

The insurer's duty to inform: an increasingly heavy burden

By Anne-Marie Lévesque

It is known that an insurer has a considerable duty to inform in group insurance. The Superior Court, in a decision by Justice Hélène Langlois, specified the extent of this duty in Tanguay et al v. L'Ordre des ingénieurs du Québec and The Manufacturers Life Insurance Company of North York, doing business under the name Manulife Financial¹.

The facts

In 1982, the members of the Ordre des ingénieurs du Québec (the "Ordre"), including Luc Roy, enrolled in a group insurance plan issued by Manulife Financial ("Manulife"). The policy was taken out by the Canadian Council of Professional Engineers ("CCPE"), an association including numerous participating professional associations and orders across Canada, including the Ordre.

This policy provides for two specific conditions of eligibility to maintain the insurance in force: a) payment of the premium on the due date, namely April 1 of each year, and b) that the applicant be a member, on the premium payment date, of one of the CCPE's participating associations.



Mr. Roy died in February 2002 at age 66. Manulife refused to pay the insurance benefit, alleging that Mr. Roy was no longer a member of the Ordre since April 2, 1999.

Thus, the Court had to determine whether or not Mr. Roy was a member of the Ordre at the time of his death and, in the negative, whether the insurance benefit had to be paid, since Mr. Roy had always paid the annual insurance premiums charged by Manulife up to the time of his death.

The evidence showed that being a member of the Ordre had always been a source of pride for Mr. Roy. However, even though his wife testified that her husband had not informed her of the non-renewal of his membership in the Ordre, it seems that Mr. Roy made this decision. Indeed, the Ordre proved that reminders for membership and payment of dues for the 1999 - 2000 period were sent to him in March and April 1999. Moreover, in the letter delivered in April 1999, it was specified that his default in payment of dues meant that, effective April 2, 1999, his name would be struck from the Ordre's roll, but that he could choose to reenroll by paying certain fees.

It was also proved that Mr. Roy had not renewed his membership with the Association des diplômés de Polytechnique and the Ordre des administrateurs agréés du Québec for that same year 1999 - 2000. Thus, the Ordre was justified in no longer considering Mr. Roy as one of its members effective April 2, 1999.

Consequently, since April 2, 1999, Mr. Roy no longer satisfied the conditions of eligibility to maintain Manulife's insurance in force.

¹ October 18, 2006, AZ-50398626.



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Why did Mr. Roy continue to pay his premiums to Manulife from 1999 up to his death in 2002? Did he believe he was insured?

A certificate of insurance and a summary of the insurance coverage and the related conditions had been delivered to the applicants by Manulife in 1994 when it amended its policy. Here are some of these conditions:

Conditions of eligibility for maintaining the insurance in force

[...]

In addition to payment of the premium on the due date, the applicant shall satisfy certain conditions if he wishes to maintain the insurance form which he benefits under group policy SP-212 of the Canadian Council of Professional Engineers. Under the terms of this policy, the insured to whom a certificate has been delivered shall:

- 1) be a member of one of the aforementioned participating associations (which also includes the members whose rights and privileges have been suspended and the members who have been suspended):

[...]

End of term life insurance

The insurance in force on the applicant's life shall end on the earliest of the following dates:

- 1) the contract anniversary coinciding with the date or following the date on which the applicant ceases to be eligible for the insurance as a member (this endorsement does not apply to applicants who have reached 75 years of age and benefit from the insurance in perpetuity);

[...]

Conversion

- 1) **General information.** Up to age 75 inclusive, the applicant may convert one or more units of the term life insurance established on his life into an individual life insurance policy, without having to submit proof of insurability. The application for conversion shall be made in writing and be sent, along with the required premium, within 31 days following the date on which the insurance ends.

[...] [TRANSLATION]

Moreover, in the month of March of each year, Manulife sent Mr. Roy a premium notice. More specifically, for the year 1999 - 2000, the premium notice was sent on March 5 and the premium was paid on the following March 24. On the front of the premium notice was the following note: "Keep this part for your records. An important notice concerning your insurance is found on the back."

[TRANSLATION] The notice in question reads as follows:

"ELIGIBILITY FOR RENEWAL OF INSURANCE

Recommended by your association, this economical group insurance plan is a valuable benefit, offered exclusively to the persons who fulfill the conditions of eligibility. For more details, please refer to the parts of your certificate pertaining to cancellation of insurance and eligibility.

YOU MUST BE A MEMBER OF YOUR ASSOCIATION ON THE CONTRACT ANNIVERSARY TO BE ABLE TO BE INSURED DURING THE FOLLOWING YEAR. PAYING THE PREMIUM IN NO WAY CHANGES THIS CONDITION OF COMING INTO FORCE OR RENEWAL OF INSURANCE."

[TRANSLATION]

As for the Ordre, its membership form was sent with a document specifically mentioning that only members on the roll could benefit from member services.

Despite the notices issued by Manulife and the Ordre, Mr. Roy ceased to pay his dues to the Ordre on April 2, 1999, but continued to pay the premiums to Manulife in March 2000 and 2001.

Since Mr. Roy was no longer a member of the Ordre effective April 2, 1999, the insurance with Manulife ended on April 2, 2000, but under the conversion clause contained in the insurance contract, he benefited from a time limit of 31 days to convert his group insurance into individual life insurance. Mr. Roy did not exercise his conversion right within the prescribed time limit.

The Superior Court judgment

The Court is of the opinion that Mr. Roy had the firm intention to maintain the life insurance he held with Manulife in force; this is why he paid all the insurance premiums. The Court thus concludes that Mr. Roy believed he was insured.

What was the duty to inform of Manulife and the Ordre concerning the consequences of no longer being a member and the conversion right?

The Court looked over the major decisions regarding an insurer's duty to inform and endorses the remarks of the Supreme Court of Canada regarding the scope of the duty to inform:

- "a) knowledge of the information, whether actual or presumed, by the party which owes the obligation to inform;
- b) the fact that the information in question is of decisive importance;
- c) the fact that it is impossible for the party to whom the duty to inform is owed to inform itself, or that the creditor is legitimately relying on the debtor of the obligation."²

The Court also mentions that it recognized since 1991 that an insurer has this duty to inform its insured.³

Also, the Court reiterates the principles set out by the Supreme Court of Canada in *Fletcher v. Manitoba Public Insurance Company*⁴ whereby members of the public need to have all relevant information available to them in an explicit and readily comprehensible manner if they are to make intelligent decisions about how much risk they are prepared to bear. The insurer must provide "timely, clear and accurate" information to its insured about the various options so that they can make informed choices.

Applying these principles, the Court concluded that, despite the mentions contained in the notices sent to Mr. Roy, he was not informed adequately of the consequences of his decision to withdraw from the Ordre's roll nor of his options to benefit from insurance coverage again. He was not informed either of the possibility of exercising his right to convert his group life insurance into individual life insurance.

Since the duty to inform rests with the insurer in the first place, the Court considered that this duty was not honored in that (i) the reminder found on the front of the premium notice is not clear enough to attract an insured's attention to the message it conveys and (ii) this mention beginning with "Keep this part for your records" is not sufficient to attract attention.

The Court concluded that as the administrator of the group policy, the insurer had to develop an administrative structure to be informed of the changes in the applicants' status so that they can be informed accordingly.

Lastly, the Court dismissed the action against the Ordre, finding that the latter had no obligation towards Mr. Roy pursuant to the tripartite contractual relationship of the group policy. Indeed the tripartite relationship involved the insurer (Manulife), the applicant (Mr. Roy) and the policyholder (CCI), not the Ordre. In addition, the insurer managed the group policy even though it had the opportunity of delegating a significant portion of it. Therefore, Manulife was condemned to pay the insurance benefit.



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Conclusion

This decision reminds us that in the context of group insurance, the various intervening parties must reasonably anticipate the decrease or loss of benefits resulting, for instance, from the withdrawal by applicants of the group to which they belong.

The duty to inform must not be taken lightly. It involves rigorous monitoring of the files, particularly with respect to the status of the applicants such as to maintain the coverage in force. When a change of status occurs, the applicant must, among other things, be adequately informed of the possibility to take advantage of the conversion clause contained in the policy.

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² *Bank of Montreal v. Bail Liée*, [1992] 2 S.C.R. 554.

³ *Baril v. Industrielle (L'), compagnie d'assurances sur la vie*, [1991] R.R.A. 196 (C.A.).

⁴ [1990] 3 S.C.R. 191.

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