IN FACT AND IN LAW

Personal Insurance

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Suicides and Accident Insurance:
The Court of Appeal Issues a Ruling

By Claude M. Jarry

In our June 1999 bulletin, we discussed a judgment rendered by Mr. Justice Ivan Godin of the Superior Court of the district of Trois-Rivières which dismissed Mr. Rénald Vallée's claim against Assurance-vie Desjardins.

On July 13, 2001, the Quebec Court of Appeal, with Justices Delisle, Thibault and Rochon (ad hoc) sitting on the bench, unanimously dismissed Mr. Vallée's appeal.

To our knowledge, this is the first time that the Quebec Court of Appeal was called upon to decide whether or not an insurer that has issued an accident insurance policy could refuse a claim following a suicide which occurred more than two years after the coming into effect of the policy.

The facts of the case were essentially uncontested. In 1987, Mr. Vallée had taken out an accident insurance which, among other things, provided benefits in the event of accidental death. The policy included, as a named insured, the plaintiff's daughter who was then 18 years old. Eight years later, she died from carbon monoxide inhalation. The plaintiff filed a claim with the insurer for the amount mentioned in the policy for losses attributable to accidental death.

Article 1 of the policy in question provided that this was insurance in the event of death, mutilation, fracture, rupture or loss of use resulting from an accident. The policy also contained an exclusion stating that the insurer would not pay an indemnity if the suicide occurred during the two years following the date on which the policy was subscribed.

In his appeal, Mr. Vallée raised two separate arguments. Relying upon the opinion of Professor Jean-Guy Bergeron in his work entitled *Les Contrats d'assurance lignes et entre-lignes*, Volume 2, he argued that article 2441 C.C.Q. (formerly article 2532 C.C.L.C.) applies to every type of personal insurance, namely, life insurance, accident insurance and sickness insurance. Thus, given that article 2441 C.C.Q. is of public order and that the suicide of the appellant's daughter had occurred more than two years after the coming into force of the policy, the appellant argued that the insurer was not justified in raising this ground of refusal.

This article reads as follows:

2441 C.C.Q.

> **"The insurer may not refuse payment of the sums insured by reason of the suicide of the insured unless he stipulated an express exclusion of coverage in such a case and, even then, the stipulation is without effect if the suicide occurs after two years of uninterrupted insurance."**

The appellant also argued that the disputed loss was a covered risk, given that the insurer had specifically excluded suicide in paragraph 11 of its exclusions. This paragraph reads as follows:

> **[translation]**
>
> **"11. Exclusions and limitations:**
>
> **In addition to the specific restrictions set forth in articles 1 and 2 of this policy, the insurer shall not pay any of the amounts provided for in the event of accident in the following cases:**
>
> **f) for any loss or disability as well as any expense resulting directly or indirectly from self-inflicted injury or mutilation by the insured, from suicide or attempted suicide, whether or not the insured is aware of his or her actions:"**

The Court of Appeal, in a judgment written by Mr. Justice Delisle, dismissed both of the appellant's grounds of argument.

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Claude M. Jarry has been a member of the Quebec Bar since 1979 and specializes in Personal Insurance Law

First, the Court stated that notwithstanding the rule of interpretation which requires that an insurance contract be read as a whole and that any ambiguity be resolved in favour of the insured, it is inconceivable to try to find coverage, or even an extension of coverage, in an exclusionary provision. Mr. Justice Delisle pointed out that in order for a person to be entitled to benefits under an insurance policy, the person's claim must be for a covered risk and must not fall within an exclusionary provision.

Recalling the fact that at the hearing, the appellant had admitted that a suicide is not an accident, Mr. Justice Delisle stated that the word "accident", in its usual meaning and as defined in the policy in question, is incompatible with the notion of suicide.

Ruling more specifically on the argument based upon a reading of article 2441 C.C.Q., Mr. Justice Delisle stated the following principle:

> **[TRANSLATION]"In order for the rule set forth in article 2441 C.C.Q. to apply, the insurance coverage must apply to the event contemplated in this article. The first part of the article makes it possible to exclude such coverage. However, it necessarily follows from this article that the coverage must have existed in the first place. The article cannot provide coverage where no such coverage originally existed."**

It is interesting to note that the Court of Appeal drew its inspiration from a judgment rendered by the Supreme Court of Missouri which had to rule on a similar matter in the case of *Katherine R. Miller* v. *Home Insurance*.[1] In the majority opinion (six judges to one), Mr. Justice Rendlen wrote:

> **"It is settled law that the phrase "accidental bodily injury" does not include suicide while sane, see Couch on Insurance 2 d (s) 41.196 and numerous Missouri cases cited, and we conclude that suicide while sane was not a covered risk within this group policy of insurance before us. As there was no coverage, the effect of the exclusionary clause and of (s) 376.620 are irrelevant to a determination of the cause."**

The decision rendered by the Court of Appeal in the *Vallée* case therefore confirms the legal position stated in *Boucher* v. *Assurance-vie Desjardins* (Superior Court 605-05-000143-904, January 13, 1993, the Honourable Camille Bergeron) and in *McGuerrin-Houle* v. *Compagnie d'assurance Combined d'Amérique* (Provincial Court 705-02-001174-853, August 6, 1986, the Honourable Denis Charest).

Claude M. Jarry

[1] *Katherine R. Miller* v. *Home Insurance* (1980) MO-QL 894, No. 61363 (September 9, 1980)

You can contact any of the following members of the Personal Insurance group in relation with this bulletin.

at our Montréal office
Jean Bélanger
Julie-Anne Brien
Marie-Claude Cantin
Daniel Alain Dagenais
Guy Lemay
Jean Saint-Onge
Johanne L. Rémillard
Evelyne Verrier
Richard Wagner

at our Québec City office
Martin J. Edwards
Claude M. Jarry

at our Ottawa office
Patricia Lawson
Alexandra LeBlanc

Montréal
Suite 4000
1 Place Ville Marie
Montréal, Quebec
H3B 4M4

Telephone:
(514) 871-1522
Fax:
(514) 871-8977

Québec City
Suite 500
925 chemin Saint-Louis
Québec, Quebec
G1S 1C1

Telephone:
(418) 688-5000
Fax:
(418) 688-3458

Laval
Suite 500
3080 boul. Le Carrefour
Laval, Quebec
H7T 2R5

Telephone:
(450) 978-8100
Fax:
(450) 978-8111

Ottawa
Suite 1810
360, Albert Street
Ottawa, Ontario
K1R 7X7

Telephone:
(613) 594-4936
Fax:
(613) 594-8783

Web Site
www.laverydebilly.com