

NEVERTHELESS SHE PERSISTED



"Litigation is the basic legal right which guarantees every corporation its decade in court."

David Porter

The following article is courtesy of Monty Fordham, BA, LL.B. who wrote it for the St. Thomas, Ontario Chamber of Commerce Business Beat, December 2019

A recent decision of the Supreme Court of Canada stands for the legal principle that...well I'll let you decide. The decision of the full nine-member panel of the top court was delivered on November 29, 2019. Remember that date. It's important later on.

Mr. Justice Cote summarized the facts of this seminal case in a very succinct and accurate manner and so I will simply summarize his observations: On an evening in May 2009, the appellant, Bela Kosoian, entered a subway station in order to travel to university. She took the descending escalator. Like many subway users she did not hold the handrail. She leaned forward and rummaged through her bag. A police officer saw her and ordered her several times to hold the handrail. Ms. Kosoian refused to comply and then refused to identify herself once she reached the bottom of the escalator. (I bet you know where this is headed.)

A few minutes later, as she tried to leave, the police officer and a colleague took her by the elbows and led her to a holding room. (Arrest? Or just detention?) Given her refusal to provide a piece of identification and her agitated behaviour, the police officers handcuffed her with her arms crossed behind her back and forced her to sit on a chair. After searching her bag, still without her consent, the officers finally gave her a statement of offence for \$100 for disobeying a pictogram (how dare she) indicating that the handrail should be held and another statement of offence for \$320 for hindering them in their duties.

Now, you may have assumed Ms. Kosoian wouldn't just plead guilty and pay her fines. No way! In fact, she attended Provincial Offences Court and was found "not guilty" on both charges. Whew, I guess that's the end of that! Oh, gentle reader, not even close. Ms. Kosoian decided to sue both the police officer, the City of Laval and the subway authority for "psychological suffering and minor bodily injuries in addition to impairing her dignity". She claimed \$69,000.00 in compensatory and punitive damages.

At the trial court, Ms. Kosoian didn't fare so well. In dismissing her claim, the trial judge found the officer's behaviour to be "exemplary and irreproachable", and noted she had acted in an "inconceivable manner" by "unlawfully and stubbornly" refusing to

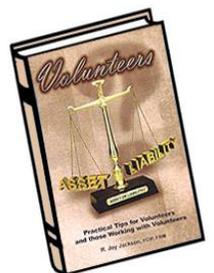
obey the officer's order to hold the hand rail. Well, I guess that's it for Ms. Kosoian. Oh no, not by a long shot.

The Quebec Court of Appeal took much the same view as the trial judge and the majority of the judges found her to be "the author of her own misfortune". Appeal dismissed! End of the line for sure! Except that one of the judges in the appeal court delivered what is called a "dissenting opinion", which opens the door just a crack to the Supreme Court. But what chance could Ms. Kosoian have in light of the legal findings of the lower court?

On November 6, 2019 we received the answer. The full nine-member Supreme Court disagreed completely with the decisions of the lower courts. The Court found that "the police officer committed a civil fault by ordering Ms. Kosoian to identify herself and by conducting a search based on a non-existent offence, namely disobeying the pictogram indicating the handrail should be held." The Court, likewise, had no difficulty in finding the subway authority civilly liable due to its unreasonable enforcement mandate. The court ordered damages against both in the amount of \$20,000.00. (A sum within the jurisdiction of the small claims court.) But the Supreme Court also made comment with respect to a fundamental Canadian principle of law: "In a free and democratic society, no one should accept- or expect to be subjected to - unjustified state intrusions. Interference with freedom of movement, just like invasion of privacy, must not be trivialized."

I suspect no one, not even Bela Kosoian, as she fumbled for her subway ticket, with hands completely off the escalator handrails, all those (count'em -10) many years ago, could have predicted such a journey; or such a profound outcome. Thanks Bela, for your persistence.

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