

The Court of Appeal on the concept of “intentional fault”: insurers have a heavy burden of proof

By Bernard Larocque

On May 12, 2006, the Court of Appeal rendered a decision in a case involving the concept of intentional fault.¹ This judgement, written by Judge Louis Rochette, once again further complicates the idea of an intentional fault committed by an insured.

I. The facts

Assurances générales des Caisses Desjardins Inc. (referred to herein as “Desjardins”) insured Mr. Fournier’s property. In May 1999, Mr. Fournier committed suicide by setting his home on fire.

The neighbouring house, insured by Axa, was damaged. Axa, subrogated in the rights of its insured, sued Desjardins, which refused to indemnify Axa on the ground that the damage resulted from an intentional fault by Mr. Fournier and such fault was not insured by virtue of article 2464 C.C.Q. and the exclusion clause in the insurance policy issued by Desjardins.



At trial, the parties admitted that:

- The May 1999 fire was the result of an intentional act by Mr. Fournier for the purpose of committing suicide.
- Mr. Fournier deliberately emptied a can of gasoline in his home in order to start a fire while he was still inside.
- Had the expert engineer testified, he would have established that:

- a) As the fire was started with gasoline, it very rapidly reached the flashover point.
- b) Regardless of how the fire was started, once it had reached the flashover point it would have caused radiating damage to the neighbouring buildings that were, in the case of Axa’s insured parties, approximately 18 feet from Mr. Fournier’s home.
- c) Damage to the neighbouring buildings was the direct and immediate consequence of the fire on Mr. Fournier’s property, given the respective positions of the buildings.

II. The Superior Court’s judgement

On the basis of the foregoing facts, the trial judge held that not only was Mr. Fournier conscious of the damage that would be caused to his property, but he was also aware of the damage that would be caused to his neighbours’ properties. He therefore accepted Desjardins’ defence and dismissed Axa’s lawsuit.

¹ *Axa Assurances Inc. v. Assurances générales des Caisses Desjardins inc.*, May 12, 2006, 500-09-014594-048, Judges Chamberland, Rochette and Trudel (*ad hoc*).



LAVERY, DE BILLY

BARRISTERS AND SOLICITORS

III. The Court of Appeal's judgement

The Court of Appeal stated that the question it had to answer was whether Mr. Fournier wanted his intentional act to adversely affect the occupants of the neighbouring building. If so, there was intentional fault and the resulting damage was not covered whereas if not, the damage was covered and Desjardins had to indemnify Axa.

Citing the decisions in *La Royale du Canada v. Curateur public*² and *Goulet v. Transamerica Life Insurance Co. of Canada*³, the Court stated that [translation] "the insured must have been seeking to bring about not only the event that is the object of the risk but also the damage itself" for the concept of intentional fault to apply.

It is well established that the insurer has the burden of proving the intentional nature of the fault. The insurer must not only prove that the wrongful act itself was intentional, but also that [translation] "the insured intended to cause the damage or at least was, or should have been, aware of the inevitability of the damage". The Court added that while it would be difficult to prove the insured's [translation] "state of mind", the exclusion clause covering intentional fault must be strictly construed.

Lastly, ruling on whether the fault committed by Mr. Fournier was intentional, and based on the above-mentioned admitted facts, the Court held that the evidence did not establish that Mr. Fournier wanted to damage the neighbouring properties or that he could think that such a result was not only foreseeable, but also inevitable. According to the Court, the insured's state of mind in this regard was unknown at the time of the events:

[translation]

"The insured certainly wanted to end his life, as swiftly as possible, but what did he know about the "flashover point" that, according to the expert, would have been reached very rapidly? What does "very rapidly" mean? What did he know about "radiating damage"? Did he believe that such damage was possible, probable, or even certain? We have no idea. Nor do we know what would have been the expectations of a reasonable person in the same situation, of which only bits and pieces are revealed to us."

Therefore, the Court allowed the appeal and refused to apply the intentional fault exclusion invoked by Desjardins.

To summarize, this judgement reaffirms the principle that the insured's intention to deliberately cause the damage must be proved on a balance of probabilities. The insurer has the burden of proving that not only was the insured aware of the intentional nature of his action, but he was also aware that his intentional act would, inevitably, result in damage to another person.

Bernard Larocque
514 877-3043
blarocque@lavery.qc.ca

² REJB 2000-18860 (C.A.).

³ [2002] 1 S.C.R. 719.

You may contact any of the following members of the Damage Insurance group regarding this bulletin.

At our Montreal office

Anne Bélanger
Jean Bélanger
Marie-Claude Cantin
Paul Cartier
Isabelle Casavant
Jean-Pierre Casavant
Louise Cérat
Louis Charette
Daniel Alain Dagenais
Julie Grondin
Jean Hébert
Odette Jobin-Laberge
Jonathan Lacoste-Jobin
Catherine Lamarre-Dumas
Bernard Larocque
Jean-François Lepage
Anne-Marie Lévesque
Jean-Philippe Lincourt
Robert W. Mason
Pamela McGovern
Cherif Nicolas
J. Vincent O'Donnell, c.r.
Jacques Perron
Martin Pichette
Dina Raphaël
André René
Ian Rose
Jean Saint-Onge
Evelyne Verrier

At our Quebec City office

Philippe Cantin
Pierre Cantin
Dominic Gélinau
Claude Larose
Line Ouellet
Marie-Hélène Riverin

At our Ottawa office

Brian Elkin
Mark Seebaran

Montreal
Suite 4000
1 Place Ville Marie
Montreal Quebec
H3B 4M4

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

Quebec City
Suite 500
925 Grande Allée Ouest
Quebec Quebec
G1S 1C1

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

Laval
Suite 500
3080 boul. Le Carrefour
Laval Quebec
H7T 2R5

Telephone:
514 978-8100
Fax:
514 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa Ontario
K1R 7X7

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

Subscription
You may subscribe
cancel your subscription
or modify your profile by
visiting our website at
www.laverydebilly.com/htmlen/Publications.asp
or by contacting
Carole Genest at
514 877-3071.

©, Lavery, de Billy, L.L.P.
- Barristers and Solicitors.
This bulletin provides
our clients with general
comments on recent legal
developments. The text is
not a legal opinion. Readers
should not act solely on
the basis of the information
contained herein.