



Case in Brief: **Threlfall v. Carleton University**

Judgment of October 31, 2019 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2019 SCC 50

If a Quebecer is found dead within seven years of going missing, it can retroactively affect payments that were based on them being alive, the Supreme Court has ruled.

Mr. Roseme was a professor. When he retired, he chose a pension plan that would pay more each month. The compromise was that the payments would stop when he died.

In September 2007, Mr. Roseme was 77 years old. He was in the early stages of Alzheimer's disease. He went for a walk near his home and never came back.

About a year later, his former employer, Carleton University, heard Mr. Roseme was missing. Carleton said he must be dead. This meant it didn't have to keep paying the pension. It said his former partner, Ms. Threlfall, had to pay back most of the benefits received since he disappeared.

But Ms. Threlfall pointed out that, under Quebec law, Mr. Roseme was an "absentee." An absentee is a person who lives in Quebec and disappears. No one knows if they are still alive. The law presumes them to be alive for seven years, unless there is proof of death before then. The law treats the absentee as if they are alive. They have the same rights (for example, to pension payments) and duties (for example, to pay their mortgage) as anyone else. Another person takes over the practical issues for them. If no proof of death is ever found, the date of death is officially set as the seventh anniversary of the disappearance.

At this point, Mr. Roseme was an absentee. There was no proof he was dead. That meant Carleton had to keep paying and Ms. Threlfall had to manage the payments on his behalf.

About six years after he disappeared, Mr. Roseme's body was found. The coroner's report said his death was likely natural or accidental. His date of death was recorded as September 11, 2007—one day after he disappeared.

Since Mr. Roseme went missing, Carleton had paid almost half a million dollars in pension benefits. Once his death was official, it asked Ms. Threlfall for the money back. It said Mr. Roseme had agreed the payments would stop when he died, and he died in 2007.

For different reasons, the lower courts both said Ms. Threlfall had to pay Carleton back.

The Supreme Court majority agreed that Ms. Threlfall had to pay the money back. It said Mr. Roseme had agreed the pension payments would stop when he died. This meant when he actually died, not the later date his death was discovered.

Quebec law presumed Mr. Roseme was alive for the six years he was missing. But when his body was found, this proved that he wasn't. Mr. Roseme had a right to his pension payment while he was alive. This continued when he went missing but was legally presumed alive. But the majority said the source of Mr. Roseme's right to the pension went away when he died, even if no one knew about it until later. It said that, during the time the person was *presumed* to be alive, if proof was found that they were *actually* dead, the law had to rely on the true state of affairs. The majority said this applied retroactively.

This was because of the law about absentees, and what it is meant to do. Presuming the person is alive protects their personal and financial interests in the hope that they return. It keeps things stable, but uncertain. After seven years, the law and the people close to the absentee need certainty. The death then becomes legally final. If death is proved within the seven-year period, though, the situation is different. That's because the purposes of treating the person as alive no longer apply. There is no more uncertainty, and no interests to protect for the person's return.

Mr. Roseme didn't have a right to the pension after he died. The legal basis for Carleton to pay it was the presumption that he was alive. But this basis fell away once his true date of death was discovered (even though no one knew that at the time). That meant Ms. Threlfall had to pay back the money she received on Mr. Roseme's behalf.

Absentees used to be treated differently in Quebec law. They weren't considered either alive or dead. They were declared legally dead once they had been missing for 30 years or on their 100th birthday. The law was changed with Quebec's new *Civil Code* in 1994.

Breakdown of the decision: *Majority:* Chief Justice Richard [Wagner](#) and Justice Clément [Gascon](#) dismissed the appeal (Justices [Abella](#), [Karakatsanis](#), [Rowe](#), and [Martin](#) agreed) | *Dissenting:* Justices Suzanne [Côté](#) and Russell [Brown](#) said the proof of death shouldn't retroactively affect Mr. Roseme's right to his pension, so Ms. Threlfall shouldn't have to pay the money back to Carleton (Justice [Moldaver](#) agreed)

More information (case # 37893): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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