

# Product Liability: Who has the burden of proof, again?

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The Court of Appeal recently released its decision in *AIG Insurance Company of Canada v. Volvo Group Canada Inc.*, [2024 QCCA 1733](#), which relates to the presumption of liability that can apply against professional sellers, distributors and manufacturers.

In April 2016, Groupement Forestier Chaudière ("GFC") purchased a new excavator manufactured by Volvo Group Canada ("Volvo") from Mécano Mobile ("Mécano"). Mécano had previously acquired it from Strongco Limited Partnership ("Strongco") and had installed a multifunctional head to delimb, cut and section trees, before selling it to GFC.

In January 2018, the excavator was destroyed in a fire after only 18 months of use. GFC and its subrogated insurer AIG Insurance Company of Canada ("AIG") brought a claim against Mécano, Strongco and Volvo. The trial judge concluded that the excavator failed prematurely. However, the trial judge dismissed the claim because the cause of the fire was undetermined. Indeed, the fire could have been caused by an electrical short circuit or the accumulation of forest residues.

GFC and AIG appealed the decision. The judgment was unanimously overturned by the Court of Appeal, which reiterated once again that when a product fails prematurely, a presumption of liability applies against the seller, distributor and manufacturer. It is then up to them to prove, on a balance of probabilities, that the fire was not caused by a manufacturing defect. This is simply impossible to prove if the cause of the fire cannot be determined.

Volvo argued that the excavator was not intended to delimb, cut and section trees. However, Volvo's manual did not contain any instructions in that regard. Additionally, Volvo's authorized dealer, Strongco, had overseen the installation of the multifunctional head on the excavator, and had also repaired the excavator under warranty multiple times. Strongco was aware that the excavator was used to delimb, cut and section trees, and yet never warned GFC that such use was not appropriate. Mécano, Strongco and Volvo were all found liable towards GFC and AIG.

In Quebec, in a product liability case, the plaintiff only needs to establish that the product failed prematurely. A claim against the seller, distributor or manufacturer can be successful even when the cause of the fire remains a mystery.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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