CASE AND COMMENT

FINLAY v. GLOBAL INSURANCE COMPANY
LAYNG v. GLOBAL INSURANCE COMPANY

INSURANCE (AUTOMOBILE) — AUTOMOBILE OWNER DECEASED — COLLISION WHILE AUTOMOBILE PROPERTY OF THE ESTATE — CLAIM UNDER POLICY — WHETHER POLICY OF AUTOMOBILE INSURANCE TERMINATES ON THE DEATH OF THE NAMED INSURED — THE INSURANCE ACT, R.S.O. 1950, c. 183, ss. 192(E), 197, 207(1), 214 — STATUTORY CONDITION 1(A)&(B) — THE INTERPRETATION ACT, R.S.O. 1950, c. 184, s. 31(ZE).

The law presumes to have an answer to every problem that comes before the courts for adjudication.[1] However the situation that forms the subject matter of this comment is one in which the law's answer is quite obscure.

The cases of *Finlay v. Global Insurance Co.* and *Layng v. Global Insurance Co.*,[2] decided together by the Supreme Court of Ontario in July 1959, are significant because it appears to be the first time that an insurance company has claimed that third party liability provisions in automobile insurance policies lapse upon the death of the named assured, a position that was upheld by the Court. It is by no means impossible for a similar situation to come before the Quebec courts.

The pertinent facts of the two actions are: F, the driver of one car, and his passengers, were injured in a collision with another car driven by L; F and his passengers sued L and the executrix of the estate of the deceased owner of the car which L was driving. The trial judge decided that at the time of the accident, the car driven by L was the property of the estate of the deceased, and that L was 90% at fault. He awarded damages against L and the executrix of the estate. F then brought a class action against the deceased's insurance company under s. 214 of the Insurance Act of Ontario in order to have the moneys payable under the policy taken out by the deceased with that company applied to satisfaction of the judgment. L brought an action against the insurance company under the same policy, claiming payment of his legal expenses included in defending the original action which arose out of the accident. The insurance company refused to defend him on the ground that the claims here were not those "for which indemnity is provided by a motor vehicle liability" as provided by s. 214 of the Insurance Act, because F, the insured, was not the owner of the vehicle at the time of the accident, and because there was no such insurance policy in effect at the time of

[1] Art. 11 C.C.: "A judge cannot refuse to adjudicate under pretext of the silence, obscurity or insufficiency of the law."

[2] [1959] Insurance Law Reporter, Paragraph 1-333.

the accident. The plaintiffs claimed that although the insurance contract for indemnification for liability may have been essentially personal in character, and to that extent not transmissible to the estate, nevertheless the provisions of the Insurance Act of Ontario and of the particular insurance contract in question had removed it from the classification of purely personal contracts and permitted the benefits thereof to flow to the executor of the estate of the named assured.

Spence J. dismissed the action. He held that while there was no authority directly on the point, there had been cases in England under statutory provisions and policies similar to those under consideration to the effect that "Third Party liability policies are still personal policies, and are subject to the ordinary rules of personal contracts",[3] and thus, in themselves, are not transmissible. He further held that the following provision in the insurance contract:

> The Insurer agrees to indemnify the Insured, his executors or administrators, and, in the same manner and to the same extent as if named herein as the Insured, every other person, who with the Insured's consent personally drives the automobile, against the liability imposed by law upon the insured or upon such other person for loss or damage arising from the ownership, use or operation of the automobile within Canada . . .

which was in accordance with the statutory conditions laid down in s. 192 of the Ontario Insurance Act, referred to liability incurred during the lifetime of the named insured, and did not make the insurance company liable for a tort committed by the executors and administrators. The policy thus terminated upon the death of the named insured, and there was, therefore, no indemnity to be claimed.

The wisdom of the Court's reasoning in arriving at this decision is irrelevant for the purpose of this comment. What concerns us here is what would or should happen if the same situation came before a Quebec court for adjudication under Quebec law. If an insurance company in Quebec were to take the same stand as did Global Insurance in Ontario, would its position be upheld or rejected under the laws of this province?

This question must be divided into two components. First, are motor vehicle liability policies so personal in quality that they must lapse upon the death of the insured? Second, if an affirmative answer is given to this question, does a clause such as that under consideration in the *Finlay* case[4] remove the policy from the realm of purely personal contracts? Does such a clause constitute an agreement on the part of the insurer to indemnify the liability of the executor or heirs of the estate to which the motor vehicle is transmitted? It should be noted here that automobile insurance contracts in Quebec contain clauses virtually the same as the one at issue in the *Finlay* case. The interpretation of such a clause might consequently be of primary importance.

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[3] *Ibid.*, 1-333, p. 1602.

[4] The case under discussion will hereinafter be referred to as the *Finlay* case.

It will be argued by the writer that the kind of insurance contract under consideration is not of such an exclusively personal nature as to terminate upon the death of the named insured.

It will also be argued by the writer that even if the first contention is not accepted, the provisions of the contract remove it from the ordinary rules governing agreements of an exclusively personal nature. They constitute an agreement on the part of the insurer to indemnify the insured and his estate for liability incurred even after the death of the original insured.

There is virtually no law either in the Civil Code or on the statute books that directly governs motor vehicle insurance policies in Quebec. The Insurance Act of Quebec lays down statutory conditions for fire insurance contracts, but states that these statutory conditions shall apply "to the exclusion of motor vehicle policies."[5] The only rule set down for automobile policies is that they must be approved by the Superintendant of Insurance as to form and policy conditions.[6]

The Civil Code of Quebec contains no articles that deal directly with automobile insurance, since there were no automobiles in 1866, date of the promulgation of the Code. There are, nevertheless, certain articles in the Code that may be applied to the problem.

Title V of the Code, "Of Insurance" regulates marine, fire and life insurance. Chapter I of Title V is entitled "General Provisions", and section I of chapter I is headed "Of the nature and form of the contract." Art. 2483 C.C. found in this section, reads as follows:

> In the absence of any consent or privity on the part of the insurer, the simple tranfer of the thing insured does not transfer the policy.
> The insurance is thereby terminated subject to the provisions contained in article 2576.

What this general rule means is that when an insured transfers an object to a third person, the insurance policy terminates unless the insurer agrees to continue it. The basis of this rule is found in the Codifiers' conception of the nature of insurance. The Codifiers consciously and deliberately rejected the French doctrine that insurance is an accessory of the thing insured, and follows it into the hands of third parties. They preferred the English and American doctrine that what is insured under a policy is the loss suffered by a certain person (the insured) who has an insurable interest in the thing. In the words of the Codifiers:[7]

> The opinion of the writers in France is based on the assumption that the insurance is an incident of the thing insured and therefore necessarily follows it. The correctness of this assumption may be doubted, and is contrary to the opinion found in

[5]R.S.Q. 1941, c. 299, s. 240.

[6]R.S.Q. 1941, c. 299, s. 242, reads as follows: "On and after the fourth day of April, 1930, no motor vehicle insurance contract shall be executed or renewed except by an insurance policy approved by the Superintendant of Insurance as to its form and policy conditions."

[7]7th Report, p. 242.

the English and American books. The contract of insurance is there held to be a contract on the part of the insurer to indemnify a particular person (the party insured) from loss, and not to indemnify any one who may afterwards acquire the thing. The contrary construction of the contract is pushing very far the imputation of liability, in favor of persons between whom and the original parties there is no privity of contract whatever, and in the sounder view of the subject seems to be that of the English courts.

The rule of art. 2483 C.C. is "subject to the provisions contained in article 2576". Art. 2576 C.C. appears in chapter 3 of Title V. headed "Of Fire Insurance". The first paragraph states:

The insurance is rendered void by the transfer of interest in the object of it from the insured to a third person, unless such transfer is with the consent or the privity of the insurer.

This paragraph is a repetition in a more explicit manner of the rule laid down in art. 2483 C.C. De La Durantaye in his note to art. 2576 C.C. writes:[8]

Cette règle est la même que pour l'art. 2483.

The Codifiers write about this paragraph:[9]

Ceci coincide avec la règle déjà déclarée dans l'art. 16 (2483) et les observations sur ce dernier article s'appliquent également au présent.

The second paragraph of art. 2576 C.C. goes on to say, however:

The foregoing rule does not apply in the case of rights acquired by succession. . . .

In other words, although the insurance contract terminates when the object insured is transferred to a third party unless the insurer agrees to continue the coverage, it does not terminate when the object is transmitted by succession upon the death of the named insured. This is only logical, since the heirs of the insured are not really "third parties" under Quebec law. They continue the person of the deceased; "le mort saisit le vif."

Thus when a person obtains under an insurance policy the right to be indemnified by the insurer for loss suffered as a result of fire, the contract does not terminate upon his death, and the rights and obligations engendered by the contract are not extinguished by his death.

This rule is in accordance with other articles in the Civil Code governing the interpretation of contracts, the extinction of obligations, and the transmission of rights by succession, and may be regarded as a particular application of those articles to the subject of insurance. Would these same rules apply to liability insurance? Let us examine the relevant articles in order to answer this question. Art. 1030 C.C. reads:

A person is deemed to have stipulated for himself, his heirs and legal representatives, unless the contrary is expressed, or results from the nature of the contract.

A corollary of this article is found in art. 1138 C.C. This article lists as one of the methods by which an obligation is extinguished:

The death of the creditor or debtor in certain cases.

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[8]*Petit Code Civil Annoté*, p. 795.
[9]7th. Report, p. 251.

This method of extinction can obviously only apply when the contractual obligation falls within one of the two exceptions to the general rule enumerated in art. 1030 C.C.[10]

In order to clearly understand the meaning of these important rules, let us see what some of the authors have to say about them. First, the French authors:

Pothier writes:[11]

> Régulièrement, les créances ne s'éteignent pas par la mort du créancier: car ce qu'on stipule, on est censé de stipuler tant pour soi que pour ses héritiers et autres successeurs universels. . . .

Larombière:[12]

> En principe, les obligations ne s'éteignent ni par la mort du créancier, ni par celle du débiteur. Cependant, certaines obligations s'éteignent par la mort de l'un ou de l'autre. Mais ce mode d'extinction se résume, soit dans la perte de la chose due, lorsque l'obligation consiste dans des prestations personnelles, soit dans l'expiration du terme de durée déterminé ou sous entendu, s'il s'agit de prestations d'une nature différente.

Laurent:[13]

> Le code ne range pas la mort des parties contractantes parmi les causes qui éteignent les obligations. En effet, nous promettons et nous stipulons pour nos héritiers; les dettes et les créances passent donc aux héritiers des parties contractantes. Il y a des exceptions, la loi n'a pas pu les mentionner dans une disposition qui établit la règle générale concernant les modes d'extinction des obligations.

Aubry and Rau:[14]

> Les obligations ne s'éteignent, ni par la mort du créancier, ni par celle du débiteur, à moins qu'il n'en soit ainsi en vertu d'une exception établie par la loi, ou par le titre de l'obligation.

In Quebec, G. Trudel writes:

> Les droits et les obligations d'un patrimoine continuent d'exister quand le patrimoine est transmis à un autre titulaire. Cette règle s'applique aux contrats parce qu'ils sont des instruments propres à fonder des obligations ou des droits patrimoniaux. Cependent, le contrat peut servir à d'autres principes. L'article 1030 C.C. énonce cette règle générale et en prévoit les exceptions.
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> La règle générale ne prête guère à des difficultés d'application. Quand aux héritiers, il était superflu de l'énoncer: continuateurs de la personne de leur auteur quant au patrimoine, ils bénéficient des droits et doivent exécuter les obligations qu'ils se trouvent dans ce patrimoine.

Two other articles of the Civil Code should be noted before proceeding further. One is art. 596 C.C. which defines succession as "the transmission by law or by the will of man, to one or more persons, of the property and transmissible rights and obligations of a deceased person" The other article is 607 C.C.

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[10]For a comparison with the Code Napoleon, see Colin and Capitant *Droit Civil Français,* t. 2, 10th. ed., 1948. No. 471.

[11]Bugnet, t. 2, p. 369.

[12]*Théorie & Pratique des Obligations,* ed. 1857, t. 3, p. 53.

[13]*Principes de Droit Civil,* 4th ed., t. 17, p. 464, No. 470.

[14]*Droit Civil Français,* 6th ed., t. 4, p. 219, No. 314.

which states that "the lawful heirs, when they inherit, are seized by law alone of the property and actions of the deceased. . . ."

It is clear then from the Civil Code itself, and from the doctrine, that a contract, and the obligations created by it do not terminate upon the death of the creditor, unless it is so expressly stipulated, or unless such results from the very nature of the contract. Art. 2576 C.C. is in perfect harmony with the general law of obligations.

The following question must now be considered: Is the contract of third party liability insurance by its very nature so different from the contract of fire insurance that it obeys a different set of rules? Or, put in other terms, is third party liability insurance so "exclusively attached to the person"[15] of the insured that it falls within the exceptions envisaged by arts. 1030 and 1138 C.C.?

To answer this question, we must consider what kinds of contract and what kinds of right are *"intuitu personae"* — so exclusively attached to the person of the creditor that they are extinguished by his death. In so doing it must be remembered that there is a rule of interpretation applicable to the Civil Code to the effect that any exceptions to a general rule must be interpreted restrictively.

There are some contracts that by their very nature clearly terminate upon the death of the creditor. A contract by which a person obtains the right to a life rent, "une rente viagère", is one example; a contract giving to a person a right of usufruct in a thing until he dies is another. A contract entered into between a doctor and a patient by which the doctor undertakes to perform a specific operation upon the patient would clearly terminate if the patient were to die before the operation.

In some instances, the Civil Code ordains that a contract shall terminate upon the death of one of the parties. The contract for lease or hire of personal service "is terminated by the death of the party hired. . . ." and "is also terminated by the death of the party hiring, in some cases, according to circumstances."[16] The contract of mandate terminates "by the natural death of the mandator or mandatory."[17] The contract of partnership is dissolved "by the death of one of the partners."[18]

There are some rights that arise through operation of the law rather than through contract which are *"intuitu personae,"* and consequently cannot be transmitted to one's heirs. Examples of these are the right to sue for an alimentary pension, and the right to sue for separation from bed and board.

[15]This terminology is used in art. 1031 C.C. which states: "Creditors may exercise the rights and actions of their debtor when to their prejudice he refuses or neglects to do so; with the exception of these rights which are exclusively attached to the person."

[16]Art. 1668 C.C.

[17]Art. 1755 C.C.

[18]Art. 1892 C.C.

What all the above examples have in common is that in each case a contract is entered into or a right accrues to a person by operation of the law because of some particular quality or characteristic of a certain person. The rights are inextricably intertwined with the person of the creditor. The doctor undertakes to operate upon A because A suffers from a particular disease, e.g. cancer. A enters into a contract of mandate or partnership with B because B possesses some particular skill in conducting business affairs. The quality in these cases is so essential, so fundamental, to the existence of the contract that when the person who possesses the quality dies the contract terminates. In such cases, and in such exceptional cases only, are the rights of a party not transmitted to his successors.

In the opinion of this writer the contract of third party liability insurance, while to a certain extent personal to the insured, just as is fire insurance, is not so exclusively personal or so exclusively attached to the person of the insured as to fall within the exceptions to the general rule of art. 1030 C.C. and hence to terminate upon the death of the insured. There is nothing in the nature of this contract to render it incapable of transmission to the insured's succession. This opinion is held for the following reasons:

1) Although it is true that the insurer, in entering into a contract of insurance, takes into consideration, to some extent, certain qualities of the insured, these qualities are not so particular or unique to the insured as to be exclusively attached to his person. The insurer expects that the insured be able to drive a car, possess a driver's license, and have an average amount of good sense and judgment not to drive the car in a reckless manner that would increase the risk of accident. The insurer also expects the policy holder to be reliable enough not to lend his car to reckless people, since third parties who drive with the insured's consent are also covered by the policy. Surely, however, this ability to drive, and this average good sense and judgment of "le bon citoyen" that the insurance company demands in issuing a policy are not such extraordinary or unique or outstanding qualities as to render the contract so personal that it must by its very nature terminate on the death of the insured. If in fact insurance companies demanded unusual or exceptional qualities in a person before issuing policies, they would enter into far, far fewer contracts than they do now. The contract is not so exclusively personal as to fall within the exceptions to the basic rule of art. 1030 C.C.

2) In addition to the fact that the qualities expected of the insured are not so unique or outstanding as to be so very particular to him, the insuring company also agrees under the contract to indemnify an indeterminate number of third parties who are completely unknown to it, since it provides indemnity for all who drive the insured's car with the consent of the insured. In fact the standard third party liability clause in Quebec insurance contracts extends coverage not only to those who drive with the insured's consent but even to those who drive with the consent of any adult member of the insured's household other than a chauffeur or domestic servant. In view of this — the contract and

the indemnity provided under it — it surely cannot be considered so inextricably bound up with the person of the insured as to be incapable of transmission to his heirs. Why should not this contract that provides coverage for any one of the many above mentioned people not equally provide it for one who inherits the automobile?

3) Finally, while the Codifiers regarded insurance as being attached to the person of the assured rather than to the object of insurance, it may be argued that insurance is attached also to the right of ownership in the object, as a protection surrounding that right of ownership and transmissible with it. When a person obtains automobile liability insurance, the insurance is not attached only to his person. The company undertakes to indemnify him for liability he incurs only when driving a certain and determinable automobile; and this automobile is described very carefully in the policy. He is not covered by the policy when driving any motor vehicle other than his own described in the policy. The insurance is a form of protection that he gives to his right of ownership in the car. Surely the insured expects, as should be expected, that this protection which surrounds his right of ownership should continue to be attached to it when it is transmitted to his estate. Why should this protection that is transmitted in the case of fire insurance not be transmitted also in the case of automobile liability insurance?

There are instances in Quebec law in which rights that are attached to the person are transmitted to the heirs of the deceased. The contract of lease or hire of things provides an example of this. This contract depends on the qualities of a person to the same extent as does an automobile insurance contract. One would not wish to lease an object, e.g. a house, to an irresponsible or unreliable person. Yet art. 1661 C.C. declares that

> The contract of lease or hire of things is not dissolved by the death of the lessor or lessee.

Faribault comments:[19]

> Vu les termes généraux avec lesquels l'article 1661 est rédigé, il faut en conclure qu'il s'applique à tous les genres de baux, même aux partiaires, quoi que pour ces derniers il arrive souvent que la personnalité du fermier ait été le motif principal qui a déterminé le propriétaire à lui accorder le bail.

The right to damages accruing to a person for "personal suffering" and for the shortening of his life, in the case of an accident caused by another, while extremely personal rights, are upon his death transmitted to his heirs.[20] In *Green v. Elmhurst Dairy Ltd.*, Casey J. said:[21]

> There is no doubt that the claim for the items of pain and suffering and loss of life expectancy were personal to the victim. It may even be said they were exclusively attached to the person within the meaning of art. 1031 C.C. and that the right to claim for these damages could not have been exercised by her creditors. But this does not mean that they were not transmissible.

[19] *Traité de Droit Civil du Québec*, t. 12, p. 266.

[20] It is true that this right arises by operation of the law rather than by contract, but does not a contract create law between two parties?

[21] [1953] Q.B. 85, at p. 89.

Casey J. said further:[22]

> We must start with the premise that the generality of art. 607 C.C. couched as it is in the widest terms, is restricted only when we find the victim in possession of rights of action which by their very nature are incapable of being transmitted. The only rights of action not transmitted under 607 are the ones which cannot possibly survive the person who possessed or enjoyed them.

The court was unanimous on this point, and this doctrine was reaffirmed in 1956, again by a unanimous bench.[23]

To recapitulate the argument thus far, this writer holds that just as fire insurance is personal to the insured, but not so exclusively personal as to be incapable of transmission to the estate of a deceased insured, in accordance with arts. 1030 and 2576 C.C., so also is automobile liability insurance personal to the insured, but not so exclusively personal as to be intransmissible. It is submitted that should an insurance company take the position in our courts that Global Insurance took in Ontario, that position should be rejected by our courts under the law of Quebec.

However, it can by no means be predicted with certainty that a court would hold this way in Quebec. The nature of the insurance contract under consideration is such as to place it in the border region that divides contracts which by their nature are purely personal from those which are not, and the decision would depend on the particular view of the judge as to the nature of the contract. In the words of Demogue:[24]

> Dans certains cas, la transmission des obligations aux héritiers est délicate. . . . Dans les cas non prévus le juge appréciera en fait si le côté personnel est secondaire. . . .

We must examine the actual terms of the contract to decide whether there is an obligation assumed by the insurer to honour the policy after the death of the original assured. The clause under consideration in the Ontario case has already been enunciated above. The standard third party liability clause in Quebec insurance contracts is virtually the same. It reads:

> The Insurer agrees to indemnify the Insured, his succession or his administrators, and, in the same manner and to the same extent as if named herein as the Insured, every other person who with the consent of the Insured, or the consent of an adult member of the Insured's household other than a chauffeur or domestic servant, is personally driving the automobile, against the liability imposed by law upon the Insured or upon any such other person for loss or damage arising from the ownership, use or operation of the automobile within Canada. . . .

This writer holds that should the case depend ultimately on an interpretation of the third party liability clause in the contract, as it did in the *Finlay* and *Layng* cases, the court should decide not *for* the insurance company, as did Spence J. in the Ontario Supreme Court, but *against* it.

To begin with, the following remark of Rinfret J. in *Halle v. The Canadian Indemnity Company* should be borne in mind:[25]

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[22] *Ibid.*, at p. 90.
[23] *Levesque v. Malinosky*, [1956] Q.B. 351.
[24] *Traité des Obligations en Général* t. 7, No. 666.
[25] [1937] S.C.R. 368, at p. 375.

> There is nothing in the definition of the Code (civil) to the effect that the person 'called the insured' must be the person who applies for the policy.

Let us examine the clause in question. It begins with the words:

> The Insurer agrees to indemnify the Insured, his succession or his administrators.

We know then that the succession or the administrators are insured for some liability. But for whose liability? Further on the clause reads:

> against the liability imposed by law upon the insured or upon any such other person.

The problem resolves itself, then, into the following question — do the words "any such other person"[26] refer only to those who drive the car with the consent of the insured, or do they refer also to the succession and the administrators? This writer submits:

1) The context implies the inclusion of the succession and the administrators in those who are covered by the policy. Since the words used are "upon the insured or upon any such other person," and since the words "the succession or his administrators" follow immediately after the mention of the insured, they should be regarded as coming within the words "any such other person."

2) Even if it is felt that the term "any such other person" does not clearly and unambiguously cover the succession or the administrators, the clause is nevertheless sufficiently ambiguous to bring into play the rule that ambiguous provisions in insurance contracts are to be interpreted against the insurer, *contra proferentem*. Surely "any such other person" could be deemed to encompass the succession or administrators.

The rule of interpretation invoked above is one that is well established in our jurisprudence. In *Crown Life Ins. Co. v. Milligan*, a case heard before the Supreme Court of P.E.I., Saunders J. said:[27]

> The policy in question having been prepared and issued by the appellant company, they naturally are supposed to make the terms, conditions and provisions of the policy clear and unambiguous, — otherwise the policy will be interpreted *'contra proferentes': Fitton v. Accidental Death Ins. Co.*, 17 C.B.N.S. 122, 144 E.R. 50.

Saunders J. then proceeded to quote further English authorities for the rule.[28] This rule of interpretation has been affirmed and applied many times in Canada. In *Metal Stampings Ltd. and Lush v. Standard Life*, Schroeder J. said:[29]

> In construing a policy of insurance whether life, fire or marine or any other kind of policy, an ambiguous clause should always be construed against rather than in favour of the Insurance Co.

The Supreme Court of Canada affirmed the rule in *Ontario Metal Products Company v. The Mutual Life Ins. Co. of N.Y.*, where Anglin J. said:[30]

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[26]The Ontario provision reads "such other person" without the word 'any'.

[27][1939] 1 D.L.R. 737, at p. 745.

[28]*Etherington v. Lancashire and Yorkshire Accident Ins. Co.*, [1909] K.B. 591. *Fitten v. Accidental Death Ins. Co.*, 17 C.B.N.S. 122, 144 E.R. 50. *Anderson v. Fitzgerald*, 10 A.E.R. 551.

[29][1951] O.W.N. 625, at p. 626.

[30][1924] S.C.R. 35, at p. 41.

> It is well established law that the preparation of the form of policy and application being in the hands of the insurers, it is but equitable that the questions to which they demand answers should, if their scope and purview be at all dubious, either in themselves or by reason of context, be construed in favour of the insured. . . .

Finally, the rule has been affirmed by the Court of Queen's Bench in Quebec. In *Travellers Indemnity and Another v. Miss Powers and Dean,* McDougall J. said:[31]

> The insured was entitled to a contract adopted to his particular protection, subject of course, to statutory provisions, and if in the contract given him ambiguity has arisen from the form the agreement takes, such ambiguity is to be construed against rather than in favour of the insurer (1013-1021 C.C.).

By the application of this rule alone, the contract should be held to cover the liability of the executors and administrators of the estate (or the succession and the administrators in Quebec). Yet there is no mention of this rule in Spence J's notes in the *Finlay* decision.

3) In searching for the real intention of the parties to the insurance contract (see art. 1013 C.C.) we must take into account the fact that before and since the stand taken by the Global Insurance Co. in Ontario, it was and still is the general practice of insurance companies to indemnify the succession of the original insured under such contracts. It is certainly reasonable to suppose in view of this that the insured in taking out a policy intends to obtain coverage for his estate and that he feels that he is obtaining such coverage. It is also reasonable to suppose that the insurer in using the standard form intends at the time when the contract is drawn up to insure the estate. This would be another reason for deciding against the company.

4) Finally, art. 1016 C.C. says that:

> Whatever is doubtful must be determined according to the usage of the country where the contract is made.

Article 2497 C.C. reads:

> Marine policies in cases of doubtful meaning are construed by the established and known usage of the trade to which the policy relates; such usage is held to be a part of the policy when it is not otherwise expressly provided.

Usage has also played an important role in the development of the rules of the Common law on such matters. General usage should have dictated in Ontario and should dictate in Quebec that the view taken by the Global Insurance Co. be rejected by the courts.

In concluding, let it be said that the only way to really provide certainty that the estates of policy holders will be covered by such policies would be for the Quebec Legislature to so enact. An addition to the Insurance Act to this effect would be appropriate. If the Legislature refuses to act for the general protection of all by making automobile liability insurance compulsory in this province, let it at least provide for complete protection for those who already have taken such insurance.

HARVEY YAROSKY*

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[31] [1943] Q.B. 479, at p. 483.

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