Decoding Quebec Liability: A roadmap for brokers, underwriters and claims departments

André Legrand
Senior Partner
Norton Rose Fulbright Canada LLP
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Is Quebec insurance law that different from insurance law in the Common law provinces?

- The *Civil Code of Quebec*

  **Article 2399 CCQ**

  2399. The policy is the document evidencing the existence of the contract of insurance.

  […]

  **Article 2400 CCQ**

  2400. In non-marine insurance, the insurer is bound to deliver the policy to the client, as well as a copy of any application in writing made by or on behalf of the client.

  In case of inconsistency between the policy and the application, the latter prevails unless the insurer has indicated in writing to the client, in a separate document, the particulars of the inconsistency.
What is the importance of precedents in Quebec law given the existence of the *Civil Code of Quebec*?

– What about common law precedents from Canada or the US? Are they relevant in Quebec? If so, to what extent?
The duty to defend over and above policy limits

- Article 2503 of the Civil Code of Quebec

2503. The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defence in any action brought against him.

Legal costs and expenses resulting from actions against the insured, including those of the defence, and interest on the proceeds of the insurance are borne by the insurer over and above the proceeds of the insurance

- Defence costs
- Interest
- Court costs
The duty to defend over and above policy limits

- What about indemnity policies?
  - *Boralex Inc. v. AIG Insurance Company of Canada*, 2015 QCCS 972

- What about SIR’s? Are they recognized as valid under Quebec law?
The duty to defend over and above policy limits

- Can excess insurers have a duty to defend third party claims?
When does Quebec law actually apply?

- Article 3119 of the *Civil Code of Quebec*

3119. Notwithstanding any agreement to the contrary, a contract of insurance covering property or an interest situated in Québec, or that is subscribed in Québec by a person resident in Québec, is governed by the law of Québec if the policyholder applies for the insurance in Québec or the insurer signs or delivers the policy in Québec. [...]
When does Quebec law actually apply?

- Article 3119 CCQ therefore provides that Quebec law will apply in the following circumstances:
  
  i) The policies relate to an interest situated in Quebec, or  
  ii) The policies were subscribed in Quebec by a Quebec resident,  
  AND  
  x) The policyholder under the policies applied for it in Quebec, or  
  y) The insurers signed or delivered the policies in Quebec
What is the status of Quebec law on bad faith/punitive damages claims against insurers?

• Courts are traditionally reticent in Quebec to hand down punitive damages awards
• Section 49 of the Quebec Charter of Human Rights and Freedom: unlawful and intentional violation is required
• The decision by an insurer to contest a claim will rarely be considered to be an act of bad faith
• Punitive damages awarded in Quebec in an insurance context tend to be lower than what may be seen elsewhere in Canada
The importance of proper translation of insurance documentation in Quebec

- Poor translation can kill an insurer’s defence in a coverage dispute
Social engineering and insurance: The Coop Fédérée case now before the Quebec Court of Appeal

- The facts:
  - Fraudulent e-mail
  - Transfer of USD$4,946,000 to the fraudster
- The parties:
  - Insured: Coop Fédérée
  - Crime insurer: Liberty ($1 million limit)
  - Property insurer: Co-operators Insurance Company (primary limit of $15 million)
- Superior Court judgment:
  - Coverage exists under the Co-operators policy
  - Liberty’s policy is not “specific”
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• Is Quebec insurance law really that different than insurance law in the common law provinces? Are Canadian common law precedents of value before Quebec Courts?

• Quebec law is known to provide that the duty to defend in liability insurance is over and above policy limits. What precisely is the law in Quebec on this issue? (A discussion on Article 2503 of the Civil Code of Quebec).

• Can you go around Article 2503 CCQ and put on the market costs inclusive policies? What about indemnity policies? When does Quebec law actually apply? (A discussion on Article 3119 CCQ).

• What is the status of Quebec law on bad faith/punitive damages claims against insurers?

• Plus much more…

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ANDRE LEGRAND | NORTON ROSE FULBRIGHT CANADA

André Legrand’s practice focuses on insurance law and professional liability. His insurance law practice focuses on general liability insurance, directors’ and officers’ liability insurance, professional liability insurance, property insurance, cyber insurance, and representations and warranties insurance.

Mr. Legrand’s professional liability practice involves representing the interests of directors and officers of corporations. He has acted before all Quebec courts and the Supreme Court of Canada. Mr. Legrand was Montréal chair of our litigation group between 2002 and 2006.
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Professional Liability Underwriting Society
Toronto Chapter

June 6, 2019 at 8:20 am

Decoding Quebec Liability: A roadmap for brokers, underwriters, and claims departments

Speakers: Andre Legrand, Norton Rose Fulbright Canada, Montreal, Quebec

1. Is Quebec insurance law really different than insurance law in the common law provinces? Are Canadian common law precedents of value before Quebec Courts?
2. Quebec law is known to provide that the duty to defend in liability insurance is over and above policy limits. What precisely is the law in Quebec on this issue? (A discussion on Article 2503 of the Civil Code of Quebec).
3. Can you go around Article 2503 CCQ and put on the market costs inclusive policies? What about indemnity policies? When does Quebec law actually applies? (A discussion on Article 3119 CCQ).
4. Are SIRs (Self-Insured Retentions) recognized as valid under Quebec law?
5. Can excess insurers have a duty to defend third party claims?
6. What is the status of Quebec law on bad faith/punitive damages claims against insurers?
7. The general approach of the Quebec insurance regulator (the Autorité des marchés financiers or AMF).
8. How are Quebec Courts open to class actions these days?
9. The importance of proper translation of insurance documentation in Quebec.
10. Social engineering and insurance: the Coop Fédérée case now before the Quebec Court of Appeal.