

## Dealing with suicide occurring within two years of reinstatement of a life insurance policy

By Martin J. Edwards



In Quebec, an insurer cannot validly exclude suicide as an insured risk in a life insurance policy, unless the suicide occurs before the insurance has been in effect for an uninterrupted period of two years. Once the two years have elapsed, death by suicide is covered (article 2441 C.C.Q.).

If the insured fails to pay a premium within the 30 days provided by law, the insurance will terminate automatically (article 2427 C.C.Q.). However, the insured is not without recourse in such a case, as the Civil Code stipulates that upon request of the insured and subject to the conditions set forth in article 2431 C.C.Q.<sup>1</sup>, an insurer is obliged to reinstate an insurance policy which has been cancelled for non-payment of the premium.

In the case of such forced reinstatement of an insurance policy, what happens to the two-year period during which the insurer is entitled to exclude the insured's suicide as an insured risk? Is the insured faced with a new two-year period that begins from the date of reinstatement of the policy, or can he invoke the benefit of the time elapsed prior to cancellation of the policy?

In two separate cases dealing with the suicide of the insured occurring less than two years after reinstatement of the insured's life insurance policy, the Superior Court rendered two contradictory judgments<sup>2</sup>.

The Quebec Court of Appeal heard the appeal of both cases simultaneously and in a single judgment<sup>3</sup> rendered March 19, 1999, settled the controversy and stated its position on the meaning and scope of the words "*the two year period (...) runs again*" found in article 2434 C.C.Q. (formerly, paragraph 2 of article 2524 C.C.L.C.):

**2434 C.C.Q.: Upon the reinstatement of a contract of insurance, the two year period during which the insurer may bring an action for the annulment of the contract or reduction of coverage by reason of misrepresentation or concealment relating to the risk, or by reason of the application of a clause of exclusion of coverage in case of the suicide of the insured, runs again.**

### The Contradictory Judgments Rendered by the Superior Court

In the *La Solidarité* case, the trial judge had concluded that the cancellation of the contract for non-payment of the premium merely suspends the computation of the two-year period and that in the event of reinstatement the period of time elapsed between the issuance of the policy and its cancellation must be taken into account. Consequently, because the two-year period had run its full course prior to the cancellation of the policy, suicide could not be excluded a second time after reinstatement. The trial judge concluded that the suicide was covered.

In the *Standard Life* case, the trial judge came to the opposite conclusion and found that the two-year period runs anew from the date of reinstatement, without taking into account the period of time elapsed prior to cancellation. The judge made a distinction between his decision and the decision rendered by the Supreme Court in

<sup>1</sup> • the application for reinstatement of the policy must be made within two years of the cancellation  
• the insured must still meet the conditions required to be insured  
• the insured must pay the overdue premiums and repay any advances obtained on the policy

<sup>2</sup> *Poulin v. La Solidarité, Compagnie d'Assurance sur la vie*, C.S. 235-05-000107-913, Justice André Desmeules, December 2, 1994  
*1858-0894 Québec Inc. v. La Compagnie d'assurance Standard Life*, C.S. 150-05-000237-968, Justice Jean Lemelin, September 22, 1997

<sup>3</sup> *La Solidarité compagnie d'assurance sur la vie v. Poulin*, C.A.Q., 200-09-000039-955, and *1858-0894 Québec Inc. v. La Compagnie d'assurance Standard Life*, 200-09-001713-970, Justices Gendreau, Delisle and Letarte, March 19, 1999



the matter of *Syndic de Chablis Textiles inc. v. London Life*<sup>4</sup> which had a different set of facts. In that latter case, the Court was called upon to determine whether an increase in the amount of coverage resulted in the computation of a new period of contestability.<sup>5</sup> It is important to note that the Civil Code does not contain a specific provision dealing with situations of increased coverage, while it does for reinstatement of a policy.

## The Judgment Rendered by the Court of Appeal

Confronted with appeals in both matters, the Court of Appeal had to determine whether the two-year exclusionary period in the event of suicide includes the time elapsed prior to cancellation of the policy for non-payment of the premium, or whether the period runs again from zero from the time the policy is reinstated. The Court of Appeal chose the latter solution, relying on its analysis of the meaning of the words “à nouveau” (“again”) as well as the legislator’s intent.

By analyzing other provisions of the Civil Code that use the words “à nouveau” and “de nouveau” (“again”), Mr. Justice Letarte observed that these expressions can be replaced by the words “une seconde fois” (“a second time”), without changing the meaning of the article. The words “à nouveau” and “une seconde fois” are defined in various dictionaries as referring to an interruption. These words can be likened to the expressions “une fois de plus”, “derechef”, “encore une fois”, “à neuf” and “de manière différente” (“one more time”, “once more”, “once again”, “anew” and “in a different way”).

The legislator spoke with a purpose and could not have been unaware of the ordinary meaning of the expression “court à nouveau” (“runs again”). Therefore, if the original two year period sufficed to defeat the suicide exclusion, the legislator would not have stated that in the event of reinstatement, « *the two year period...runs again* ».

In the case at hand, the law obliges the insurer to reinstate the policy; this reinstatement is an exception to the principle of freedom to contract. Having the two-year period start at zero is a logical corollary of the obligation imposed upon the insurer to reinstate a policy which has been cancelled.

Consequently, the words “court à nouveau” (“runs again”) mean that the period “court entièrement une seconde fois” (“runs entirely a second time”) as of the reinstatement of the insurance policy. This solution is the appropriate one for the interpretation of a contract characterized by the utmost good faith of the parties.

The above principle is also applicable to concealment and misrepresentation on the part of the insured when applying for reinstatement of the policy, either of which can lead to the annulment of the insurance policy within two years of reinstatement.

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<sup>4</sup> *Syndic de Chablis Textiles Inc. v. London Life* (1996) 1 S.C.R., 160. In this matter, the Supreme Court had ruled that the contestability period for exclusion of coverage could not run more than once within the same insurance contract.

<sup>5</sup> Justices Delisle and Letarte were in agreement with the distinction drawn by the trial judge. Justice Letarte emphasized that this decision could not constitute a precedent in matters of cancellation of a policy for non-payment of the premium.



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represented La Solidarité  
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