

## The Court of Appeal Rules on Disability Benefits in the Small Claims Court

By Evelyne Verrier



On May 28, 2001, the Quebec Court of Appeal confirmed the jurisdiction of the Court of Quebec, Small Claims Division, to hear a claim for disability benefits notwithstanding that the participant could make subsequent claims in the future.<sup>1</sup>

### The Facts

In this case, Hartford Life Insurance Company of Canada (referred to hereinafter as "Hartford") was sued by Mr. Lalumière with respect to a claim for disability benefits under an accident and health insurance policy. The policy provided coverage of 24 months per accident, up to an amount of \$1,400 per month, for loss of income resulting from a first-time accident or illness during the term of the contract, subject to policy exclusions and restrictions.

On December 20, 1995, while lifting a piece of furniture, Mr. Lalumière felt a strong pain in his right arm. On February 9, 1996, he sent Hartford an initial claim for a 7-week disability period covering January 3, 1996 to February 19, 1996.

As Hartford's opinion was that the injury had been caused by a "pulled muscle, sprain or diskarthrose", it paid the maximum benefits allowed for his injury as provided in the "Special Restrictions" clause of the contract, i.e., \$700 (15 days per claim).

On July 17, 1996, Mr. Lalumière sent Hartford a second claim, this time for the disability period covering February 15, 1996 to March 18, 1996. In his claim, the insured stated that he had tendinitis and was unable to predict the date of his return to work.

On October 7, 1996, Lalumière initiated proceedings in the Small Claims Division of the Court of Quebec claiming the balance owed by Hartford for the period of January 3, 1996 to February 19, 1996, i.e., \$2,100 (2 x \$1,400 - \$700).

On June 16, 1997, the Court of Quebec rendered judgement by default and ordered Hartford to pay the amount claimed.

On March 2, 1998, Mr. Lalumière initiated further proceedings in the Small Claims Court for \$1,400, the monthly benefit payable for the disability period covering February 15, 1996 to March 18, 1996, which was the subject of his second claim submitted to Hartford.

The Court of Quebec again ordered Hartford to pay the amount claimed. Hartford then filed a writ of evocation and application for a stay of proceedings before the Superior Court. The application was dismissed on May 11, 1999<sup>2</sup>, hence the proceedings before the Court of Appeal.

### Hartford's Grounds of Appeal

In its application, Hartford challenged the very jurisdiction of the Small Claims Division of the Court of Quebec, to hear the matter, on the following grounds:



**LAVERY, DE BILLY**  
BARRISTERS AND SOLICITORS

<sup>1</sup> *Hartford du Canada, Compagnie d'assurance-vie v. Jacques Lalumière, C.A.*, May 28, 2001, Deschamps, Rochette and Pelletier, JJ.

<sup>2</sup> *Hartford du Canada, Compagnie d'assurance-vie v. Jacques Lalumière, S.C.* 540-05-004519-991, May 11, 1999, Trudeau J.

1) Mr. Lalumière had illegally divided a claim exceeding \$3,000 within the meaning of article 957.1 of the *Code of Civil Procedure*, which reads as follows:

**“957.1 No person may, to avail himself of this Book, divide, directly or indirectly, a claim exceeding \$3 000 into so many claims not exceeding \$3,000.**

**No right of action exists for the recovery of a claim resulting from such a division and the judge must dismiss the demand ex officio or upon the application of the debtor.**

(...)”

2) This was a matter that could affect the future rights of the parties in accordance with article 954 of the *Code of Civil Procedure*, which reads as follows:

**“954. Nevertheless, this Book does not apply to demands resulting from the lease of a dwelling or land contemplated in article 1892 of the Civil Code of Québec, to demands for alimentary pensions, suits for slander, rents or other matters which may affect the future rights of the parties, nor to the recovery of a small claim where it is being prosecuted by means of a class action.”**

## First Ground of Appeal

In order to succeed on its first ground of appeal, Hartford had the burden of proving that Mr. Lalumière, by bringing the second proceedings before the Small Claims Court on March 2, 1998, in which he claimed \$1,400 after judgement had been rendered in the first proceedings awarding him \$2,100, had deliberately, directly or indirectly, divided his claim:

**“The party seeking to invoke this provision, in this case the Appellant, has the burden of proving on the weight of the evidence that a person has divided, directly or indirectly, a claim exceeding the jurisdictional threshold of the Court of Quebec, Small Claims Division, to artificially give the court jurisdiction. If that conclusion may be drawn from the evidence before the Court, the judge may also dismiss the claim ex officio.”**  
[translation]

Hartford did not submit any evidence on this point and the Court of Appeal held that the judge of first instance was, under the circumstances, justified in ruling as he did:

**“These grounds were not raised in the Court of Quebec and the Respondent was not examined in this regard, which would have allowed the Court to ascertain his intentions or to test his credibility. The Appellant did submit evidence at the judicial review stage, but did not examine the Respondent in this regard, which it could have done.”** [translation]

Mr. Lalumière explained in court that he had no other choice but to bring a second action against Hartford because it had not responded to his second claim for an additional disability period. The judge of first instance was satisfied with this explanation.

## Second Ground of Appeal

As its second ground of appeal, Hartford argued that Mr. Lalumière’s legal action dealt with a “matter which may affect the future rights of the parties”, in which case the Court of Quebec, Small Claims Division, would not have had jurisdiction to rule on the question submitted.

In support of its position, Hartford assimilated the insurance policy to an annuity contract and argued that the contractual amount in dispute could reach \$33,600 (\$1,400 x 24 months).



Evelyne Verrier has been a member of the Quebec Bar since 1993 and specializes in Life and Disability Insurance Law

The Court of Appeal disagreed and held that each claim is circumscribed and is complete and final in and of itself. Mr. Lalumière's claims covered a specific period, with the result that the insurer was not liable to pay more than the amount claimed during that period.

Moreover, even if Lalumière were to claim further disability benefits from Hartford, the judgments already rendered do not have the authority of a final judgment (*res judicata*):

**"Lastly, the impugned judgment is not a definitive ruling, for the future and forever, on the rights of the parties [Québec Propane Gaz Company Ltd v. Valence, [1963] R.P. 193 (C.A., Bissonnette, Hyde and Owen JJ.)] under the contract of insurance binding upon them. A new application for compensation with respect to a subsequent disability period could be argued before the court of competent jurisdiction because the effect of the judgment of the Court of Quebec as *res judicata* is significantly limited by article 981 C.C.P.:**

**981. The judgment has the authority of a final judgment (*res judicata*) only with respect to the parties to the suit and only for the amount claimed.**

**The judgment may not be raised in an action based on the same cause of action that is brought before another court; the court must, upon application by a party, or *ex officio*, dismiss any application or disallow any evidence based on such judgment." [translation]**

Under the circumstances, it should be noted that article 954 of the *Code of Civil Procedure* is to be construed narrowly.

## Conclusion

In light of this judgment, it must be borne in mind that where an insurer is faced with a claim for disability benefits for different periods before the Court of Quebec, Small Claims Division, it can avail itself of article 957.1 of the *Code of Civil Procedure*. However, if it seeks to successfully argue that the debt has been divided, it has the burden of proving that allegation.

In a similar situation, it would therefore be necessary for anyone representing an insurer before the Court, to examine the claimant at the hearing in order to ascertain his true intentions underlying his action and test his credibility.

Given that proof of a Plaintiff's intentions can be made in a number of ways, the members of our team would be pleased to assist you in this regard.

Evelyne Verrier

**You can contact any of the following members of the  
Life and Disability Insurance Law Group in relation with this bulletin.**

**at our Montréal office**

Jean Bélanger  
Julie-Anne Brien  
Marie-Claude Cantin  
Daniel Alain Dagenais  
Guy Lemay  
Jean Saint-Onge  
Johanne L. Rémillard  
Evelyne Verrier  
Richard Wagner

**at our Québec City office**

Martin J. Edwards  
Claude M. Jarry

**at our Ottawa office**

Patricia Lawson  
Alexandra LeBlanc

**Montréal**

Suite 4000  
1 Place Ville Marie  
Montréal, Québec  
H3B 4M4

Telephone:  
(514) 871-1522  
Fax:  
(514) 871-8977

**Québec City**

Suite 500  
925 chemin Saint-Louis  
Québec, Québec  
G1S 1C1

Telephone:  
(418) 688-5000  
Fax:  
(418) 688-3458

**Laval**

Suite 500  
3080 boul. Le Carrefour  
Laval, Québec  
H7T 2R5

Telephone:  
(450) 978-8100  
Fax:  
(450) 978-8111

**Ottawa**

Suite 1810  
360, Albert Street  
Ottawa, Ontario  
K1R 7X7

Telephone:  
(613) 594-4936  
Fax:  
(613) 594-8783

**Web Site**

[www.laverydebilly.com](http://www.laverydebilly.com)

All rights of reproduction reserved. This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.