BULLETIN INSURANCE AND CIVIL LIABILITY September 1994, No. 1

LAVERY, DE BILLY
BARRISTERS AND SOLICITORS

1 Place Ville Marie
Suite 4000
Montréal, Québec
H3B 4M4
Tel.: (514) 871-1522
Fax: (514) 871-8977

925 chemin St-Louis
Suite 500
Québec, Québec
G1S 1C1
Tel.: 1-800-463-4002
Tel.: (418) 688-5000
Fax: (418) 688-3458

45 O'Connor Street
20th floor
World Exchange Plaza
Ottawa, Ontario
K1P 1A4
Tel.: (613) 594-4936
Fax: (613) 594-8783

Associated Firm:
Blake, Cassels & Graydon
Toronto, Ottawa,
Calgary, Vancouver,
London (England)

The Bulletin has a new look. In addition to an improved visual format, you will now find a chronicle giving short resumes of recent judgments. We hope that this will make the Bulletin more useful to readers without departing from its continuing editorial policy of utilizing a judgment to present a deeper analysis of a particular subject.

Good Reading!

THE CONSEQUENCES OF A SETTLEMENT MADE BY AN INSURED WITHOUT THE CONSENT OF THE INSURER AND THE LIABILITY OF A CARRIER

The Court of Appeal recently rendered judgment in the case of *American Home* vs *Inter-Tex Transport Inc.*, J.E. 94-82 (22 C.C.L.I. (2d) 55), confirming the decision of the Court of Quebec, [1989] R.R.A. 647, condemning an insurer to reimburse to its insured the amount of a payment made by the latter in virtue of a settlement concluded by it directly with the injured party.

SUMMARY

Briefly the facts were the following:

The insured was a trucking business. In June 1984 one of its trucks was broken into while parked over the weekend in a yard used for that purpose by a dozen carriers. Merchandise belonging to a client of the insured was stolen. The theft was discovered the next morning by the insured's driver. The police were immediately notified and made an investigation. The insurer was also advised and engaged the services of an expert loss adjuster who also investigated.

After several months, the insurer denied coverage to its insured, principally on the ground that the latter had admitted responsibility for the theft. Two years later, in April 1986, the insured paid to its customer the value of the stolen merchandise, namely $12,384, in order to retain the customer's business.

The insured then took action against the insurer claiming the amount disbursed by it to its customer. The insurer pleaded that there had been violations of the provisions of the policy, namely, that the insured had made a settlement with its customer without the consent of the insurer, and that it had admitted responsibility for the loss.

The question before the Court of Appeal was to decide whether the settlement was fatal to the insured's action in view of the provisions of article 2604 C.C.L.C. This article, which is one of public order, provides, in part:

> "2604...
>
> No transaction made without the consent of the insurer may be set up against it.".

The article does not, however, make any mention of an admission of liability.

The Honourable Mr. Justice Chamberland, who gave the Court's reasons, agreed that the insured, in settling with its client, had violated certain conditions of the policy, particularly the following:

"(6) OBLIGATIONS OF THE INSURED IN THE EVENT OF LOSS:

(a) (...) Except at its own expense, the insured must not voluntarily assume any responsibility nor settle any claim. It must not involve itself in any judicial proceeding or settlement; it must, nevertheless, upon the simple demand of the insurer, collaborate with it in establishing the facts, preparing the evidence and the appearance of witnesses.

(7) CO-OPERATION OF THE INSURED: The insured is bound to co-operate with the insurer and if the latter requires, it must, more particularly, be present at trial and collaborate in the conclusion of settlements and in obtaining and presenting the evidence, the appearance of witnesses and the conduct of the trial. Except at its own expense, the insured must not voluntarily make any payment, nor assume any expense unless it is for medical or surgical care immediately required by a third party as a result of the loss or to protect the vehicle or the cargo from greater damage.

(8) ACTIONS AGAINST THE INSURER: No action may be instituted against the insurer unless prior thereto the insured has completely conformed to all the conditions of the present policy and unless the amount owed by the insured has been definitively established either by judgment against it after trial, or by written agreement between the insured, the claimant and the insurer.

(13) PAYMENT OF DAMAGES - ACTION AGAINST THE INSURER: No action may be brought against the insurer unless the insured has respected all of the pro-

> visions of this contract and the amount of the loss has been established as provided for in this policy;". (Office translation).

Mr. Justice Chamberland however, came to the conclusion that the insurer could not raise the various sanctions set forth in the policy, particularly the loss of the right to the indemnity, since the second paragraph of article 2604 C.C.L.C. prohibited this:

> "No transaction made without the consent of the insurer may be set up against it.".

This article, being of public order, cannot be derogated from by either the insurer or the insured. Therefore, the provision that a settlement cannot be raised against the insurer is the only sanction provided for in this situation and any clause of an insurance contract which provides other sanctions, such as the loss of a right to take action against the insurer, has no effect.

As to the meaning of the words "may be set up against it", the Court concluded that they meant simply that the insured must prove not only the existence of insurance coverage but also that it was liable for the loss and that the amount disbursed by it as a settlement with the victim represented the real amount of the damages suffered by the latter.

This judgment, initially, appears surprising, in view of the judgment of the Court of Appeal several years earlier in the case of *J.L. Freeman* vs *American Home Insurance Company*, [1990] R.R.A. 904 (C.A.) in which the Court dismissed an insured's action in somewhat similar circumstances.

In the Freeman case the problem presented itself differently. The insured indemnified its customer prior to a denial of coverage by the insurer and attempted to recover the sum disbursed by it from the insurer. The Court of Appeal primarily directed its attention to determining whether the property covered was covered by the commerical property floater insurance, or was the situation not one aimed at in the section of the policy dealing with the civil liability of the warehouseman. The Court held that the section having application was that of civil liability. Having established that the insured had acknowledged its liability by paying the claim, the Court was of the opinion that the insured had breached the collaboration clause in the policy and dismissed the insured's action. In support of its opinion the Court relied upon the judgment in the case of *Imperial Tobacco Products Ltd.* vs *Yorkshire Insurance Co.*, [1978] C.A. 331. It should be noted, however, that the decision in *Imperial Tobacco* was rendered according to the law in force prior to 1976, that is, before the adoption of article 2604 C.C.L.C.; in addition, in *Freeman* it does not appear that the parties raised this article nor its character of public order.

Although these decisions appear contradictory, the judgment in *Inter-Tex* seems to express the present state of the law in matters of settlement. The same conclusion was expressed in *Desjardins* vs *Chabot et La Compagnie d'assurance Guardian du Canada*, [1987] R.R.A. 701 (C.Q.) and also is in conformity with French law which is the source of article 2604 C.C.L.C.

Continuing its analysis in *Inter-Tex*, the Court examined the situation in the context of the criteria that it had set forth, namely, was there valid insurance in effect, was the insured liable for the loss and did the amount of the settlement represent the real amount of the damages suffered by the claimant.

The insured benefitted from an insurance policy for its civil liability, therefore the first criterion was satisfied.

As to whether or not the insured's liability as a carrier was engaged in the sense of article 1675 C.C.L.C., only irresistible force or fortuitous event allow

a carrier to exonerate itself from all liability. The Court reviewed the jurisprudence on this question and held that the theft was not irresistible force and that *Inter-Tex* would have been found liable if it had been sued by the owner of the merchandise. The heavy burden imposed upon carriers explains the insured's decision to settle with its customer.

Finally, the Court confirmed the findings of fact in the lower court which declared itself satisfied that the value of the stolen merchandise was clearly set out in the bills of lading and that the amount paid in settlement was justified.

This judgment expresses the state of the law under the new Civil Code of Quebec. In effect, article 2504 C.C.Q. maintains the rule that a settlement made without the insurer's consent cannot be raised against it and article 2414 C.C.Q. prohibits any derogation which grants the insured fewer rights than are granted by the Code. Consequently, the prohibition against raising against the insurer a settlement which has been made without its consent is the only available sanction.

Neither the new Code nor the former Code provide for the consequences of the insured's failure to cooperate or its acknowledgment of liability. In the light of the provisions of article 2502 C.C.Q., which prohibits the insurer from raising against the victim any policy violations committed by the insured subsequent to the loss, it appears to be the law that the victim which proceeds directly against the insurer will obtain compensation and the insurer who has paid notwithstanding a policy violation as to admissions by an insured or its failure to cooperate will have no alternative but to proceed against its insured for amounts paid by the insurer.

Moreover, in our opinion, an acknowledgement of liability by the insured should not be opposable to the insurer, although this rule of French law is not specifically set forth in the Civil Code of Quebec. In fact, in *Inter-Tex* the Court found it necessary to determine whether or not the insured was responsible, which has a similar effect.

Odette Jobin-Laberge

WHAT IS THE REAL PREJUDICE SUFFERED BY THE INSURED?

In the case of *Laurentienne Générale Compagnie d'Assurance* c. *Zigby,* J.E. 94-1258 (C.A.), the Court of Appeal ruled in favour of an insurer which refused to pay an indemnity equivalent to the depreciated value of a building destined to be demolished within a short period. This judgment reversed a decision of the Superior Court, [1989] R.R.A. 973, upon which we had commented in an earlier Bulletin (Vol. 5, no. 1, December 1990).

In February 1987, the city of Granby placed on the insured's building a land reserve for public purposes, thereby substantially diminishing the value of the building and limiting the uses which could be made of it. The insured contested the "reserve" and in March 1987 the insured and the municipality came to an agreement by virtue of which the insured agreed to demolish the building and to grant a servitude of right of passage over the land which thereafter could be used by the owner as he wished, subject to the servitude. On its part, the municipality agreed to relocate the existing tenants in the building, to pay any indemnities which might be due to them, to pay the cost of the demolition, to grant a certain tax relief to Zigby and, finally, to examine a construction project on the property proposed by Zigby.

The agreement provided that the building was to be demolished before October 1, 1987. The fire occurred July 24, 1987, at which time the building was vacant, the electricity had been shut off, the tenants had been relocated and indemnified, and tenders had been called for the demolition.

As there had been no alienation of the property, the insured claimed that he was entitled to be paid by his insurer the replacement value of the building, less depreciation, notwithstanding the imminent demolition, relying in this regard upon various cases which had held that the projected demolition did not affect his right to the insurance indemnity. See, amongst others, *Ardill* vs *Citizens Insurance Co.*, (1893) 20 O.A.R. 605; *Cyrand Investment Ltd.* vs *Aetna Insurance Co.*, [1979] I.L.R. 1-1127 and *Royal Insurance Co.* vs *Rourke*, [1973] C.A. 1046.

In the Court of Appeal, the Honourable Mr. Justice Brossard recalled that the "the object of the insurance is to indemnify the insured for the material loss suffered to his patrimony" and that "this indemnification must be made not as a function of the intrinsic value of the thing, but as a function of the value of the thing lost or damaged to the insured, who must not realize a profit as a result of the fire". This latter notion has frequently and successfully been raised in cases wherein the intrinsic value of a thing is substantially different from its market value.

It is refreshing to note that the Court of Appeal recognizes the fundamental character of the principle of indemnification in property damage insurance and acknowledges that respecting this principle ensures that there cannot be only one method of indemnification; the indemnity must be determined in the light of the facts in each case.

In this matter, the decision to demolish being irrevocable and irreversible as it was completely out of the insured's hands, the building had no value to him other than the value of scrap materials which he might dispose of, namely $512.00.

It is interesting to note that a recent judgment in New Brunswick, *Quigley* vs *The Co-Operators General Insurance Co.*, [1994] N.B. - Q.B., I.L.R. 1-3070 (NB-QB) applied the *Ardill* judgment in 1893, which judgment was also followed in *Leger* vs *Royal Insurance Co. Ltd.*, (1968) 70 D.L.R. (2d) 344 (N.B. - S.C. Appeal Division), and in *Martin* vs *Travelers Indemnity Co.*, [1985] I.L.R. 1-1970 (B.C. - S.C.). Mr. Justice Creaghan held that, on the facts of the case, the simple intention to demolish did not affect the insured's rights to be indemnified since at the time of the fire the buildings were occupied by tenants and had a real intrinsic value to the insured.

From all of this it is clear that the principle of indemnification is the fundamental rule to be respected and that the evaluation of an insured's real loss must be made in the light of the circumstances in each case. It is therefore possible that a thing, having an intrinsic value, has no real value to the insured who then has no right to any indemnity.

Jean-Pierre Casavant

LIABILITY OF A DISTRIBUTOR OF A DEFECTIVE APPLIANCE

In a recent judgment, *Allstate* vs *Sears* (S.C. 400-05-000359-902, 02-05-94), the Superior Court considered the liability of manufacturers and distributors to a consumer for safety defects, and the extent of the rights of an insurer subrogated in the rights of a consumer.

In June 1989, Allstate's insured's house was severely damaged by a fire caused by a defect in a barbecue grill sold by

Sears. Expert evidence calculated that the fire resulted from a design error in the appliance which permitted storage of a reserve propane gas cylinder underneath the heat source.

Allstate subrogated in its insured's rights, sued Sears, the distributor of the grill, and Sears called in warranty the manufacturer of the safety valve component of the reserve cylinder.

Sears raised three defences of non-responsibility against Allstate, namely that the grill met all of the standard safety norms, that it was not a trader specializing in retail sales of gas grills and that the insurer could not benefit from the Consumer Protection Act.

Mr. Justice Allard rejected all these arguments. He did not accept Sears' claim that all manufacturing and safety standards had been met, since Sears was a specialized vendor. As such it should be considered to be a manufacturer and therefore it owed an additional degree of precautionary care, taking into account at all times circumstances which could give rise to damages. The grill was designed in such a fashion as to invite the dangerous storage of the reserve cylinder, and the notice not to store a cylinder inside the appliance or near a heat source was insufficient.

Mr. Justice Allard also found that Sears gave the product a name similar to the corporate name of its stores, that it supplied in its name an operating and maintenance manual, that it provided advice as to cleaning and maintenance or, in short, that it held itself out as being the manufacturer or its legal representative. As a result of this qualification, Sears was presumed to know of the defect in the thing sold, since article 1527 C.C.L.C. creates an absolute presumption of knowledge of the defect in such a case, even if Sears had not manufactured the thing.

On the other hand, Mr. Justice Allard allowed Allstate to benefit from article 53 of the Consumer Protection Act, its corporate status not constituting an impediment to the subrogation from which it benefitted. The same provision was given application in *Veranda Industries Inc.* vs *Beaver Lumber Company*, [1992] R.J.Q. 1763 (C.A.). In that case Mr. Justice Gendreau held that article 53 C.P.A. created an absolute presumption of knowledge of defects or of risks in a product sold by a merchant. He added that article 53 clearly allowed the consumer to claim damages from the merchant, and was not limited to a demand to annul the sale or reduce the price.

The judgment in *Allstate* vs *Sears* is of significance since it confirms the insurer's right to be subrogated in the rights of its insured and to benefit from the advantages available to the insured in virtue of the Consumer Protection Act. As pointed out above, the merchant, it seems, no longer has any means of exonerating itself from responsibility for defects which cause damage to a consumer.

Pierre Gourdeau

CHRONICLE OF JURISPRUDENCE

THE BURDEN OF PROOF IN FIRE LOSSES

In *La Prudentielle, Compagnie d'Assurance Ltée* vs *Mécanique et Pièces d'autos Charron (1980) Inc.*, J.E. 94-949 (C.A.), the Court of Appeal reiterated the principle that a claimant must prove the probable cause of a fire, not simply a possible cause thereof. The Court held that if the defence establishes that there exists another possible cause, the trial judge does not err in accepting the theory put forth by the defence expert that the exact cause of the fire could not be determined. Consequently, the claimant could not establish a causal relationship and articles 1053 and 1054 C.C.L.C. did not apply.

The claimant alleged that the fire resulted from the fact that a stove control had remained in the simmer position for several hours. The defence expert categorically denied that this could have caused the fire, and testified that the fire appeared to have been electrical in origin, although he could not determine the exact cause due to the extensive damage to the premises. As there was no proof establishing the origin of the fire, the Court held that the defendant had not rebutted the presumption of article 1054 C.C.L.C. by establishing the fault of a third party or that it had taken all available measures to avoid the fire. The Court thus confirmed its position in *Liberty Mutual Insurance Co.* vs *Sanborn's Motor Express (Quebec) Inc.*, [1991] R.R.A. 272 (C.A.), to the effect that a victim must identify the cause of the damage before it can benefit from the presumption of article 1054 C.C.L.C.

NOTICE OF CANCELLATION TO HYPOTHECARY CREDITORS

The Court of Appeal of Nova Scotia, in *Commercial Union Assurance Co. of Canada* vs. *The Bank of Nova Scotia*, 1993 I.L.R., 1-2992 held that an insurer must send a notice to hypothecary creditors named in its policy prior to the policy reaching its term. This judgment is based on clause 5, entitled "Termination" of the "Standard Mortgage Clause" approved by the Insurance Bureau of Canada, which provides "that the insurer will neither terminate nor alter the policy to the prejudice of the mortgagee without the notice stipulated in such statutory provision". The Court held that the word "terminate" had a broad meaning and could include cancellation of the policy as well as its non-renewal or expiry. The judgment contained a significant dissent.

A recent Quebec judgment in the Superior Court, *Société d'entraide et d'établissement du Québec* vs *Dumas & Associés Inc.*, (155-05-00141-888, 93-12-08) takes a contrary position. In this case, the hypothecary creditor argued that it had the right to be notified that the policy would not be renewed by the insured. The Court held that articles 2567 and 2568 C.C.L.C. (now articles 2477 and 2478 C.C.Q.), referred to in the policy only imposed an obligation upon the insurer to give notice of cancellation or modification of the policy, not of the expiry or non-renewal thereof. The Court absolved the broker of any responsibility and, the policy having expired at the time of the loss, dismissed the claim of the hypothecary creditor. Although the creditor was only a loss payee, the Court held that the outcome would have been the same even if the policy had contained the "Standard Mortgage Clause". In our opinion, the French version of this clause does not allow the interpretation

given by the Nova Scotia Court since it provides only that the insurer undertakes to give to hypothecary creditors a prior notice of 15 days in the event of cancellation or modification which could cause them prejudice; it does not, therefore, include a term as broad as "terminate".

THE OBLIGATION TO DEFEND

In *Bionaire Inc.* vs *Calvert Insurance Co.*, [1994] R.J.Q. 1290 (S.C.), Mr. Justice Piché was called upon to consider the insurer's obligation to defend its insured under a policy covering the liability of the directors and officers of a company. The action against the directors and officers alleged dishonest acts on the part of some of them. The policy excluded coverage for any damages resulting from dishonest acts. The judge distinguished between the obligation to defend and the obligation to indemnify, the former being wider in scope, and, relying upon the particular terms of the policy, decided that the insurer must provide a defence to the allegations of dishonesty. The Court relied upon *Filion* vs *La Sécurité*, [1990] R.J.Q. 349 (C.A.), and also cited *Nichols* vs *American Home Insurance Co.*, [1990] 1 S.C.R. 801. The Court condemned the insurer to reimburse to the insured both the taxable fees and the extra-judicial fees which the latter had disbursed for the defence of the action against the two directors which had been dismissed. The judgment has been taken to appeal.

THE NON-FULFILLMENT OF A WARRANTY BY AN INSURED SUSPENDS COVERAGE ONLY WITH RESPECT TO THE RISK AFFECTED BY THE WARRANTY

In *Auberge Rollande St-Pierre Inc.* vs *Canadian General Assurance Company*, J.E. 94-879 (C.A.), the Court of Appeal reversed a Superior Court judgment which had refused a claim by an insured to be indemnified for the loss it had suffered as the result of a fire at a hotel owned by it. The insurer argued that the insured's alarm system did not conform to the requirements of the policy. The fire protection system was, or should have been connected to the police station and several other places by way of telephone lines. In October 1982, the Town of Tracy prohibited the connection of alarm systems to its police station, with the result that a part of the insured's system became non-functional. The Honourable Mr. Justice Chamberland reviewed the text of the warranty clause and found that the clause constituted a warranty only with respect to the system designed to protect against theft and consequently the warranty, as set out in the policy, had not been breached, and there was no suspension of coverage which could be raised against the insured. Mr. Justice Chamberland was of the opinion that article 2489 C.C.L.C. (now article 2412 C.C.Q.) only penalized a breach of warranty by suspending coverage with respect to the risk affected by the warranty, namely, theft. Conversely, failure to install sprinklers in a building, contrary to a warranty to such effect, would have produced a suspension of coverage against fire loss, but not loss by theft.

Similarly, in *Bijouterie Martine Ltée* vs *Pafco Assurance*, L.P.J. 94-4398 (S.C.), the Superior Court dismissed an insured's action on the ground that a jeweller which could not activate its

anti-theft system when it left its premises, by reason of a defect therein, lost the benefit of the insurance. The Court stated that the insured knew its system was not functioning when it left the premises and, the security clause being clear and precise, there was no question of ambiguity or interpretation. The non-fulfillment of a warranty is penalized by suspension of the insurance coverage.

PLURALITY OF POLICIES AND THE ACTION IN SUBROGATION BY THE INSURER WHO HAS INDEMNIFIED THE INSURED

The insurers of a building owner indemnified the insured for loss suffered as the result of a fire. Some time later they became aware that a tenant had also insured the building in accordance with the terms of its lease. The owner's insurers took action against the tenant's insurer, which presented an exception to dismiss the action on the ground of tardiness, such action having been taken slightly more than three years after the loss. In *Scottish & York Insurance Co.* vs *Zurich Compagnie d'Assurance,* (200-05-000276-936, 93-11-25), the Superior Court held that the owner's insurers were entitled to a proportional reduction under the terms of article 2585 C.C.L.C. (now article 2496 C.C.Q.) without relying upon the notions of subrogation or transfer of insurance. It was from the date of the payment made by the owner's insurers that prescription of their recourse against the other insurer began to run.

RAINFALLS OF JULY 14, 1987 IN MONTREAL AND DAMAGES CAUSED BY THE ACCUMULATION OF WATER ON ROOFS

In three decisions, *Groupe Dominion du Canada* vs *Antinozzi*, [1994] R.R.A. 249 (C.A.), *La Fédération Compagnie d'Assurance du Canada* vs *Homza*, [1994] R.R.A. 260 (C.A.) and *Tinmouth* vs *Bourbonnais*, [1994] R.R.A. 250 (C.A.), it was decided by the Court of Appeal that the exclusion with respect to floods was not applicable to damages caused by the accumulation of water on roofs. In these cases the roof downspouts had become accidentally obstructed by organic, vegetable or bituminous matter preventing run-off with the result that water accumulated on the roofs and leaked into the premises through the walls and ceilings or by way of the skylight or the roof joints. The Court held that the downspouts on the roofs formed part of the plumbing system of the building and, therefore, the exclusion in respect of water damages and flooding did not apply. One argument raised by the insurers was that there had been no rupture or sudden escape, since the water had never entered the blocked drain. The Court of Appeal held that it was a question of an overflowing of the downspout since normally the water would have circulated in the drains.

AN ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR (BILL 68): THE COUNTDOWN PERIOD IS OVER.

The bulk of the provisions of an *Act respecting the protection of personal information in the private sector* has been in force since January 1, 1994, but the provisions concerning the collection of personal information (articles 5 to 9, inclusive), as well as those concerning the creation and utilization of nominative lists only came into force on July 1, 1994.

Already, the Commission d'accès à l'information (C.A.I.) has had occasion to render several decisions in virtue of Bill 68 of which some involve insurers. Moreover, since the majority of insurers collect and retain personal information about individuals, we can expect that insurance will be a field in which respect of private lives will have significant importance.

There is still time to ask yourselves what you have done to respond to the obligations imposed by Bill 68:

- Use of the appropriate consent

  As an insurer you are called upon to deal with personal information on a daily basis. Your staff and your representatives must now be familiar with Bill 68 and use a form of consent which permits you to obtain or to exchange personal information relevant to the underwriting of a risk or the investigation of a claim.

  Article 6 of Bill 68 prohibits you, with certain exceptions, from collecting information on a person from a third party, unless such person consents. Moreover, article 13 of the law prohibits you from communicating personal information that you hold on a person to a third person, unless you have obtained the former's consent or benefit from an exception provided by the Act.

  Obtaining a consent is essential in order to respect the law. In addition, your representatives and staff must be able to explain to anyone from whom a consent is sought, the terms thereof and the necessity of giving it. In fact, article 14 of the Act provides that the consent must be "manifest, free and enlightened and must be given for specific purposes".

- Notice under article 8

  When you open a file, and for that purpose collect personal information, article 8 requires that you inform the person concerned of the existence of the file, of the use that will be made of the information and the categories of persons that will have access to it, of the place where the file will be kept and of the rights of access and rectification.

  This article came into force on July 1, 1994. Since that date, you must inform your clients in accordance with article 8. This can be done by way of simple notice which can be attached to any other document being sent to the insured.

- Rights of access and rectification

  The Civil Code of Quebec, as well as Bill 68, provide a right of access to and rectification of personal information held by an enterprise. This right of access can be exercised by consulting the file or by requesting copies of the personal information. In addition, an individual can demand that information concerning him or her be withdrawn from the file if it is out of date or is not pertinent or that it be rectified. From this point of view it is important

to inscribe in the file the source of any information obtained to permit you, should the occasion arise, to inform third parties of any rectifications made.

It is essential that requests for access or rectification be well administered to permit a decision to be made and communicated within 30 days of the request. The decision of the C.A.I. in *X* vs *Dow Chemical Canada Inc.* illustrates the importance of promptly reacting to requests for access. In this regard we refer you to our **Bulletin - Droit de l'information, September 1994, no. 1.**

If it has not yet been so provided, it would be preferable that one person be designated as the only person within the enterprise responsible for dealing with requests for access or rectification and that all such requests received by the enterprise be immediately turned over to such person for handling.

- Confidentiality of information

  Communication of personal information not authorized by the person concerned, or permitted by exceptions to Bill 68, cannot be made. Bill 68, having been in force for several months, your representatives and staff must be particularly vigilant when they receive requests for communication of personal information or when they are collecting such information.

- The necessary character of the information

  You are not permitted to collect information which is not necessary or relevant to the purpose of the file. In this regard, it would perhaps be prudent to review your methods and your forms.

It is possible that the C.A.I. may show some indulgence to enterprises which have made an effort to respect Bill 68. For those who have not as yet taken any steps, their position may be somewhat riskier if they are called upon to respond to requests for access or complaints.

François Duprat

LAVERY, DE BILLY

BARRISTERS AND SOLICITORS