

Master Policies and Insurance Certificates: Beware of Discrepancies

By Evelyne Verrier



In a recent judgment rendered in the case of *Lemieux v. Croix-Bleue du Québec Canassurance*,¹ the Superior Court penalized the insurer for discrepancies between a group insurance policy and the insurance certificate issued to a participant by preventing the insurer from integrating the monthly disability benefits paid by the Régie des rentes du Québec with the insurance benefits.

The Facts

Lemieux sued the defendant, Croix-Bleue du Québec Canassurance, claiming disability benefits under the group insurance policy issued in favour of the Quebec Bar. Specifically, the plaintiff claimed monthly benefits of \$1,400 pursuant to the long-term total disability insurance coverage. For the period of November 14, 1993 to April 30, 1995, the monthly benefits paid to him by the defendant represented the full amount claimed; however, as of May 1, 1995, the insurer deducted the monthly disability pension of \$828.05 paid by the Régie des rentes du Québec, thereby reducing the monthly benefits payable under the insurance policy to \$571.95.

To justify the reduction, the defendant relied on the provision entitled "Integration of benefits" contained in the insurance policy.

The participant did not accept the reduction, because he claimed that he could not have suspected the existence of such a provision when reading the documents which had been provided to him, namely, the group insurance certificate (hereinafter referred to as the "Certificate") and the form explaining the policy (hereinafter referred to as the "Pamphlet").

In addition to claiming the monthly shortfall since May 1, 1995, the plaintiff also sought damages in the amount of \$38,200.

Insurance Documents in Dispute

The long-term salary insurance coverage provided by the group insurance policy includes a provision entitled "Reduction" which reads as follows:

[TRANSLATION]

"8.03 REDUCTION

- 1) **Rehabilitation program;**
- 2) **Residual disability (loss of earnings); applies only to members;**
- 3) **Integration of benefits**

Under no circumstances shall the initial disability benefits payable under the long-term salary insurance coverage and the total income mentioned hereafter exceed the available coverage set forth in the SCHEDULE to this policy, which available coverage was determined on the basis of the eligible earnings at the time the disability began.



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¹ *Lemieux v. Croix-Bleue du Québec Canassurance*, S.C. 450-05-002872-980, December 15, 2000, the Honourable Pierre C. Fournier

- **The sources of income are the following:**

- **benefits paid in virtue of this salary insurance plan, and**

- **amounts paid by the Régie des rentes du Québec, the Régie de l'assurance-maladie du Québec and the Commission de la santé et de la sécurité du Travail.**

- **Eligible earnings means the income earned, before taxes, by the insured from his or her profession, less all professional expenses incurred by the insured in the exercise of his or her profession.**

4) **Pregnancy...**

5) **Recovery..."**

The Insurance Certificate

The Certificate does not mention anything regarding the "reduction" or "integration" of benefits. However, the following provision entitled "Exclusions and restrictions", appears on the back of the Certificate:

[TRANSLATION]

"EXCLUSIONS AND RESTRICTIONS

Coverage under an insurance policy is subject to certain exclusions and restrictions. The pamphlet that is available from your plan administrator provides a good summary thereof, and the full text is available in the group policy..."

The following note also appears on the back of the Certificate, at the very bottom:

[TRANSLATION]

"FOR PURPOSES OF INTERPRETATION, THE ONLY CONTRACTUAL PROVISIONS ARE THOSE SET FORTH IN THE GROUP INSURANCE POLICY PROVIDED TO THE QUEBEC BAR."

The Pamphlet

The Pamphlet provides a summary of the full coverage provided under the group insurance policy, including the long-term disability insurance. There is no heading referring to a "reduction", although the Pamphlet does contain a provision entitled "Integration", which reads as follows:

[TRANSLATION]

"INTEGRATION:

The disability benefits shall be integrated with the benefits payable under any governmental plan, such that the total benefits payable shall not exceed the insured's net earnings prior to his or her disability."

The following is also found on the last page of the Pamphlet:

[TRANSLATION]

"This pamphlet does not create or confer any contractual or other rights. The provisions of the master policy issued by the insurer to the Corporation de services du Barreau du Québec govern the insurance and the conditions of this pamphlet."

The Judgment

The Court focused specifically on the difference between the provision entitled "Integration" that is found in the Pamphlet and the provision entitled "Integration of benefits" found in the insurance policy.

Under these circumstances, the Court had to determine whether the provision of the insurance policy on which the insurer sought to rely could be set up against the participant. This dispute was governed by the provisions of the *Civil Code of Lower Canada*, in particular article 2505 C.C.L.C., which read as follows:

"In group insurance, the insurer must issue the policy to the policyholder; the participant and the beneficiary are entitled to examine it at the office of the policyholder and to make a copy of it.

Except as otherwise permitted by the regulations made to that effect by the Lieutenant-Governor in Council, the insurer must provide the policyholder with writings evidencing the insurance, which the latter must distribute to the participants."

The text of article 2505 C.C.L.C. was carried over to article 2401 C.C.Q., but the new article includes a significant amendment. Article 2401 C.C.Q. reads as follows:

"In group insurance, the insurer issues the group insurance policy to the client and remits to him the insurance certificates, which he shall distribute to the participants.



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Participants and beneficiaries may examine and make copies of the policy at the place of business of the client and, in case of discrepancies between the policy and the insurance certificate, they may invoke either one according to their interest.
(Emphasis added)

After reviewing the caselaw and doctrine on the interpretation of such provisions, the Court determined that when there is a discrepancy between the policy and the certificate, the participant may rely on either one according to the participant's interest. Thus, new article 2401 C.C.Q. merely codified the existing caselaw.

Moreover, the Court stated that the obligation to make the master policy available and facilitate a participant's access thereto did not in any manner whatsoever reduce the insurer's obligation to draft a consistent and complete certificate, all the more so that access to the insurance policy is not as easy as access to the certificate. In the case at bar, the plaintiff lived in a remote area and the insurer should have known that, for all practical purposes, such a participant would never take advantage of his right to consult the master policy.

On another issue, the Court was careful to point out that the provision of the insurance policy entitled "Integration of benefits" was entirely legal and valid. The Court also agreed that an insurer is not required to reproduce all of the provisions of a policy in the certificate, although the content of the certificate must correspond faithfully to the content of the policy.

This approach is consistent with the principles established by the Court of Appeal a few years earlier in *Lapointe v. L'Industrielle-Alliance*² in which it had ordered the insurer to pay the life insurance benefit to the participant whose wife had committed suicide, because the certificate only mentioned as exclusions civil war and active participation in a riot, whereas the policy also mentioned suicide as an exclusion:

[TRANSLATION]

"The appellant did not argue that the respondent should have provided him with a summary of each of the provisions of the master policy; he complained of a significant discrepancy between the text of a provision of the insurance certificate and the text of the policy itself.

If an insurer refers in an insurance certificate to a provision of the policy, it must provide an accurate summary thereof; if it reproduces the provision, it must provide the full text thereof."

Given the discrepancy in the present case, the Court ordered Croix-Bleue du Québec Canassurance to pay to the insured the monthly shortfall of \$828.05 as of May 1, 1995, but it dismissed the action for damages in the amount of \$38,200. As regards the issue of damages, the Court made the following remarks:

[TRANSLATION]

"Damages in the amount of \$38,200 cannot be granted: they do not result from the non-payment of the monthly amount of \$828.05.

The penalty for non-payment of a sum of money which is justly owed is the interest and the additional indemnity."

Conclusion

This judgment is yet another reminder to insurers of the importance of the information included in documents prepared for participants, particularly when the information deals with exclusions and restrictions or, more generally, with any reduction of coverage.

One cannot overly insist on the need to ensure that the certificates and pamphlets delivered to participants accurately reflect the contents of the policy, ideally by using the same wording, as tedious as that may seem.

Indeed, it seems to be more harmful to have a certificate or pamphlet which includes information that is different from that contained in the policy than to have a certificate or pamphlet which is silent on a certain subject.

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² *Mario Lapointe v. L'Industrielle-Alliance, Compagnie d'assurance sur la vie*, C.A. 200-09-000587-946, December 18, 1997

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