

A-110

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1.2.2.8 The *Automobile Insurance Act*

Damage insurance representatives should be very familiar with the *Automobile Insurance Act*. Since 1978, this statute has been an important source of insurance law. This section of the chapter deals with the principal rules relating to the compensation of property damage resulting from an automobile accident. Compensation of bodily injury is dealt with very summarily. To help you understand where these rules fit within a more general context, we will first discuss the scope of the *Automobile Insurance Act*.

1.2.2.8.1 Scope of the *Automobile Insurance Act*

In essence, the *Automobile Insurance Act* creates two completely separate compensation plans depending on the type of damage:

- a social insurance plan for bodily injury;
- a private insurance plan for damage to property.

The *Automobile Insurance Act* begins by establishing a no-fault compensation scheme for bodily injury, that is, compensation regardless of the fault of the victim or the person who caused the harm. Every natural person who suffers bodily injury in Québec as a result of an automobile accident is compensated by the *Société de l'assurance automobile du Québec* (SAAQ). The victim deals directly with the SAAQ in order to be compensated and cannot institute a civil action before the courts of Québec with respect to the bodily injury suffered. The rules established by the *Automobile Insurance Act* with respect to compensation for bodily injury are set forth in sections 2 to 83.68.

Not all Canadian provinces have a no-fault automobile insurance plan.³⁴ It should also be noted that the *Automobile Insurance Act* applies when a Québec resident suffers bodily injury in an accident that occurs ~~outside Québec, either in another Canadian province or in the United States.~~ ^{anywhere} This means that the victim will be compensated by the SAAQ, but such compensation will not prevent him from instituting a civil action against the person who caused the injury, in order to obtain full compensation, ~~in the Canadian province or U.S. state~~ ^{in the Canadian province, the U.S. state or the country} in which the accident occurred, even if the person who caused the injury is a Québec resident. The victim will have to institute his action in accordance with the law of ~~the province or state in question.~~ ^{the province, state or country in question}³⁵

The Act then sets out specific rules relating to property damage. It states that each motorist may purchase insurance from the private insurance company of his choosing. The Act also imposes certain obligations. Sections 84 to 121 of the Act deal with the rules applicable to the insurance scheme covering property damage,

34. Louise BÉLANGER-HARDY and Aline GRENON, "Le droit des délits", in *Éléments de common law*, Scarborough, Carswell, 1997, p. 185.

35. *Boucher (Succession) v. Roy*, REJB 2000-18492 (Sup. Ct.), May 15, 2000. In this case, a Québec resident died in a car accident that happened in Connecticut and in which the driver, who caused the death, was also a Québec resident. The estate sued the person who caused the harm in the state of Connecticut, given that the accident had occurred there, in order to be fully compensated for the harm suffered. The Connecticut court ordered the person liable for the harm to pay the estate an amount of US\$265,000. The compensation paid by the SAAQ was deducted from this amount.

<i>Act respecting the Québec Pension Plan</i>	<i>Crime Victims Compensation Act</i>	<i>Act respecting industrial accidents and occupational diseases</i>	<i>Automobile Insurance Act</i>
Co-ordination or Reduction of Disability Benefits			
<p>Benefits may be co-ordinated or reduced. The orphan's pension could be taken into account in calculating income from all sources by Canadian insurance companies.</p>	<p>A victim injured during an automobile accident benefits from the SAAQ plan.</p> <p>If the victim was injured during a crime which occurred at work, the compensation plan under <i>An Act respecting industrial accidents and occupational diseases</i> applies.</p>	<p>For the income replacement indemnity, if the worker receives benefits from the SAAQ, the income replacement indemnity from the CSST will be reduced.</p> <p>For compensation for bodily injury, benefits are not co-ordinated with or reduced by those payable under public and private plans.</p>	<p>If the worker receives benefits from the CSST, SAAQ benefits will be reduced.</p> <p>For compensation for bodily injury, benefits are not co-ordinated with or reduced by those payable under public and private plans.</p>

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ANSWER SHEET FOR THE SELF-EVALUATION EXERCISE

Answer 1

The company ABC offers group life insurance to its employees. Christiane is an employee of ABC. She names her son Thierry as beneficiary of the insurance coverage. Under these circumstances, which of the following statements is true?

- a) ABC is the debtor under the insurance contract because it has to pay the premiums for this group insurance.
- b) ABC is the insured under the contract because it has to pay the premiums for this group insurance.
- c) Thierry is the insured under the contract because he will receive the insured amount at the time of his mother's death.
- d) **Christiane is the insured under the contract because the risk is on her life.**

Answer 2

While Joseph and Marie are married, Joseph purchases an annuity contract on his life and on his wife's life. He subsequently divorces Marie. He then marries Jeanne and names her as beneficiary under his annuity. When Joseph dies, to whom will the annuity continue to be paid?

- a) **To Jeanne as long as Marie is alive.**
- b) To Jeanne as long as she is alive.
- c) To Marie as long as she is alive.
- d) To Joseph's succession.

Answer 3

Roger is married and owns a beautiful house in Laval. The hypothec (mortgage) on the house is for an amount of \$200,000 with the Bank of Laval. Roger has taken out home insurance against fire. One day, the house is destroyed by fire. To whom will the home insurance indemnity be paid?

- a) To Roger, because he is the owner of the house.
- b) To Roger and his wife, because the house forms part of the family patrimony.
- c) To the Bank of Laval, because it has a hypothec on the house.
- d) **To both Roger and the Bank of Laval.**

The correct answer is d).

- performing the duties of a funeral director or any other similar duties in the funeral services industry;
- pursuing activities as a bankruptcy trustee;
- pursuing the activities of a health-care profession governed by the *Professional Code*;
- exercising the profession of lawyer or notary, except for claims adjusters and financial planners;
- exercising the professional activity of public accountancy, except for claims adjusters and financial planners;
- managing a union (other than a union formed of representatives), or being employed by a union; and
- exercising the activities of a real estate broker, except in connection with brokerage activities relating to loans secured by immovable hypothec (mortgage loans).

In addition to being incompatible with the occupations mentioned above, the activities of a representative who acts as a damage insurance agent or damage insurance broker and the activities of a claims adjuster are also incompatible with the following occupations:

- vendor, lessor or repairer of road vehicles, off-road vehicles or boats;
 - vendor, lessor or repairer of movable property;
 - contractor, as that term is defined in section 7 of the *Building Act* (R.S.Q., c. B-1.1); and
 - supplier of services or goods which could be required at the time of an insurance loss (*Regulation respecting the pursuit of activities as a representative*, s. 3).
- The obligation, when pursuing activities as a representative, not to take part directly or indirectly in a contest or a promotion providing benefits, as an incentive to promote or sell a product that does not meet the specific needs of his clients (*Regulation respecting the pursuit of activities as a representative*, s. 5). However, a representative may be reimbursed for the direct costs incurred by attending a conference or a convention, provided that the main purpose of the event is to provide training on activities governed by the *Distribution Act*.
 - The obligation to personally gather the information that is necessary to assess a client's needs and propose the insurance product that best meets those needs (*Distribution Act*, s. 27).

non-pecuniary benefits

, with the exception of benefits or property of low value

Question 3

~~Anna is a damage insurance broker and works in Montréal. She does business very often with the company *Assuretout*. Within the scope of her work, Anna will not be permitted to participate in one of the following activities. Which one?~~

- ~~a) Go to Vancouver, on an all expenses paid trip, to receive training on the rules of ethics she must follow within the scope of her work.~~
- ~~b) Go to Québec City, on an all expenses paid trip, to receive training on a new product recently launched by *Assuretout*.~~
- ~~c) Go to a benefit gala to raise funds for the International Red Cross.~~
- ~~d) Attend a Montréal Canadiens hockey match at the invitation of the president of *Assuretout*.~~

Question 4

A representative decides to go into business. To do so, he decides to publish a brochure on the products and services he would like to offer his clients. Which information can he include in his brochure?

- i) The representative's name.
- ii) The logo of Life Savers candies.
- iii) A description of the services offered.
- iv) Recognition of his services by the AMF.
- v) The title of damage insurance advisor.

Choose:

- a) All the information can appear in the brochure.
- b) Only the information in (i), (iii), (iv) and (v) can appear in the brochure.
- c) Only the information in (i) and (v) can appear in the brochure.
- d) Only the information in (i), (iii) and (v) can appear in the brochure.

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Abusing the good faith of the parties is a violation under section 20 of the *Code of ethics of claims adjusters*. For example, by leading an insured to believe that he may not receive all the indemnities to which he is entitled if he does not use the claims adjuster's services, the claims adjuster is in breach of the Code.

EXAMPLE

Last week, Réjean lost control of his car and damaged a house. Nicole is the claims adjuster in charge of the claim file. She makes several unsuccessful attempts to contact Réjean in order to obtain his statement.

Nicole is exasperated and leaves a message in Réjean's voicemail telling him that if he does not contact her office as soon as possible, she will take steps to have the *Société de l'assurance automobile du Québec* suspend his driver's licence. These are false and misleading representations that are likely to mislead Réjean (ss. 16, 20 and 25, *Code of ethics of claims adjusters*).

See also sections 48, 51 and 58(5) of the *Code of ethics of claims adjusters* and section 14 of the Regulation respecting the pursuit of activities as a representative.

Sections 92 and 93 of *Distribution Act* impose strict conditions on the use of personal information obtained by a claims adjuster during his investigation, particularly if the information is used for purposes other than those for which he obtained it or in order to gain a personal benefit for the claims adjuster or another person (ss. 22, 23 and 24, *Code of ethics of claims adjusters* and s. 4, *Regulation respecting information to be provided to consumers*).

EXAMPLE

Pascale, a claims adjuster, breached the obligation to maintain the confidentiality of personal information provided by an insured by leaving an insured's file containing this type of information in a restaurant. She had met with a supplier at the restaurant and forgotten the documents on a chair (ss. 22, 23 and 24, *Code of ethics of claims adjusters* and s. 4, *Regulation respecting information to be provided to consumers*).

Division III – Duties and obligations towards clients

The third division of the *Code of ethics of claims adjusters* deals with the duties and obligations towards clients. A claims adjuster is mandated by one party, most often the insurer, and must abide by certain provisions with respect to this mandator.

Before accepting a mandate, a claims adjuster must ensure he has the necessary ability or support to adequately carry out the mandate (s. 26, *Code of ethics of claims adjusters*).