

# schjerner mediations

P.O. Box 15343  
Queensway High P.O.  
Toronto, ON  
M8Y 0B4  
eric@schjernermediations.com  
416-236-9282

## ERIC'S LTD UPDATE

### ISSUE 11 – SPRING 2021

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**Eric Schjerner** is a mediator with 9 years of mediating LTD and other insurance disputes, a former litigator with over 3 decades of LTD trial work, and the author of 2 editions of the book Disability Insurance Law in Canada.

To look for available mediation dates or to book a mediation with Eric, visit [schjernermediations.com](http://schjernermediations.com) or simply email Eric at: [eric@schjernermediations.com](mailto:eric@schjernermediations.com).

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**Eric Schjerner**

**Schjerner Mediations Ltd.**

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#### Comments:

The issue of jury trials being struck due to delays caused by COVID-19 continues to dominate what little new case law there is at the moment, with the Ontario Court of Appeal overturning a decision of the Divisional Court almost before the ink was dry (see below). While Eric's best guess is that this issue will fade as vaccines are rolled out, this issue is likely receiving too much press in these LTD Updates since jury trials are so rare in the LTD world. Accordingly, any further case law on this topic may or may not find a home in these updates.

A much more relevant topic for LTD counsel is the tax treatment of LTD settlements where benefits are taxable. What portion can be deemed non-taxable? How does one deal with T1198s, especially if the case has proceeded to trial? Eric's next LTD Update will address these issues. If any counsel

has actually had a taxable LTD benefits case proceed to trial and can comment on how a T1198 for arrears, or claimed damages by the plaintiff for the tax impact of being required to proceed to trial, were dealt with by the trial judge please contact Eric in the next few months.

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## INDEX

### A) Collective Agreement Jurisdiction – *Hutton v. Manulife*

### B) Jury Trials - *Louis v. Poirras*

## A) COLLECTIVE AGREEMENT JURISDICTION

- (i) *Hutton v. Manulife* 2019 ONSC 279 (O.S.C.J.); 2019 ONCA 975; and Jan. 14, 2021 No. 39102 S.C.C.

As reported in Issue 7 of Eric’s LTD Updates, Manulife brought a summary judgment motion to dismiss the plaintiff’s action on the basis that the Court lacked jurisdiction to deal with a claim that arose out of and was governed by the terms and conditions of a Collective Agreement between the plaintiff’s union and her employer, a matter exclusively within the arbitral jurisdiction of the Collective Agreement.

After a detailed review of the Collective Agreement, the Minutes of Settlement of the grievance, and the case law (in particular *Weber v. Ontario Hydro* 1995 S.C.R. 929 and *Barber v. Manulife* 2017 ONCA 164 (CanLII)) the Ontario Superior Court of Justice granted Manulife’s motion to dismiss the plaintiff’s civil action.

The Ontario Court of Appeal denied the appellant’s appeal.

*“The fact that LTD benefits were paid or administered under the Manulife policy did not change the motion judge’s determination that the appellant’s entitlement to LTD benefits, and the employer’s obligation to provide them, were rooted in Article 15 of the*

*Collective Agreement and that the dispute involved 'the interpretation, application, or administration of the Collective Agreement.'"*

Application for leave to appeal was dismissed by the Supreme Court of Canada on January 14, 2021 S.C.C. No. 39102.

## **B) JURY TRIALS**

(ii) *Louis v. Poirras* 2021 ONCA 49 (CANLII)

As commented on in Issue 10 of Eric's LTD Updates, the Divisional Court overturned a decision by an Ottawa motions judge striking a jury notice, although leaving it open for such motion to be reheard with the presiding judge being required to provide a fuller basis for the reasons behind striking such jury notice.

The Ontario Court of Appeal overturned the Divisional Court and reinstated the motion judge's decision. The Court of Appeal stressed that an appellate court should not lightly interfere with a decision to strike a jury notice and should not second guess a local court's discretionary case management decisions, noting that Superior Court justices are acutely aware of local conditions.

That being said, the Court of Appeal did not provide any conclusive statement on when a jury notice should be struck in the context of the pandemic, simply noting that *"...local conditions will necessarily impact the choice of effective solutions....and.... what must remain consistent is that motion judges have the discretion to respond to local conditions to ensure the timely delivery of justice."*

## **ACKNOWLEDGEMENTS**

Eric would like to thank Amir Tamari and Katie Quinlan of Manulife for forwarding case law included in this update.