



The Supreme Court rules the City of Montreal could not apply payments from Quebec’s voluntary reimbursement program to cover the amount it owed to a contractor.

This case involves the City of Montreal and one of its contractors, an engineering firm called SM Group. In 2018, SM Group sought to avoid bankruptcy by applying to Quebec’s Superior Court for protection under the *Companies’ Creditors Arrangement Act* (CCAA). This process is called restructuring.

SM Group had also participated in a two-year voluntary reimbursement program under a Quebec law meant to help recover money paid “in the course of the tendering, awarding or management of a public contract in relation to which there may have been fraud or fraudulent tactics”. The 2015 law was in response to the Charbonneau Commission of inquiry into collusion and corruption in public contracts with the construction industry.

The Superior Court granted SM Group’s application. It appointed Deloitte Restructuring (Deloitte) to monitor the company’s restructuring and ordered a “stay of proceedings”. The stay meant that all legal actions against the company were put on hold to give the engineering firm the opportunity to get its business back on track.

Following that initial court order, SM Group continued with the construction of the Samuel De Champlain Bridge and the rebuilding of the Turcot Interchange in Montreal. However, the City refused to pay for that work. It said it could use “pre-post compensation” to reduce or cancel the amount owed for the work performed by SM Group. This meant the City would apply payments from the voluntary reimbursement program (VRP) to cover the amount owed for the work done on the bridge and interchange. Pre-post compensation is usually not allowed by the courts, but the City said it should be allowed in this case because the money SM Group owed through the VRP resulted from fraud.

In response to the City’s refusal to pay, Deloitte applied to the Superior Court to stop the City from using pre-post compensation. The court granted Deloitte’s application, which the City then appealed. When the Court of Appeal agreed the City could not use pre-post compensation, the City turned to the Supreme Court of Canada.

The Supreme Court has also agreed the City could not use pre-post compensation.

The City failed to prove the VRP claim was fraudulent.

Writing for the majority, Chief Justice Wagner and Justice Côté explained that a VRP claim is not necessarily fraudulent. They wrote, “the mere fact that a debtor company participated in the VRP is not sufficient to infer that the company defrauded a public body”. In this case, the City of Montreal still had the burden of proving that SM Group had committed fraud, which the City failed to do.

The majority said a court should generally not allow pre-post compensation, unless there are exceptional circumstances. They said there were no such exceptional circumstances in this case.

Breakdown of the decision: *Majority:* Chief Justice [Wagner](#) and Justice [Côté](#) dismissed the appeal, holding that the City could not use pre-post compensation to reduce or cancel the money owed for the work performed by SM Group (Justices [Moldaver](#), [Karakatsanis](#), [Rowe](#) and [Martin](#) agreed). | *Dissenting:* Justice [Brown](#) would have allowed the appeal solely for the purpose of returning the case to Quebec’s Superior Court for it to decide whether the City could effect compensation since that court was under the mistaken impression that it had no discretion to permit it.

More information (case # 39186): [Decision](#) | [Case information](#)

Lower court rulings (in French only): [judgment](#) (Quebec Superior Court) | [appeal](#) (Quebec Court of Appeal)
