had to show that the respondents had jointly taken part in a wrongful act that resulted in the injury or had committed separate faults each of which may have caused that same injury. On this point, the City submits that the respondents jointly took part in a wrongful act by taking part in the riot or in the whole of the acts that allegedly caused the total loss of each patrol car.
25. On the subject of this second condition for the application of art. 1480 *C.C.Q.*, the trial judge concluded from his assessment of the evidence that the facts did not support a finding of joint participation in a wrongful act. I wish to make it clear here that the trial judge did not merely hold that the riot as a whole did not constitute joint participation in a wrongful act. His analysis also focused on the fact that the defendants did not have a common intention for the acts of vandalism they committed against each of the patrol cars in question in the 10 cases before him. And this was in fact the very question he had to answer, given the City’s election to bring a separate action for each damaged patrol car. Here again, his determination on the issue of joint participation in a wrongful act is not open to review absent a palpable and overriding error on his part. A simple difference of opinion about the assessment of the evidence does not suffice.
26. On balance, the trial judge found that the riot was not the cause, but the occasion, of the injury. He added that the common venture alleged by the City had not been established given the absence of a clear intention or a plot to commit mischief. The City has not satisfied me that he erred in this finding. Its arguments reflect an incorrect analysis of the judicial precedents on the common venture concept and a misunderstanding of the concept of joint participation in a wrongful act to which art. 1480 *C.C.Q.* now applies.
    * + 1. Extracontractual Solidarity Under the Civil Code of Lower Canada and the “Common Venture” Concept
27. The current scheme of extracontractual solidarity set out in arts. 1480 and 1526 *C.C.Q.* is a codification of rules developed by the courts under the former *Code* (Baudouin, Deslauriers and Moore, at No. 1‑680; Levesque, at p. 196; Court of Appeal’s reasons, at para. 38). Article 1106 *C.C.L.C.* provided only that “[t]he obligation arising from the common offence or quasi‑offence of two or more persons is joint and several”, but the courts nonetheless interpreted the article broadly to include in its scope situations in which different persons had committed a number of separate offences or quasi‑offences that had all contributed to the same injury (*Martel v. Hôtel-Dieu St‑Vallier*, [1969] S.C.R. 745; *Grand Trunk Railway Co. of Canada v. McDonald* (1918), 57 S.C.R. 268). Thus, the courts went beyond common, contributory and simultaneous faults to extend the application of the article to situations involving what they referred to as a [translation] “common venture” (Court of Appeal’s reasons, at paras. 29‑35).
28. The effect of those decisions that expanded the scope of art. 1106 *C.C.L.C.* was that the “common venture” concept could also serve as a basis for the courts to find defendants jointly and severally liable. Such a finding was imperative in situations involving extracontractual fault where, first, a court identified an intention, even a tacit one, to take part in the wrongful “common venture” and, second, the acts alleged against the defendants had caused a single injury that might be impossible to connect in whole or in part with the fault of one defendant in particular. The City is relying heavily on those decisions, which in fact do not really assist it here. A brief review of the decisions in question helps clarify the actual scope of the principles developed in this regard under the former scheme.
29. First, in *D’Allaire v. Trépanier*, [1961] C.S. 619 (Que.), the Superior Court found that the fact that a child had [translation] “actively [taken] part” in a “risky common venture”, that of children throwing stones at one another, was sufficient to make all the participants jointly and severally liable (p. 620) even though the evidence made it possible to identify the child who had thrown the stone that actually broke the victim’s teeth.
30. Then, in *Gagné v. Monzerolle*, [1967] B.R. 899 (Que.) (summary), the Court of Appeal found that a car race was a [translation] “common enterprise” and held that the two drivers who had taken part in it were jointly and severally liable for the death of the victim, with whom they had collided almost simultaneously. Rejecting one defendant’s argument that his car had merely grazed the victim’s vehicle, the Court of Appeal concluded that “regardless . . . of whether the death was caused by the first or the second impact, [this defendant] is partly responsible” (p. 899).
31. Next, in *Laxton v. Sylvestre*, [1972] C.S. 297 (Que.), aff’d [1975] C.A. 648 (Que.), the Superior Court characterized a fight between two children who had been trying to grab hold of a needle as a [translation] “collective fault” (p. 299) and found that they were jointly and severally liable even though it was known which child had been holding the needle at the time a third child was stabbed in the eye.
32. As well, in *Massignani v. Veilleux*, [1987] R.L. 247 (Que.), an argument between four hunters resulted in two of them being shot either by the other two or by one of the other two. The Court of Appeal concluded that, [translation] “even if it is assumed that only one of the two appellants fired the shot or two shots that injured the respondents, the appellants must be found to be jointly and severally liable . . . . They took part in a common venture that was unlawful, extremely careless and dangerous” (p. 253).
33. In *Royale du Canada, Cie d’assurance v. Légaré*, [1991] R.J.Q. 91, a case in which a fire started by two children had accidentally spread to a shopping centre, the Superior Court characterized [translation] “a common act” in which the children had actively taken part as an “ill‑fated venture” (p. 95). It accordingly found that they were jointly and severally liable.
34. Finally, in *Dumont v. Desjardins*, [1994] R.R.A. 459 (Que. Sup. Ct.), two children had been shooting at a third child for fun with a pellet gun when the other child suffered an eye injury. Although the evidence showed which of the two children had fired the shot, the judge in that case, too, stated that the [translation] “ill‑fated venture” had been “a common act of the two children” (p. 470) and found that they were jointly and severally liable.
35. In each of the above cases, it was established that there was an intention, often tacit, to take part in the wrongful “common venture”. Regardless of whether the context was that of children’s games (*D’Allaire*, *Dumont*), fights (*Laxton*, *Massignani*), a car race (*Gagné*) or the starting of a fire (*Légaré*), the courts found in effect that the defendants had had a common intention to jointly take part in the act that had caused the injury. In addition, the acts alleged against the defendants in those cases had all resulted in a single, easily identifiable injury.
36. It is true that, in all the cases in question except *Massignani*, the evidence also showed on a balance of probabilities which person had committed the specific act that caused the injury. Yet this did not preclude the imposition of joint and several liability. However, as the Court of Appeal rightly observed in the cases at bar, the courts had under the former *Code* applied this “common venture” concept to impose joint and several liability, even where the circumstances generally supported a finding of common fault or contributory faults. At the time, there was no need to clearly distinguish the concepts of common venture, common fault and contributory faults, because a single article, art. 1106 *C.C.L.C.*, applied without distinction to all these possibilities.[[4]](#footnote-4) It is therefore important to approach the principles enunciated in those cases with caution, and not to read into the decisions something that was not said.
    * + 1. Solidarity Under the Current Code for Jointly Taking Part in a Wrongful Act
           1. Relationship Between Article 1106 *C.C.L.C.* and Articles 1480 and 1526 *C.C.Q.*
37. Two articles of the current *Code* provide for solidary liability in cases of extracontractual fault. The first, art. 1480 *C.C.Q.*, concerns, in part, joint participation in wrongful acts. The common intention and single injury requirements remain, but for the provision to apply, proof that it is impossible to determine who committed the fault that caused the injury is now required.
38. Unlike art. 1106 of the former *Code*, art. 1480 of the new *Code* now expressly provides that a court may not impose solidary liability on persons who have jointly taken part in a wrongful act unless it is impossible to determine which of them actually caused the injury. This requirement is not inherent in the concept of joint participation in a wrongful act, but in light of the article’s wording, it must nonetheless now be met in order to justify a finding of solidary liability against persons who have jointly taken part in such an act.
39. The second article, art. 1526 *C.C.Q.*, concerns a common fault or contributory faults that, here again, caused a single injury (Baudouin, Deslauriers and Moore, at Nos. 1‑720 to 1‑722; *Code civil du Québec: Annotations — Commentaires 2017-2018*, at p. 1287; Lluelles and Moore, at No. 2578). It should be mentioned in this regard that art. 1526 *C.C.Q.* imposes solidarity on persons who have committed a common fault or contributory faults even where the evidence shows which person committed the fault that actually caused the injury. Thus, it is under art. 1526 *C.C.Q.*, not under art. 1480 *C.C.Q.*, that solidary liability can now be imposed on those who commit common or contributory faults, for which the courts formerly sometimes used the expression “common venture”. Of the various cases discussed in the preceding section, *Massignani* is therefore the only one that would likely be covered by art. 1480 *C.C.Q.* The others (*D’Allaire*, *Gagné*, *Laxton*, *Légaré* and *Dumont*) would now most likely fall within the scope of art. 1526 *C.C.Q.*
40. It follows that, although the current legislative provisions governing extracontractual solidarity do codify the pre‑existing case law, it would be wrong to say that all the decisions in which the term “common venture” was used would now automatically fall within the scope of art. 1480 *C.C.Q.* That term was formerly employed in a variety of situations that must now be characterized in different ways.
    * + - 1. Case Law on Joint Participation in a Wrongful Act Under Article 1480 *C.C.Q.*
41. That being said, as the trial judge pointed out, [translation] “there are not many cases on the subject of joint participation in a wrongful act” (QCCQ, at para. 16 (CanLII)). Neither in its factum nor at the hearing did the City refer us to any decision rendered since the current *Code* came into force that supports its argument characterizing the respondents’ faults as joint participation in a wrongful act. It is easy to understand why, given that the few cases decided under the current *Code* in which courts have found persons who had jointly taken part in wrongful acts to be solidarily liable in an extracontractual context are distinguishable from this appeal. Like the persons who had jointly taken part in the wrongful acts at issue in the cases decided under the former *Code*, those who had done so in each of the cases decided under the current *Code* shared a common, albeit sometimes tacit, intention, a factor that is sorely lacking in the instant cases.
42. For example, in *Valois v. Giguère*, 2006 QCCS 1272, the Superior Court relied on art. 1480 *C.C.Q.* to find three defendants solidarily liable for injuries sustained by the plaintiff as a result of blows struck by one of them. The plaintiff was not able to identify his assailant from among the three defendants, all of whom admitted taking part in the same fight but denied striking the critical blow (paras. 49, 57 and 59 (CanLII)).
43. Similarly, in *Bamboukian v. Karamanoukian*, 2014 QCCA 2093, the Court of Appeal affirmed a decision in which the Superior Court had imposed solidary liability on the defendants, who had been involved in two assaults committed a few hours apart for the purpose of settling a personal score. Even though the assaults had been committed by different persons, it was impossible to specifically link the injuries to one of the assaults, and the evidence showed that the two incidents were closely related (paras. 4‑5 (CanLII)).
44. Finally, in *Roy v. Privé*, 2017 QCCS 986, the Superior Court held a defendant liable for the whole of the injuries caused to the plaintiff, who had been attacked simultaneously by two people, each of whom had struck him(paras. 69‑70 (CanLII)).
    * + - 1. Common Intention Requirement
45. As the above decisions show, the existence of a common intention is required for the concept of joint participation in a wrongful act in the context of the new scheme of art. 1480 *C.C.Q.*, just as it was for the common venture concept in that of the former scheme. This intention may be tacit, of course, but at the very least, the defendant must have been aware of the acts or omissions that constituted the wrongful act and must have intended to take part in them. Like the other constituent elements of civil liability, a common intention must be proved on a balance of probabilities (arts. 2803 and 2804 *C.C.Q.*). It can often be inferred — in accordance with the rule governing presumptions of fact set out in art. 2849 *C.C.Q.* — from the very fact of taking part in the impugned acts.
46. In determining whether there was a common intention, a court should avoid defining the wrongful act so broadly that the common intention no longer bears any relation to reality. For example, in *Assurances générales des Caisses Desjardins inc.*, the Court of Québec declined to apply art. 1480 *C.C.Q.* and to find two defendants solidarily liable for an injury caused by arson. The defendants had robbed an apartment together, but one of them had on his own set fire to the building. The Court of Québec found that the [translation] “wrongful act committed jointly by [the two defendants] was the robbery, not the fire” (para. 37). It accordingly declined to impose solidary liability on the other defendant, who had “not take[n] part in or consent[ed] to this specific wrongful act” (*ibid.*).
47. In this regard, the concept of joint participation in a wrongful act under art. 1480 *C.C.Q.* is comparable to the “concerted action” concept of the common law (see *Fullowka v. Pinkerton’s of Canada Ltd.*, 2010 SCC 5, [2010] 1 S.C.R. 132, at para. 154). The British Columbia Supreme Court in fact considered the joint and several liability of rioters in a context very similar to the one at issue in this appeal in *I.C.B.C. v. Stanley Cup Rioters*, 2016 BCSC 1108, a recent case to which the City refers in its factum. The spontaneous riot in question in that case had also occurred following a playoff hockey game, this time in Vancouver, and had resulted in acts of vandalism against a number of cars.
48. In that case, the plaintiff insurance corporation asked that all the identified rioters be held jointly liable for the whole of the damage done during the riot to all the vehicles insured by it. In the alternative, it asked that the rioters who had contributed to the damage done to each individual vehicle be held jointly liable. After finding that the first conclusion was too broad to be granted, the British Columbia Supreme Court accepted the second, but only where the facts showed that rioters had taken part in a concerted action in relation to a specific vehicle. Thus, where rioters had joined forces to flip a car over or had otherwise acted in concert with other individuals who were vandalizing a vehicle at the same time as them, the court held them jointly liable.
49. The trial judge who decided the cases at bar likewise imposed solidary liability on rioters who had acted together to set fire to an individual vehicle (2014 QCCQ 4921, at paras. 98‑105 (CanLII); 2014 QCCQ 4917, at paras. 51‑58 (CanLII); 2014 QCCQ 4918, at paras. 59‑68 (CanLII)), or had shattered a vehicle’s windows (2014 QCCQ 4923, at paras. 58‑62 (CanLII)). In each of those cases, the defendants actually had a common intention to do damage to the patrol car in question. However, the trial judge found those rioters solidarily liable under art. 1526 *C.C.Q.* — not art. 1480 *C.C.Q.* — because there was no uncertainty about the identities of the persons who had committed the fault that caused the injury.
    * + 1. Application of the Relevant Principles to the Instant Cases
50. As the trial judge concluded, the specific circumstances of the cases at issue in this appeal simply do not show that the respondents acted with a common intention, either express or tacit. There is no doubt that groups formed in the course of the riot. But the trial judge held in analyzing the evidence that this was not true where the respondents were concerned. With a few exceptions, which the judge rightly dealt with differently, the respondents did not know and were never in contact with one another, and their acts were committed at different times during the riot without the knowledge of the other respondents. Here again, these are findings of fact that are not open to review on appeal unless a palpable and overriding error was made in making them (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 10). They are valid regardless of whether the wrongful act was participation in the riot or participation in the total destruction of a vehicle. From either standpoint, the faults committed by the respondents did not amount to joint participation in a wrongful act if the respondents had no common intention or their faults did not cause a single injury.
51. It is true that, as the Court of Appeal indicated in *Bamboukian*, the participants need not have acted simultaneously for a court to find that they jointly took part in a wrongful act. Be that as it may, the plaintiff must be able to prove, at the very least, the existence of a tacit common intention. The City has not shown that the judge made a palpable and overriding error in finding that the rioters who had contributed to the damage done to a given patrol car at various times during the riot did not have such an intention.
52. It follows that, for two compelling reasons, the respondents cannot be found solidarily liable under art. 1480 *C.C.Q.* First, it is possible to establish a causal connection between each of the respondents’ faults and a specific injury. Second, the faults of the respondents involved in each of the actions instituted by the City did not constitute joint participation in a wrongful act given that the respondents in question did not have a common intention. Having said that, I wish to be clear that art. 1478 *C.C.Q.* and art. 328 of the *Code of Civil Procedure*, CQLR, c. C‑25.01, have no impact on this analysis. They apply where, after a finding of solidarity has been made, liability must be apportioned among persons who caused a single injury. The trial judge and the Court of Appeal were right not to take them into account here.
    1. Article 1526 C.C.Q.
53. The City further argues that, if the respondents cannot be found solidarily liable under art. 1480 *C.C.Q.*, they can be under art. 1526 *C.C.Q.*:

**1526.**The obligation to make reparation for injury caused to another through the fault of two or more persons is solidary where the obligation is extra‑contractual.

1. For this article to apply, the fault of two or more persons must have caused a single injury. This fault may be a common fault or may consist of contributory faults. On this point, the City argues that the mutual encouragement on the rioters’ part contributed to the aggregate injury it suffered, that is, the total destruction of the patrol cars. In the City’s opinion, the courts below erred in law in characterizing the injury, which must be assessed as a whole rather than being split into separate portions.
2. In my view, the City is mistaken. Although its argument is purportedly one of an alleged error of law in characterizing the injury, what it is really seeking is, here again, to have this Court revisit the trial judge’s findings of fact on the injury actually caused by each of the respondents’ faults. In so doing, the City is also disregarding the trial judge’s findings of fact to the effect that the respondents’ faults were separate. Given that the trial judge made no palpable and overriding error that would taint his finding that a single injury did not result from the respondents’ separate faults, there is no reason to intervene.
   * 1. No Single Injury
3. Article 1526 *C.C.Q.* provides for solidarity in the case of persons who have, by committing a common fault or contributory faults, caused one and the same injury to another person (Baudouin, Deslauriers and Moore, at Nos. 1‑720 to 1‑722; *Code civil du Québec: Annotations — Commentaires 2017-2018*, at p. 1287; Lluelles and Moore, at No. 2578). It is of the very essence of extracontractual solidarity that the debtors be obligated to the creditor for “the same thing” (art. 1523 *C.C.Q.*; Lluelles and Moore, at No. 2577; see also M. Tancelin, *Des obligations en droit mixte du Québec* (7th ed. 2009), at No. 1388). The injury contemplated in art. 1526 *C.C.Q.* is therefore subject to the requirement that there be a single injury.
4. In the instant cases, the trial judge determined that there was no causal connection between each respondent’s participation in the riot and the total destruction of the patrol cars. Rather, he found that there were many distinct and identifiable injuries, each caused by a fault that was just as distinct and identifiable, and that he linked to a particular rioter. He assessed the precise damage caused by the respondents’ faults and determined the amount of the award against each of them on that basis. In the case of defendants Hunter and Côté Béliveau, for example, he found that the video evidence made it possible to determine exactly what damage was caused by each of their respective wrongful acts (2014 QCCQ 4916, at paras. 56‑67 (CanLII)). This constitutes a clear distinction between the case of those defendants and that of defendants Gauchier and Casimir, in which the only conclusion he could draw from the police officer’s report and testimony was that the latter were indistinctly responsible for the whole of the damage done to the patrol cars (2014 QCCQ 4923, at paras. 55‑62). The fact that there was a single injury caused by the common fault of these defendants thus justified their being held solidarily liable.
5. At the risk of repeating myself, the question whether there is a causal connection between a fault and damage is one of fact, and the City has not identified a palpable and overriding error made by the trial judge in this regard. This Court recently noted that in such cases, “given its position at the second level of appeal, this Court’s role is not to reassess the findings of fact of a judge at the trial level that an appellate court has not questioned: ‘. . . the principle of non‑intervention “is all the stronger in the face of concurrent findings of both courts below” . . .’” (*Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin*, 2017 SCC 26, [2017] 1 S.C.R. 478, at para. 51, quoting *St-Jean*, at para. 45, in turn quoting *Ontario (Attorney General) v. Bear Island Foundation*, [1991] 2 S.C.R. 570, at p. 574). The trial judge did not find a sufficient causal connection that gave rise to liability, that is, a “logical, direct and immediate” connection, between each of the faults and the whole of the damage done to a given vehicle (Baudouin, Deslauriers and Moore, at No. 1‑683; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789, at para. 50; *Hinse v. Canada (Attorney General)*, 2015 SCC 35, [2015] 2 S.C.R. 621, at para. 132). At most, the respondents’ faults contributed to the context in which the patrol cars were subsequently destroyed. The cause of the damage must be distinguished from the circumstances or the occasion of the damage (Baudouin, Deslauriers and Moore, at No. 1‑687; *Dallaire v. Paul‑Émile Martel Inc.*, [1989] 2 S.C.R. 419, at p. 427; *Montréal (Ville) v. Tarquini*, [2001] R.J.Q. 1405 (C.A.), at p. 1427).
   * 1. Trial Judge’s Analysis on the Issue of Punitive Damages
6. Nevertheless, the City argues that the trial judge found that the respondents’ acts had caused the whole of the injury for which it seeks to be compensated. In support of this argument, it focuses on one sentence from the judge’s discussion on the issue of punitive damages. In the course of that discussion, the judge noted that the events of April 21, 2008 were [translation] “[a] spontaneous reaction fuelled by shouts of encouragement that prodded each new person to do something worse” (2014 QCCQ 4921, at para. 83 (emphasis added)). He went on to strongly condemn the widespread destruction that had occurred. The City concludes from this that the encouragement in itself constituted a fault that had, in addition to each rioter’s specific wrongful acts, contributed to the aggregate damage done to the patrol cars.
7. With respect, I find that the City is disregarding part of what the trial judge said, although his reasons are in fact clear on this point. In his discussion regarding causation, the judge expressly stated that [translation] “[i]n this case, there is no causal connection between participation in the riot and the damage done to the police vehicles” (QCCQ, at para. 45). Where there is no legally sufficient causal connection between an act, even a wrongful one, and damage, the act does not give rise to liability under art. 1457 *C.C.Q.* This means that participation in the riot, despite being blameworthy, cannot in itself be viewed as a contributory fault giving rise to liability for the whole of the damage done during the riot.
8. Moreover, the context of the judge’s discussion on punitive damages was quite different from that of his discussion on causation. Under art. 1621 *C.C.Q.*, he had to assess punitive damages so as to fulfill their preventive purpose, and he had to do so in light of all the relevant circumstances. In these cases, the circumstances in question included the unlawful conduct being denounced, the gratuitous vandalism that had been committed and the general disapproval of such acts. The judge certainly considered all these circumstances in assessing the punitive damages, which are not in issue in this appeal. Yet he nevertheless held that there was no causal connection between participation in the riot and the aggregate damage done to the patrol cars.[[5]](#footnote-5)
9. On this point, I note that, while it is true that a fault that is not causally connected to the damage in question cannot ground an obligation to make reparation for the injury, it can nonetheless form the basis for an award of punitive damages. Punitive damages are not subject to the compensatory logic of the civil liability system. Nor does it really matter if a trial judge characterizes the fault on which an award of compensatory damages is based differently than the conduct that grounds an award of punitive damages. In *de Montigny v. Brossard (Succession)*, 2010 SCC 51, [2010] 3 S.C.R. 64, this Court put an end to a longstanding judicial difference of opinion and held that punitive damages are autonomous in nature (paras. 40‑46; Baudouin, Deslauriers and Moore, No. 1‑388; S. Grammond, “Un nouveau départ pour les dommages‑intérêts punitifs” (2012), 42 *R.G.D.* 105, at pp. 109‑10; see also *Richard v. Time Inc.*, 2012 SCC 8, [2012] 1 S.C.R. 265, at paras. 144‑47). Punitive damages can thus be awarded in relation to a fault even if compensatory damages have not been awarded in respect of it.
   * 1. Respondents’ Separate Faults
10. Finally, the trial judge was right in law in characterizing the respondents’ faults as separate faults rather than as common or contributory faults. For it to be possible to characterize faults as a “common fault” or “contributory faults”, and for them to lead to the application of art. 1526 *C.C.Q.*, they must have caused or contributed to a single injury (Baudouin, Deslauriers and Moore, at Nos. 1‑720 to 1‑721; *Code civil du Québec: Annotations — Commentaires 2017-2018*, at p. 1287). These cases do not involve such faults.
11. From this perspective, the City’s assertion that the respondents’ fault consists in their taking part in the total destruction of a patrol car during the riot reflects an error in its reasoning. To say that the fault lies in taking part in the total destruction of a vehicle is to characterize the fault not on the basis of the impugned act, but by taking the final injury suffered by the victim as the starting point. This approach of retrospectively characterizing the fault solely on the basis of the injury the victim suffered as a result of a series of wrongful acts is inappropriate, as it disregards a central element of extracontractual liability: causation. By logical extension, it would be possible to recharacterize every one of a series of faults that injure a single victim. It would then suffice to say that the fault consists in taking part in the aggregate injury suffered by the victim. But such an approach would be contrary to the requirement under art. 1457 *C.C.Q.* that causation be established.
12. In summary, the trial judge did not make a palpable and overriding error in finding that there was no causal connection between the respondents’ faults and the whole of the damage done to each patrol car. The City cannot take his remarks about punitive damages out of context and use them to contradict his clear finding that there was no causal connection. In the end, given the finding of fact that each of the faults had caused a specific injury, it was inevitable that the faults would be characterized as being successive and separate. Article 1526 *C.C.Q.* is therefore inapplicable.
    1. Obligation in Solidum
13. The City’s final argument is that the respondents are liable to it *in solidum*. The City did not make this argument in the courts below, but raised it for the first time in this Court. I cannot accept this last‑ditch proposition.
14. In the civil law, the obligation *in solidum* is a judicial creation that, though distinct from solidarity, has the same fundamental effects as it. In circumstances in which such an obligation exists, one of its effects is to allow a creditor to seek to obtain the full amount of an award from any one of the debtors (Baudouin and Jobin, at No. 618; *Prévost‑Masson v. General Trust of Canada*, 2001 SCC 87, [2001] 3 S.C.R. 882, at para. 29). So far, the circumstances in which the authors and the courts have agreed on the applicability of liability *in solidum* have been very different from those of the instant cases (see Vézina and Langevin, at p. 129). These circumstances have, for example, involved liability of two parties for a single injury caused by both contractual and extracontractual faults (*Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec*, 2004 SCC 53, [2004] 3 S.C.R. 95, at para. 79; *Dostie v. Sabourin*, [2000] R.J.Q. 1026 (C.A.), at para. 72), liability for abnormal neighbourhood annoyances (*Homans v. Gestion Paroi inc.*, 2017 QCCA 480, at paras. 161‑64 (CanLII)) and liability for non‑performance of separate contracts (*Prévost‑Masson*,at para. 33). However, neither the academic literature nor the case law includes cases or examples in which the principles related to the obligation *in solidum* have been applied to faults that are, as in the instant cases, exclusively extracontractual.
15. The reason for this is obvious. Unlike in cases involving separate contractual faults or faults that are both contractual and extracontractual, the solidarity of debtors who have committed extracontractual faults is governed by a complete legislative framework set out in arts. 1480 and 1526 *C.C.Q.* (see Vézina and Langevin, at p. 129). In *Solomon v. Québec (Procureur général)*, 2008 QCCA 1832, [2008] R.J.Q. 2127, the Court of Appeal in fact relied on the comprehensive nature of the solidarity scheme created by these two articles in cases of extracontractual fault to conclude that the debtors’ solidarity did not extend to punitive damages (paras. 192‑95).[[6]](#footnote-6)
16. The cases at bar concern extracontractual faults, and the conditions for the application of arts. 1480 and 1526 *C.C.Q.* are not met. In this context, it is not appropriate to circumvent the comprehensive legislative scheme governing solidarity in cases of extracontractual fault and to seek to obtain similar effects by way of liability *in solidum*. This judge‑made solution is intended to apply in situations that the legislature has not expressly contemplated, not to bypass existing legislative mechanisms that are subject to conditions a creditor is unable to meet.
17. In any event, the obligation *in solidum* is of no assistance to the City in these cases, since it does not resolve the central problem with the City’s argument, namely the absence of a causal connection between each fault committed by the respondents and the aggregate damage done to a given patrol car during the riot. As one author aptly puts it, [translation] “[f]or several debtors to have an obligation *in solidum*, one essential and fundamental requirement must always be met: there must be a connection between each debtor individually and the whole of the debt or injury. If . . . it is possible to identify each person’s share, the obligation *in solidum* must not be applied” (Levesque, at p. 128 (emphasis in original)). As in cases of legislative solidarity, there can be no liability *in solidum* among defendants who have caused separate injuries (Vézina and Langevin, at p. 129; *2855‑0523 Québec inc. v. Ivanhoé Cambridge inc.*, 2014 QCCA 124, 45 R.P.R. (5th) 64, at para. 20; *Fonds d’assurance responsabilité professionnelle du Barreau du Québec v. Gariépy*, 2005 QCCA 60, [2005] R.J.Q. 409, at paras. 20‑30).
18. Conclusion
19. In short, no matter what approach is taken, the respondents cannot be found solidarily liable in the circumstances of the cases at bar. The requirements of arts. 1480 and 1526 *C.C.Q.* are not met, and the obligation *in solidum* cannot be used to circumvent the comprehensive legislative scheme governing solidarity in cases of extracontractual fault in Quebec civil law.
20. What the City is really seeking is to have all the identified rioters who did damage to one of its patrol cars during the riot found solidarily liable even though their actions did not all contribute to the aggregate injury for which it is seeking compensation. Not only is this claim wrong in law, but it would also lead to absurd results. The wrongful acts committed by the rioters were quite dissimilar, both in nature and in seriousness, and were also separated in time from and unrelated to one another. To grant the City’s claim would be to assign the same legal consequences to arson committed against a vehicle by a masked outside agitator as to a kick at the same vehicle by a tipsy fan three hours earlier.
21. In a context in which it would in all likelihood be impossible to bring a recursory action against other rioters whom the evidence did not make it possible to identify, imposing solidarity would thus amount to placing a rioter who kicked a car door in a fit of pique in a position in which he could face financial liability in the order of tens of thousands of dollars. Such an act is of course blameworthy and unacceptable, there is no doubt about that. However, a finding of solidary liability cannot be justified by equating this person with an unidentified rioter who set fire to the vehicle more than two hours later. The conclusion sought by the City strikes me as extremely unfair. Full reparation of the *injury* — not full compensation of the *victim* —is indeed a fundamental principle of Quebec civil law. But imposing solidarity on rioters who caused separate injuries would be a radical departure from the principle that a person is liable for reparation only of injuries caused by his or her own fault. The fact that a victim suffered several injuries in the course of an incident does not justify making an exception to that principle.
22. The Court of Québec and the Court of Appeal limited the consequences of the respondents’ faults on the basis that there was no causal connection between those faults and the whole of the injury claimed by the City. In doing so, they made no error of law or palpable and overriding error of fact. I would dismiss the City’s appeal with costs in each of the six instant cases.

English version of the reasons delivered by

Côté J. (dissenting) —

1. Introduction
2. My colleague Gascon J. frames the central issue in this appeal as follows: “To what extent can a rioter who has caused property damage be held solidarily liable to the victim for damage done to the same property by other rioters?” (para. 3). In my view, rioters who act together to do damage to property must be held solidarily liable for the whole of the injury suffered by the victim in respect of that property.
3. In an extracontractual context, persons who have committed faults are solidarily liable for reparation of an injury they have caused in the following circumstances:

**1480.** Where several persons have jointly taken part in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it, they are solidarily liable for reparation thereof.

**1526.** The obligation to make reparation for injury caused to another through the fault of two or more persons is solidary where the obligation is extra‑contractual.

(*Civil Code of Québec* (“*C.C.Q.*”))

1. In my opinion, the facts in the cases at bar supported a finding that the respondents are solidarily liable. In the circumstances, the conduct of all the individuals who took part in the destruction of a given patrol car constituted joint participation in a wrongful act. Their conduct ultimately led to the total loss of the vehicle, and these individuals are therefore solidarily liable for reparation of that injury under art. 1480 *C.C.Q.*
2. If, however, as my colleague concludes, the individuals in question cannot be found solidarily liable on that basis under art. 1480 *C.C.Q.*, then it must be found that the combined conduct of these various individuals constituted a common fault, a type of fault that also leads to a finding of solidary liability, but under art. 1526 *C.C.Q.* instead.
3. Under the *Civil Code of Lower Canada*, the courts did not hesitate to impose joint and several liability on a group of persons at fault who had caused injury. They arrived at that conclusion even where the member of the group who had caused the injury could be identified on a balance of probabilities, as they considered that it was, first and foremost, the dangerous conduct of the group that had caused the injury and, therefore, that the members of the group had all contributed to it. That case law has since been codified in the *Civil Code of Québec*. Thus, regardless of whether art. 1480 or art. 1526 is applied, the respondents must be found solidarily liable in respect of a given vandalized patrol car.
4. Issues
5. This appeal raises three questions that must, in my view, be answered as follows:
   * + 1. Are the respondents solidarily liable for the whole of the damage done to a patrol car during the riot because they jointly took part in a wrongful act within the meaning of art. 1480 *C.C.Q.*?

Yes. The respondents who participated in the destruction of a given patrol car jointly took part in a wrongful act and are solidarily liable for reparation of the whole of the damage that was done.

* + - 1. If the answer to the first question is no, did the respondents commit a common fault or contributory faults as a result of which they are solidarily liable under art. 1526 *C.C.Q.*?

If the answer to the first question is no, it must be concluded that the respondents are solidarily liable under art. 1526 *C.C.Q.* because they committed a common fault or contributory faults in relation to a given patrol car.

* + - 1. Are the respondents liable *in solidum*?

No. The concept of liability *in solidum* is not applicable in a situation involving a number of faults that are all extracontractual in nature.

1. Analysis
   1. Article 1480 C.C.Q.
2. Article 1480 *C.C.Q.* provides for solidary liability where several persons have jointly taken part in a wrongful act that has resulted in injury. In my view, these conditions are met where, as in these cases, several persons gather around a patrol car, strike it in ways that cause various damage and encourage others to do the same until the vehicle is completely destroyed.
   * 1. Respondents Jointly Took Part in a Wrongful Act That Resulted in Injury
3. The trial judge in these cases found that the respondents had not jointly taken part in a wrongful act given that they had not had a clear intention and had not plotted with one another. In his view, art. 1480 *C.C.Q.* was therefore inapplicable:

[translation] The City alleges a common venture. A common venture requires a clear intention, a plot to commit mischief. In the instant case, the evidence shows that the acts were spontaneous (although no less blameworthy) and had not been planned by the persons who committed them, who often did not know one another. According to the evidence, the evening was festive and actually had a family‑friendly ambience. It was not until later in the evening that things got out of hand.

The Court concludes that in this case, although the images may be shocking, the evidence shows that there was no collusion or common intention. In short, there was no common venture among the defendants.

(2014 QCCQ 4902, 2014 QCCQ 4915, 2014 QCCQ 4916, 2014 QCCQ 4919, 2014 QCCQ 4920 and 2014 QCCQ 4921 (collectively, “QCCQ”), at paras. 47‑48 (CanLII) (emphasis added).)

1. In my opinion, the trial judge erred in law in reaching that conclusion.
2. Article 1480 is new law. It codified the case law from before the *Civil Code of Québec* came into force.[[7]](#footnote-7) It is therefore necessary to look to that case law in order to properly define the concept of joint participation in a wrongful act and thus to determine the scope of this article. It is clear from the case law in question that it is not necessary, in order to find the respondents solidarily liable, to establish that they had a clear intention to commit mischief or had plotted to do so.
3. When the *Civil Code of Lower Canada* was in force, the courts often relied on the concept of “collective fault” or that of “common venture” in order to find that members of a group were jointly and severally liable. Francine Drouin‑Barakett and Pierre‑Gabriel Jobin[[8]](#footnote-8) correctly summarized the courts’ view of the scope of these concepts:[[9]](#footnote-9)

[translation] . . . these hypothetical cases involving an express prior agreement in the nature of a plot are not the only forms of collective fault. It is instead in cases in which there is no such agreement that the appropriate use of this concept can prove invaluable.

The courts recognize that collective fault may apply in a dangerous situation resulting from a spontaneous activity. . . .

. . .

Presence at the scene of the act that is the immediate cause of the damage is not conclusive. A person may have helped prepare the act and then slipped away at the last minute. Another person might join the instigators in an act that is already under way. The actions of participants who contribute to the creation of a dangerous situation may be identical or different. Finally, collective fault can exist in the case of purely spontaneous conduct as well as in that of conduct resulting from a plot. In all these scenarios, liability for collective fault will attach to all those — and only those — whose attitudes are connected with and inseparable from the damage, with the exception of fault by pure omission, about which some doubt remains, but which should also be included where the person at fault was in a position to intercede. [Emphasis added.]

1. This definition was entirely consistent with the case law under the *Civil Code of Lower Canada*. The courts did not hesitate to impose joint and several liability on a group of persons who had acted spontaneously, but whose actions or attitudes were connected with and inseparable from the damage the victim had suffered. For example, in *Gagné v.* *Monzerolle*, [1967] B.R. 899 (summary), the Quebec Court of Appeal held that two drivers who had spontaneously participated in an impromptu car race were jointly and severally liable on the basis that the race had been a [translation] “common enterprise”. Drouin‑Barakett and Jobin also referred to French law and to a case in which the Cour de cassation had imposed solidary liability on a group of hunters who had acted spontaneously in what the court described as a moment of euphoria.[[10]](#footnote-10)
2. It is thus possible, in cases involving spontaneous acts, to find that a collective fault has been committed even though the group did not plan its actions in advance or expressly agree to them. In my opinion, this means that the trial judge erred in law in respect of the definition of joint participation in a wrongful act in stating that [translation] “[a] common venture requires a clear intention, a plot to commit mischief” (QCCQ, at para. 47). Moreover, this error is confirmed by the facts on which he based his finding that the respondents had not jointly taken part in a wrongful act. The trial judge’s finding of fact that “the acts were spontaneous . . . and had not been planned by the persons who committed them, who often did not know one another” (QCCQ, at para. 47), cannot suffice to justify a finding that the respondents did not jointly take part in a wrongful act in the instant cases.
3. In his reasons, the trial judge sought to resolve the following issue with respect to the application of art. 1480 *C.C.Q.*:

[translation] The Court agreed with the parties that this judgment will have two parts. In the first, the Court will determine whether the riot of April 21, 2008 constituted joint participation in an act, in which case the defendants will be solidarily liable (1480 *C.C.Q.*).

(QCCQ, at para. 14 (emphasis added).)

1. I agree with the trial judge that the riot of April 21, 2008, viewed as a whole, cannot constitute joint participation in a wrongful act. A riot involving hundreds of people that occurs on many streets of downtown Montréal is an event that is simply too vast for there to be a sufficient nexus between the actions of all the participants. Every person who committed a fault that night could not be found solidarily liable for the whole of the damage.
2. In fact, it was precisely to avoid such a result that the Barreau du Québec recommended adding the word “*fautif*” (wrongful) to art. 1480 *C.C.Q.* at the time of the reform of the civil law:

[translation] The Barreau first suggested that the word *fautif* be added after the expression *fait collectif* [before the word “act” in the English version] in clause 1538 of the bill (art. 1480 C.C.Q.). The purpose of this clarification was to avoid having “every representative at an activity that is in itself legitimate (e.g. legal strike, demonstration) be liable for an injury caused by a small group of persons”.[[11]](#footnote-11)

1. This does not mean that wrongful acts in which smaller groups jointly took part during the riot cannot be identified, though. But the trial judge did not decide this issue. I repeat that he was instead seeking to determine [translation] “whether the riot of April 21, 2008 constituted joint participation in an act” (QCCQ, at para. 14). Thus, in the first section of his reasons, which was an integral part of his decisions in all the cases before him, he established that the riot of April 21, 2008 had not constituted joint participation in a wrongful act.
2. In the second section of the reasons, which was specific to each individual case, he merely stated that the question of joint participation in a wrongful act had already been decided (see, for example, 2014 QCCQ 4921, at para. 56 (CanLII)). In my view, he left open the question whether each group of respondents who had done damage to a given vehicle had jointly taken part in a wrongful act as a result of which those respondents were solidarily liable.
3. Small groups of individuals did in fact form on the night of the riot. Each of those groups attacked a single patrol car until it was completely destroyed. Given the individual conduct of the persons who did damage to the same property together with the bandwagon atmosphere that resulted, there is no doubt that their actions, whose ultimate purpose was, collectively, to destroy a single patrol car, were connected. Though the acts were not identical and were not always committed at exactly the same time, they were a series of related acts that were committed in the same place within a short period of time and in relation to the same property.
4. My colleague states that, in the cases decided under both the *Civil Code of Québec* and the *Civil Code of Lower Canada*, the persons who had jointly taken part in a wrongful act had “shared a common, albeit sometimes tacit, intention, a factor that is sorely lacking in the instant cases” (para. 59). Yet the cases he cites (at paras. 47 et seq.) concerned groups whose tacit intention was established on the basis of their having participated in a dangerous activity that had resulted in injury. In most of those cases, there had been no prior agreement between or preparation by the members of the group. I need only cite the example of the drivers who spontaneously participated in an impromptu car race (*Gagné*) or that of the group of children throwing stones for fun (*D’Allaire v. Trépanier*, [1961] C.S. 619 (Que.)). Therefore, as regards the intention that must be shared by persons who jointly take part in a wrongful act, the cases in question are fully applicable to the instant cases, in which groups of persons participated spontaneously in the destruction of vehicles.
5. I accordingly conclude that the persons who participated in the destruction of a given patrol car jointly took part in a wrongful act. Moreover, their joint participation in a wrongful act resulted in injury: the total loss of the patrol car. As the City argues:

[translation] The respondents could not have been unaware that if they jointly took part in vandalizing a vehicle, it would in the end be completely destroyed, given that a riot was under way and that they themselves were the rioters. In this case, there is an inextricable and very close connection between each respondent’s actions and the whole of the damage suffered by the appellant in respect of each vehicle.

(A.F., at para. 90)

1. Unlike my colleague, who states that the City’s argument results from “disregarding part of what the trial judge said” (para. 78), I am of the view that the trial judge’s findings of fact support the City’s argument in this regard. The trial judge described the events as follows: [translation] “Collective destruction for no reason. A jubilant crowd that smashed everything in its path for fun. A spontaneous reaction fuelled by shouts of encouragement that prodded each new person to do something worse” (2014 QCCQ 4915, at para. 68 (CanLII) (emphasis added)). And he added the following: “If one considers the defendants’ active participation in the riot, the acts of vandalism that were committed, the shouts of encouragement to other rioters to commit acts of mischief against police vehicles, all against a backdrop of unappeasable violence, these facts make this event unique” (2014 QCCQ 4915, at para. 72).
2. It is not a matter here of questioning the trial judge’s findings that the riot as a whole was not a common venture and that there was no causal connection between the riot as a whole and the destruction of the various vehicles. But in my view, the trial judge erred in law in defining joint participation in a wrongful act. His findings of fact lead to the conclusion that the respondents jointly took part in wrongful acts during the riot and that each of the acts they took part in resulted in the destruction of a patrol car. All in all, those findings were sufficient to hold the respondents solidarily liable for reparation of the whole of that injury, and it was therefore unnecessary to identify separate faults within this collective fault and link each one to a portion of the damage done by the group.
3. My colleague seems to suggest that certain of the trial judge’s findings should be disregarded on the basis that he made them in the section of his reasons on punitive damages (para. 78). I do not agree with my colleague on this point: regardless of whether the trial judge’s findings of fact were relied on in discussing compensatory damages or in discussing punitive damages, they can very well be relevant to both of these separate issues and they remain the same no matter what issue is being discussed and which section of the reasons they are found in.
4. On the subject of punitive damages, my colleague notes at para. 80 of his reasons that, “[i]n *de Montigny v. Brossard (Succession)*, 2010 SCC 51, [2010] 3 S.C.R. 64, this Court put an end to a longstanding judicial difference of opinion and held that punitive damages are autonomous in nature”. In my view, that comment is not necessary to dispose of this appeal, since punitive damages are not at issue here. I would add that I am not convinced that *de Montigny* actually put an end to any disagreement about whether punitive damages are autonomous in nature.
   * 1. Impossibility of Determining the Cause of the Injury
5. According to my colleague Gascon J., in addition to the conditions set out above, it must, before a group of persons may be found solidarily liable under art. 1480 *C.C.Q.*, “be impossible to determine which person actually caused the injury” (para. 19). While he acknowledges that this requirement does not flow from the concept of joint participation in a wrongful act or that of a common venture, my colleague expresses the view that, in light of that article’s wording, it must nonetheless be met (para. 56).
6. There are many examples of cases decided in the context of the *Civil Code of Lower Canada* in which the members of a group that had taken part in a common venture were held jointly and severally liable even though it had been shown on a balance of probabilities which person had actually caused the injury (*D’Allaire*; *Gagné*; *Laxton v. Sylvestre*, [1972] C.S. 297 (Que.), aff’d [1975] C.A. 648 (Que.); *Dumont v. Desjardins*, [1994] R.R.A. 459 (Que. Sup. Ct.)). Logically, the same conclusion applies even where it is possible to identify a member of the group who directly caused a portion of the injury. This is because it is the collective fault that is agreed to be the source of the injury regardless of which person directly caused the injury. This is the very case law the legislature codified in enacting arts. 1480 and 1526 *C.C.Q.*
7. In my opinion, there is no indication that the legislature intended to add another requirement to the concept of joint participation in a wrongful act, as defined by the courts, when it codified that concept in the *Civil Code of Québec*. I agree with the City that the words “*sans qu’il soit possible, dans l’un ou l’autre cas, de déterminer laquelle l’a effectivement causé*” (“where it is impossible to determine, in either case, which of them actually caused it”) in the French version of art. 1480 *C.C.Q.* apply only to the second part of that article with respect to separate faults. As the Court of Appeal stated in the cases at bar, [translation] “[i]t may be possible to read the French version in [this] manner . . . in light of its syntax” (2016 QCCA 1022, at para. 59 (CanLII)). Moreover, unlike my colleague, I am of the view that the English version does not conflict with this interpretation:

**1480.** Where several persons have jointly taken part in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it, they are solidarily liable for reparation thereof.

1. This provision can be read as follows: “Where several persons . . . have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused it . . .” This means that when a court applies the first part of the article, a finding that “several persons have jointly taken part in a wrongful act which has resulted in injury” or, in French, that “*plusieurs personnes ont participé à un fait collectif fautif qui entraîne un préjudice*” will suffice for it to find the participants solidarily liable for reparation of the injury.
2. This interpretation is consistent with the scheme and object of the legislation. The civil liability scheme is based on the concept of fault. In the case of joint participation in a wrongful act, the members of a group are found solidarily liable because it is their collective fault that is considered to be the cause of the injury. A case that can be cited to illustrate this is *Massignani v. Veilleux*, [1987] R.R.A. 541 (Que.), at pp. 543‑44, in which the Court of Appeal endorsed the remarks of Albert Mayrand[[12]](#footnote-12) (later a judge of that court) concerning the common venture concept:

[translation] In my view, even if it is assumed that only one of the two appellants fired the shot or two shots that injured the respondents, the appellants must be found to be jointly and severally liable in the circumstances of this case.

They took part in a common venture that was unlawful, extremely careless and dangerous.

. . .

On this point, I endorse Mr. Mayrand’s observations:

Where hunters are alleged to have been careless in hunting, the fault on which the action is based is not the shots fired by each of them, one of which injured the victim, but their common carelessness, which created a dangerous situation. The shots are nothing more than the foreseeable result of conduct that was already wrongful, the final phase of a careless activity. For the members of the group to be jointly and severally liable, it is not necessary that the careless enterprise have been conducted in its entirety by all of them; it is enough that all of them participated in it to some degree. If they took part in a battue in the woods without first deciding on a plan and agreeing on safety measures, they are collectively guilty of carelessness.

Carelessness in a hunting expedition is not as direct a fault as the shot that injured the victim. Is it a legal cause of the accident? This takes us back to the question of adequate causation referred to above. It is our view that, in many circumstances, the shot that injured the victim is a normal and foreseeable result of a fault of omission and of the careless behaviour of all the hunters. This wrongful behaviour is therefore — to use the accepted jargon — the *causa causans*, not merely a *sine qua non*, of the damage. Carelessness in the hunt increased the risk that damage would occur. In some circumstances, it is reasonable to think that, without this collective carelessness, the shots would not have been fired. [Emphasis added; footnote omitted.]

1. My colleague Gascon J. cites a passage from the commentaries of the Minister of Justice on the reform of the *Civil Code of Québec* in support of his position:

As the Minister of Justice mentioned, art. 1480 *C.C.Q.* resolves the problem of apportionment of liability among those who are at fault (Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 906). He added that, in the cases contemplated in art. 1480 *C.C.Q.*, the rule of solidarity applies [translation] “to protect the victim, because, in the circumstances, the victim is unable to establish a causal connection between the injury he or she suffered and the causal fault” (*ibid.*). The legislature has thus ensured that the victim does not bear the consequences of evidentiary difficulties that can be attributed to the situation in which he or she has been placed by the persons who committed the faults (see also P. Deschamps, “Cas d’exonération et partage de responsabilité en matière extracontractuelle”, in *JurisClasseur Québec — Collection droit civil — Obligations et responsabilité civile* (loose‑leaf), vol. 1, by P.‑C. Lafond, ed., fasc. 22, at para. 15; Khoury, at para. 32). [para. 31]

1. In the cases at bar, contrary to what my colleague says (at para. 39), the respondents are not being held solidarily liable solely on the basis that the victim cannot identify the person who caused the damage (or a portion of the damage). Rather, it is important to protect the victim, because, in the circumstances, the victim is unable to establish a causal connection between a fault — other than the joint participation in a wrongful act — and the total loss of a patrol car. First of all, the evidence does not in every case establish the exact sequence of events where two or more respondents acted simultaneously to do damage to a given vehicle. As well, it is impossible to establish the exact moment when a vehicle became a total loss or the condition a vehicle was in when it was set on fire. Finally, the greater the number of harmful acts, the harder it is to distinguish the damage caused by each individual.
2. It is obvious that even if all the persons who had committed faults could be identified, the court would still be confronted with a serious evidentiary issue in that it would be unable to attribute each share of the partitioned injury to those individuals. In such circumstances, why should the group of individuals who jointly took part in the wrongful act be favoured over the innocent victim? The exact opposite is suggested by arts. 1480 and 1526 *C.C.Q.* As my colleague notes, “[t]he legislature has . . . ensured that the victim does not bear the consequences of evidentiary difficulties that can be attributed to the situation in which he or she has been placed by the persons who committed the faults” (para. 31).
3. One example drawn from this appeal clearly shows how grossly unfair it would be to the victim not to impose solidary liability. In case number 2014 QCCQ 4919, the City claimed $20,707.53 for the total destruction of patrol car 21‑15, which had been vandalized and set on fire during the riot. The trial judge found seven individuals liable in respect of that vehicle:
   * + 1. Defendant Favreau Courtemanche admitted that he had [translation] “kicked the grill of the vehicle . . . a few times” (para. 83 (CanLII)). *He was ordered to pay $400 in compensatory damages.*
       2. Defendant Iden [translation] “admitted that he had thrown a metal garbage can at the front fender . . . [and] that he had climbed onto the hood, thereby denting it slightly” (para. 124). *He was ordered to pay $1,000 in compensatory damages.*
       3. Defendant Bradshaw [translation] “admitted that he had climbed onto and jumped on the hood of the vehicle, thereby denting it” (para. 147). *He was ordered to pay $700 in compensatory damages.*
       4. Defendant Primeau kicked the car several times. The trial judge stressed the following with respect to the defendant’s attitude: [translation] “The video clips clearly show the defendant encouraging the crowd to do damage to the vehicle. A few times, the defendant is heard shouting ‘Come on’ while waving his arms as a sign of encouragement. That attitude will certainly affect the amount awarded as punitive damages” (para. 60). The defendant therefore “not only took part in the riot, he encouraged those around him to commit acts of mischief against police vehicle 21‑15” (para. 78). In doing so, he incited the crowd to do damage to the vehicle (para. 79). Mr. Primeau also admitted that he was still present at the scene and saw the individual who set fire to the vehicle. *He was ordered to pay $900 in compensatory damages.*
       5. Defendant Nega jumped [translation] “with both feet on the hood of vehicle 21‑15 and kicked at the windshield, which he broke. Finally, he picked up a metal garbage can and hit police car 21‑15 many times, to say nothing of the many times he gleefully kicked the body of the vehicle” (para. 110). The police report also notes that, [translation] “[i]n each interval between acts of mischief, the accused got the crowd worked up by shouting and throwing bottles and rocks” (reproduced in A.R., vol. V, pp. 952‑54, at p. 954). *He was ordered to pay $2,000 in compensatory damages.*
       6. Defendant Davin [translation] “jumped on the hood, on the roof of vehicle 21‑15. He smashed the headlights and roof lights and threw beer bottles at the vehicle’s windows. He also attacked an individual who tried to reason with him, hitting him in the head with a bottle” (para. 134). According to the police report, Mr. Davin stated that it was his friends who had set fire to the vehicle. He even added that “given the chance, he would start all over again and that, had he been given the opportunity to do so, he would have set the vehicle on fire” (para. 135). *He was ordered to pay $2,000 in compensatory damages.*
       7. Defendant Chaperon helped another individual light a piece of cardboard that he himself then placed in the vehicle, which was set on fire. *He was ordered to pay $4,000 in compensatory damages.*
4. In the case in question, the City was thus able to identify seven individuals who had taken part in the destruction of the patrol car. It was also able to identify the person who had started the fire. As a result of the vandalism, the vehicle was completely destroyed and the City incurred a loss of $20,707.53. However, it is receiving only $11,000 in compensatory damages. Rather than imposing solidary liability on the members of the group who had jointly participated in this wrongful act, the trial judge identified separate faults within the wrongful act and linked each of them to a portion of the damage done by the group. In the case of the respondent who had set fire to the patrol car, the judge noted that the vehicle was already in bad shape by the time it was set on fire, as it had been completely wrecked. He accordingly assessed the damage at $4,000.
5. When all is said and done, it is the innocent victim that is left with a loss of $9,707.53 for which it has not been compensated. This is precisely the type of injustice that art. 1480 *C.C.Q.* is intended to remedy. On this point, allow me to reiterate that, as my colleague points out, the legislature’s intention was to “ensur[e] that the victim does not bear the consequences of evidentiary difficulties that can be attributed to the situation in which he or she has been placed by the persons who committed the faults” (para. 31).
6. Before concluding on this question, I wish to add one thing: under the *Civil Code of Lower Canada*, a court could find a defendant jointly and severally liable even if it was possible to identify separate faults within a collective fault and to link them to portions of the damage done by the group. This is still true today. In the instant cases, therefore, the trial judge should have found the defendants solidarily liable even though it was possible, in some of the cases, to link individual faults to portions of the damage. That does not bar such a finding given that the persons in question had jointly taken part in a wrongful act that resulted in injury. Once a finding of solidarity has been made, art. 1478 *C.C.Q.* requires that the seriousness of the faults committed by the defendants who have been found solidarily liable be assessed in order to apportion liability among them:[[13]](#footnote-13)

**1478.** Where an injury has been caused by several persons, liability is shared by them in proportion to the seriousness of the fault of each.[[14]](#footnote-14)

. . .

This means that the identification of individual faults and the determination of their nature and seriousness are relevant only to the apportionment of liability among the persons who jointly took part in the wrongful act and do not affect the question whether those persons are solidarily liable to the victim.

1. I accordingly conclude that art. 1480 *C.C.Q.* applies in these cases. In my view, this interpretation is consistent with the wording of the article, with the legislature’s intention to codify the earlier case law and with the scheme and object of the legislation (*Canada (Attorney General) v. Thouin*, 2017 SCC 46, [2017] 2 S.C.R. 184, at para. 26, quoting *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, in turn quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87).
   1. Article 1526 C.C.Q.
2. In my opinion, the legislature did not intend to make the application of art. 1480 *C.C.Q.* subject to the requirement that it be impossible to determine the identity of the person who caused the injury. But even if that were the case, the requirement in question would not affect the outcome of this appeal.
3. My colleague states that in such a case, it is on art. 1526 *C.C.Q.* that a plaintiff would have to rely in order to have persons who have jointly taken part in a wrongful act — a situation the courts formerly characterized as a “common venture” — found solidarily liable. Therefore, even if I accepted Gascon J.’s interpretation of art. 1480 *C.C.Q.*, I would still conclude that the respondents must be found solidarily liable under art. 1526 *C.C.Q.* for the whole of the damage done to a given patrol car:

**1526.** The obligation to make reparation for injury caused to another through the fault of two or more persons is solidary where the obligation is extra‑contractual.

1. Under this article, two or more persons who have through their fault caused a single injury have a solidary obligation to make reparation for that injury.[[15]](#footnote-15) In the instant cases, the trial judge found that the respondents had committed separate faults and that those faults could not be linked to a single injury. In my view, that finding flowed directly from the error of law he made in defining joint participation in a wrongful act.
2. Because the trial judge concluded that the respondents had not jointly taken part in a wrongful act, he was unable to establish a causal connection with the injury suffered by the City, that is, the total loss of the patrol car in question. He instead found that there were a number of individual faults, each of which had caused a portion of the damage. Unlike him, I find that the respondents committed a common fault that resulted in the total loss of each vehicle. In light of my discussion in the preceding sections, it was the wrongful act in which the respondents jointly took part that was the direct cause of the destruction of each of the vehicles, and it therefore stands to reason that the respondents are solidarily liable under art. 1526 *C.C.Q.*
3. Furthermore, the trial judge’s analysis regarding the application of art. 1526 *C.C.Q.* leads to inconsistent outcomes that cannot be ignored. For example, in case number 2014 QCCQ 4923, which is not at issue in this appeal, he found the two defendants Gauchier and Casimir — cousins who had thrown things at patrol cars 44‑3 and 30‑5 and shattered the cars’ windows — solidarily liable under art. 1526 *C.C.Q.* He concluded that, [translation] “[b]ecause this was a single fault committed by two people in relation to two vehicles, the defendants are solidarily liable” (para. 61 (CanLII)).
4. In a second, very similar case (2014 QCCQ 4916), which is at issue in this appeal, the two defendants in question were roommates who had gone downtown together. The trial judge found that Mr. Côté Béliveau had [translation] “thr[own] rocks at the vehicle, breaking the front and rear windows” and “tried, with the help of other rioters, to tear off the front passenger‑side door of [the] vehicle” (para. 56 (CanLII) (emphasis added)). Mr. Côté Béliveau filed neither a defence nor an estimate of the damage he had allegedly caused. The trial judge therefore awarded $2,500 in damages. Mr. Hunter had also taken part in the destruction of the vehicle at the same time. He admitted in particular to throwing a rock that had broken the vehicle’s rear window — for which Mr. Côté Béliveau was also found liable. He also admitted that he had “tried to tear off the front (passenger‑side) door of the police vehicle” (para. 58) — again damage for which Mr. Côté Béliveau was also found liable. The trial judge found that the value of the rear window was $300, but that Mr. Hunter’s liability was limited to 50 percent of that amount on the basis that he “was not the only one to throw things at the windows” (para. 61). As for the door and the other damage that had been done, the trial judge simply awarded an amount without evidence as to the cost of the damage.
5. According to my colleague, the case of defendants Côté Béliveau and Hunter must be distinguished from that of defendants Gauchier and Casimir (2014 QCCQ 4923) on the basis that, in his opinion, it was possible in the case of Mr. Hunter and Mr. Côté Béliveau to determine exactly what damage had been caused by each of the defendants (para. 75). Unlike my colleague, however, I do not believe that in finding that Mr. Hunter was liable to the extent of 50 percent of the value of the windows he broke, the trial judge identified the precise damage caused by the defendants. In my view, he instead assessed Mr. Hunter’s liability on the basis of the seriousness of the fault the defendant had committed, as he could not determine the exact extent of the damage. It is impossible to establish that a given individual broke exactly 50 percent of a window. The victim ultimately finds itself with a broken window that must be replaced. That is a single injury in which a number of individuals took part, and those individuals must therefore be found solidarily liable. The same is true where the front (passenger‑side) door of the patrol car is concerned. In the end, the patrol car was completely destroyed. That, too, is a single injury for which the defendants should be found solidarily liable.
6. Finally, I would also note with respect to the case of the defendants Côté Béliveau and Hunter that it cannot be said, as my colleague does, that “[w]ith a few exceptions, which the judge rightly dealt with differently, the respondents did not know and were never in contact with one another, and their acts were committed at different times during the riot without the knowledge of the other respondents” (para. 68). The evidence unquestionably shows the opposite to be true, yet the trial judge did not *deal with their situation differently*.
7. Conclusion
8. I conclude that the respondents who damaged a given patrol car during the riot jointly took part in a wrongful act and must be held solidarily liable for the whole of the damage done to the vehicle in question. In my view, they should be found solidarily liable under art. 1480 *C.C.Q.* or, alternatively, for the same reasons, under art. 1526 *C.C.Q.* I would therefore allow the appeal.

*Appeal dismissed with costs,* Côté J. *dissenting.*

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1. I note that art. 1480 *C.C.Q.* also applies in contractual matters (N. Vézina, “Cas d’exonération et partage de responsabilité en matière contractuelle”, in *JurisClasseur Québec — Collection droit civil — Obligations et responsabilité civile* (loose-leaf), vol. 1, by P.‑C. Lafond, ed., fasc. 31, at para. 42; see, for example, *Larouche v. Simard*, 2009 QCCS 529, [2009] R.J.Q. 768). Some authors suggest that art. 1480 *C.C.Q.* could therefore apply in a case involving both contractual and extracontractual faults (J.‑L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile* (8th ed. 2014), at No. 1‑58; V. Karim, *Les obligations* (4th ed. 2015), vol. 1, at paras. 3456 and 3460‑70). That question does not arise in this appeal, however. [↑](#footnote-ref-1)
2. Minor amendments were made to the English version of the article in 2014, 2015 and 2016, but they are of no consequence to this appeal. [↑](#footnote-ref-2)
3. I note that, according to the *Multidictionnaire de la langue française*, the phrase “*l’un ou l’autre*” means [translation] “only one of two” (M.‑É. de Villers (5th ed. 2009), see table on the word “*un*”, at p. 1639 (emphasis added)). Because the only example given in that dictionary does not reflect the structure of the sentence in art. 1480 *C.C.Q.*, I consider the Banque de dépannage linguistique of the Office québécois de la langue française to be more complete on this specific point. [↑](#footnote-ref-3)
4. And as can be seen, the terminology used at the time was fluid: the courts used the terms “common venture”, “common enterprise”, “common act” and “collective fault” interchangeably. [↑](#footnote-ref-4)
5. I leave it to the reader to judge whether my intention here is to place what the trial judge said in its context or whether, as my colleague maintains (at para. 116), I am instead suggesting that certain of his conclusions be disregarded. [↑](#footnote-ref-5)
6. This Court resolved the conflict in the case law on this point in *Cinar Corp. v. Robinson*, 2013 SCC 73, [2013] 3 S.C.R. 1168, in which it endorsed the reasoning and result in *Solomon* (para. 124). [↑](#footnote-ref-6)
7. J.-L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile* (8th ed. 2014), at No. 1‑680. See also *Massignani v. Veilleux*, [1987] R.R.A. 541 (Que. C.A.). [↑](#footnote-ref-7)
8. F. Drouin-Barakett and P.-G. Jobin, “La faute collective dans l’équipe de professionnels” (1978), 56 *Can. Bar Rev.* 49, at p. 66. [↑](#footnote-ref-8)
9. According to Frédéric Levesque, the definition proposed by Drouin‑Barakett and Jobin was precisely what inspired the legislature to include joint participation in a wrongful act in the *Civil Code of Québec* (*L’obligation in solidum en droit privé québécois* (2010), at p. 219). [↑](#footnote-ref-9)
10. p. 66. [↑](#footnote-ref-10)
11. Levesque, at p. 222 (footnote omitted). [↑](#footnote-ref-11)
12. A. Mayrand, “L’énigme des fautes simultanées” (1958), 18 *R. du B.* 1, at p. 16. [↑](#footnote-ref-12)
13. Baudouin, Deslauriers and Moore, at No. 1-721. [↑](#footnote-ref-13)
14. It should be noted that art. 328 of the *Code of Civil Procedure*, CQLR, c. C-25.01, provides: “A judgment rendered against a party must be capable of being executed. A judgment awarding damages must liquidate the damages; a judgment finding persons solidarily liable for injury must, if the evidence permits, determine the share of each of those persons in the award as between them only.” [↑](#footnote-ref-14)
15. Baudouin, Deslauriers and Moore, at Nos. 1‑720 to 1‑722; D. Lluelles and B. Moore, *Droit des obligations* (2nd ed. 2012), at No. 2578. [↑](#footnote-ref-15)