



I filed a lawsuit in Small Claims Court

You filed a lawsuit in the Small Claims Court. You were told that you could not be represented in Small Claims Court by a lawyer, yet the other party is represented by a lawyer who is an employee of the company. Can a lawyer represent his employer in Small Claims Court?

THE FACTS

A woman was insured under a group insurance policy issued by an insurance company in favour of the employees of the business for which she worked. She claimed salary insurance benefits from the insurance company for a period during which she had been absent from work. Her initial claim was for \$27,000, an amount she reduced to \$7,000 so that her case could be heard in the Small Claims Division of the Court of Québec. She represented herself, given that the law states that a lawyer is not authorized to represent an individual before the Small Claims Court. The insurance company, however, was represented by one of its employees in charge of benefits to its insureds; this employee was also a member of the Bar. The woman felt ill at ease due to the fact that her opponent was a lawyer. The Court, before even hearing the case, had to rule on this preliminary issue.

THE ISSUE

Could the insurance company be represented by an employee who is a lawyer? Did the Court have to consider the fact that the employee did not perform functions within the company that were related to his training as a lawyer?

THE DECISION

The Court refused to recognize the employee of the insurance company as a representative, because he was a lawyer. The insurance company was allowed to designate another representative, namely one of its officers or another person bound exclusively to it under a contract of employment.

THE GROUNDS

The law provides that a business may be represented by a person bound exclusively to it

under a contract of employment. The Court reviewed the jurisprudence. It cited certain judgments that had allowed an employee, who was also a lawyer, to represent his employer where, in essence, the employee did not perform duties on behalf of the employer that were related to his training as a lawyer. It cited another line of jurisprudence which leaned towards disallowing such representation. The judge raised several arguments which led him to adopt the second approach. He emphasized the very basis of the Small Claims Court which is intended to be a straightforward and accessible means for the day-to-day management of disputes. He was concerned about creating an imbalance between those parties who cannot be represented by a lawyer and other parties who can be represented by a lawyer, because they are businesses that have the financial resources to have a lawyer on staff. A party might even be dissuaded from availing himself of the small claims procedure if he knows that the interests of the other party will be defended by a lawyer. He also dismissed the approach which would assess, at the beginning of each hearing, the duties performed by the employee in order to determine the extent to which he performs duties related to his legal training, because such an approach would be too cumbersome and would open the door to the possibility of postponements, which would adversely affect the proper administration of justice.

Reference

Latreille v. L'Excellence compagnie d'assurance-vie, 2008 QCCQ 11395, Court of Québec (Small Claims Division) 500-32-104619-079, November 14, 2008, Judge: David L. Cameron (www.jugements.qc.ca).

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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