

## Intentional Fault and Psychological Distress

By Odette Jobin-Laberge



On October 10, 2001, the Court of Appeal overturned the judgment of first instance in *American Home Ins. v. Allstate du Canada*, [1998] R.J.Q. 3137 (C.S.), in which Mr. Justice Trudeau had ruled that the damage resulting from a fire lit intentionally by a teenager (who, incidentally, had pleaded guilty in a criminal trial) was not an intentional act within the meaning of article 2464 C.C.Q. or the insurance policy, because the act was the result of psychological distress and was actually a call for help.

The Court of Appeal's reasons are set forth in the decision of Mr. Justice Chamberland, with Justices Rochette and Rochon concurring.

Noting that the case dealt with an exclusion which had to be interpreted narrowly—with the insurer having the burden of proof regarding the application of the exclusion clause—Mr. Justice Chamberland summarized the meaning of intentional fault as follows:

[TRANSLATION]

**"18. The notion of intentional fault has been explained in several decisions rendered by this Court, most recently in *Royale du Canada, Compagnie d'assurance v. Le Curateur public du Québec*, [2000] R.R.A. 594. In essence, an intentional fault can be distinguished from recklessness or from an accident in that it must show conduct which deliberately and voluntarily seeks to cause damage. The intention of the insured person whose intentional fault is alleged must relate not only to the act itself**

**but also to the results arising therefrom. A fault will not be intentional if the act being reproached was not carried out consciously and voluntarily. Moreover, a fault will not be considered intentional if, notwithstanding that the act was carried out consciously and voluntarily, the consequences of the act were not intended. In a sense, an intentional fault is the opposite of an accidental occurrence."**

The judge of first instance had accepted, based on the evidence, that the young man knew what he was doing and had not lost his grasp on reality at any point; therefore, he was civilly liable for his actions and their consequences. The judge of first instance had also considered the personal motives driving the young man's actions.

Mr. Justice Chamberland agreed with the findings of fact and confirmed that the young man was aware of what he was doing. However, according to Mr. Justice Chamberland, the concept of "*motive*" is not a criterion to be taken into consideration when analyzing whether or not a fault is intentional:

[TRANSLATION]

**"22. (...)**

**In my opinion, a fault is no less intentional because the insured sees the fire as a call for help as it would be if the insured had acted in order to take revenge on a neighbour, to eliminate a competitor or, in damage insurance, to collect insurance benefits."**

Mr. Justice Chamberland also commented on the fact that the young man had pleaded guilty in the criminal proceedings. He pointed out that mere evidence of a guilty plea is not sufficient; the insurer must also establish a causal link between the act and the occurrence of the damage—a link which was clearly established in the case at bar.



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Consequently, the Court of Appeal dismissed the action in warranty against Allstate, the insurer that covered the liability of the young man and his parents, which had been ordered to indemnify American Home, the latter having exercised its rights of subrogation as the victim's insurer.

This decision clarifies somewhat the Court of Appeal's previous rulings<sup>1</sup> on the issue of intentional fault in insurance matters in that it confirms the requirement of a "subjective" awareness of the resulting consequences while adding, as a further criterion, a restriction preventing the wrongdoer from invoking a "motive" showing that the main reason behind his act was not to cause death or damage, if in fact the damage was foreseeable and intended.

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<sup>1</sup> *General Accident, compagnie d'assurance du Canada v. Groupe Commerce, compagnie d'assurance*, [2000] R.J.Q. 617 (C.A.), drunken driving; *Compagnie d'assurance-vie Transamerica Canada v. Goulet*, [2000] R.J.Q. 1066 (C.A.), death while planting a bomb (leave to appeal to the Supreme Court allowed, no: 27939); *Compagnie d'assurance Royale du Canada v. Curateur public*, [2000] R.R.A. 594 (C.A.), fire caused by a cigarette during an attempt to commit suicide by gassing.

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