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*The greatest obstacle to discovery is not ignorance;
it is the illusion of knowledge.*

Michaël Aguilar

BODILY INJURIES AND NEW RAMQ-RELATED REQUIREMENT

A client who lost the use of his right hand in an accident that occurred during a practical workshop as part of training activities held at a school has just consulted you and given you the mandate to institute proceedings against the third party liable for the harm suffered.

A new formality has been introduced that could have an impact on the liability recourse you will institute on behalf of your client for this bodily injury.

With the coming into force on December 7, 2016 of *An Act to extend the powers of the Régie de l'assurance maladie du Québec, regulate commercial practices relating to prescription drugs and protect access to voluntary termination of pregnancy services*,¹ the Régie de l'assurance maladie du Québec now has new powers allowing it to achieve greater effectiveness in applying the controls related to its various missions.

More specifically, one of the principal amendments pertains to claims involving third-party liability. Thus, following an event involving bodily injuries that entails or might entail the payment of insured services by the Régie or the assumption thereof by the Ministère de la Santé et des Services sociaux due to the fault of a third party, where the insured person or the insured person's successors institute a judicial application, they must notify the Régie thereof within five (5) days after the judicial application has been instituted.

Section 7 of the aforementioned statute amends section 18 of the *Health Insurance Act*,² in particular, by inserting the following paragraphs after paragraph 1:

1 – *An Act to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions*, S.Q. 2016, c. 28 (Bill 92, assented to on December 7, 2016).

2 – CQLR, c. A-29.

*“1.2. If a judicial application is instituted to obtain compensation for the injury caused by the third person's fault, the insured person or insured person's successors **shall notify it to the Board within five days after it is instituted.*** (Emphasis added).

1.3. The Board may intervene in any judicial application brought against the third person to obtain compensation for the injury caused to the insured person.”

Failure to notify the judicial application to the Régie within the stipulated time limit could result in a penalty, as provided for in section 76 of the *Health Insurance Act*:

“76. Every person who contravenes any provision of this Act or the regulations for the violation of which no penalty is provided, is guilty of an offence and liable to a fine of \$250 to \$2,500.”

A form entitled *Avis de dommages corporels* has been made available by the Régie at the following link: <http://www.ramq.gouv.qc.ca/SiteCollectionDocuments/citoyens/fr/formulaires/form-avis-dommages-corporels-3155-fr.pdf> ☂

BEWARE OF FRAUDULENT E-MAILS

One of our insureds recently informed us that he had received an e-mail solicitation from a so-called “dredging technology” firm based in Europe that designs and builds entire dredgers for international companies that are leaders in the construction industry.

The e-mail mentioned that the firm in question was looking for a lawyer here to draft and finalize a sale agreement with a local commercial purchaser.

Beware of these types of e-mails!

Con artists are using the names of real companies and their representatives, making it seem as if the solicitation is legitimate (identity theft).

This type of e-mail is common and its only purpose is to fool lawyers in order to use their trust accounts. The objective of the con is to have the lawyer deposit in his trust account a fake cheque from a purported purchaser in order to pay for the transaction.

Are you sure you want to open this email?



This scenario generally unfolds as follows:

- Whether it comes via a funds transfer or by mail, the so-called cheque or bank draft arrives from an address that makes no sense, often in an envelope with a handwritten address or, at times, even without a cover letter. Beware, because even certified cheques and bank drafts can be fake.
- The banking instrument or any document that accompanies it often contains clerical errors (such as misspelled names).
- The client pressures you to know whether the banking instrument has been deposited in your trust account and demands that the funds be disbursed quickly once you have received and deposited the banking instrument (with insufficient funds) in your trust account. Various reasons may be given to convince you that the funds must be sent to the client urgently.
- You send the funds to the client and later learn that the banking instrument was fake. Your trust account is now in the red and you have to make up the difference.
- Generally speaking, these types of scams can involve a transaction, the collection of accounts or a divorce agreement that has an international aspect.

You should ignore these e-mails and, in particular, make sure you do not reply.

The professional liability insurance policy subscribed with the Insurance Fund does not apply to these situations, because the policy does not cover harm sustained by the insured himself. In such a case, you should check your comprehensive insurance policy.

We strongly urge you to do the following in order to reduce the risk of being the next victim of this type of fraud:

- If you have received a banking instrument, verify its genuineness before depositing it in your trust account.
- Communicate directly with the issuing bank by fax or by phone, using the numbers published by the bank and not those provided by the client.
- Wait for the banking instrument to be honoured by the bank before sending funds to the purported client.

We invite you to visit the *Lawpro* (Ontario) website at <http://avoidclaim.com/fraud-warnings/>, where you will find, by category of fraud, the names of numerous fraudsters having issued counterfeit banking instruments.

If you are wondering whether a case is legitimate and are not totally at ease handling a transaction, terminate the mandate immediately! ☂

THE SHORT PRESCRIPTION PERIOD UNDER THE PRESS ACT: WHAT CONDITIONS APPLY?

By *M^e Marie-Eve Charbonneau-Trudel*,
Legal Department

Under section 2 of the *Press Act*¹: “Every person who deems himself injured by an article published in a newspaper and who wishes to claim damages must institute his action within the three months following the publication of such article, or within three months after his having had knowledge of such publication, provided, in the latter case, that the action be instituted within one year from the publication of the article complained of.”

Moreover, pursuant to section 3 of the statute, a notice must be given at least three business days before instituting such an action for damages. The terms of section 3 state the following: “No such action may be brought against the proprietor of the newspaper, unless, personally or through his attorney, the party who deems himself injured gives a previous notice thereof of three days, not being holidays, at the office of the newspaper or at the domicile of the proprietor, so as to allow such newspaper to rectify or retract the article complained of.”

Nonetheless, according to section 12 of the *Press Act*, in order to avail itself of the provisions of the *Press Act*, a newspaper must comply with the formalities under the *Newspaper Declaration Act*.²

In a recent Superior Court ruling,³ the defendants learned this the hard way. The plaintiffs claimed the defendants had published articles containing unfounded insinuations, criticisms and comments, but the defendants invoked, among other things, the short three-month prescription period set out in the *Press Act* and the inadmissibility of the action due to the absence of the prior three-day notice.

The Court did not accept the defendants’ arguments, because, at the time the action was instituted, on May 14, 2012, the defendants had not complied with the requirements under sections 1 and 2 of the *Newspaper Declaration Act*.

Those sections, which provide for delivery of a declaration under oath to the clerk of the Court of Québec, read as follows:

“1. No person shall print or publish, or cause to be printed or published in Québec, any newspaper, pamphlet or other paper containing public news, or serving the purpose of a newspaper, or used for posting up or general circulation in detached pieces as a newspaper, until a declaration under oath, made and signed as hereinafter mentioned, containing the matters hereinafter mentioned, has been delivered to the clerk of the Court of Québec for the district in which such newspaper, pamphlet or other paper is printed or published.

2. Such declaration shall set forth the title of such newspaper, pamphlet or other paper, the real name, style, description and place of abode of every person who

1 – CQLR, c. P-19.

2 – CQLR, c. J-1.

3 – *Ville de Saint-Lambert v. Les Publications Léonardo Ltée*, 2017 QCCS 1104.

2016 ANNUAL REPORT



The 2016 Annual Report of the Professional Liability Insurance Fund of the Barreau du Québec is now available on the Fund’s website. You can access it online at the following link: <http://www.assurance-barreau.com/fr/rapport.html> ☂

is, or who is intended to be, the printer or publisher thereof, and of all the proprietors of the same, if the number of such proprietors, exclusive of the printer and publisher, does not exceed two, and if the same exceeds two, then of two such proprietors, exclusive of the printer and publisher; and also the amount of the proportional shares of such proprietors in the ownership of the newspaper, pamphlet or other paper, and the true description of the house or building wherein it is intended to be printed.”

Moreover, pursuant to section 4 of the *Newspaper Declaration Act*, a new declaration under oath must be filed each time the newspaper’s office changes location: “A similar declaration under oath shall be made, signed and given in like manner, as often as any of the printers, publishers or proprietors named in such declaration are changed, or change their respective places of abode, or their printing house, place or office, and as often as the title of the newspaper, pamphlet or other paper is changed.”

The evidence showed that, in 2008, the defendants had failed to file a new declaration when they moved to new businesses premises. They filed the declaration only after being served with the action, on June 1, 2012.

Therefore, the Court dismissed the defendants’ argument to the effect that the newspaper could avail itself of the short prescription period provided for in section 2 of the *Press Act*. Instead, it concluded that the plaintiffs’ recourse was governed by the prescription period provided for in article 2929 of the *Civil Code of Québec* and, as a result, part of the plaintiffs’ recourse was not prescribed.

Similarly, the Court dismissed the defendants’ allegation to the effect that the notice required by section 3 of the *Press Act* had not been given.

According to the Court, it was only as of June 1, 2012, the date on which the defendants were in compliance with the aforementioned requirements, that they were entitled to invoke the provisions of the *Press Act* to their advantage.

On the merits, the Court found the defendants liable and ordered them to pay \$100,000 of moral damages and \$30,000 of punitive damages.

A notice of appeal has been filed with the Court of Appeal, so it will be interesting to monitor the outcome of this case. ☂

TWO NEW LAWYERS JOIN THE PROFESSIONAL LIABILITY INSURANCE FUND OF THE BARREAU DU QUÉBEC

We are pleased to announce that two new lawyers have joined the Insurance Fund’s team.

Me Jo-Annie Perron, Litigator in the Legal Department



Me Jo-Annie Perron is a graduate of the Université de Montréal. She was called to the Bar in 2014 after completing her articles at the Insurance Fund. Her intellectual rigour, dynamic approach, curiosity and ability to prioritize makes her an invaluable addition to the Insurance Fund’s Legal Department.

Me Annie Guillemette, Analyst in the Claims Department



Me Guillemette is a graduate of the Université de Sherbrooke and was called to the Bar in 2008. Before joining the Insurance Fund, she worked primarily as a civil and commercial litigator in a private law firm and then, in the legal department of a damage insurer. The insureds will benefit from her experience in a wide-range of claims files. ☂

NOTICE

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This Loss Prevention Bulletin is published by the Professional Liability Insurance Fund of the Barreau du Québec.