

**SUPREME COURT OF CANADA**

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| **Citation:** de Montigny*v.* Brossard (Succession), 2010 SCC 51, [2010] 3 S.C.R. 64 | **Date** : 20101110  **Docket** : 32860 |

Between:

Marcel de Montigny, personally and in his capacity as heir

and liquidator of the succession of Liliane de Montigny,

and in his capacity as heir of the successions of Claudia

and Béatrice Brossard, Sandra de Montigny, personally and in her capacity

as heir and liquidator of the succession of Liliane de Montigny, and

Karen de Montigny, personally and in her capacity as heir

and liquidator of the succession of Liliane de Montigny

Appellants

and

Succession of the late Martin Brossard, represented by

Roger Brossard, its liquidator

Respondent

- and -

Attorney General of Quebec

Intervener

**Official English Translation**

**Coram:** McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Charron and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 71) | LeBel J. (McLachlin C.J. and Deschamps, Fish, Abella, Charron and Cromwell JJ. concurring) |

de Montigny *v.* Brossard (Succession), 2010 SCC 51, [2010] 3 S.C.R. 64

Marcel de Montigny, personally and in his capacity as heir

and liquidator of the succession of Liliane de Montigny,

and in his capacity as heir of the successions of Claudia

and Béatrice Brossard,

Sandra de Montigny, personally and in her capacity as heir

and liquidator of the succession of Liliane de Montigny, and

Karen de Montigny, personally and in her capacity as heir

and liquidator of the succession of Liliane de Montigny *Appellants*

v.

Succession of the late Martin Brossard, represented by

Roger Brossard, its liquidator *Respondent*

and

Attorney General of Quebec *Intervener*

**Indexed as:**de Montigny ***v.* Brossard (Succession)**

2010 SCC 51

File No.:  32860.

2010:  April 14; 2010:  November 10.

Present:  McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Charron and Cromwell JJ.

on appeal from the court of appeal for quebec

*Damages — Quantum — Moral prejudice — Spouse killing former spouse and their two children before committing suicide — Relatives of victims bringing civil liability action against murderer’s succession both personally and in their capacity as heirs and liquidators of victims’ successions — Trial judge allowing personal damages claim for solatium doloris and loss of moral support and dismissing action by successions — Whether compensation for solatium doloris and loss of support adequate.*

*Human rights — Compensation — Punitive damages — Autonomous nature — Death of perpetrator of illegal and intentional acts — Relatives of victims claiming punitive damages from murderer’s succession both personally and in their capacity as heirs and liquidators of victims’ successions — Whether absence of award of compensatory damages bars claim for punitive damages — Whether death of perpetrator of intentional wrong precludes award of punitive damages against his succession — Charter of human rights and freedoms, R.S.Q., c. C‑12, s. 49 — Civil Code of Québec, R.S.Q., c. C‑1991, art. 1621.*

In April 2002, B strangled his former spouse, drowned the couple’s two children, and then committed suicide. M, S and K later instituted an action in civil liability, on their own behalf and as heirs and liquidators of the victims’ successions, claiming compensatory and punitive damages from B’s succession. The trial judge denied the claim by the successions for two reasons. First of all, he concluded that compensation claimed for pain, suffering and loss of expectation of life could be transmitted to heirs only where the evidence showed that a sufficient period of time had elapsed between the wrongful act and the death and that the victim had actually felt pain. The fact that the deaths of the victims in this case were almost instantaneous meant that damages could not be awarded under this head. Because the trial judge took the view that punitive damages are incidental to compensatory damages, he concluded that a right to punitive damages did not become part of the victims’ patrimony that would be transmitted to their heirs. The judge added that the deterrent aspect of punitive damages no longer applied in any event because B was deceased. However, the judge allowed the personal action of M, S and K and awarded them damages for *solatium doloris* and loss of moral support. The Court of Appeal upheld the trial decision.

*Held*:  The appeal should be allowed in part.

There is no reason to intervene to vary the amounts awarded to M, S and K personally as compensation for the moral prejudice they suffered as a result of B’s actions, because the trial judge did not commit any palpable and overriding error in determining the quantum of compensatory damages. In this case, the amounts awarded by the trial judge are well within the range of acceptable compensation and seem reasonable, even if the compensation levels for this type of prejudice remain conservative. The fact that the trial judge did not consider psychological prejudice separately from the other aspects of the moral prejudice suffered by M, S and K is not in itself a reviewable error in principle. Here, the judge properly considered the psychological prejudice suffered by M, S and K in determining the compensation he awarded them.

However, the claim for punitive damages under s. 49, para. 2 of the Quebec *Charter* made by M, S and K in their capacity as heirs and liquidators of the successions was admissible, even in the absence, in this case, of an award of compensatory damages. In this regard, the majority opinion in *Béliveau St‑Jacques* has been given too broad a scope. That opinion excluded an action under s. 49, para. 2 of the *Charter* only in cases involving public compensation systems. Outside that context, there is no reason not to recognize the autonomous nature of punitive damages. The *Charter*’s quasi‑constitutional status means that it prevails over general legal rules in the Quebec normative order. If the autonomy of the right to such damages conferred by the *Charter* is denied by imposing on those asserting it the additional burden of first proving that they are entitled to bring an action that they may not necessarily wish or be able to bring, this amounts to making the implementation of the *Charter* rights and freedoms subject to the rules applicable to civil law actions. There is no justification for maintaining this obstacle.

Similarly, it is too narrow a view of the role of punitive damages to say that there is no point in awarding them where the person who committed an unlawful act is deceased. That view does not take account of the social utility of this form of judicial intervention. Article 1621 *C.C.Q.* recognizes the preventive purpose of punitive damages. Because of the exceptional nature of these damages, the courts have been using them only for punishment and deterrence (both specific and general) of conduct that is considered socially unacceptable. However, since denunciation contributes to the preventive objective of art. 1621 *C.C.Q.* just as much as punishment and deterrence, there is no reason to refuse to recognize denunciation as an objective of punitive damages in Quebec civil law, especially where the issue is respect for the rights and freedoms guaranteed by the *Charter*.

In this case, awarding punitive damages seems entirely appropriate in the circumstances to denounce the acts in question and affirm the importance of the right to life. The murders committed by B were for the victims an unlawful interference with a right protected by the *Charter* and were also a civil fault within the meaning of the law of civil liability. The interference was intentional because B intended to deprive his victims of life at the time he acted. Since B’s succession is insolvent, a symbolic lump sum of $10,000, payable to the three successions and to be shared among them equally, is sufficient to achieve the objective of denunciation. Since the Quebec law of succession allows the right of action for punitive damages under the *Charter* to be transmitted to a person’s heirs, M, S and K could bring this action by the successions on behalf of the victims. However, because there is no reason to believe that B intended to interfere with the psychological inviolability of M, S and K or even that he actually thought about the consequences of his actions for them, their personal action for punitive damages cannot succeed.

**Cases Cited**

**Distinguished:***Béliveau St‑Jacques v. Fédération des employées et employés de services publics inc.*, [1996] 2 S.C.R. 345; **referred to:**  *Augustus v. Gosset*, [1996] 3 S.C.R. 268; *Quebec (Public Curator) v. Syndicat national des employés de l’hôpital St‑Ferdinand*, [1996] 3 S.C.R. 211; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Driver v. Coca‑Cola Ltd.*, [1961] S.C.R. 201; *Pantel v. Air Canada*, [1975] 1 S.C.R. 472; *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Wilkes v. Wood* (1763), Lofft. 1, 98 E.R. 489; *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595; *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28; *Association des professeurs de Lignery v. Alvetta‑Comeau*, [1990] R.J.Q. 130.

**Statutes and Regulations Cited**

*Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001, s. 438.

*Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57, s. 423.

*Act respecting the Régie du logement*, R.S.Q., c. R‑8.1.

*Canadian Charter of Rights and Freedoms*, s. 24(1).

*Charter of human rights and freedoms*, R.S.Q., c. C‑12, Preamble, ss. 1, 49.

*Civil Code of Québec*, R.S.Q., c. C‑1991, arts. 625, 1610, 1618, 1621.

*Consumer Protection Act*, R.S.Q., c. P‑40.1.

*Tree Protection Act*, R.S.Q., c. P‑37.

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APPEAL from a judgment of the Quebec Court of Appeal (Pelletier, Bich and Côté JJ.A.), 2008 QCCA 1577, [2008] R.J.Q. 2015, [2008] J.Q. no 8007 (QL), 2008 CarswellQue 7957, affirming in part a judgment of Trudel J., 2006 QCCS 1677, [2006] R.J.Q. 1371, 40 C.C.L.T. (3d) 109, [2006] Q.J. No. 2848 (QL), 2006 CarswellQue 14487. Appeal allowed in part.

*Jean‑Félix* *Racicot*, for the appellants.

No one appeared for the respondent.

*Jean‑Yves Bernard*, for the intervener.

*Sébastien* *Grammond*, as *amicus curiae*.

English version of the judgment of the Court delivered by

1. LeBel J. — This appeal has as its backdrop a family tragedy. On the morning of April 22, 2002, Martin Brossard entered the home of his former spouse, Liliane de Montigny, strangled her and then drowned the couple’s two children, Claudia and Béatrice, in the bathtub of the home they had all once shared. He then hanged himself, leaving a note that clearly explained the reasons for his actions.
2. Since the tragedy, Marcel de Montigny, who is Liliane’s father and the grandfather of Claudia and Béatrice, and Sandra and Karen de Montigny, who are Liliane’s sisters and the children’s aunts, have been engaged in civil proceedings against the murderer’s succession. As heirs and liquidators of the successions of Liliane, Claudia and Béatrice, and also on their own behalf, they are claiming compensatory and punitive damages from Martin Brossard’s succession.
3. Despite its difficult context, this case provides the Court with an opportunity to reconsider the question of whether the punitive damages that may be awarded under s. 49, para. 2 of the *Charter of human rights and freedoms*,R.S.Q., c. C‑12 (“*Charter*”), are autonomous in nature. This Court must consider the relevance of such damages in cases where, as here, the person who committed the act in question can no longer be punished for his or her conduct.

I. Origin of the Case

1. Liliane de Montigny and Martin Brossard were together for about 15 years, from 1986 to 2001, although they separated a few times during that period. They had two children: Claudia, who was born in December 1997, and Beatrice, who was born in October 2000. In December 1999, they purchased land in Brossard, a suburb south of Montréal. They had a house built on the land and took possession of it in June 2000. They separated just over a year later, in November 2001. Liliane stayed in the family home with the children, while Martin went back to live with his parents. They agreed to share custody of the children.
2. On the morning of April 22, 2002, it was agreed that Martin would pick up the children at Liliane’s house, take them out for breakfast and drive them to daycare. The children’s caregiver was concerned when they did not arrive at the expected time. After trying in vain to reach Liliane and Martin, she went to the couple’s home and knocked on the door, but no one answered. She looked through the stained‑glass window of the front door and saw Martin’s body hanging in the living room. She immediately called for help.
3. When the police arrived, they found not only Martin’s body but also the lifeless bodies of Liliane, Claudia and Béatrice. Liliane was lying on her back in the master bedroom and had marks on her neck. The autopsy report indicated that she had been strangled, possibly with the belt from her bathrobe. The two children were lying face down in the empty bathtub in the upstairs bathroom. The autopsy reports concluded that they had both died from drowning. The cause of Martin’s death was asphyxiation by hanging. In its report to the coroner, the police investigation division concluded that there had been a triple murder followed by a suicide. That conclusion was consistent with the note left by Martin expressing despair over his breakup with Liliane.
4. On July 3, 2002, Marcel, Sandra and Karen de Montigny appeared before a notary to make a declaration of inheritance in Liliane’s succession and designated themselves as liquidators of the succession. The heirs did not designate a liquidator for the successions of Claudia and Béatrice. On October 3, 2002, they commenced the action that is the subject of this appeal in the Quebec Superior Court.

II. Judicial History

A. *Quebec Superior Court, 2006 QCCS 1677 (CanLII)*

1. In the Quebec Superior Court, the plaintiffs brought an action in damages against Martin Brossard’s succession. The action had two parts, namely a claim by the successions and a direct claim.
2. There were two aspects to the action by the successions. First, the three plaintiffs, in their capacity as heirs and liquidators, claimed compensation for the damage allegedly suffered by Liliane’s succession. Second, Marcel de Montigny did the same for the successions of Claudia and Béatrice. The case was heard by Clément Trudel J.
3. On the first aspect, Trudel J. concluded that he could not award the compensation claimed for Liliane’s pain, suffering and loss of expectation of life. That head of damages is transmitted to heirs only where the evidence shows that a sufficient period of time elapsed between the wrongful act and the death and that the victim actually felt pain. However, it appeared that Liliane, who became unconscious a few seconds after being attacked by Martin, had not regained consciousness before she died. Because her death was almost instantaneous, Trudel J. refused to award damages under this head to the succession. He also denied the claim for reimbursement of her funeral expenses.
4. Still dealing with the first aspect of the claim by the successions, Trudel J. next considered the demand for exemplary or punitive damages (which are equivalent terms according to the *Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57, s. 423). He noted that the Quebec legislature has recognized the possibility of awarding such damages in certain statutes, including the *Charter*. However, he inferred from this Court’s decisions on the matter, particularly *Béliveau St‑Jacques v. Fédération des employées et employés de services publics inc.*, [1996] 2 S.C.R. 345 (“*Béliveau St‑Jacques*”), that this type of damages can only be incidental to an award of compensatory damages for moral or material prejudice. Since he had found that he could not award compensatory damages for Liliane’s death, Trudel J. concluded that a right to exemplary damages could not have become part of Liliane’s patrimony or been transmitted to her heirs. He added that the deterrent aspect of punitive damages no longer applied in any event because Martin was deceased.
5. Trudel J. applied the same reasoning to Marcel de Montigny’s claims on behalf of the successions of young Claudia and Béatrice, which were the second aspect he considered. Since death by drowning is also almost instantaneous, neither compensatory nor exemplary damages could have become part of the young girls’ patrimony. He therefore denied these heads of damages for the same reasons as with Liliane’s succession. However, he awarded the successions half of the funeral expenses incurred as a result of the children’s deaths.
6. Trudel J. also considered the direct claim, in which Liliane’s father and sisters sought damages from Martin Brossard’s succession for *solatium doloris* and loss of moral support. After examining the evidence concerning the relationships among the members of the de Montigny family and the personal consequences of the tragedy for each of them, Trudel J. awarded Marcel de Montigny $30,000 for the loss of Liliane and $6,000 for the loss of each of his granddaughters. He awarded Sandra and Karen de Montigny $10,000 for the death of their sister Liliane and $2,000 for the death of each of their nieces. However, he denied the claim of Jacques‑Yves Gadbois, Sandra de Montigny’s spouse, on the basis that he had not been part of the family for long enough to have formed an attachment that could justify awarding him moral damages.

B. *Quebec Court of Appeal, 2008 QCCA 1577, [2008] R.J.Q. 2015 (Pelletier, Bich and Côté JJ.A.)*

1. Four aspects of Trudel J.’s decision were appealed to the Quebec Court of Appeal. The appellants’ appeal against the Brossard succession related first to the quantum of compensation awarded to them personally for pain and loss of moral support. It also concerned the refusal to award compensation to the successions for the victims’ suffering and loss of expectation of life as well as the denial of exemplary damages. Finally, the appellants claimed full compensation for the funeral expenses incurred by the successions.
2. On the issue of the amount of compensation awarded to the plaintiffs for *solatium doloris* and loss of *consortium* and *servitium* (“loss of moral support”), Pelletier J.A., for a unanimous Court of Appeal, found that Trudel J. had properly applied the principles established by this Court in *Augustus v. Gosset*, [1996] 3 S.C.R. 268 (“*Augustus*”). Moreover, his assessment of the evidence did not warrant any intervention by the Court of Appeal. Pelletier J.A. added that the amounts awarded were comparable to those awarded in other cases that bore some similarity to the present one.
3. The Court of Appeal found that the trial judge had not erred concerning the victims’ right to be compensated for pain and suffering and loss of expectation of life. Since it was impossible to determine the sequence of events, it could not be concluded that one of the victims could have suffered as a result of being aware of another victim’s murder. As well, the courts had long refused to accept such claims where the victim dies almost instantaneously or where the quantity of the time elapsed between the causal act and death does not allow for a reasonable inference that the victim suffered any prejudice separate from the death itself, as in this case.
4. Next, the Court of Appeal held that Trudel J. had correctly refused to award exemplary damages to the victims’ successions. However, at the hearing, the appellants had been given leave to amend their motion in order to claim exemplary damages in their personal capacity as “indirect victims”. While this eliminated the objection based on the immediate victims’ lack of recourse, the fact that exemplary damages can have no deterrent effect where the wrongdoer is deceased was an issue, as it had been at trial. According to Pelletier J.A., this factor justified denying the claim for exemplary damages:

[translation] . . . assuming that a message must be sent to anyone who might be tempted to do something similar to what Martin Brossard did . . . such a warning would have no real impact. . . . The level of despair required to contemplate such extreme action means that it is illusory to think that any deterrent effect can result from an award of punitive damages. [para. 37]

1. With regard to funeral expenses, the Court of Appeal intervened to allow the claims of the successions of Liliane, Claudia and Béatrice. That aspect of the decision is not in issue before this Court.

III. The Appeal to This Court

*Appointment of the Amicus Curiae*

1. After leave to appeal was granted in this matter, the appeal was set down for hearing in the fall 2009 session. However, the succession of the late Martin Brossard gave notice of its withdrawal and this Court appointed an *amicus curiae*, Sébastien Grammond. I note that Mr. Grammond made a considerable contribution to the proceedings through his factum and his input during the hearing.

IV. Analysis

A. *Issues*

1. There are two issues in this appeal:

1. Whether the trial judge and the Court of Appeal committed a palpable and overriding error in determining adequate compensation for *solatium doloris* and loss of moral support;

2. Whether the death of a person who commits intentional acts for which the victims could be awarded exemplary damages precludes an award of exemplary damages against the person’s succession. Whether the admissibility of such a remedy then depends on the existence of another head of damages.

B. *Positions of the Parties*

(1) Appellants’ Position

1. On the first issue, the appellants argue, in light of the case law and on the basis of the quality of their relationships with Liliane, Claudia and Béatrice, the circumstances of the deaths and the consequences of the tragedy for their own lives, that the quantum of damages awarded to them does not constitute full and acceptable compensation for the prejudice they suffered. They add that the Quebec courts seem to view the amount awarded by this Court in *Augustus*, the leading case on compensatory damages, as a cap on compensation, and they submit that that amount, expressed in today’s dollars, should be much higher than at the time it was established. They therefore ask this Court to substantially increase the compensation awarded to them under this head by the courts below.
2. On the second issue, the appellants argue that the admissibility of a claim for exemplary damages does not depend on the existence of another head of damages. They argue that an exemplary damages remedy exists autonomously and in parallel where a *Charter* right is intentionally violated. They add that the objectives of such damages are not limited to punishing or curbing an existing situation but also include deterring and denouncing acts of the same nature. In light of the facts of this case, particularly the motives for Martin Brossard’s crime, the victims’ situation and international recognition of the need to protect women and children, the appellants submit that exemplary damages must be awarded to send a clear message to society. The quantum of such damages will have to be determined based on the factors set out in art. 1621 of the *Civil Code of Québec*, R.S.Q., c. C‑1991 (“*C.C.Q.*”), namely the gravity of the fault, the defendant’s patrimonial situation, the extent of the reparation for which the debtor is already liable and the fact that the payment of compensation is assumed by a third person.

(2) Position of the *Amicus Curiae*

1. On the first issue, the *amicus curiae* is in favour of full compensation for the prejudice suffered by the surviving members of the de Montigny family, including psychological prejudice. In his view, by accepting only the concepts of *solatium doloris* and loss of moral support, the trial judge and the Court of Appeal failed to compensate for that specific type of prejudice and thus violated the principle of full compensation that underlies civil liability. He suggests that this Court reassess the moral prejudice by taking full account of the psychological prejudice.
2. On the second issue, which relates to punitive damages, the *amicus curiae* suggests that the objectives of such damages are the same in Quebec civil law as in the common law, namely punishment, deterrence and denunciation. For such damages to be awarded, there must have been intentional interference with the victim’s rights within the meaning of s. 49, para. 2 of the *Charter*. In other words, the person who committed the interference must have acted “with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause” (*Quebec (Public Curator) v. Syndicat national des employés de l’hôpital St‑Ferdinand*, [1996] 3 S.C.R. 211 (“*St‑Ferdinand*”), at para. 121). In the present case, there is no evidence of intentional interference with the appellants’ inviolability. According to the *amicus curiae*, the interference resulted only from Martin Brossard’s recklessness, and it was held in *Augustus* that recklessness does not amount to intentional fault. Therefore, in his opinion, the appellants cannot claim punitive damages from Martin Brossard’s succession either personally or as indirect victims.
3. However, the *amicus curiae* adds that the successions of Liliane, Claudia and Béatrice can obtain such damages. The *Charter* does not exclude the general principle set out in art. 625, para. 3 and art. 1610 *C.C.Q.* that the right to punitive damages for interference with personality rights is a right that may be transmitted to a person’s heirs. The *amicus curiae* acknowledges that *Béliveau St‑Jacques* was thought to have established a policy rule whereby the remedy of punitive damages is incidental to an award of compensatory damages. However, according to the *amicus curiae*, the solution adopted in *Béliveau St‑Jacques* can be explained by the specific facts of that case, particularly the importance of protecting [translation] “the integrity of major government compensation systems” (Daniel Gardner, *Le préjudice corporel* (3rd ed. 2009), at p. 161). Since that special concern is not present here in the instant case, no civil law principle would prevent awarding punitive damages even in the absence of an award of compensatory damages.
4. Finally, the *amicus curiae* submits that an obligation to pay punitive damages became part of Martin Brossard’s patrimony at the time he killed his victims and was transmitted to his heirs with the rest of his patrimony (art. 625 *C.C.Q.*). Even if it is impossible to punish the murderer, and even if an award of punitive damages against the murderer’s succession is unlikely to deter people from committing similar acts, it is important for this Court to denounce and indicate society’s disapproval of his crime. For that purpose, the *amicus curiae* suggests $1,000 as a symbolic amount.

C. *Compensation for Solatium Doloris and Loss of Moral Support*

1. This appeal reminds us once more of the delicate nature of judges’ work. In civil liability cases, judges sometimes have the difficult task of quantifying the value of concepts as intangible as a person’s life, physical inviolability or suffering. In this area, where, by definition, the exercise of reasoned discretion remains the rule, the judge must also give as much priority as possible to following established judicial practice while adapting it to the specific circumstances of each case. Because of the essential factual assessment required by this task, an appellate court must take a highly deferential approach to varying the quantum of compensatory damages awarded by the trial judge. The “palpable and overriding error” standard applies to findings and inferences of fact concerning the assessment of such damages (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 10 and 25; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at para. 53).
2. We have seen that the appellants claimed compensatory damages in the Quebec Superior Court in their dual capacity as heirs of the successions of Liliane, Claudia and Béatrice and as direct victims of moral prejudice. Trudel J. dismissed the action by the successions on the basis of *Driver v. Coca‑Cola Ltd.*, [1961] S.C.R. 201, which set out the principle that a claim for damages for pain and suffering is transmitted to a person’s heirs only if two conditions are met, namely, first, that a sufficiently long time have elapsed between the wrongful act and the death and, second, that the victim have actually felt pain (see also *Pantel v. Air Canada*, [1975] 1 S.C.R. 472, at pp. 478‑79; *Augustus*, at para. 56). The experts who testified at trial stated that death by strangulation or drowning is almost instantaneous. They said that, in both cases, loss of consciousness occurs after about 10 to 15 seconds and death within a few minutes. Since the right to life terminates at the time of death (*Augustus*, at para. 62), the trial judge correctly denied this claim. This aspect of the judgment is not under appeal in this Court.
3. However, the appellants are disputing the amounts awarded to them as compensation for the moral prejudice they suffered. In their opinion, those amounts are so far removed from full compensation for that prejudice that their determination was in itself a palpable and overriding error justifying appellate intervention. In support of their arguments, the appellants rely on examples drawn from Quebec cases in which the facts, while not completely identical to those of the instant case, are similar enough to form a basis for comparison. They submit that the Quebec courts still seem to wrongly view the amount awarded by this Court in *Augustus* as a cap on compensation. Moreover, that cap would be much higher once adjusted. I shall deal with this argument first.
4. In *Augustus*, the victim, a 19‑year‑old youth, escaped from the custody of the police officer who had arrested him on a warrant. The ensuing chase ended with the young man being shot in the head and killed. The appellant in that case, who was the victim’s mother, claimed, *inter alia*, compensatory damages from the respondents as *solatium doloris*. L’Heureux‑Dubé J., for this Court, held that $25,000 might be fair and reasonable in the circumstances but nonetheless referred the parties back to the Court of Appeal so it could determine the quantum of this head of compensation after hearing the parties on this point (para. 51).
5. While the Quebec courts have since used the sum of $25,000 awarded by L’Heureux‑Dubé J. as a reference point for determining the amount to be awarded as compensation for moral prejudice, it has never been considered a cap in the same way as the $100,000 awarded by Dickson J. in *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, at p. 265, for non‑pecuniary losses suffered by the immediate victim of injury. In *Augustus*, L’Heureux‑Dubé J. instead emphasized full compensation for moral prejudice, the value of which is calculated based on a set of factors that cover all the circumstances of the case. The adoption of such an approach is not foreign to the nature of the prejudice. While it is impossible to predict with any certainty the value of the future non‑pecuniary damage that may be suffered by the immediate victim of bodily injury, this exercise becomes easier when the extent of the moral prejudice suffered by the victim’s loved ones is being considered after the fact. The mere fact that there is no cap does not mean that no restrictions apply when such damages are being assessed. As L’Heureux‑Dubé J. noted, this is an area in which moderation and predictability must always be fostered (*Augustus*, at para. 48).
6. A review of Quebec case law subsequent to *Augustus* shows that this call for moderation and predictability has been heard quite well, even though the approach based on a consideration of all the circumstances of the case necessarily implies some variability in the amounts awarded. Professor Daniel Gardner, at pp. 668-71, looks at the compensation awarded from 1997 to 2009 for non‑pecuniary losses resulting from death. His study indicates that the amounts awarded by Trudel J. at trial are well within the range of acceptable compensation. That range (in 2009 dollars) is $12,400 to $79,700 for a parent who has lost a child aged 18 to 34 and $5,800 to $34,200 for the loss of a sibling. As regards a grandparent, uncle or aunt of a child under the age of 18, the decision under appeal serves as a precedent, since no similar cases are identified by Professor Gardner. Based on this information, the compensation awarded in this case seems reasonable, even if the compensation levels for this type of prejudice remain conservative.
7. The *amicus curiae* submits that Trudel J.’s error lies instead in his failure to view psychological prejudice as a form of compensable prejudice distinct from *solatium doloris* and loss of moral support, even though, like them, it is included in what is referred to as “moral prejudice”. This argument is unfounded. It can be seen from Trudel J.’s reasons that he looked at all the factors that have to be considered in determining the appropriate compensation.
8. The varying and complex nature of human feelings makes it pointless to try to artificially categorize the various aspects of moral prejudice. What is truly important is that the moral prejudice actually suffered be compensated as precisely and fully as possible. To this end, L’Heureux‑Dubé J. in *Augustus* established a non‑exhaustive list of factors to be considered in examining such a claim for compensation, namely the circumstances of the death, the ages of the deceased and the parent, the nature and quality of the relationship between the deceased and the parent, the parent’s personality and ability to manage the emotional consequences of the death, and the effect of the death on the parent’s life in light, *inter alia*, of the presence of other children or the possibility of having others (*Augustus*, at para. 50). Consideration of all these factors provides the judge with an overview of the emotional impact of the victim’s death on each of the victim’s loved ones so that full compensation can be provided for the resulting moral prejudice, including psychological prejudice, to the extent that this type of loss is compensable given its nature and complexity.
9. Contrary to the opinion of the *amicus curiae*, the fact that the trial judge did not consider psychological prejudice separately from the other aspects of the moral prejudice suffered by the appellants is not in itself an error in principle that calls for intervention by this Court. Such intervention is justified only where the trial judge’s analysis of the facts of the case is wrong or defective in light of the factors set out in *Augustus*, which is not the case here. In addition to the tragic circumstances of the deaths and the family dynamics in the de Montigny family both before and after the tragedy, Trudel J.’s analysis took into account the immediate and subsequent emotional and psychological repercussions of the events on the lives of Mr. de Montigny, Sandra and Karen. He noted, for example, that Sandra and Karen had [translation] “succeeded quite well in managing the emotional consequences of the deaths, surviving the loss, and assimilating it” (para. 111), whereas their father “had a hard time coping with the situation and moving on. . . . Although more private, [his pain] was nonetheless as intense, painful and traumatic as theirs. It will undoubtedly be hard for him to resign himself to the loss of his daughter and two granddaughters” (para. 112). These comments, though concise, satisfy me that Trudel J. properly considered the psychological prejudice suffered by the appellants in determining the compensation he awarded them.
10. Accordingly, in the absence of any palpable and overriding error, I find that there is no reason for this Court to intervene to vary the amounts awarded to the appellants as compensation for the moral prejudice they suffered as a result of Martin Brossard’s actions. While those amounts may seem relatively low given the tragic circumstances that led to them being awarded, it should be borne in mind that the process of quantifying this type of prejudice to arrive at an abstract monetary value remains governed by the evidence submitted and by judicial practice in this area. As Pelletier J.A. noted, appellate judges may not vary an amount awarded for moral prejudice at trial merely because they themselves would have awarded a higher amount. Despite all the sympathy one may feel for the de Montigny family, the applicable legal rules require that this first ground of appeal be dismissed.

D. *Award of Exemplary Damages Where the Perpetrator of the Intentional Wrong Is Deceased*

1. The appellants are also challenging the dismissal of the claim for exemplary damages they brought against Martin Brossard’s succession, first in their capacity as heirs of the successions of Liliane, Claudia and Béatrice and then, on appeal, in their personal capacity. As already discussed, there were two reasons why that claim was dismissed. First, relying on a line of judicial and scholarly authority that refuses to recognize the autonomous nature of exemplary damages, the judges below found that the fact that compensatory damages could not be awarded to the victims’ successions in this case was an insurmountable obstacle to the admissibility of a claim for exemplary damages under s. 49 of the *Charter*. As well, both the Superior Court and the Court of Appeal stressed that the punitive and deterrent effects of exemplary damages would be absent in this case because the wrongdoer had killed himself immediately after committing his acts. We shall now see that neither of these reasons stands up to analysis and that this aspect of the appellants’ appeal is well founded.
2. Autonomous Nature of Exemplary Damages
3. Ever since this Court rendered its three decisions on compensatory and exemplary damages under the *Charter* (*Augustus*, *St‑Ferdinand*, *Béliveau St‑Jacques*), there has been an ongoing controversy about whether the latter are autonomous of the former (for a summary of the debate, see Claude Dallaire, “L’évolution des dommages exemplaires depuis les décisions de la Cour suprême en 1996: dix ans de cheminement”, in *Développements récents en droit administratif et constitutionnel* (2006), vol. 240, 185)*.* The arguments on each side basically mirror those of the majority and minority judges in *Béliveau St‑Jacques*, in which the central issue was whether the victim of an industrial accident who had received compensation under the *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001 (“*AIAOD*”), could also bring a civil liability action against the person who had caused prejudice to the victim.
4. To determine whether an action for exemplary damages under s. 49, para. 2 of the *Charter* was a civil liability action within the meaning of s. 438 of the *AIAOD*, Gonthier J., for the majority, considered the nature of and basis for such an action. He concluded from his analysis that the action remained subject to the general principles of civil liability and therefore incidental in nature. Its recognition presupposed the admissibility and success of an action for compensatory damages. In a frequently quoted passage, he provided the following explanation:

Such an action can only be incidental to a principal action seeking compensation for moral or material prejudice. The second paragraph of s. 49 clearly states that in case of unlawful and intentional interference with a protected right, “the tribunal may, in addition, condemn the person guilty of it to exemplary damages” (emphasis added). This wording clearly shows that, even if it were admitted that an award of exemplary damages is not dependent upon a prior award of compensatory damages, the court must at least have found that there was an unlawful interference with a guaranteed right. Some wrongful conduct that gives rise to civil liability will therefore be identified and further consideration given to the intention of the person responsible. It is the combination of unlawfulness and intentionality that underlies the decision to award exemplary damages. The necessary connection with the wrongful conduct that gives rise to civil liability leads one to associate the remedy of exemplary damages with the principles of civil liability. [Emphasis in original; para. 127.]

1. Gonthier J.’s position on this question was criticized by L’Heureux‑Dubé J., who, in dissent, vigorously defended the position that exemplary damages are autonomous. In her view, “the *Charter* differs from the general law with respect to exemplary damages in that it establishes a remedy that is autonomous and distinct from compensatory remedies” (para. 26 (emphasis in original)). In her opinion, the textual argument drawn from the interpretation of the words “in addition” in s. 49, para. 2, on which Gonthier J. had relied in part to find that exemplary damages could not be dissociated from compensatory damages, would mean that “a court can not only award compensatory damages but can ‘in addition’, or equally, as well, moreover, also . . ., grant a request for exemplary damages” (para. 62 (emphasis in original)). According to L’Heureux‑Dubé J., the latter type of damages is therefore not dependent on the former. However, this autonomy is partially limited by the requirement that evidence of all the constituent elements (fault, prejudice, causal connection) of liability within the meaning of the *Civil Code of Québec* be presented in accordance with general legal principles.
2. Some authors believe that the specific context of *Béliveau St‑Jacques*, which had to do with the public compensation system for employment injuries, and the language used by Gonthier J. in the above passage make this aspect of the judgment a [translation] “cautious *obiter dictum*” (J.‑L. Baudouin and P. Deslauriers, *La responsabilité civile* (7th ed. 2007), vol. I, at p. 397). These factors are said to explain the subsequent vacillation in the Quebec courts with regard to the autonomous nature of exemplary damages (for a list of contradictory Quebec decisions, see Baudouin and Deslauriers, at p. 398, notes 304‑6; Gardner, at p. 161, notes 258‑59; Dallaire, at pp. 212 *et seq.*). Authors themselves are divided on this issue, since some have embraced the reasoning of the majority (Gardner, at p. 161) while others have expressed reservations about that reasoning (Baudouin and Deslauriers, at p. 398; Dallaire, at p. 210; Pierre Pratte, “Les dommages punitifs: institution autonome et distincte de la responsabilité civile” (1998), 58 *R. du B.* 287, at pp. 372 *et seq.*).
3. The solution adopted by L’Heureux‑Dubé J. seems in fact to be the appropriate one in cases where, as here, the imperative of preserving government compensation systems is not part of the legal context. As we have seen, *Béliveau St‑Jacques* dealt specifically with the interaction between the *AIAOD*, a provincial statute that separates claims by victims of industrial accidents from the general system of civil liability, and the *Charter*. As Gonthier J. noted, the *AIAOD* results from a social compromise whereby workers waive the possibility of obtaining full compensation by way of a civil action while employers have to provide partial compensation in the event of an accident (*Béliveau St‑Jacques*, at para. 109). By its very nature, such a complete and closed system, detached from the concept of fault or intentional acts, excludes the existence of a parallel system of liability that would hypothetically be based on s. 49 of the *Charter*. Since he was concerned about the long‑term viability of that public system, Gonthier J. was probably seeking to maintain its financial and structural stability by ensuring that the prohibition against bringing civil proceedings against employers contributing to the system remained effective. His comments must therefore be understood in that context.
4. One might question Gonthier J.’s interpretation of the expression “in addition”. Its meaning instead seems to be the one given to it by L’Heureux‑Dubé J. Gonthier J. himself acknowledged the possibility that an award of exemplary damages might not be dependent upon a prior award of compensatory damages in certain contexts. Outside the context of public compensation systems as in *Béliveau St‑Jacques*, the majority and minority positions seem to tend toward unqualified recognition of the need to establish the existence of the constituent elements of civil liability under the general law.
5. As noted by L’Heureux‑Dubé J. in *Béliveau St‑Jacques* (see, in particular, paras. 25 *et seq.*), the objectives of an action under s. 49 necessarily overlap with those of an action in damages based on the civil liability rules of the *Civil Code of Québec*. The concept of an unlawful act, on which s. 49 is based, often coincides with the concept of civil fault. As a result, in such situations, the compensation available under these two systems is combined and cannot be awarded separately. Otherwise, there would be duplicate compensation for the same acts. However, the remedies are not always perfectly coextensive. Because of the particular purpose of the remedy it provides for, s. 49, para. 2 can apply to acts and conduct that do not correspond to the concept of civil fault and thus do not fall within the scope of Quebec’s general civil liability system. The autonomy of this remedy emerges from both the wording of s. 49 and the distinct purposes served by the *Charter*’s implementation as well as from the need to ensure that the *Charter* has all the flexibility required for the development of remedies suited to concrete situations.
6. Therefore, it is my view that the majority opinion in *Béliveau St‑Jacques* has been given too broad a scope. That opinion excluded an action under s. 49, para. 2 only in cases involving public compensation systems, such as the system applicable to employment injuries in Quebec. Outside that context, there is no reason not to recognize the autonomous nature of exemplary damages and thus give this remedy the full scope and flexibility that its incorporation into the *Charter* demands. I note that the *Charter*’s quasi‑constitutional status means that it prevails over general legal rules in the Quebec normative order. If the autonomy of the right to exemplary damages conferred by the *Charter* is denied by imposing on those asserting it the additional burden of first proving that they are entitled to bring an action that they may not necessarily wish or be able to bring, this amounts to making the implementation of *Charter* rights and freedoms subject to the rules applicable to civil law actions. There is no justification for maintaining this obstacle.
7. For these reasons, the fact that no compensatory damages were awarded in the instant case does not in itself bar the claim for exemplary damages made by the appellants in their capacity as heirs of the successions of Liliane, Claudia and Béatrice. In my opinion, that claim was admissible. However, as I have already stated, according to the judgments of the Court of Appeal and the Superior Court, the absence of compensatory damages was only one of two obstacles to an award of exemplary damages, the second being that there was no point in punishing or deterring a wrongdoer who had died after committing his acts. I shall therefore consider this question before determining the appellants’ rights.
8. Objectives of Exemplary Damages
9. While compensatory damages are awarded to compensate for the prejudice resulting from fault, exemplary damages serve a different purpose. An award of such damages aims at expressing special disapproval of a person’s conduct and is tied to the judicial assessment of that conduct, not to the extent of the compensation required for reparation of actual prejudice, whether monetary or not. As Cory J. stated:

Punitive damages may be awarded in situations where the defendant’s misconduct is so malicious, oppressive and high‑handed that it offends the court’s sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant.

(*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 196)

1. In Quebec law, the system of exemplary damages remains exceptional in nature. Article 1621 *C.C.Q.* states that such damages may be awarded only where this is provided for by law. As we have seen, the *Charter* so provides by allowing exemplary damages to be awarded in cases involving unlawful and intentional interference with the rights and freedoms it guarantees. Exemplary damages can also be awarded under certain other statutes of particular social importance, including the *Consumer Protection Act*, R.S.Q., c. P‑40.1, the *Act respecting the Régie du logement*, R.S.Q., c. R‑8.1, and the *Tree Protection Act*, R.S.Q., c. P‑37.
2. Because of the exceptional nature of this right, the Quebec courts have so far been quite strict in giving effect to the preventive purpose of exemplary damages under art. 1621 *C.C.Q.* by using them only for punishment and deterrence (both specific and general) of conduct that is considered socially unacceptable (*Béliveau St‑Jacques*, at paras. 21 and 126; *St‑Ferdinand*, at para. 119). An award of exemplary damages seeks to punish a person who commits an unlawful act for doing so intentionally and to deter that person, and members of society generally, from repeating the act by condemning it as an example. However, both the trial judge and the judges of the Court of Appeal denied the appellants’ claim for exemplary damages, noting that [translation] “the aspect of deterrence . . . no longer applies because Martin is deceased” (Superior Court’s reasons, at para. 81) and that [translation] “assuming that a message must be sent to anyone who might be tempted to do something similar to what Martin Brossard did . . . such a warning would have no real impact. . . . The level of despair required to consider such extreme action means that it is illusory to think that any deterrent effect can result from an award of punitive damages” (Court of Appeal’s reasons, at para. 37).
3. It is too narrow a view of the role of punitive damages to say that there is no point in awarding them where the person who committed an unlawful act is deceased. That view does not take account of the social utility of this form of judicial intervention, which requires the courts to take a functional approach that can help achieve all aspects of the preventive purpose assigned to such damages by the legislature.
4. In this regard, it is interesting to look at the functions of exemplary damages in the common law, which are broader and which encompass but also go beyond punishment and deterrence. As far back as *Wilkes v. Wood* (1763), Lofft. 1, 98 E.R. 489 (K.B.), exemplary damages were seen as having three functions, namely punishment, deterrence and denunciation:

[A] jury have it in their power to give damages for more than the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself. [pp. 498‑99]

Since that time, there has been “a substantial consensus that coincides with Lord Pratt C.J.’s view . . . that the general objectives of punitive damages are punishment (in the sense of retribution), deterrence of the wrongdoer and others, and denunciation” (*Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 (“*Whiten*”), at para. 68). This was what Binnie J. held following a comparative survey of the experience in other common law jurisdictions as regards exemplary damages. Exemplary damages were found to have the same function under s. 24(1) of the *Canadian Charter of Rights and Freedoms* in this Court’s recent decision in *Ward* (*Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28).

1. As we have seen, denunciation was described by Cory J. as “the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant” (*Hill*, at para. 196). That outrage is expressed through an award of a substantial or symbolic amount of money, often accompanied by a declaration, which together are intended to convey the opinion of the justice system concerning the particularly reprehensible nature of the conduct in question. In this sense, denunciation constitutes an objective serving both the retributive and the utilitarian functions of the system of exemplary damages. The retributive function is served by the opprobrium attaching to the person of the wrongdoer, which is in itself a form of punishment for the wrongdoer’s conduct. The utilitarian function for its part is served by the preventive effect that such damages can have on the type of conduct involved, which benefits society as a whole. Denunciation also serves a declaratory function, which it shares, to a lesser degree, with the general deterrent objective of exemplary damages. While the objectives of punishment, deterrence and denunciation intersect to some extent in these functions, each of them covers a different aspect of the role played by exemplary damages and can therefore, in itself, justify an award of such damages.
2. Since denunciation contributes to the preventive objective of art. 1621 *C.C.Q.* just as much as punishment and deterrence, I see no reason to refuse to recognize denunciation as an objective of exemplary damages in Quebec civil law. This approach is all the more appropriate where the issue is respect for the rights and freedoms guaranteed by the *Charter*, a document that expresses the most fundamental values of Quebec society, as stated forcefully in its preamble.
3. However, care must be taken not to give exemplary damages a subsidiary criminal justice role. The fact that Martin Brossard cannot be punished for his actions by the criminal justice system is not a determining factor in the analysis. The existence of a prior criminal conviction is, at most, one of the factors to be considered in determining the quantum of exemplary damages, as explained by the Ontario Law Reform Commission in a report on such damages:

. . . it would be incorrect to view punitive damages as a systematic response to the shortcomings of criminal law. The law of punitive damages is applicable to a limited range of criminal conduct only, and it is applicable only in a limited way. The limits are not always consistent with a general theory of tort as a supplement to criminal law. The law of punitive damages intrudes not on to the general criminal law, but only on to its exceptionally objectionable breaches. It is a requirement for punitive damages not only that the defendant commit a tort advertently, but that the conduct be exceptional. Moreover, punitive damages are not an inducement to the general citizenry to enforce the criminal law for profit. The claim may be brought only by the victim of a tort, and damages may be awarded only in reference to the conduct that affected the victim.

(Ontario Law Reform Commission, *Report on Exemplary Damages* (1991), at pp. 32‑33)

In short, while “punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment)” (*Whiten*, at para. 36), it must be borne in mind that each of these systems has its own role to play. One should not be substituted for the other where one of them is unable to perform its specific role, as in this case.

1. In the case before us, the particularly serious and horrific nature of the acts committed by Martin Brossard before he took his own life cannot be disregarded. He killed a woman and young children whom he was supposed to love and protect. Awarding exemplary damages seems entirely appropriate in the circumstances to denounce those acts and affirm the importance of the right to life.
2. At this point in the analysis, only one issue remains, namely whether the appellants are entitled to exemplary damages.
3. Right to Exemplary Damages
4. Section 49, para. 2 of the *Charter* sets out two conditions for awarding exemplary damages: the act in question must be both unlawful and intentional. Since I have concluded that the absence of compensatory damages does not preclude the payment of exemplary damages, I shall first consider whether the appellants are entitled to such damages in their capacity as heirs of the successions of Liliane, Claudia and Béatrice. I shall then look at their personal claims.
5. *Action by the Successions*
6. To be entitled to exemplary damages, the successions must first prove unlawful interference with a right held by Liliane, Claudia and Béatrice. The appropriate approach was explained as follows by L’Heureux‑Dubé J. in *St‑Ferdinand*:

To find that there has been unlawful interference, it must be shown that a right protected by the *Charter* was infringed and that the infringement resulted from wrongful conduct. A person’s conduct will be characterized as wrongful if, in engaging therein, he or she violated a standard of conduct considered reasonable in the circumstances under the general law or, in the case of certain protected rights, a standard set out in the *Charter* itself . . . . [para. 116]

(See also *Association des professeurs de Lignery v. Alvetta‑Comeau*, [1990] R.J.Q. 130 (C.A.).)

1. In the present case, there can be no doubt about the unlawfulness of the interference, which was also a civil fault within the meaning of the law of civil liability. The affirmation of the right to life in s. 1 of the *Charter* shows the fundamental importance of that right in Quebec society. The murders of Liliane, Claudia and Béatrice by Martin Brossard, whose civil liability is not in issue, were the ultimate interference with their right to life. The first criterion under s. 49 is therefore satisfied.
2. The second criterion involves determining whether the interference was intentional. At this stage, intentionality refers not to the intent to commit the fault but rather to the intent to cause the result thereof. None of the parties questioned this criterion. In the context of the *Charter*, the result in question is unlawful interference with a protected right (*St‑Ferdinand*, at para. 118). In concrete terms, to satisfy this criterion, the appellants had to show that Martin Brossard intended to deprive his victims of life at the time he acted. This second criterion is also clearly satisfied. Before killing himself, Martin Brossard wrote a letter expressing his anger and sadness over the breakup of his family as well as his lethal intentions. That letter reads in part as follows:

[translation] six months ago, Liliane took from me all my dreams, everything I’d worked hard for. After completing our family, I will never accept that I’m no longer part of your plans one year after our second daughter and our dream house. You’ve taken all my pride. Like your arrogance and your indifference, I don’t think it was the right attitude to adopt. The same thing for the house. We always said we’d sell the house if we separated, but you lied to me about that too. Do you think I would have agreed to share my place in that house and especially in my bedroom? No, I won’t share my wife and especially not my children. A family is a father and a mother. Fine, you don’t want that, Six months ago, you made a choice. You didn’t want me to come back. Now it’s my turn. I’m pigheaded too. Did I tell you it’s not human to do this to someone? I didn’t have the right to do what I did, but neither did you. [Emphasis in original; A.R., vol. II, at p. 160.]

This note leaves no doubt about the intentional nature of the interference with the lives of Liliane, Claudia and Béatrice.

1. For these reasons, the successions of Liliane de Montigny and Claudia and Béatrice Brossard should be awarded exemplary damages for unlawful and intentional interference with their right to life. Awarding such damages conveys the opinion of the justice system concerning the seriousness of these acts and the need to denounce them as a violation of society’s most fundamental values.
2. Since Martin Brossard’s succession is insolvent, I consider a symbolic lump sum of $10,000, payable to the three successions and to be shared among them equally, sufficient to achieve the objective of denunciation in this case. Although moderate, this amount, which is not purely symbolic, emphasizes the gravity attached by the justice system to unlawful interference with the three victims’ right to life. I would also note that it is not a matter here of punishing or deterring the wrongdoer, who is deceased, but of setting an amount that sends a message of social denunciation.
3. Before ending on this point, I should say a few words about whether the right of action for exemplary damages under the *Charter* may be transmitted to the victims’ heirs. Insofar as we have found that the victims’ actions for exemplary damages are admissible, the Quebec law of succession allows the rights of action to be transmitted to their heirs. Article 625, para. 3 *C.C.Q.* provides that the heirs of a victim of unlawful interference are seised of the right of action resulting from that breach. The heirs may therefore bring this action by the successions:

**625.**  The heirs are seised, by the death of the deceased or by the event which gives effect to the legacy, of the patrimony of the deceased, subject to the provisions on the liquidation of successions.

. . .

The heirs are seised of the rights of action of the deceased against any person or that person’s representatives, for breach of his personality rights.

(See Jacques Beaulne, *Droit des successions* (4th ed. 2010), based on the work of Germain Brière, at pp. 63‑64.)

Moreover, art. 1610 *C.C.Q.* confirms that the right to damages, including punitive damages, resulting from a breach of a personality right may be transmitted to a person’s heirs:

**1610.**  The right of a creditor to damages, including punitive damages, may be assigned or transmitted.

This rule does not apply where the right of the creditor results from a breach of a personality right; in such a case, the right of the creditor to damages may not be assigned, and may be transmitted only to his heirs.

(See Baudouin and Deslauriers, at pp. 361 and 414.)

1. In short, there is no doubt that the appellants, in their capacity as heirs, are entitled to receive the amount determined above.
2. *Personal Action for Exemplary Damages*
3. At this stage, the question of whether the appellants are personally entitled to exemplary damages is purely academic. The awarding of a lump sum of exemplary damages to the three successions is sufficient to fulfil the objective of denunciation of this form of damages, which is the only one relevant here, as I noted earlier. Unlike compensatory damages, exemplary damages attach not to the prejudice suffered by the victims but to the person of the wrongdoer and the wrongdoer’s conduct, which the court seeks to punish, deter or denounce. However, since the *amicus curiae* raises this issue in his factum, I consider it necessary to discuss it briefly.
4. In the circumstances of this case, the appellants could have brought two types of personal actions, one as the direct victims of prejudice and one as the indirect victims of interference with the right to life of Martin Brossard’s victims. In my opinion, both actions would have failed.
5. Action as Direct Victims
6. First of all, to be entitled to exemplary damages as direct victims of prejudice, the appellants would have had to satisfy the twin criteria set out in s. 49, para. 2 of the *Charter*. The first criterion, unlawful interference, is not problematic. In the section on compensatory damages, we saw that the appellants are still suffering the emotional and psychological repercussions of Martin Brossard’s wrongful acts. Those repercussions are an infringement of their right to personal inviolability alone under s. 1 of the *Charter*. As this Court held in *St‑Ferdinand*, the concept of inviolability understood in this way is not limited to physical inviolability alone but also includes psychological, moral and social inviolability, provided that the interference is “more than . . . fleeting” (*St‑Ferdinand*, at para. 97). That is the case here.
7. An action by the appellants as direct victims would instead have run into problems with the second criterion, intentional interference. As I have said, in the context of the *Charter*, intentionality applies not to the fault but to its result. To succeed on this point, the appellants would have had to show that Martin Brossard intended to interfere with their psychological inviolability when he committed his acts. Simple negligence or recklessness as to the consequences of those acts would not have satisfied this criterion. L’Heureux‑Dubé J. was very clear in this regard:

. . . there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the *Charter* when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence. Thus, an individual’s recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test.

(*St‑Ferdinand*, at para. 121)

1. Here, there is no reason to believe that Martin Brossard intended to interfere with the appellants’ psychological inviolability or even that he actually thought about the consequences of his actions for them. The appellants are not mentioned in the note he left setting out his motivations. The note indicates instead that all the rage and sorrow that led Martin Brossard to commit his acts arose out of his breakup with Liliane and the fact that she had started seeing another man. The connection between his feelings and the other members of the de Montigny family remains too tenuous to justify awarding exemplary damages to them. The impact of the murders of Liliane, Claudia and Béatrice on them is only cruel collateral damage in this tragedy. Such a personal action by the appellants could not have succeeded.
2. Action as Indirect Victims
3. The other way the appellants personally claimed exemplary damages was as indirect victims. Indeed, the Court of Appeal gave them leave to amend their motion to institute proceedings in order to make such a claim. It is sufficient to note that the admissibility of this claim raised insurmountable problems. If the appellants could not claim exemplary damages as direct victims, the intentionality required by s. 49 of the *Charter* also prevented them from doing so as indirect victims, since such victims could not have been directly targeted by the wrongdoer. In any event, the application of the intentionality requirement makes any claim for exemplary damages presented by a claimant who is merely an indirect victim inadmissible.

V. Conclusion

1. For the reasons set out above, I would allow the appeal in part with costs throughout and would award the appellants, in their capacity as heirs of the successions of Liliane de Montigny and Claudia and Béatrice Brossard, $10,000 in exemplary damages plus interest at the legal rate from the date the proceedings were instituted (art. 1618 *C.C.Q.*).

*Appeal allowed in part, with costs.*

Solicitor for the appellants:  Jean‑Félix Racicot, Mont‑St‑Hilaire, Quebec.

Solicitor for the intervener:  Attorney General of Quebec, Québec.

Solicitor appointed by the Court as amicus curiae:  Sébastien Grammond, Ottawa.