

Insurance Law

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Access to Documents Used by an Insurer to Deny Coverage

Is an insurer compelled to release to its insureds all documents, especially expert reports, used to substantiate a decision to deny coverage?

In *Gauvreau c. Promutuel Assurance*, 2020 QCCA 347, two insureds had filed a claim with their insurer following an incident in which their boat had been damaged. The insurer denied coverage. The insureds asked it to review its decision, also requesting copies of the documents in their file.

The insurer released copies of the estimates of the repair work to be carried out, as prepared by several firms. It refused to disclose the expertise reports and quotes filed by three other experts. The insureds then applied to Commission d'accès à l'information requesting the release of the information concerning them, under the *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1.

The insurer raised s. 39 par 2, pursuant to which “[a] person carrying on an enterprise may refuse to communicate personal information to the person it concerns where disclosure of the information would be likely to [...] affect judicial proceedings in which either person has an interest.” Based on earlier cases, such communication may be denied if all of the following conditions are met:

- It consists of personal information concerning the applicant;
- The refusal is related to judicial proceedings either pending or about to be filed;
- Disclosing the information would, in all likelihood, have an impact on the judicial proceedings;
- The likelihood of judicial proceedings being instituted and how they could be affected must be evaluated when the enterprise refuses to disclose the information requested.

The Commission stated that the record did contain personal information: the first condition was met.

The imminence of judicial proceedings had to be appraised considering all the facts on record since no actual proceedings had been filed. First, the Commission stated that mere hypothetical proceedings are not likely proceedings, and proceeded to analyze the circumstances of the case.

The insurer argued that the insureds closely monitored their communications with the insurer, which could be

IMPORTANT

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a hint of upcoming proceedings. It also argued that the insureds had declined to refer their case to arbitration and had taken steps with the Autorité des marchés financiers, (AMF) including filling a complaint form. Therefore, in the insurer’s view, the sole response to its denial of coverage was to take judicial proceedings. The Commission disagreed.

Representatives of the insurer testified that the insureds never mentioned the possibility of filing judicial proceedings. As to the refusal of arbitration, it seems the insureds were waiting for the result of the review of their claim and did not have all the information required to make a final decision.

Although the request for access to information and the insurer’s decision were concurrent, the Commission held that the process before the AMF, which was still ongoing, remained an alternative, especially since it was admittedly not a judicial process. The conclusions sought by this process, a review of its decision by the insurer, also confirm the insureds’ intention. In the

Commission’s view, at no time during their communications with the insurer did the insureds raise the possibility of taking the case to court.

The chronology of facts and the communications between the insureds and their insurer led the Commission to conclude that the insureds’ discontent with the insurer’s decision not to compensate their loss was not an indication of upcoming judicial proceedings.

Key point: the imminence of judicial proceedings depends on the facts and circumstances of each case. The Commission must ensure that proceedings are more than possible or hypothetical: the facts must lead to the conclusion that proceedings are almost certain.

In this case, since no judicial proceedings were imminent, the conditions of s. 39 were not met: the Commission ordered the insurer to release the expert reports in the insureds’ files.

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