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CASE SUMMARY: DUTY TO DEFEND ARISING WHERE FRENCH VERSION OF POLICY FOUND TO PROVIDE BROADER COVERAGE THAN ENGLISH VERSION

The insureds appealed from a judgment finding the insurer had no duty to defend their son with respect to a claim by a third party for personal injuries. The Court of Appeal allowed the appeal, finding that the French version of the policy offered a significantly broader scope of coverage than the English version.

Insurance law – Homeowner’s insurance – Interpretation of policy – Exclusions – Duty to defend – Practice – Leave to appeal

Chiasson v. Intact Insurance Co., [2020] N.B.J. No. 112, 2020 NBCA 37, New Brunswick Court of Appeal, June 4, 2020, J.C.M. Richard C.J.N.B., K.A. Quigg and C.A. LeBlond J.J.A.

The insurer issued a Homeowners Broad Form policy to the insureds, whose son was also an insured under the policy.

The son was involved in an altercation at a club, which resulted in injuries to a third party. The injured party brought an action against the son and his parents, as well as other individuals, wherein allegations of assault and intention to inflict bodily harm were pleaded as against the son. The insurer agreed to defend the insureds, but refused to defend their son, on the basis that assault and intention to inflict bodily harm were excluded from coverage under the policy.

The insureds’ application to compel the insurer to defend their son was dismissed, on the basis that the insurer had no duty to defend the son. The insureds appealed.

The Court of Appeal recited the applicable principles with respect to the duty to defend including that insuring agreements should be read broadly, exclusions narrowly, and ambiguities resolved in favour of the insured. The Court held that, where the policy of insurance in question is written in both official languages, any inconsistency between the two versions of the policy must be resolved in favour of the insured. The Court found that there were “glaring inconsistencies” between the two versions of the policy, in particular with respect to the applicable exclusion. The English version excluded claims arising from bodily injury or property damage caused by either an intentional act, a criminal act or a criminal failure to act. The French version, on the other hand, read literally, purported to exclude all claims for bodily injury or property damage caused by a person insured under the policy, as well as claims resulting from a criminal act and all claims arising out of a failure to act whether constituting criminal conduct or not.

The Court held that the French version created both an absurdity and an ambiguity. In effect, the exclusion eliminated all coverage and added the redundant exclusion for damages caused by criminal act or failures to act. The Court found that “this absurdity/ambiguity must be interpreted against its author – Intact.”

While the application judge termed this to be a “pure contradiction” and chose to ignore the French version of the policy, stating that such was consistent with a purposive approach to interpretation, the Court of Appeal held that that was an error of law. The Court held that “[t]he two versions simply do not accord. The French version does not exclude coverage for injuries caused by the insured’s intentional acts. That is consistent with the general coverage statement set out at the beginning of the policy booklet... There are no “criminal acts” or “failures to act” at play here which, therefore, precludes the application of the French version of the exclusion. At the very least, the ambiguity created between the two versions must be resolved in favour of the insured.”

In sum, under the French version of the policy, intentional acts were covered and they were not excluded unless they constituted criminal acts. Thus, the Court of Appeal held that the insurer has a duty to defend the son because the French version of the policy offered a significantly broader scope of coverage than the English version and did not limit coverage to accidental injuries.

This case was digested by [Tricia M. Milne](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Tricia M. Milne at tmilne@harpergrey.com.