CISRO / OCRA

Ethics and professional practice (Québec)

Life Licence Qualification Program (LLQP) Exam Preparation Manual

E-111 ~~10~~11th Edition, 2024

~~10~~11th Edition, 2024

Updated by

Mtre. Dominic Veilleux

~~In consultation with~~

~~Mtre. Marie-Chantal Cloutier and Mireille Pelletier~~

Project management

Marie Achard

6th Edition, 2019

Updated by

Mtre. Dominic Veilleux and Mtre. John Robert Kelly

Project management

Marie Achard

1st Edition, 2015 and 2nd Edition, 2015

Written by

Mtre. Dominic Veilleux and Mtre. Élyse Lemay

In consultation with

Mtre. Jacqueline Bissonnette, Mtre. Marianne Bureau, Michèle Frenette and Normand Morasse

Project management

Marie Achard, Jérôme Gagnon, Emily Harrison and Lucie Regimbald

Legal deposit – *Bibliothèque et Archives nationales du Québec*, 2024

ISBN: ~~978-2-551-27055-2~~ (PDF)
ISBN: 978-2-551-25622-8 (PDF, 1st Edition 2015)

FOREWORD

This manual is an exam preparation tool for future representatives registered in the Life Licence Qualification Program (LLQP). Its content will help candidates achieve the learning objective of the ethics and professional practice (Québec) module forming part of the LLQP Curriculum: *Develop an ethical professional practice, in compliance with the rules governing the insurance of persons sector*.[1]

Chapter overview page

The first page of each Chapter presents the competency components and sub-components of the module that will be covered. The evaluation objectives identified for each Chapter are intended to allow candidates to target the contents that are essential for achieving these~~those~~ objectives.

We therefore recommend that candidates review these competency components and sub-components on a regular basis so as to contextualize and assimilate them as they read the Chapter. This will facilitate their understanding of the nature and scope of the competency being evaluated. Candidates must master the knowledge, strategies and skills discussed in each Chapter in order to pass the corresponding module in the LLQP licensing exam.

When this edition of the exam preparation manual was drafted, all content, extracts of statutes and other texts and forms presented herein were in use. Changes may have been made since then that would mean that they are no longer reflected in its content. However, please note that it is the content of the edition of the manual in force at the time you take the exam which must serve as a reference for study and which will be taken into account in the AMF exams.

In this text, the masculine form is used to refer to both men and women.

1. In the context of the ethics and professional practice (Québec) module, the term “insurance of persons’ is used to refer broadly to all categories of individual and group insurance of persons, namely: life insurance, accident and sickness insurance (living benefits), annuity contracts (segregated funds, GIAs and immediate annuities) and supplemental pension plans.

TABLE OF CONTENTS

CHAPTER 2

LEGAL ASPECTS OF INSURANCE OF PERSONS AND GROUP -INSURANCE OF PERSONS CONTRACTS

CHAPTER 3

INDIVIDUAL AND GROUP ANNUITY CONTRACTS (-INCLUDING -SUPPLEMENTAL PENSION PLANS)

CHAPTER 4

RULES RELATING TO THE ACTIVITIES OF REPRESENTATIVES

LIST OF DIAGRAMS AND TABLES

CHAPTER 1

CHAPTER 2

CHAPTER 3

CHAPTER 4

LIST OF ABBREVIATIONS

AAPVCO	*Act to assist persons who are victims of criminal offences and to facilitate their recovery*
AIA	*Automobile Insurance Act*
AIAOD	*Act respecting industrial accidents and occupational diseases*
AMF	*Autorité des marchés financiers*
APPIPS	*Act respecting the protection of personal information in the private sector*
ASO	Administrative Services Only plans
BIA	*Bankruptcy and Insolvency Act*
c.	Chapter
C.C.Q.	*Civil Code of Québec*
CAI	*Commission d'accès à l'information*
CAPSA	Canadian Association of Pension Supervisory Authorities
CDCSF	*Code of ethics of the Chambre de la sécurité financière*
CDIC	Canada Deposit Insurance Corporation
CISRO	Canadian Insurance Services Regulatory Organizations
CLHIA	Canadian Life and Health Insurance Association
CLU	Chartered Life Underwriter
CNESST	*Commission des normes, de l'équité, de la santé et de la sécurité du travail*
CPP	Canada Pension Plan
CQLR	Compilation of Québec Laws and Regulations
CRA	Canada Revenue Agency
CRTC	Canadian Radio-television and Telecommunications Commission
CSA	Canadian Securities Administrators
CSF	*Chambre de la sécurité financière*
CIRO	Canadian Investment Regulatory Organization
CVCA	*Crime Victims Compensation Act*
DB	Defined benefit
DC	Defined contribution
DCPP	Defined contribution pension plan
Distribution Act	*Act respecting the distribution of financial products and services*

DPSP	Deferred profit sharing plan
DWR	Distribution without a certified representative
EI	Employment insurance
EPSP	Employee profit sharing plan
FATCA	*Foreign Account Tax Compliance Act*
Fin. Pl.	Financial planner
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
GIA	Guaranteed interest account
GIC	Guaranteed investment certificate
GIS	Guaranteed Income Supplement
GP	General partnership
GST	Goods and services tax
IIROC	Investment Industry Regulatory Organization of Canada
IVAC	Crime victims compensation
IVIC	Individual variable insurance contract
Joint Forum	Joint Forum of Financial Market Regulators
~~LAPVIC~~	~~*Act to assist persons who are victims of criminal offences and to facilitate their recovery*~~
LCSC	Local community service centre
LIF	Life income fund
LIRA	Locked-in retirement account
LP	Limited partnership
MF	Mutual funds
MFPP	Member-funded pension plan
MIE	Maximum insurable earnings
MPE	Maximum pensionable earnings
MFDA	Mutual Fund Dealers Association of Canada
National DNCL	National Do Not Call List
OACIQ	*Organisme d'autoréglementation du courtage immobilier du Québec*
OAS	Old Age Security
OLHI	OmbudService for Life & Health Insurance
OSFI	Office of the Superintendent of Financial Institutions

p.	Page
PA	Pension adjustmentpara.
Paragraph	
PIPEDA	*Personal Information Protection and Electronic Documents Act*
PRPP	Pooled registered pension plan
QPIP	Québec Parental Insurance Plan
QST	Québec sales tax
r.	Regulation
RAMQ	*Régie de l'assurance maladie du Québec*
RARI	*Regulation under the Act respecting insurance*
RDSP	Registered disability savings plan
RESP	Registered education savings plan
RLU	Registered Life Underwriter
RPP	Registered pension plan
RRIF	Registered retirement income fund
RRSP	Registered retirement savings plan
s.	Section
S.Q.	Statutes of Québec
SAAQ	*Société de l'assurance automobile du Québec*
SIPP	Simplified pension plan
SME	Small business (enterprise)
SPPA	*Supplemental Pension Plans Act*
TFSA	Tax-free savings account
v.	Versus
VRSP	Voluntary retirement savings plan

CHAPTER 1

LEGAL FRAMEWORK GOVERNING INSURANCE OF - PERSONS IN QUÉBEC

Competency component

- Understand the legal framework governing insurance of persons.

Competency sub-components

- Define the provisions of the *Civil Code of Québec* applicable to insurance of persons;
- Define the other sources of law applicable to insurance of persons.

1

LEGAL FRAMEWORK GOVERNING INSURANCE OF PERSONS IN QUÉBEC

In Québec, legal rules stem from several sources, in particular, the Canadian Constitution, legislation, case law and doctrine.

The Canadian Constitution takes precedence over all other rules of law, including Canadian (federal) and Québec laws. In practical terms, this means the laws and regulations enacted by Parliament and by the legislatures of each province must comply with the Canadian Constitution.

The Canadian Constitution includes rules on the division of legislative powers between Parliament and the provincial legislatures (stemming from the *Constitution Act, 1867*,[1] at the time the British Parliament created the Canadian Confederation) and the *Canadian Charter of Rights and Freedoms* (included in the *Constitution Act, 1982*[2] when the Canadian Constitution was repatriated in 1982).

The other sources of law include legislation (laws), regulatory instruments (regulations), case law (all court decisions[3]) and doctrine (texts in which their authors explain and interpret the law[4]). There are also other sources of law, such as treaties, custom and usage. This manual will deal primarily with laws and regulations applicable to the activities of insurance of persons representatives.

It should be noted that pursuant to the division of powers arising under the Canadian Constitution, insurance contracts, annuity contracts and the distribution of insurance products fall under the exclusive jurisdiction of the provincial legislatures.[5] The organization of federally chartered insurance companies and the monitoring of their solvency fall under the jurisdiction of Parliament, while the provincial and territorial legislatures are in charge of these matters for provincially chartered insurance companies.

---

1. *Constitution Act, 1867,* 30 & 31 Victoria, c. 3 (U.K.).
2. *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982*, (U.K.) 1982, c. 11, which came Into force on April 17, 1982.
3. According to the rule of [translation] "precedent, a judge must apply the rule of law produced by a higher-ranking judge. The judge has the option of disregarding precedent by making a distinction." (Maurice Tancelin and Danielle Shelton, Des institutions – Branches et sources du droit, Montréal, Adage, 1989, pp. 136 and 137). In *Caisse populaire des Deux Rives v. Société mutuelle d'assurance contre l'incendie de la Vallée du Richelieu*, [1990] 2 S.C.R. 995, the Supreme Court of Canada made some preliminary observations regarding the use of judgments of courts in France, Britain, the United States and other Canadian jurisdictions in Québec insurance law. The Supreme Court of Canada has been Canada's final court of appeal in criminal matters since 1933 and in civil matters (including insurance) since 1949. Previously, the final court of appeal for Canadian litigation was the Judicial Committee of the Privy Council (London, England). The last Canadian case to be heard by this Committee was *Ponoka-Calmar Oils Ltd. et al. v. Earl F. Wakefield Co. et al.*, [1959] UKPC 20, because the parties involved in a decision rendered by a Canadian trial court until 1949 (in civil matters) retained their right of appeal to the Judicial Committee of the Privy Council.
4. Doctrine "annotates," "comments on" or "sets forth" the law. It is said that [translation] "the legislature makes the laws," "judges interpret" (laws and earlier decisions) and "authors give an opinion or develop a theory" (Maurice Tancelin and Danielle Shelton, Des institutions – Branches et sources du droit, Montréal, Adage, 1989, pp. 136 and 137).
5. *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3.

This Chapter provides an overview of the principal laws and plans affecting the activities of insurance of persons representatives. This Chapter therefore aims to familiarize future insurance representatives with such legal framework and present notions that are useful from a practical standpoint.

Clearly, an insurance representative cannot give legal advice or legal opinions to a client.[6] Accordingly, the representative must encourage his client to consult a lawyer or a notary if he realizes that this client is looking for legal advice. Also, if the representative realizes that his client is looking for advice of an accounting or tax nature, he should suggest that the client consult an accountant or a tax specialist.

1.1 *Civil Code of Québec* (C.C.Q.)

Importance of the *Civil Code of Québec* (C.C.Q.)

The *Civil Code of Québec*[7] (C.C.Q.) is the principal source of law in Québec. It has been in force since January 1, 1994, replacing the Civil Code of Lower Canada[8] (which came into force on August 1, 1866). One of its Chapters deals with insurance. In addition to the C.C.Q., there are specific statutes with provisions applicable to insurance of persons. Article 2414, C.C.Q. states that any clause in an insurance contract which grants the client, the insured, the beneficiary or the policyholder fewer rights than are granted by the provisions of the chapter of the C.C.Q. relating to insurance is null.

Québec civil law

Québec civil law is based on French law. Québec is the only province with a civil code (civil law legal system). The other Canadian provinces have a legal system based on British law, that is, common law (common law legal system).

Content of the *Civil Code of Québec* (C.C.Q.)

The C.C.Q. consists of 10 Books (namely: “Persons,” “The Family,” “Successions,” “Property,” “Obligations,” “Prior Claims and Hypothecs,” “Evidence,” “Prescription,” “Publication of Rights,” and “Private International Law”), each of which is divided into Titles, Chapters, Divisions, and so on.

The following sections deal with certain topics found in the C.C.Q., due to their effects on the professional practice of insurance of persons representatives.

6. *Act respecting the Barreau du Québec,* CQLR c. B-1; *Notaries Act,* CQLR c. N-3*; Professional Code,* CQLR c. C-26.
7. *Civil Code of Québec,* S.Q. 1991, c. 64 (CQLR, c. C-1991).
8. *Civil Code of Lower Canada*, S. Prov.C., 1865 (29 Vict.), c. 41. To learn more about the origins of the *Civil Code of Lower Canada*, click here (Wikipedia).

1.1.1 Elements of law relating to capacity and status of persons

1.1.1.1 Natural persons, partnerships and legal persons (corporations)

Natural persons

Every human being is a natural person who possesses juridical personality, has the full enjoyment of civil rights, and has a patrimony, and can therefore exercise rights and perform obligations (arts. 1 and 2, C.C.Q.)

Legal persons

The term “legal person” refers to a type of business or entity with a juridical personality and patrimony distinct from the individuals who make up the legal person. Generally, a legal person is defined as a “business for which the law recognizes a separate existence from that of its members.” [translation][9] Legal persons are also called “joint stock companies,” “business corporations,” “corporations,” or “companies.” Pursuant to the *Act respecting the legal publicity of enterprises*, the official name of a legal person usually includes the abbreviation “Inc.” for “incorporated” or “Ltd.” for “limited.” It is important not to confuse the legal name of a corporation with its trademark(s) or business name(s).

Rights and obligations of a legal person

Like a natural person, a legal person is endowed with juridical personality. This means that it can exercise rights and perform obligations (arts. 298, 301 and 303, C.C.Q.), that, in order to exercise and perform them, it uses the name chosen when it was constituted (art. 305, C.C.Q.), that it has its domicile at the place and address of its head office (art. 307, C.C.Q.), that it exists in perpetuity unless otherwise provided by law or its constituting act (art. 314, C.C.Q.), that a legal person set up as a company or corporation owns property and is liable for its debts (it has a patrimony separate from that of its shareholders), and that it acts pursuant to the resolutions or by-laws adopted by its board of directors and by the general meeting of its members or shareholders (art. 311, C.C.Q.).

Representation of a legal person

A legal person is represented by its senior officers and directors, whose authority is limited by law, its constituting act, and its by-laws with respect to its functioning, the administration of its patrimony, and its activities (arts. 310 and 312, C.C.Q.).

Insurance firms and insurers are legal persons.

9. Marie-Éva de Villers, *Multidictionnaire de la langue française,* Montréal, Québec Amérique, 2006, p. 1091.

Partnerships

A partnership is formed by a contract entered into between two or more persons for the purpose of carrying out civil or commercial activities. A partnership is not a legal person (unlike a corporation, which is not a partnership). The most common partnerships are general partnerships (GPs) and limited partnerships (LPs). There are also undeclared partnerships.

A general partnership is a group of persons, referred to as "partners," who have come together to operate a commercial undertaking and earn a profit from it which they will share.

A general partnership is created by a contract entered into between all the partners. The future partners must choose a name for their partnership and comply with the *Act respecting the legal publicity of enterprises*[10]. Under this statute, a partnership must register with the Enterprise Registrar.[11] A partnership must also obtain all permits necessary to carry on business.

All the partners of a general partnership participate in the management of the enterprise, unless they have designated a person from among them to fulfill that role. Each partner is a mandatary of the partnership in respect of contracts entered into by the partnership with third persons and binds the partnership for every act performed in its name in the ordinary course of its business (art. 2219, C.C.Q.). Partners are jointly and solidarily liable for the debts and obligations contracted for the operation of the partnership's business (art. 2221, C.C.Q.).

"Independent partnerships"[12] in insurance of persons are partnerships and can become registrants with the *Autorité des marchés financiers* (AMF).

1.1.1.2 Capacity: Marriage, Marriage Contracts, Civil Union and Civil Union Contracts

Marriage

Marriage is the legal union of two persons. As of July 20, 2005, same-sex persons can get married in Canada.

A marriage is dissolved by (art. 516, C.C.Q.):

- the death of one of the spouses;
- dDivorce.

Separation from bed and board does not break the bond of marriage (art. 507, C.C.Q.).

A marriage may also be declared null under certain circumstances (art. 380, C.C.Q.).

10. *Act respecting the legal publicity of enterprises*, CQLR c. P-44.1
11. For more information, see the online register of the Registraire des entreprises.
12. See section 128, para. 2, of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2. Independent partnerships will be further discussed in Chapter 4.

Civil union

Civil union was introduced into the Civil Code of Québec on June 24, 2002 (arts. 521.1 to 521.19, C.C.Q.) pursuant to *An Act instituting civil unions and establishing new rules of filiation*[13] in order to allow everyone (but, in practice, mainly with a view to allow same-sex spouses) to enjoy the same effects as marriage as regards the family patrimony, the direction of the family, the exercise of parental authority, the contribution towards expenses, the family residence, the compensatory allowance, the right to establish the desired regime by way of civil union contract, and the power to inherit in the same capacity as married spouses in the absence of a will.

Given that, under the Canadian Constitution, the Québec legislature did not have the possibility to enact legislation stating that "marriage" could occur between two persons of the same sex, it created a similar institution (the "civil union") for their benefit, allowing them to enjoy the same rights and obligations under civil law as married spouses (husband and wife).

On July 20, 2005, Parliament enacted the *Civil Marriage Act*,[14] which came into force that same day. Since then, same-sex spouses have had the right to marry in Canada. This statute resulted from a decision rendered by the Supreme Court of Canada on December 9, 2004.[15]

Consequently, since July 20, 2005, very few same-sex spouses have taken advantage of civil union under the C.C.Q., preferring to get married. Thus, in actual fact, civil union will have had practical value only for the period from June 24, 2002 to July 20, 2005. It should be noted that opposite-sex spouses can also choose to be united or be in a civil union.

It is very important to remember that civil union under the C.C.Q. must not be confused with the notion of *de facto* spouses (or common-law spouses), that is, spouses who are not in a civil union or married. Spouses in a civil union and *de facto* spouses (or common-law spouses) fall into two very different categories.

Individuals who are joined in a civil union are required to live together and owe each other respect, fidelity, succour and assistance. In practical terms, with respect to rights and obligations, a civil union is the equivalent of marriage because the spouses enjoy the same rights and obligations as a married couple, particularly with respect to the constitution of the family patrimony.

Future civil union spouses may choose one of the matrimonial regimes that exist in Québec. Those who do not make a choice are governed by the legal regime of partnership of acquests. The couple may also create their own civil union regime by deciding that only part of the property will be recognized as acquests and the rest of the property will be governed by the rules of separation as to property.

13. *An Act instituting civil unions and establishing new rules of filiation*, SQ 2002, c. 6
14. *Civil Marriage Act*, SC 2005, c. 33.
15. *Reference re Same-Sex Marriage, [2004] 3 SCR 698.*

A civil union is dissolved when:

- one of the spouses dies;
- Aa court orders the dissolution; or
- the spouses make a joint declaration before a notary stating that their will to live together has been irretrievably undermined.

Matrimonial regimes

Firstly, the term “matrimonial regime” is defined as all provisions relating to property belonging to married or civil union spouses.

There are currently three types of matrimonial regimes in Québec, each one with its own rules governing property depending on whether or not it forms part of the family patrimony. They are:

- community of property (art. 492, C.C.Q.);
- separation of as to property (arts. 485 to 491, C.C.Q.);
- partnership of acquests (arts. 448 to 484, C.C.Q.).

Community of property

This former legal regime applied to spouses married in Québec before July 1, 1970, without a marriage contract. The words “without a marriage contract” are important because a couple could choose to be married without signing a contract before a notary. Such a couple was governed by the matrimonial regime in force, set out in the *Civil Code of Lower Canada*, at the time of the marriage.

What is unique about community of property is that a sole administrator - —the husband - — manages a common patrimony.

Upon the dissolution of the marriage, the property acquired by the spouses during the marriage is partitioned equally. On July 1, 1970, community of property was replaced by partnership of acquests as the default legal regime. Until April 2, 1981, new spouses could nonetheless choose community of property by referring to the provisions of the C.C.Q. in their contract. Although this option is no longer possible, community of property still exists in Québec, because many couples married before July 1, 1970 without a marriage contract or those who opted for this regime (through a notarized marriage contract) until 1981 are still subject to it.

Separation as to property

The regime of separation as to property is very popular in Québec. In order for it to apply, the spouses must enter into a notarized marriage contract (art. 440, C.C.Q.).

The most distinctive aspect of separation as to property is its simplicity. Each spouse is responsible for the administration, enjoyment and free disposition of all his property. There is no partition of property when the marriage ends or in the event of separation from bed and board.

However, the rules governing family patrimony in force since July 1, 1989, modified the effects of this regime, unless the spouses signed a notarized document before January 1, 1991, indicating their wish to waive the application of the division of the patrimony by agreement. If both spouses agreed, they may also have waived it at the time of their divorce or at the dissolution of their civil union.

Partnership of acquests

Partnership of acquests is the current legal regime for couples married after June, 30, 1970 without a marriage contract and for couples joined in a civil union since June 24, 2002 without a civil union contract.

Property acquired during the marriage from the proceeds of work and other sources of income are acquests (art. 449, C.C.Q.)[16] and thus may be partitioned upon the dissolution of the marriage or civil union.[17] Other property is "private" or "private subject to compensation" (arts. 450 to 459, C.C.Q.), or, exceptionally, property held in undivided co-ownership (art. 460, C.C.Q.).

The main characteristic of this regime is that all property owned by a spouse prior to the marriage or civil union is considered private property (i.e., property belonging to that spouse alone). Similarly, property a spouse inherits or receives as a gift during the marriage or civil union is considered private property.

Each spouse keeps the property belonging to him and can accept or waive the partition of the acquests upon the dissolution of the marriage or civil union.

The private property of each spouse consists of the rights or benefits devolved to that spouse as a subrogated holder or as a specified beneficiary under a contract or plan of retirement, an annuity or insurance of persons (art. 450([4)], C.C.Q.).[18]

1.1.1.3 Family patrimony

The concept of family patrimony is quite recent, given that *An Act to favour economic equality between spouses,*[19] commonly called the *Family Patrimony Act* (Québec), only came into force on July 1, 1989. Since this regime is of public order, married or civil union spouses cannot renounce their rights in the family patrimony, whether by a marriage contract or otherwise (art. 423, C.C.Q.). Although couples married prior to July 1, 1989, had until December 31, 1990, to waive these provisions in writing before

16. Registered Retirement Savings Plans (RRSPs) are acquests (*Droit de la famille – 181540*, 2018 QCCS 3040 (CanLII); *Droit de la famille – 19982*, 2019 QCCA 930 (CanLII)). Deferred profit-sharing plans (DPSPs) are not acquests (*Droit de la famille – 21363*, 2021 QCCS 939). However, an unregistered savings plan held with the employer would be an aquest (*Droit de la famille – 21363*, 2021 QCCS 939).
17. As regards stock options, see: *Droit de la famille – 141259*, 2014 QCCS 2471 (paras. 113 to 124), Nicole-M. Gibeau J.; *M.(P.) v. L.(K.)*, 2003 CanLII 2546 (QC CS), Nicole Bénard J.; Droit de la famille – 142, [1984] C.S. 1223, John Gomery J.; and *J.S.H. v. B.B.F.*, 2001 CanLII 25570 (QC CS), Marie-Christine Laberge J.
18. However, see articles 451 and 453 C.C.Q.
19. The exact title of the statute is: *An Act to amend the Civil Code of Québec and other legislation in order to favour economic equality between spouses*, S.Q. 1989, c. 55.

a notary, no one married after June 30, 1989, can avoid the application of these rules. The rules of family patrimony take precedence over the rules of matrimonial regimes.[20]

Marriage and civil union both involve the constitution of a family patrimony consisting of certain property of the spouses regardless of which of them holds a right of ownership in that property (art. 414, C.C.Q.). Thus, in the event of nullity of the marriage, divorce or separation from bed and board, this property must be partitioned between the ex-spouses, or, upon the death of one of the spouses, it must be partitioned between the surviving spouse and the succession (estate) of the deceased spouse.[21]

List of property included under the family patrimony

The provisions of the *Family Patrimony Act* are included in the C.C.Q. (arts. 414 to 426, C.C.Q.), and provide for the partition of the following property between couples who are married or in a civil union:

- the principal and secondary residences of the family;
- the movable property located therein serving for the use of the household;
- the motor vehicles used for family travel;
- the benefits accrued during the marriage or civil union under a government pension plan such as the Québec Pension Plan;
- the benefits accrued during the marriage or civil union under pension plans offered by employers;[22]
- the benefits accrued during the marriage or civil union under registered retirement savings plans, such as registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), locked-in retirement accounts (LIRAs), life income funds (LIFs), and voluntary retirement savings plans (VRSPs);[23] and

20. *Droit de la famille — 3056*, 1998 CanLII 12980 (QC CA), Deschamps, Robert and Biron, JJ. (*ad hoc*); Droit de la famille — 1994, [1994] R.D.F. 388 (C.S.).
21. The surviving spouse is entitled to half the net value of the property comprising the family patrimony that exists at the time of the spouse's death if it results in a claim for the surviving spouse (art. 416 C.C.Q.). The deceased's succession therefore owes the surviving spouse in this case. If the deceased is a creditor of the family patrimony, the heirs are entitled to partition (*Lamarche v. Olé Widholm*, 2002 CanLII 37315 (C.A.); *Banque nationale du Canada v. Sciascia-Trapani*, 2002 CanLII 39948 (C.A.)). However, in order to benefit from the right to partition of the family patrimony, they must first accept the succession.
22. Basic pensions and pension plan improvements (e.g., amounts received for accepting an employer's offer of early retirement) are includeed in the family patrimony (*Droit de la famille – 211666*, 2021 QCCS 3655; *Droit de la famille – 091214*, 2009 QCCS 2347, paras. 59 to 61).
23. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, ss. 75 to 79. See the AMF's list of VRSPs registered with *Retraite Québec* and register of legal persons authorized to act as administrators of VRSPs. https://lautorite.qc.ca/en/general-public/registers/register-vrsps. Benefits accrued under a pension plan during cohabitation prior to marriage are not includeed in the family patrimony (*M.L. v. D.M.*, 2001 CanLII 24830 (QC CS); *Droit de la famille – 2384*, 1996 CanLII 4694 (QC CS); *Droit de la famille – 191077*, 2019 QCCA 1003).

- benefits accrued during the marriage or civil union under any other retirement-savings instrument, including an annuity contract into which sums from any such plans have been transferred.[24]

The following, among others, therefore do not form part of the family patrimony:

- cash and money kept in bank accounts;
- insurance contracts (including the cash surrender value[25]);
- investments, shares, bonds and annuity contracts[26] not included in an RRSP, a RRIF, a LIRA, a LIF or a pension plan; and
- deferred profit-sharing plans (DPSPs),[27] retirement superannuation plans,[28] tax-free savings accounts (TFSAs),[29] and businesses;
- other productivity-sharing plans, employee share ownership plans and current distribution profit sharing plans.[30]

Exclusion of certain property

The following property is excluded from the family patrimony:

- tThe earnings registered in the name of each party during the marriage pursuant to the *Act respecting the Québec Pension Plan*, if the dissolution of the marriage or civil union results from death (art. 415, para. 2, C.C.Q.);
- bBenefits accrued under a retirement plan granting a right to death benefits to the surviving spouse, if the dissolution of the marriage or civil union results from death (art. 415, para. 3, C.C.Q.); and

24. The conversion by a husband of his pension fund into a life annuity in his favour and, on his death, in favour of his wife is a contract for the constiution of an annuity and is includeed includeed in the family patrimony (*Droit de la famille – 3642*, 2000 CanLII 17781 (QC CS)).
25. *A. v. P.*, [1997] R.L. 124 (C.S.).
26. *Droit de la famille — 1398*, [1991] R.D.F. 215 (C.S.) (life annuity contract in the payout phase).
27. *Droit de la famille — 1963*, J.E. 94-594 (C.S.);*D.(M.) v. De.(F.)*, 2003 CanLII 770 (QC CS), Jean-Jacques Crôteau, J.; *F. (L.) v. M. (S.)*, C.S. Saint-François, June 19, 1991, No. 450-04-000504-893, Boily, J.; *Droit de la famille — 17336*, 2017 QCCA 281. *Droit de la famille - 21363*, 2021 QCCS 939. However, a DPSP transferred to an RRSP forms part of the family patrimony (*Droit de la famille* — 2141, [1995] R.D.F. 131 (C.S.)). The Registered Home Ownership Savings Plan is not regarded as a pension plan and does not fall under family patrimony (*G. v. G.*, 1998 CanLII 19145 (QC CS)).
28. *N. (L.) v. N. (P.)*, C.S. Québec, June 4, 1992, No. 200-12-043249-904, Philippon J. (supplemental annuity agreement for senior employees).
29. *Droit de la famille — 152833*, 2015 QCCS 5304; *Droit de la famille — 18409*, 2018 QCCS 796.
30. *Droit de la famille – 2141*, [1995] R.D.F. 131 (C.S.) ; *Droit de la famille — 1963*, J.E. 94-594 (C.S.); *Droit de la famille – 17336*, 2017 QCCA 281; *M.D. v. F.De.*, 2003 CanLII 770 (C.S.).

- Property received by one of the spouses as an inheritance or gift,[31] before or during the marriage or civil union (art. 415, para. 4, C.C.Q.).

However, movable property (and even the undivided half of the principal residence) given in a marriage contract by a married or civil union spouse to the other spouse forms part of the family patrimony.[32]

The pension plan of a deceased retired spouse that provides for surviving spouse benefits is excluded from partition of the family patrimony. Excluding the deceased spouse's pension plan is intended, in the case of the surviving spouse benefits provided under the plan, to ensure that the surviving spouse is not deprived of all of his(or her) pension, which, in many cases, exceeds the 50% share (s)he or she would receive under the family patrimony, and also to prevent situations where a surviviving spouse receives both a joint and survivor pension and half the plan benefits. Furthermore, in the event one of the spouses dies, the surviving spouse's pension plan is not excluded from partition of the family patrimony.[33]

Application of rules

The provisions of the C.C.Q. relating to the family patrimony apply to all married or civil union couples who live in Québec (with the exception of persons married before July 1, 1989, who, no later than December 31, 1990, renounced the family patrimony in writing before a notary). The rules relating to the family patrimony have applied to civil union couples since June 24, 2002.

Also, although spouses have not been allowed to renounce their rights in the family patrimony in advance, by way of their marriage contract, since December 31, 1990, they may renounce their rights in what is excluded from it. For example, since the net value of property acquired by one of the spouses before marriage that is included in the family patrimony may be deducted from the net value of the family patrimony, such property is a personal asset of that spouse, the rights to which may be renounced by him(or her).[34] A spouse may, from the death of the other spouse or from the judgment of divorce, separation from bed and board or nullity of marriage, renounce their his(her) rights in the family patrimony, in whole or in part, by notarial act *en minute*; that spouse may also do so by a judicial declaration which is recorded, in the course of proceedings for divorce, separation from bed and board or nullity of marriage (art. 423, C.C.Q.).

31. However, a gift of property included in the family patrimony that is made during the marriage by one spouse to the other cannot be part of the exclusion provided by the text because such a gift would constitute a partial renunciation of the partition of the family patrimony, which is prohibited by article 423 C.C.Q.: *V.Z. v. T.C.*, 2003 CanLII 22476 (appeal allowed on other grounds by (C.A., 2004-03-12), J.E. 2004-773. However, the life insurance proceeds received by a spouse and used to pay for part of the family residence constitute a contribution akin to property devolved by succession or gift within the meaning of article 418 C.C.Q.: *C. v. S.*, 1997 CanLII 17105 (QC CS). For a contrary opinion, see: *Droit de la famille — 19530*, 2019 QCCS 1148.
32. *Droit de la famille – 18409*, 2018 QCCS 796.
33. *Droit de la famille – 18409*, 2018 QCCS 796.
34. *Droit de la famille – 1636*, 1993 CanLII 4311 (C.A.).

Valuation date of the family patrimony

The family patrimony is partitioned upon separation from bed and board, divorce, dissolution of the civil union, or the death of one of the spouses. The value of the patrimony is divided among the spouses at such time. The property is valued as of one of the following dates:

- The date of death of one of the spouses or the date of the institution of the action seeking separation from bed and board, divorce, or nullity of marriage, or of the dissolution or nullity of a civil union; or
- The date on which the spouses ceased living together, if it is prior to the date mentioned above.

The right to the family patrimony is a contingent claim that is constituted at the time of the marriage and that crystallizes upon its dissolution. This civil debt bears interest like any other debt, beginning on the date set for the valuation of the family patrimony (date of institutiion of proceedings [(as a general rule]) or date on which the couple ceased living together [(in exceptional cases])).[35]

Rules for partitioning the family patrimony

The C.C.Q. sets out rules for partitioning the family patrimony to avoid penalizing a spouse who, during the marriage or civil union, acquired property forming part of the family patrimony through a gift or inheritance (contribution). The C.C.Q. rules of partition also take into account the property forming part of the family patrimony that was fully paid for by one of the spouses before the marriage or civil union (arts. 416 to 426, C.C.Q.). There are also other rules dealing with property paid for in part prior to the marriage or civil union and in part during the marriage or civil union.

To partition the family patrimony, the following steps must be followed:

- determine the market value of all the property in the family patrimony;
- next, determine the total amount of the debts existing on the partition date that were incurred for the acquisition, improvement, maintenance and preservation of property included in the family patrimony;
- deduct the debts from the market value, which allows the net value of the family patrimony to be determined;
- apply the other deductions prescribed by the C.C.Q. relating to property forming part of the family patrimony (property acquired before the marriage, through inheritance or a gift); and
- calculate the net value resulting from these steps and partition the family patrimony equally.

35. *Droit de la famille – 2261*, 2022 QCCA 92. See also art. 417 C.C.Q. However, according to the Court of Appeal in *T.D. c. R.N.*, 2008 QCCA 1968, the prescription rules do not apply to partition of a supplemental pension plan when an agreement confirmed by a judgment expressly provides for or a judgment orders the partition of such benefits.

1.1.1.4 Divorce and separation from bed and board

Divorce, which is governed by the *Divorce Act*,[36] a federal statute, dissolves a marriage and results in the partition of the family patrimony and the dissolution and liquidation of the matrimonial regime. However, the C.C.Q. governs some of its effects (such as the partition of the family patrimony and the partition of a matrimonial regime).

Separation from bed and board does not dissolve a marriage, but it releases the spouses from the obligation to live together and results in the partition of the family patrimony and as well as the dissolution and liquidation of the matrimonial regime. Separation from bed and board and its effect are governed by the C.C.Q. (arts. 493 to 514). In some cases, it may be advantageous for both or one of the spouses to be released only from the obligation to live together, without the marriage being dissolved, in order to retain certain benefits arising under the law, such as, for example, the right to inherit if the spouse dies without a will, the right of a designated beneficiary or a subrogated beneficiary of a life insurance policy or of an annuity contract not to not be revoked, and the right of a donee to benefit from a donation clause included in a marriage contract following the spouse's death (contractual institution).

However, a legally separated spouse does not qualify as a "surviving spouse" pursuant to the *Act Rrespecting the Québec Pension Plan*, CQLR CQLR, c. R-9 (s. 91([a], save except in the case of an exception provided for in sections 91.1 and 91.2 of this Act). Also, unless otherwise indicated by the participant of a supplementary plan of retirement or unless designated as the beneficiary of a pension plan, the separated spouse is not entitled to death benefits from the deceased spouse pursuant to the *Supplemental Pension Plans* Act (s. 85 et seq.).

Separation from bed and board requires a Superior Court judgment.

1.1.1.5 De facto spouses (or common-law spouses)

In Québec, the notion of *de facto* spouse (more often referred to outside Québec as "common-law spouse") does not exist in the C.C.Q. Thus, *de facto* spouses (or common-law spouses) cannot assert any rights under the rules for the partition of the family patrimony or the dissolution and liquidation of a matrimonial regime, they nor do they not have the right to obtain spousal support (alimony), nor do they have the right to inherit from their *de facto* spouse (or common-law spouse) if (s)he dies without a will.[37] This difference in treatment between *de facto* spouses (or common-law spouses) and married or civil union spouses was determined to be valid in the Supreme Court of Canada decision in *Québec (Attorney General)* v. *A*, 2013 SCC 5 (also known as "Éric v. Lola").

However, *de facto* spouses (or common-law spouses) who fall within the appropriate definition have the same rights as married or civil union spouses under other laws, such as the *Income Tax Act* (federal) (s. 248([1]) "common-law partner"), the *Taxation Act* (Québec) (s. 2.2.1), the

Supplemental Pension Plans Act (ss. 85 and 178), the *Pension Benefits Standards Act*, 1985 (s. 2([1]) "common-law partner"), the *Act respecting the Québec Pension Plan* (ss. 91 and 102.2), the *Act respecting prescription drug insurance* (ss. 18, 18.1 and 37) and the *Canada Pension Plan*

36. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.).
37. See: Éducaloi, Common-Law Couples: Making a Life Together Without Being Married, 2024.

(s. 2([1]) “common-law partner”).

Also, as regards children, it is irrelevant whether or not the spouses are married.

However, Bill 56, *An Act respecting family law reform and establishing the parental union regime*, S.Q. 2024, c. 22), which was assented to by the National Assembly on June 4, 2024, and is scheduled to come into force on June 30, 2025 (with some exceptions), will alter the legal landscape for *de facto* spouses who become the father and mother or the parents of the same child after June 29, 2025 (without retroactive effect). Such unions will be called "parental unions."[38] The regime will apply automatically to *de facto* spouses, without any action required on their part, and the spouses will have the option of placing themselves outside of the regime (right to withdraw from its application through renunciation by notarial act).

Blended families will not be *de facto* protected by the new regime unless the spouses become the parents of the same child after June 29, 2025.

The parental union regime has been created primarily to protect the least financially secure spouse in the union and the children.

The parental union includes a patrimony formed of:

- the family residence or the rights which confer use of it;
- the movable property with which the residence is furnished or decorated and which serves for the use of the household; and
- the motor vehicles used for family travel.

However, the parental union patrimony, unlike the family patrimony constituted by marriage, does not include pension plans, retirement savings plans and supplemental pension plans.

As in the case of a marriage, property acquired before the union will be excluded from the calculation. For example, a paid-off home cannot be partitioned.

The spouses may also change the composition of the parental union patrimony by planning a different partition of their assets based on a mutual agreement.

Where the spouses withdraw from the parental union, the value of the parental union patrimony will be divided equally between the spouses. However, the court may “order any other measure it considers appropriate to ensure that the judgment is properly executed” (C.C.Q., art. 521.38). For example, the court may require that a spouse keep in force insurance for the benefit of the former spouse, as is sometimes the case in a divorce.

The parental residence is protected and cannot be sold by the parent who owns the residence without the other spouse’s consent.

Lastly, a parental union does not allow *de facto* spouses to claim support for themselves if they separate.

38. See: Serge Lessard, “Les subtilités du projet de loi sur l’union parentale – Réponses à 10 bonnes questions sur ce projet de Québec,” *Finance et Investissement*, April 10, 2024.

1.1.1.6 Successions with and without a will

Articles 613 to 702 of the C.C.Q. set out the rules applicable to succession rights and to legal, or intestate, successions (without a will). Articles 703 to 775 deal with wills. The liquidation and partition of a succession and the rules relating to the liquidator's rights and obligations are found in articles 776 to 907.

Definitions

There are two forms of successions: legal successions and testamentary successions. A legal succession, or intestate succession, means that the deceased did not leave a will. In contrast, a testamentary succession means that the deceased prepared a will and named his(her) heirs and legatees.

Legal or intestate successions (without a will): devolution of property

In the case of a legal or intestate succession, the persons who inherit from the deceased are the spouse to whom the deceased was married or with whom he was in a civil union and the persons related to the deceased by blood or adoption.

The married or civil union spouse takes one third of the succession and the descendants take the other two thirds. Where there is no married or civil union spouse, the entire succession devolves to the descendants[39] (the children or, otherwise, the grandchildren). If there are no descendants, the C.C.Q. provides that the father or mother (ascendant) or the brothers and sisters may have rights.

If there are no successors, two-thirds of the succession devolves to the surviving partner (spouse by marriage or civil union) and one-third to the privileged ascendants (father and mother) (art. 672, C.C.Q.).

If there are no descendants or privileged ascendants, two-thirds of the succession devolves to the surviving partner (spouse by marriage or civil union) and one-third devolves to the privileged collaterals (brother and sister) and to his first- degree descendants (children of siblings of the deceased, i.e., nephews and nieces of the deceased) (art. 673, C.C.Q.).

If there are no descendants, privileged ascendants or privileged collaterals, the succession devolves entirely to the surviving partner (spouse by marriage or civil union) (art. 671, C.C.Q.).

39. *Civil Code of Québec*, arts. 666 and 667.

Moreover, all the children whose filiation is established (by blood or by adoption) have the same rights in the context of a succession without a will. Therefore, if a person has a child from a marriage, another out of wedlock[40] and another by adoption and dies without a will, all three children will have the same rights in the succession (art. 522, C.C.Q.).

In the event of death and the absence of a will, it is advisable to have a notary or lawyer prepare a "declaration of heredity" which sets out the heirs and their share of the succession. This document also identifies the liquidator of the succession.

Exclusion: *de facto* spouse (or common-law spouse) and in-laws

Note that *de facto* spouses (or common-law spouses) and in-laws are excluded from legal successions (successions without a will). A "*de facto* spouse" (or "common-law spouse") is the person with whom the deceased lived without being married or joined in a civil union.

However, the *Act respecting family law reform and establishing the parental union regime*,[41] which is scheduled to come into force on June 30, 2025, will amend articles 653 and 654 of the *Civil Code of Québec* so that, in matters of succession, the rules on legal devolution will allow a parental union spouse to inherit from their deceased spouse where the spouses shared a community of life for over one year at the time of death.

1.1.1.7 Liquidator of the succession

The liquidator of the succession (formerly called the "testamentary executor") is the person appointed to liquidate the succession, whether it be legal or testamentary. The testator generally designates a liquidator, but if he has not done so or in the case of a legal succession, the heirs perform this role together. They may appoint one or more persons from among themselves or a person who is not an heir of the deceased, in accordance with certain formalities. If the heirs cannot agree on the choice of a liquidator, the court designates one.

The liquidator must settle the succession as quickly as possible, although no specific time is prescribed.

If the liquidator is not an heir, he is entitled to remuneration (art. 789, C.C.Q.). A liquidator who is also an heir may be remunerated if the will so provides or, if not, if the heirs so agree. In addition, a liquidator, whether or not an heir, is entitled to the reimbursement of all expenses incurred in fulfilling his office.

The liquidator must abide by the wishes of the deceased, unless it is illegal to do so. He must act with prudence and diligence and report on his administration to the heirs. All the legal formalities prescribed by the C.C.Q. must be fulfilled. He must also prepare the last income tax returns of the deceased and ensure that the income taxes are paid.

40. *Brule v. Plummer*, [1979] 2 S.C.R. 343. However, an adopted child would cease to be the child of his biological parents and could not inherit from his intestate biological parents (*Strong v. Marshall Estate*, 2009 NSCA 25).

41 *Act respecting family law reform and establishing the parental union regime*, S.Q. 2024, c. 22.

Once the heirs are identified[42] and the liquidation is completed, the succession may be partitioned. First, the family patrimony, if any, must be partitioned. After this step, the succession can be liquidated.

~~*Services* The~~~~Services~~ Ministère de l'Emploi et de la Solidarité Social~~Québec – Citoyens~~ has prepared a useful brochure that provides an overview of the government departments and agencies that must be contacted in the event of death.[43]

Lastly, it is important to note that the document commonly called a "declaration of heredity" is essential when settling a succession where the deceased has not drawn up a will. When there is no will, intestate (legal) succession has to be initiated, and the devolution of the deceased's property will be required to be determined according to the provisions of the *Civil Code of Québec* (arts. 653 to 684, C.C.Q.). The declaration of heredity, which is usually prepared by a notary (although the law does not require it to be notarized), is used to identify the deceased, the children and relatives of the deceased, the deceased's matrimonial regime, the type of succession, and all the legal heirs of the succession. Specifically, the declaration of heredity is necessary to enable the heirs to be recognized as such by various institutions and organizations and by tax or government authorities. When no will exists, a declaration of heredity is usually required by banks, financial institutions, and insurance companies to recognize a person's status as an heir or the liquidator of the succession. Once recognized as such by means of the declaration of heredity, the heirs (and especially the liquidator of the succession) can use it to claim assets, monies and other property that rightfully belong to them under the rules of devolution applicable to intestate (will-less) successions. The declaration of heredity is also used to appoint a liquidator of the succession who will deal with the property bequeathed by the deceased. It is also possible for the heirs identified in the declaration of heredity to assign one or two of them (or another person), through a written power of attorney, to act as liquidator of the succession.

Special right arising under a marriage contract or civil union contract: conventional appointment

Conventional appointment is a gift *mortis causa* (gift in the event of death) set out in a marriage contract or civil union contract that provides for the transfer of property to the surviving spouse; it is often referred to as the "surviving spouse" clause. The gift is revocable, unless the donor

spouse has stipulated otherwise. In such a case, he cannot, without the consent of the spouse (the donee) and all other interested persons, give property gratuitously by contract or by will, with the

42. In order to carry out a will search so as to determine whether the deceased has a will or has a more recent will, the liquidator of the succession must search the Registers of Testamentary Dispositions and Mandates of the Chambre des notaires and the Registers of wills and mandates of the Barreau du Québec. The Register of Testamentary Dispositions and Mandates of the *Chambre des notaires du Québec* was created in 1961 so that a person's last notarial will could be traced, with certainty, when settling a succession. In 1991, the *Chambre des notaires du Québec* established a system for the registration of mandates in anticipation of incapacity. The *Barreau du Québec*'s Register of Wills has been in place since December 1, 1979, and contains a record of wills prepared by lawyers. From September 2003 to October 15, 2013, a partnership between the *Barreau du Québec* and the *Chambre des notaires du Québec* made it possible to file a single search request for both registers. However, as of October 15, 2013, a separate search request must be filed for each register.
43. Government of Québec. *What to Do in the Event of Death, 2023 Edition*, Publications du Québec, 2023, 84 pages ($1.69). See also *What to do In the event of death - Steps to take after a person's death*, March 31, 2023.

exception of property of little value or customary presents (art. 1841, C.C.Q.). Divorce entails the lapse (nullity) of gifts *mortis causa* (art. 519, C.C.Q.). However, in the event of separation from bed and board, they remain valid, unless the Superior Court decides that they have lapsed (arts. 510 and 519, C.C.Q.)

1.1.1.8 Trusts

A trust results from an act whereby a person, referred to as the "settlor," transfers property from his patrimony to another patrimony constituted by him (the trust) that he appropriates to a particular purpose and that a trustee undertakes, by his acceptance, to hold and administer for the beneficiary of the trust (art. 1260, C.C.Q.).

A trust is established by contract, whether by onerous title or gratuitously, by will, or, in certain cases, by operation of law or by judgment (art. 1262, C.C.Q.).

The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right (property right) (art. 1261, C.C.Q.).

Just like a legal person or partnership, a trust can be the holder of an insurance contract or annuity contract. It acts through the trustee, who acts for the good of the beneficiaries of the trust, who should not be confused with the designated beneficiaries of an insurance policy or annuity contract. A trustee is an administrator of the property of others with full powers of administration (arts. 1278, 1306 and 1307, C.C.Q.).

Only a natural person fully capable of exercising their civil rights or a legal person authorized by law[44] may act as trustee of a trust (arts. 304 and 1275 C.C.Q.).

1.1.2 Contracts – General

The provisions relating to obligations are set out in articles 1371 to 2643, C.C.Q. They include those respecting contracts (contractual obligations) and civil liability (legal and extra-contractual obligations).

1.1.2.1 Conditions required for the formation of a contract

A contract is the most common source of obligations of natural persons and legal persons. The general rules governing contracts are set out in articles 1377 to 1456, C.C.Q. In insurance of persons, contracts are the fundamental source of the parties' rights and obligations.

A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform an obligation. A contract is formed by the sole exchange of

44. *Trust Companies and Savings Companies Act*, CQLR, c. S-29.01, ss. 2 and 20; *Trust and Loan Companies Act*, SC 1991, c. 45, ss. 57, 409 and 412 ; *Securities Act*, CQLR, c. V-1.1, s. 109.6 (the AMF may authorize a legal person other than a trust company to act as trustee of an investment fund; *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r 1, s. 44. See also: Julien Busque, *La portée de l'article 1275 du Code civil du Québec à l'égard du fiduciaire*, (2016) 118 *Revue du notariat* 457.

consents (verbal or written) between persons having the capacity to contract obligations (usually at the age of 18), unless, in addition, the law requires a particular form to be respected as a necessary condition of its formation (for example, a contract signed between the parties or a notarial act), or unless the parties themselves establish a particular form in order for the contract to take effect. A contract must also have a cause and an object.

Types of contracts

The C.C.Q. lists the various types of contracts. According to the second paragraph of article 1378, they are:

- cContracts of adhesion and contracts by mutual agreement;
- sSynallagmatic (bilateral) and unilateral contracts;
- oOnerous and gratuitous contracts;
- cCommutative and aleatory contracts;
- cContracts of instantaneous performance or of successive performance; and
- cConsumer contracts.

Table 1.1 illustrates the different types of contracts and their characteristics and provides one or more examples of each type of contract.

TABLE 1.1:

Classification of contracts in the C.C.Q.

TYPES OF CONTRACTS	FEATURES
Contracts of adhesion and contracts by mutual agreement (art. 1379 C.C.Q.)	▪ The terms are imposed by one of the parties. **Example:** A contract to lease an automobile ▪ The terms are negotiated freely. **Example:** A contract for the sale of a used automobile between individuals
Synallagmatic (bilateral) and unilateral contracts (art. 1380 C.C.Q.)	▪ Both parties obligate themselves to provide a benefit. **Example:** A contract for the sale of a house ▪ Only one of the parties obligates itself. **Example:** The gift of a boat to one's brother
Onerous and gratuitous contracts (art. 1381 C.C.Q.)	▪ Each party receives an advantage in return for his obligation (money, property). **Example:** The sale of a house ▪ One of the parties obligates itself to the other for the benefit of the other without obtaining any advantage in return. **Example:** A gift
Cumulative and aleatory contracts (art. 1382 C.C.Q.)	▪ The extent of the obligations is certain and determinate at the time the contract is formed. **Example:** The purchase of an automobile ▪ The scope of the obligations is uncertain at the time the contract is formed. **Example:** The purchase, in advance, of a farmer's harvest
Contracts of instantaneous performance or of successive performance (art. 1383 C.C.Q.)	▪ The parties perform their obligations at one single moment. **Example:** A contract for the sale of a house ▪ The obligations are performed at several different times and without interruption. **Example:** A contract to rent an apartment
Consumer contracts (art. 1384 C.C.Q.)	The contract is governed by consumer protection legislation. The contract is entered into between a natural person and a person who carries on an enterprise. **Example:** The purchase of a television by a consumer in a store

"Nominate" and "innominate" contracts

A distinction must also be made between "nominate" and "innominate" contracts.

Nominate contracts, of which there are eighteen (18), are each dealt with in separate chapters in the Book on “Obligations” in the C.C.Q. The following is a list of these contracts:

- cContracts of sale (arts. 1708 to 1805);
- cContracts of gift (arts. 1806 to 1841);
- lLeasing contracts (arts. 1842 to 1850);
- lLease agreements (arts. 1851 to 2000);
- aAffreightment contracts (arts. 2001 to 2029);
- cContracts of carriage (arts. 2030 to 2084);
- cContracts of employment (arts. 2085 to 2097);
- cContracts of enterprise or for services (arts. 2098 to 2129);
- cContracts of mandate (arts. 2130 to 2185);
- cContracts of association or partnership (arts. 2186 to 2279);
- cContracts of deposit (arts. 2280 to 2311);
- lLoan contracts (arts. 2312 to 2332);
- sSuretyship contracts (arts. 2333 to 2366);
- aAnnuity contracts (arts. 2367 to 2388);
- cContracts of insurance (arts. 2389 to 2628);
- gGaming and wagering contracts (arts. 2629 and 2630);
- cContracts of transaction (arts. 2631 to 2637);
- aArbitration agreements (arts. 2638 to 2643).

The specific C.C.Q. rules that apply to these contracts prevail over the general rules applicable to contracts and obligations, which are suppletive.

The other types of contracts that are not dealt with in a specific chapter of the C.C.Q. are referred to as “innominate” contracts. The following are some examples:

- consignment contracts;
- fFranchise agreements;
- distribution agreements; and
- joint venture contracts.

These types of contracts are governed by the C.C.Q.’s general rules for contracts.[45]

45. Pascal FRÉCHETTE, “*La qualification des contrats : aspects pratiques*,” in (2010) *Les Cahiers de droit*, 51(2), p. 375. See Schedule I (Contrats innommés reconnus par la jurisprudence québécoise).

1.1.2.2 Administration of the property of others and mandate (power of attorney and mandate in anticipation of incapacity)

Administration of the property of others

Any person charged with the administration of property or a patrimony that is not his own assumes the office of the administrator of the property of others (art. 1299, C.C.Q.).

A person charged with simple administration (e.g., a legal tutor) must perform all the acts necessary for the preservation of the property or useful for the maintenance of the use for which the property is ordinarily destined (art. 1301, C.C.Q.). A person charged with full administration (e.g., a trustee) must preserve the property and make it productive or increase the patrimony (art. 1306, C.C.Q.). That person also has the right to dispose of or alienate the property.

The administrator of the property of others charged with simple administration must invest the sums in "presumed sound investments." These investments are listed in articles 1339 and following of the C.C.Q.

The administrator of the property of others must not mingle (mix) the administered property with his own property (art. 1313, C.C.Q.).

Mandate and power of attorney

A mandate is a specific type of contract whose general rules are set out in the C.C.Q. (arts. 2130 to 2185). The mandate will be examined in greater detail in Chapter 4 of this manual, which deals with the role of insurance of persons representatives.

A mandate is a contract by which a person, the mandator, empowers another person, the mandatary, to represent him in the performance of a juridical act. This power and the document itself are also referred to as a "power of attorney" (art. 2130, C.C.Q.).

A mandatary is an administrator of the property of others, governed firstly by the rules of the C.C.Q. respecting the mandate (arts. 2130 to 2185), and, secondly, by the rules respecting the administration of the property of others (arts. 1299 to 1370, C.C.Q.). Legal persons may not act as mandataries to the person. They may, however, to the extent that they are authorized by law to act as such, hold office as mandatary to a person's property.[46]

When the mandator becomes incapable and his incapacity is ascertained by a judgment appointing a tutor or curator, or by the homologation of a protection mandate (commonly referred to as a "mandate in anticipation of incapacity"), the mandatary's mandate or power of attorney ends. If the mandatary notices that his mandator has become incapable, he must cease to act, because his actions may be challenged on the basis of nullity.[47]

46. *Civil Code of Québec*, art. 304 ; *Trust Companies and Savings Companies Act*, CQLR, c. S-29.02, s. 2; *Trust and Loan Companies Act*, SC 1991, c. 45, ss. 57(2), 409(2) and 412.
47. *Civil Code of Québec,* arts. 1420, 284 and 290. Third parties acting in good faith are protected (art. 2162), but not third parties who are aware of the mandator's incapacity (art. 2158).

Protection mandate

A protection mandate (formerly known as a "mandate in anticipation of incapacity") is defined in the Civil Code of Québec (art. 2166, C.C.Q.) as a mandate given by a person of full age in anticipation of his incapacity to take care of himself or to administer his property, and it must be made by a notarial act or in the presence of witnesses. It is therefore subject to specific formalities. The performance of the mandate is subordinate to the occurrence of the incapacity and to homologation by the court,[48] at the request of the mandatary designated in the act (art. 2166, C.C.Q.). Thus, before the occurrence of the incapacity and the court's homologation of the protection mandate, the mandate does not confer any powers on the mandatary.[49]

The rights of minors and incapable persons of full age are covered in section 2.3.1 (under "Capacity").

1.1.3 Insurance of persons contracts and damage insurance contracts

The principal rules governing insurance contracts are found in Chapter XV of the C.C.Q. (arts. 2389 to 2628).

This Chapter distinguishes between non-marine insurance, which includes insurance of persons and damage insurance, and marine insurance (arts. 2505 to 2628). Marine insurance covers risks relating to marine adventure.

The general provisions applicable to non-marine insurance are found in articles 2389 to 2414, C.C.Q. Insurance of persons is governed by the specific provisions found in articles 2415 to 2462. The provisions relating to damage insurance are found in articles 2463 to 2504. Only the rules relating to insurance of persons, including the general provisions applicable to non-marine insurance, will be covered in this manual. These provisions will be discussed in detail in Chapter 2, which deals with insurance of persons contracts.

1.1.4 Annuity contracts

Articles 2367 to 2388, C.C.Q. deal with annuity contracts. A contract for the constitution of an annuity is a contract by which a person, the debtor, undertakes, gratuitously or in exchange for the alienation of capital for his benefit, to make periodical payments to another person, the annuitant, for a certain time. Annuity contracts are discussed in detail in Chapter 3.

In theory, anyone can enter into an annuity contract.

48. New *Code of Civil Procedure,* CQLR, c. C-25.1, arts. 302 to 305 and 403 to 406. The new *Code of Civil Procedure* came into force on January 1, 2016.
49. Michel BEAUCHAMP and Cindy GILBERT, *Tutelle, curatelle et mandat de protection*, Cowansville, Les Éditions Yvon Blais, 2014, pp. 339 and 340.

It is important to note that pursuant to article 2393, C.C.Q. and section 13 of the *Regulation under the Act respecting insurance,*[50] (life and fixed-term) annuity contracts entered into with an insurer are included under life insurance. Therefore, annuity contracts issued by insurers are life insurance products.

1.1.5 Civil liability

Civil liability is a major source of obligations. The rules governing civil liability are set out in articles 1457 to 1481, C.C.Q. There are two separate civil liability regimes: contractual liability and extracontractual liability.

General principles

In civil law, liability means that a person is responsible for the consequences of his actions in his dealings with others. Civil liability is the obligation to repair the injury caused when certain conditions are met.[51]

Note that civil liability is not intended to punish a person for wrongful conduct, but rather, to compensate the victim for the harm suffered.

Liability is contractual when the victim and the author of the damage are bound by contract and the fault occurs while the contract is being performed.[52]

Civil liability is extra-contractual when a person, through his fault, causes harm to another.

Every person is liable for the injury caused by his own fault, but also, in certain cases, by the act or fault of another person, such as his children, or by the act of things in his custody.

The rules of civil liability are discussed again in Chapter 4.

1.1.6 Forfeiture of the right to claim and prescription

Extinctive prescription

Extinctive prescription is a means of being released from an obligation by the lapse of time and according to the conditions determined by law (art. 2875, C.C.Q.).

For example, when a person fails to assert his rights in a timely manner, he may lose his rights and recourse. A mere claim or even a formal notice does not interrupt the prescription. Only the filing of a judicial application may interrupt prescriptions.[53]

50. *Regulation under the Act respecting insurance*, CQLR c. A-32.1, r 1
51. Pierre Deschamps. “Les conditions générales de la responsabilité civile du fait personnel”, in École du Barreau du Québec, Responsabilité, *Collection de droit 2023–2024,* Vol. 5, Montréal, Éditions Yvon Blais, 2023, p. 15.
52. Tardif v. Succession Dubé, 2017 QCCA 1005 (CanLII).
53. *Civil Code of Québec,* art. 2892. However, acknowledgement of a right by the debtor also interrupts the prescription (art. 2898).

The day on which the right of action arises determines the beginning of the period of extinctive prescription (art. 2880, C.C.Q.). An action to enforce a personal right is prescribed by three years, if the prescriptive period is not otherwise determined (art. 2925, C.C.Q.). Where the right of action arises from moral, bodily or material injury appearing progressively or tardily, the period runs from the day the damage appears for the first time (art. 2926, C.C.Q.).

A person can also renounce (but not in advance) the prescription acquired or the benefit of any time elapsed (art. 2883, C.C.Q.).

Time limit whose expiry entails forfeiture

Sometimes, the law requires that a prior notice be given before a right can be exercised and if the notice is not given within a prescribed time limit, the recourse is forfeited, even if it is not yet prescribed. This is the case, for example, in matters of accident and sickness insurance pursuant to article 2435, C.C.Q. This is discussed in Chapter 2 of this manual.

1.2 Public insurance and pension (or retirement) plans

Public insurance and pension plans are set up by the federal, provincial and territorial governments to guarantee citizens minimum social and financial security.

Contrary to private plans, which are contractual, public plans are legislative and regulatory. They are financed through the assessments payable when obtaining or renewing a driver's licence (Québec Public Automobile Insurance Plan from the SAAQ), for example, through income and other taxes (GST, QST, etc.) in some cases (Old Age Security, social welfare, RAMQ Public Prescription Drug Insurance Plan) and through contributions by employers and employees in other cases (CNESST, employment insurance, Québec Pension Plan, Canada Pension Plan and Québec Parental Insurance Plan).

1.2.1 Federal public plans

This section begins with an overview of Canada's main public plans, i.e., insurance plans and pension plans falling under federal legislation. Next, it examines the main public insurance plans and pension plans in Québec. The features we will analyze are eligibility for benefits and the co-ordination and reduction of benefits between the various public and private plans.

The purpose of this Chapter is not to cover all the features of public plans. However, it is important to understand how public and private insurance plans complement each other. This means that a payment priority is established between the various plans and that there is co-ordination and reduction of benefits under these plans in order to avoid the enrichment of a person entitled to

benefits (for example, the duplicate payment of an indemnity), in addition to reducing the cost of premiums.

1.2.1.1 Employment insurance (EI)

Administered by Service Canada on behalf of the Department of Employment and Social Development, the employment insurance program under the *Employment Insurance Act* provides various types of benefits to employees who have contributed to the program and who meet its eligibility requirements. Employers contribute to it as well. Contributions are deducted from employees' pay. Self-employed workers are not considered employees, except under certain conditions. The employment insurance program is generally the last payer when other public plans apply.

Employment insurance provides temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills. Employment insurance also assists workers who are sick, pregnant or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death or who must provide care or support to their critically ill or injured child.[54]

Eligibility criteria

To be entitled for regular benefits (lack of work, seasonal work, etc.) or special benefits (sickness, maternity or parental leave, etc.), the employee must:

- have been out of work and without pay for at least seven consecutive days; and
- have held insurable employment for a specific number of hours during the qualifying period (from 420 to 700 hours, depending on the type of benefits and the regional unemployment rate).

The qualifying period is the 52 weeks that immediately precede the start of benefits or the period since the start of the previous benefit period, if it began during that 52-week period.

Premium rate and benefits payable

For insurable employment, the employer deducts the employment insurance premiums from the employee's salary or wages. These premiums go into the employment insurance fund. There is no minimum or maximum age for paying employment insurance premiums.

Premiums apply to all eligible earnings until the yearly earnings reach the prescribed maximum. As at January 1, 2024~~2023~~, the maximum insurable earnings amount was $~~61,500~~63,200. After the premiums have been collected on this maximum amount, any additional earnings are exempt from employment insurance premiums. Therefore, the maximum premiums payable for an employee in 2024~~2023~~ amounted to $~~1,002.45~~1,049.12 outside Québec and $~~781.05~~834.24 in Québec. The

54. *Employment Insurance Regulations*, SOR 96-332. See: Government of Canada, Employment Insurance benefits and leave, 2024-01-17. See also: Government of Canada, Calculate payroll deductions and contributions - EI premium rates and maximum, 2024-04-10.~~https://www.canada.ca/en/services/benefits/ei/ei-sickness.html. See also: https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/employment-insurance-ei/ei-premium-rates-maximums.html.~~

maximum employer contribution is $~~1,403.43~~1,468.77 outside Québec and $~~1,093.47~~1,167.94 in Québec (however, such rate is lower when the employer offers its employee a plan that provides short-term disability insurance).

Most people receiving employment insurance are entitled to 55% of their average weekly insurable earnings. In 2024~~2023~~,[55] the maximum benefits were $~~650~~ 668 per week. Note that these benefits are taxable. They are subject to a one-week waiting period and are payable for a maximum of 14 to 45 weeks.

If the net family income of the eligible worker is $25,921 annually or less, that worker has children and that worker or his spouse receives the Child Tax Benefit, such worker will be considered a low-income family member. He will therefore be eligible for the Employment Insurance Family Supplement.[56]

The payments (benefits) made under Employment Insurance are taxable income.

1.2.1.2 Old Age Security (OAS), Guaranteed Income Supplement (GIS), Allowance and Allowance for the Survivor

Role of the plans

The *Old Age Security Act*[57] is administered by the Department of Employment and Social Development. Different types of benefits are provided. These programs are financed out of the federal government's general tax revenue, not premiums. A person need not be retired to be entitled to benefits. However, high-income retirees (income over $81,761 for 2022) must repay all or part of the benefits received when filing their income tax return.

For the April to June, ~~-~~2023 quarter, the maximum annual income 202~~3~~4 quarter, ~~the maximum annual net income from all sources in 2022 must be less than $134,626 for people aged 65 to 74, and less than $137,331 for people aged 75 and over (the income level at which an individual cannot receive the OAS pension or benefits). (the income level at which an individual cannot receive the OAS pension or benefits) was $142,124 (ata~~At that income level, the ~~-~~entire OAS pension must be reimbursed~~)~~.[58]

55. Effective December 18, 2022, Employment Insurance sickness benefits were extended from 15 weeks to 26 weeks. To receive these benefits, a worker must provide a medical certificate signed by a medical practifioner. See also on the subject Employment Insurance sickness benefits: Government of Canada, *EI premium reduction guide: General information about the Employment Insurance premium reduction*, December 30, 2022.
56. See: Government of Canada, *EI regular benefits - How much you could receive*, 2024-03-20.
See also: Government of Canada, *EI Premium Reduction Program: For employers*, 2023-11-22.
57. *Old Age Security Act*, R.S.C., 1985, c. O-9.
58. See: Government of Canada, Old Age Security, 2024-03-19.

Types of benefits

The income security programs are made up of four benefit plans:[59]

- the basic Old Age Security (OAS) pension;
- tThe Guaranteed Income Supplement (GIS) for OAS pensioners;
- allowance for 60- to 64- year-old spouses or common-law partners of GIS recipients;
- tThe Survivor Allowance for 60- to 64- year-old widowed spouses and common-law partners.

The basic pension (OAS) is determined based on the number of years during which a person lived in Canada after the age of 18. The pension is considered taxable income and may be subject to a recovery tax if the person's annual income exceeds the net world income threshold set for the year.

The amount of OAS benefits (GIS, Allowance and Allowance for the Survivor) is calculated based on a person's marital status and income. These benefits are not considered taxable income.

Eligibility requirements for the Old Age Security (OAS) pension

To be eligible, the person must:

- be 65 years of age or over;
- bBe a Canadian citizen or a legal resident at the time the OAS pension application is approved; and
- hHave resided in Canada for at least 10 years after turning 18.

For a person living abroad, the person must:

- bBe 65 years of age or over;
- hHave been a Canadian citizen or a legal resident of Canada on the day before they left Canada; and
- have resided in Canada for at least 20 years after turning 18.

For the April to June, 20242~~2022~~ quarter, the maximum monthly pension was $~~691.00~~713.34 for people aged 65 to 74 and $7~~60.10~~84.67 for people aged 75 or older.

59. Government of Canada. *Old Age Security payment amounts*, 2024-03-19.

1.2.1.3 Eligibility requirements for the Guaranteed Income Supplement (GIS)

To be eligible for this benefit:

- the applicant must be receiving the basic OAS; and
- tThe annual income of the applicant or couple must be low or non-existent; it cannot exceed a certain limit.

The following was the maximum annual income eligible for GIS benefits and the maximum monthly GIS benefit payment for the April to June, 2023 quarter:

- Single person: $~~20,952~~21,624 ($~~1,032.10~~1,065.47 per month);
- A person whose spouse also receives the basic OAS pension: $~~27,649~~28,560 (combined income) ($~~621.25~~641.35 per month);
- A person whose spouse receives the Allowance: $~~38,736~~39,984 ($~~621.25~~641.35 per month);[60]
- A person whose spouse does not receive the OAS pension: $~~50,208~~51,840 ($~~1,032.10~~1,065.47 per month).[61]

Eligibility requirements for the Allowance and the Allowance for the Survivor

The spouse of a pensioner who is receiving the OAS and GIS may be eligible for a benefit if his income, combined with the spouse's income, does not exceed the $~~38,736~~39,984 permitted maximum for the April to June, 3 quarter. The maximum monthly benefit for the April to June, 2024~~2023~~ quarter was $~~1,312.25~~1,354.69.

To be entitled to the Allowance for the Survivor, a person whose spouse is deceased must be 60 to 64 years of age and not be the spouse of another person. For the April to June, 2023 quarter, the maximum annual income to qualify for the Allowance for the Survivor was $~~28,224~~29,112 (individual income), and the maximum monthly benefit payable was $~~1,564.30~~1,614.89.

1.2.1.4 Canada Pension Plan (CPP)

Role of the plan

The Canada Pension Plan (CPP)[62] is a federal plan applied in nine Canadian provinces and three territories. A province or territory can opt out if it offers a similar program. Only Québec has chosen to set up its own plan, the Québec Pension Plan (QPP). The CPP provides different types of benefits to those who contribute to it as well as to their dependants. All workers 18 years of

60. *Canada Pension Plan*, RSC 1985, c. C-8. See: Government of Canada, *Canada Pension Plan*, 2023-05-15. See also: National Bank Investments, *Quick Facts 2023*. See also: Beneva, *2023 Bulletin on social legislation*.
61. See: https://www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/payments.html.
62. *Canada Pension Plan*, R.S.C., 1985, c. C-8. See: https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-benefit/amount.html. See also: National Bank Investments, *Quick Facts 2021*: https://www.nbinvestments.ca/content/dam/bni/publication/publication-nbi-quick-facts-letter-format.pdf. See also: Beneva, *2023 Social Legislation Bulletin*: https://www.beneva.ca/en/group-insurance/social-legislation-bulletins

age or over must contribute to the CPP when they hold a job in a Canadian province or territory other than Québec.

Types of benefits

The CPP provides several types of benefits, including the following:

- **Retirement pensions:**
  Married couples and *de facto* spouses (or common-law spouses) can voluntarily share their CPP pension. Moreover, CPP contributions made while spouses were living together can be equally divided after a divorce or separation.
- **Disability benefits:**
  Benefits are paid to disabled contributors and their dependant children under 18 years of age or 18 to 25 years of age if they are attending a recognized educational institution full-time.
- **Survivor benefits:**
  Survivor benefits include the lump sum death benefit, the monthly benefits to the surviving spouse and the monthly benefits to children under 18 years of age or 18 to 25 years of age if they are attending a recognized educational institution full-time.
- **Post-retirement benefits:**
  The CPP contributions of a person who continues to work while receiving the CPP retirement pension will go towards post-retirement benefits, which will increase that person's income.

1.2.1.5 Other federal public plans

The *Canada Health Act*[63] provides coverage for certain health care and stipulates the conditions and criteria the provinces and territories must satisfy in order to receive the full amount of negotiated transfer payments relating to medical services so that minimum national standards are maintained for public health care.

Also noteworthy are~~is~~ the interim Canada Dental Benefit for the periods from October 1, 2022 to June 30, 2023 and from July 1, 2023 to June 30, 2024, the Canadian Dental Care Plan (effective June 27, 2024), and the proposed pharmacare legislation.[64]

1.2.2 Québec public plans

This section discusses the eligibility requirements for the Québec public plans as well as the co-ordination or reduction of benefits. These insurance and pension plans fall under the following statutes:

- *Individual and Family Assistance Act*;[65]
- *Act respecting the Québec Pension Plan*;[66]

63. *Canada Health Act*, R.S.C., 1985, c. C-6.
64. Bill C-64 (An Act respecting pharmacare), February 29, 2024. See also: Health Canada, News release, *Moving Forward on Pharmacare for Canadians*, May 24, 2024.
65. *Individual and Family Assistance Act*, CQLR, c. A-13.1.1.
66. *Act respecting the Québec Pension Plan*, CQLR, c. R-9.

- *Act respecting industrial accidents and occupational diseases* (AIAOD);[67]
- *Crime Victims Compensation Act* (CVCA);[68]
- *Automobile Insurance Act* (AIA);[69]
- *Health Insurance Act*;[70]
- *Hospital Insurance Act*;[71]
- *Act respecting prescription drug insurance*;[72] and
- *Act respecting parental insurance*.[73]

Some programs stemming from these statutes are analyzed in the following sub-sections.

1.2.2.1 Société de l'assurance automobile du Québec (SAAQ)

The *Société de l'assurance automobile du Québec* (SAAQ) compensates all Quebeckers who suffer bodily harm due to a road accident, regardless of liability, both in Québec and elsewhere. Various benefits are payable in the case of death and for the purpose of income replacement.

1.2.2.2 Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)

The purpose of the *Act respecting industrial accidents and occupational diseases* (AIAOD) is to provide compensation to workers for employment injuries and the consequences they entail, and to provide for the collection, from employers, of the amounts needed to fund the plan. The CNESST is the agency charged with administering the AIAOD.

The CNESST pays various types of benefits in the event of an industrial accident or occupational disease.

Income replacement indemnity

A worker who becomes unable to carry on his employment by reason of an employment injury is entitled to an income replacement benefit. He is entitled to the income replacement benefit for as long as he requires rehabilitation to become able to carry on his employment again or, if that is not possible, to be able to carry on a suitable full-time employment.

For the work day during which the worker becomes unable to carry on his employment by reason of his employment injury, the employer must pay him 100% of his net salary. For the first 14 days

67. *Act respecting industrial accidents and occupational diseases*, CQLR, c. A-3.001.
68. *Crime Victims Compensation Act*, CQLR, c. I-6.
69. *Automobile Insurance Act*, CQLR, c. A-25.
70. *Health Insurance Act*, CQLR, c. A-29.
71. *Hospital Insurance Act*, CQLR, c. A-28.
72. *Act respecting prescription drug insurance*, CQLR, c. A-29.01.
73. *Act respecting parental insurance*, CQLR, c. A-29.011.

of absence, the employer must pay the worker 90% of his net salary for the periods during which he would normally have worked. As of the 15th day of absence, the CNESST must pay the worker a benefit equal to 90% of his net salary (up to the maximum insurable earnings determined on the date of the occurrence[74]).

Compensation for bodily injury

A worker can also receive compensation for bodily injury if he sustains physical or mental impairment as a result of the employment injury. The compensation is paid as a lump sum, based on his age and the degree of impairment.

Death benefit

The spouse and dependants of a worker who has died as a result of an employment injury are entitled to a death benefit. If the worker has no spouse or dependants at the time of his death, his parents will be entitled to the death benefit. If both parents are deceased, the death benefit will be paid to the worker's succession. The amount of the death benefit is determined on the basis of specific rules if the person entitled to it is disabled.

The funeral expenses are reimbursed to the person who paid them, up to the maximum amount provided by law, and the cost of transporting the body is paid on the basis of the actual cost incurred.

A lump sum indemnity is paid to the spouse or, failing same, to the other dependants, so they can deal with unexpected expenses caused by the worker's death.

Rehabilitation

When a worker sustains permanent physical or mental impairment as a result of an employment injury, he is entitled to the rehabilitation required by his condition. This may include a physical rehabilitation program (physiotherapy treatments, adaptation to a prosthesis, etc.), a social rehabilitation program (personal home assistance, psycho-social services, etc.) or a professional rehabilitation program (evaluation of vocational potential, adaptation to a workstation, etc.).

1.2.2.3 Régime de l'assurance maladie du Québec (RAMQ)

The *Régie de l'assurance maladie du Québec* (RAMQ), which falls under the authority of the Minister of Health and Social Services, administers Québec's Health Insurance Plan.

Since November 1, 1970, coverage under the Health Insurance Plan has been compulsory for every resident or temporary resident of Québec who fulfills the conditions provided for by law.

74. *Commission des normes, de l'équité, de la santé et de la sécurité du travail*. *En cas d'accident ou de maladie au travail... voici ce qu'il faut savoir!*, (in French only), June 2018.

The Health Insurance Plan includes the following services:

- **Medical services:**
  The medical services program is a universal program, which means that anyone covered by the Health Insurance Plan is eligible. To benefit from this program, individuals need only to present their valid health insurance card. The medical services covered by the Health Insurance Plan are those that are medically necessary and rendered by a general practitioner (also called a "family doctor") or a medical specialist.
- **Dental services:**
  They cover most dental services for children under age 10, certain services for all persons 10 years of age or older, and most services for recipients of last-resort financial assistance and their dependants.
- **Optometric services:**
  They cover most optometric services for persons under age 18, persons 65 years of age or older, visually impaired persons and people receiving last-resort financial assistance and their dependants.
- **Other services:**
  In some cases, certain other services are covered, such as devices and prostheses.

Pursuant to section 15 of the *Health Insurance Act* (save for certain listed exceptions[75]) and section 11 of the *Hospital Insurance Act*, no private insurer may enter into or maintain an insurance contract that includes coverage for the cost of an insured service furnished by the RAMQ to a resident, except for the excess cost of insured services rendered outside Québec.[76]

1.2.2.4 Québec Prescription Drug Insurance Plan

A universal Prescription Drug Insurance Plan administered by the RAMQ was set up on January 1, 1997.[77] Prescription drug insurance is mandatory in Québec. Persons who have access to group insurance or are covered through their spouse, or through their father or mother if they are 18 years of age or under (25 years of age or under for a student), must subscribe to that plan. Persons who do not have access to such a plan are insured through the RAMQ and must pay their contribution when filing their provincial tax return. This topic is covered in Chapter 2.

75. Including, in particular, telehealth services (*Regulation respecting the application of the Health Insurance Act*, CQLR, c. A-29, r. 5, ss. 22(d) and (i)).
76. See however: *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791.
77. See the document produced by the RAMQ entitled *Info assurance médicaments* (in French only), September 2021. See also the document produced by the RAMQ entitled *Assurance médicaments* (in French only), 2020.

1.2.2.5 Québec Parental Insurance Plan (QPIP)

The Québec Parental Insurance Plan (QPIP) came into force on January 1, 2006. It is designed to financially support new parents, encourage them in their desire to have children and support them as they devote more time to their children in their first months of life.

The plan offers four types of benefits:

- maternity benefits;
- pPaternity benefits;
- pParental benefits; and
- aAdoption benefits.

This plan is financed through contributions from employers, employees and self-employed workers. *Revenu Québec* is in charge of collecting contributions to the Québec Parental Insurance Plan.[78]

Eligibility criteria

To be eligible, a person must:

- have contributed to the QPIP;
- be the parent of a child born or adopted on or after January 1, 2006;
- be a wage earner residing in Québec at the start of the benefit period, or reside in Québec at the start of the benefit period and have resided in Québec on December 31 of the year preceding the start of the benefit period;
- have experienced a reduction of at least 40% in his usual weekly employment income or in the time spent on his business activities;
- be a wage earner with at least $2,000 of insurable earnings during the qualifying period, which is usually the 52 most recent weeks;
- be a self-employed worker with at least $2,000 of insurable earnings during the qualifying period, which is usually the 52 most recent weeks.

78. The maximum contribution rates for ~~2023~~ 2024 are $~~449.54~~464.36 for employees, $~~629.72~~650.48 for employers and $~~798.98~~825.32 for self-employed workers. The maximum insurable income is $9~~1~~4,000 for ~~2023~~2024. See: Québec Parental Insurance Plan, *Cotisations et revenu maximal assurable* (in French only)~~https://www.rqap.gouv.qc.ca/en/about-the-plan/tables-of-benefits~~. See also: Québec Parental Insurance Plan, ~~*Cotisations et revenu maximal assurable*~~*Tables of Benefits* ~~(in French only)~~, ~~January~~ April 1~~1~~, ~~2023~~2024.

1.2.2.6 Québec Pension Plan (administered by *Retraite Québec*)

Role of the Act

The *Act respecting the Québec Pension Plan* is administered by *Retraite Québec*, formerly known as the *Régie des rentes du Québec*.[79] All workers 18 years of age or over must contribute to it if they earn over $3,500 per year and do not receive disability benefits. Employers must also contribute to this plan.[80]

It should be noted that the 2019 changes to the QPP are intended to improve the standard of living of future generations of retirees.[81] The establishment of this additional plan, which enhances the QPP and meets the expectations of both workers and employers, will reach maturity in 2065.[82] ~~Moreover,~~O~~-o~~ther, additional significant changes were made effective January 1, 2024 for disabled workers aged 60 to 64.[83]

Retraite Québec administers various plans and offers various benefits or compensation:

- a retirement pension;
- disability benefits, which include the disability pension (monthly maximum: $~~1,537.13~~1,606.75 in ~~2023~~2024), the pension for a disabled person's child, and the additional amount for disability. The disability pension is taxable; and
- survivors' benefits (death benefit, surviving spouse's pension, and orphan's pension).

79. On January 1, 2016, the *Commission administrative des régimes de retraite d'assurances* (CARRA) and the *Régie des rentes du Québec* (RRQ) became one entity called *Retraite Québec*.
80. There are some exceptions: employment as a member of the Canadian Forces or Royal Canadian Mounted Police (they contribute to the Canada Pension Plan (CPP) even if they work in Québec); employment conferring the right to a pension plan established by the *Courts of Justice Act* (chapter T-16) or the *Judges Act* (R.S.C. 1985, c. J-1); with certain exceptions, employment in Québec by another government or an international organization; employment in agriculture, an agricultural enteprise, horticulture, fishing, hunting, trapping, forestry, logging or lumbering if the employerays the employee less than $250 cash remuneration during the year or hires the employee, in return for cash remuneration, for fewer than 25 working days during the year; employment of a person from a country other than Canada in a teaching position, further to an exchange; employment of a child or dependent, for which no cash remuneration is paid, where the person employed is the child or a dependent of the employer the Act respecting the *Québec Pension Plan*). In addition to these exceptions, some others exceptions are listed on the website of Revenu Québec (see: Revenu Québec, *Excepted Employment - Québec Pension Plan (QPP) Contributions*).
81. *An Act to enhance the Québec Pension Plan and to amend various retirement-related legislative provisions*, S.Q. 2018, c. 2.
82. See: Retraite Québec, *The Québec Pension Plan*.
83. These changes were made under *An Act respecting the implementation of certain provisions of the Budget Speech of 25 March 2021 and amending other provisions*, S.Q. 2022, c. 3.

Eligibility requirements for a retirement pension

The person must:

- be 65 years of age or over; or
- be 60 to 64 years of age; and
  - have contributed for at least one year;
  - not necessarily have stopped working. For example, a person receiving a retirement pension from *Retraite Québec* and earning employment income of more than $3,500 (exempted amount) will be entitled to the retirement pension supplement.[84]

Maximum monthly benefits

In 20242023, the yearlyyear'sly maximum yearly pensionable earnings (YMPE) threshold wais $66,600.68,500 and the year's additional maximum pensionable earnings (YAMPE) is $73,200. The maximum contribution for an employee and an employer is $4,038.404,160 each ($8,076.808,320 for a self-employed worker),individualworker) on earnings under the YMPE, and $4,348 for each employee and employer ($8,696 for a self-employed individual) on earnings, including theunder the YAMPE additional plan.[85]

The maximum monthly benefit (retirement pension) in 20242023 is $1,306.571,364.60 for a beneficiary aged 65. It increases to $1,855.332,166.98 if the pension begins at age 7270 and decreases to $836.20873.34 if the pension begins at age 60.[86]

For a disability to be recognized as severe and permanent, the eligible person must be unable to do any type of full-time work. *Revenu Québec* does not consider a disability to be severe if an eligible person aged 65 or older can do work that takes his limitations into account and for which he would earn more than $20,17120,746 in 20232024. A severe disability must also be permanent. A severe disability is permanent if it is of expected to last indefinitely duration, without any possibility for improvement.[87]

Temporary disability (or temporary incapacity to work) is not covered under the QPP.

Factors such as language, the availability of work and place of residence are not taken into account in the medical evaluation of a contributor's ability to work.

For *Retraite Québec* to deem a contributor aged 60 to 65 disabled because he is unable to do his regular work, the person must have contributed to the Plan for at least four of the last six years in his contributory period.

A contributor aged 60 to 64 who is disabled or applying for disability benefits will automatically receive In some cases and under certain conditions, a contributor may be eligible for a retirement pension under the QPP while his their application for disability benefits is being processed.

84. See: Retraite Québec, *Retirement pension supplement*.
85. See: Retraite Québec, *Québec Pension Plan Figures*. See also: Retraite Québec, *Contributions to the Québec Pension Plan*.
86. See: Retraite Québec, *Calculation of your retirement pension under the Québec Pension Plan*.
87. See: Retraite Québec, *Disability benefits under the Québec Pension Plan*.

In such cases, if *Retraite Québec* deems the contributor to be disabled and the contributor chooses to receive a disability pension, he must cancel his retirement pension and repay all amounts he has received since the first retirement pension payment.[88]

Co-ordination or reduction of the retirement pension

At age 65, the disability pension is automatically replaced by the retirement pension. The amount of this retirement pension will then be reduced to take into account the years during which the contributor received a disability pension. However, effective January 1, 2024, a portion of the disability pension will be converted into a retirement pension at age 60 (with opt-out rights), and the actuarial adjustment applicable to the retirement pension received before age 65 will be reduced.[89]

The *Retraite Québec* retirement pension will not be reduced to take into account any private insurance or retirement plans. However, private plans may contain a clause providing for a reduction of benefits to take into account the retirement pension paid by *Retraite Québec*.

1.2.2.7 Other Québec public plans

Other Québec public plans include the crime victims compensation plan (IVAC), which stems from the *Act to assist persons who are victims of criminal offences and to facilitate their recovery* (AAPVCO),[90] which replaced the *Crime Victims Compensation Act* (CVCA),[91] on October 13, 2021,[92] and the last-resort financial assistance (social assistance) program, which stems from the *Individual and Family Assistance Act*.[93] Note that private insurance plans cannot deduct amounts received by an insured under the last-resort financial assistance program from any disability insurance benefits to be paid under the private insurance plans.

1.2.3 Co-ordination and integration of benefits between public plans and private insurance plans

Co-ordination of benefits between the various public plans

More than one public plan may apply to a given situation. There are therefore co-ordination rules so as to avoid the duplication of benefits or determine which plan will be the first payer. For example, a person who is the victim of an automobile accident while performing his work must submit his claim to the CNESST under the *Act respecting industrial accidents and occupational diseases*

88. See: Retraite Québec, *Disability pension under the Québec Pension Plan*.
89. These amendments derive from Bill 17, subsequently the Act respecting the implementation of certain provisions of the Budget Speech of 25 March 2021 and amending other provisions, S.Q. 2022, c. 3, and ~~are scheduled to~~ c~~o~~ame into force on January 1, 2024. As of January 1, 2025, the actuarial adjustment applicable to the retirement pension received before age 65 will no longer be reduced. See: Retraite Québec, *Changes to the Québec Pension Plan*.
90 *Act to assist persons who are victims of criminal offences and to facilitate their recovery*, CQLR, c. P-9.2.1.

92. *Crime Victims Compensation Act*, CQLR c. I-6. For more information, visit the IVAC website.
93 *Individual and Family Assistance Act*, CQLR c. A-131.1

(AIAOD)[94] and will be compensated under this plan. Sometimes, the beneficiary must choose between one recourse or another. In other cases, there is a co-ordination of benefits, as with the disability pension paid by *Retraite Québec*, which is deducted from the income replacement benefit paid by the CNESST.

EXAMPLE 1

Jean is a trucker employed by Transport XYZ. He is involved in a traffic accident while working and becomes disabled. Jean must claim his benefits from the CNESST, which is the first payer according to the *Automobile Insurance Act*.[95]

EXAMPLE 2

Monique arrives at the scene of a traffic accident. While attempting to help one of the victims, she is hit by a car. Monique can claim benefits under the *Automobile Insurance Act*[96] or the *Act to promote good citizenship*.[97]

Co-ordination of benefits paid under public plans or annuity plans and benefits paid under private insurance plans

Aside from some exceptions, there is no legislative rule of priority between public and private plans or among the various private plans. However, insurers normally include co-ordination clauses in their insurance contracts to avoid the duplication of benefits and to reduce the cost of premiums. The courts

94. André LAPORTE, "Les différents régimes d'indemnisation à la suite d'un accident automobile," in *Barreau du Québec – Service de la formation continue*, *Développements récents en matière d'accidents d'automobiles, 2006*, Vol. 257, Cowansville, Les Éditions Yvon Blais, 2006, p. 119
95. *Automobile Insurance Act,* CQLR, c. A-25, art. 83.63.
96. *Automobile Insurance Act,* CQLR, c. A-25, art. 86.64.
97. *Act to promote good citizenship,* CQLR, c. C-20.

have interpreted reduction clauses as a simple method of calculating benefits.[98] These contractual provisions provide for the reduction of the benefits the insurer would normally have paid by taking into account the benefits the insured may receive from public plans. In all cases, one must refer to the clause in the insurance contract to determine what is covered by the co-ordination.

These clauses may also provide for the reduction of the benefits the insured is entitled to receive from another insurer.

EXAMPLE 1

Henri became disabled following a work accident. He is covered by a disability insurance contract. The benefits he will receive from his private insurance plan will be reduced by the income replacement benefit he receives from the CNESST.

EXAMPLE 2

Michèle became disabled following a critical illness. She is covered by a disability insurance contract. She is also entitled to a disability pension from *Retraite Québec*. The benefits she receives from her private insurance plan will be reduced by the disability pension she receives from *Retraite Québec*.

Types of co-ordination

Insurance contracts that provide salary or disability insurance benefits contain two principal types of co-ordination clauses:

- an integration clause (often referred to as a “reduction” or “direct integration” clause);

98. *Pelletier c. Sun Life, Cie d’assurance-vie*, [1983] C.A. 1 1983-01-13; *Messer* v. *Constellation Assurance Co.*, [1992] R.R.A. 413 (C.S.), 1992-03-16; *Léger v. Services de santé du Québec, S.S.Q. Mutuelle d’assurance groupe*, J.E. 83-222 (C.S.), 1983-01-20 ; *Légaré v. Industrielle Alliance (L’), assurances et services financiers Inc.*, 2007 QCCA 1840 (CanLII); *Lavoie* v. *S.S.Q. Vie*, 2003 CanLII 33200 (QC CS); *SSQ, Société d’assurance-vie Inc. v Renaud*, 2015 QCCS 566 (CanLII), para. 42; *SSQ, Société d’assurance-vie Inc. v. Thouin*, 2005 CanLII 137 (QC CQ);*SSQ, Société d’assurance-vie Inc. v. Renaud*, 2015 QCCS 566, 2015-02-17; *Lamothe v. Joncas*, 2021 QCCQ 13038 (CanLII), para. 26; *Cavaliere v. Association de bienfaisance et de retraite des policiers et policières de la Ville de Montréal*, 2021 QCCQ 8260 (CanLII), paras. 17 and 18; *Compagnie d’assurances Standard Life v. Guitard*, 2006 QCCA 451; *Proulx v. Compagnie d’assurance-vie RBC*, 2006 QCCQ 164, confirmed by *Proulx v. Compagnie d’assurance-vie RBC*, 2007 QCCA 1427 (CanLII); *Rapino v. La Maritime, Cie d’assurance*, 2003 CanLII 3868 (CanLII) (QC CQ); *Grimard-Szpyt and Commission administrative des régimes de retraite et d’assurances*, 2014 QCTA 531; *Mutuelle du Canada, Cie d’assurance sur la vie v. Ouellet*, 1990 CanLII 2943 (QCCA); *Dufour v. Desjardins Sécurité financière, Cie d’assurance-vie*, 2008 QCCS 568; *Boulanger v. Assurance-vie Desjardins Laurentienne inc.*, 2003 CanLII 21863 (QCCS); *Personnelle vie, corporation d’assurance v. Pouteau*, 2003 CanLII 20551 (QCCA); *Tremblay v. Alliance cie mutuelle d’assurance-vie*, [1990] R.R.A. 928 (C.S.). See also *a contrario*: *J.M. Asbestos inc. and Syndicat national de l’amiante d’Asbestos Inc. (C.S.D.)*, D.T.E. 99T-872 (T.A.), 1999-07-06 (an employer cannot stop paying disability benefits when an employee retires if this exclusion is not clearly set outn the insurance contract).

- aA limitation clause (often referred to as a “co-ordination” or “indirect integration” clause).

Insurance contracts can also include both an integration clause and a limitation clause.

Integration clause

By applying this type of clause, the insurer can reduce the benefits it pays. This is often the case with respect to benefits granted by various public agencies, such as the CNESST, the SAAQ and *Retraite Québec*.

EXAMPLE 1

- Insurer's benefits: $1,000
  Retraite Québec's benefits: $400
- $1,000 -– $400 = $600

The new benefits to be paid by the insurer after applying the integration clause will be $600.

EXAMPLE 2

- Insurer's benefits: $1,000
- CNESST benefits: $1,200
- $1,000 -– $1,200 = -$200

The new benefits to be paid by the insurer after applying the integration clause will be $0.

Limitation clause

The application of this clause means that the total benefits received from one or more sources of income must not exceed a percentage of the salary stipulated in the contract. Any excess will be deducted from the benefits paid by the insurer.

In example 1, the insurance policy contains both an integration clause (*Retraite Québec* [disability]) and a limitation clause (*Retraite Québec* [disability]). In example 2, the insurance policy contains only a limitation clause (other disability insurance). In example 3, the insurance policy contains both an integration clause (CNESST, SAAQ, IVAC, *Retraite Québec* [disability]) and a limitation clause (*Retraite Québec* [disability] as well as other disability insurance [referred to in the insurer's limitation clause]).

EXAMPLE 1

(THE POLICY CONTAINS BOTH AN INTEGRATION CLAUSE AND A LIMITATION CLAUSE)

- Salary: $25,000 gross per year or $18,750 net per year
- Coverage percentage: 66.67% of gross salary
- Limit (ceiling): 85% of net salary
- *Retraite Québec* benefits (disability): $900

Indemnity paid by the insurer	$25,000 × 66.67% ÷ 12 = $1,388.96 per month (however, since this amount is greater than the limit of $1,328.13 in the contract, $1,328.13 will become the insurer's maximum indemnity)
Calculation of the limit	$18,750 × 85% ÷ 12 = $1,328.13
Benefit after integration	$1,328.13 -– $900 = $428.13
Amount to be paid by the insurer	$1,328.13 -– $900 = $428.13

In practical terms, in this case, the insured will receive a total of $1,328.13 per month, or $900 from *Retraite Québec* and $428.13 from the insurer.

EXAMPLE 2

(THE POLICY CONTAINS A LIMITATION CLAUSE)

- Salary: $50,000 gross per year or $37,500 net per year
- Coverage percentage: 50% of gross salary
- Limit (ceiling): 90% of net salary
- Benefits from another insurer (disability): $900

Limit	$37,500 × 90% ÷ 12 = $2,812.50 per month
Indemnity paid by the insurer	$50,000 × 50% ÷ 12 = $2,083.33 per month
Calculation of the limit	$2,083.33 + $900 = $2,983.33
	$2,983.33 - $2,812.50 = $170.83
	(the insurer will deduct $170.83, because the limit is exceeded by this amount)
Amount to be paid by the insurer =	$2,083.33 - $170.83 = $1,912.50

In practical terms, in this case, the insured will receive a total of $2,812.50 per month, or $900 from *Retraite Québec* and $1,912.50 from the insurer.

EXAMPLE 3

(THE POLICY CONTAINS AN INTEGRATION CLAUSE, A LIMITATION CLAUSE AND OTHER DISABILITY INSURANCE [REFERRED TO IN THE INSURER'S LIMITATION CLAUSE])

In this case, the integration clause applies to the *Retraite Québec* benefits (disability), and the limitation clause applies to the *Retraite Québec* benefits (disability) and to benefits received under any other disability insurance policy.

The benefit payable by the insurer will therefore be calculated as follows:

- Salary: $50,000 gross per year or $37,500 net per year
- Coverage percentage: 66.67% of gross salary (benefit from the insurer: $50,000 ÷12 months × 66.67% = $2,777.92)
- Limit (ceiling): 100% of net salary ($3,125)
- *Retraite Québec* (disability): $1,000
- Other disability insurance (other insurer): $1,100

Limit (ceiling) per month: $37,500 × 100% ÷ 12 = $3,125.00

Indemnity paid by the insurer: (maximum payable by the insurer) $50,000 × 66.67% ÷ 12 = $2,777.92 per month

Benefit after integration: $2,777.92 -– $1,000 = $1,777.92

Calculation of the limit: $1,777.92 + $1,000 (*Retraite Québec* [disability]) + $1,100 (benefit from the other insurer) = $3,877.92

Amount to be paid by the insurer = Limit (ceiling) = $3,125

Total from all income sources
= $2,777.92 (insurer)
+ $1,000 (*Retraite Québec*)
+ $1,100 (other insurer)
= $3,877.92

Excess = $752.92 ($3,877.92 - $3,125)

Amount to be paid by the insurer
= $1,777.92 (benefit payable by the insurer after integration) -– $752.92 (excess) = $1,025

In practical terms, in this case, the insured will receive a total of $3,125.00 per month, or $1,000 from *Retraite Québec*, $1,100 from the other insurer and $1,025 from the insurer.

1.3 Other important Québec legislation

1.3.1 Québec *Charter of human rights and freedoms*

The Québec *Charter of human rights and freedoms*[99] is different from the *Canadian Charter of Rights and Freedoms*, which will be discussed below. They do not have the same constitutional status or scope. First, the Québec Charter is not incorporated into the Canadian Constitution.

Moreover, the Québec Charter, which was passed by the National Assembly, can be amended according to the usual procedure and is therefore an ordinary law in the formal sense. However, in practice, in regard to sections 1 to 38, the nature of the Charter is such that it may not be altered, amended or repealed, nor may exceptions be created to its provisions, save except by clear legislative pronoucement. In short, in Québec law, in matters within the jurisdiction of the National Assembly, the Québec Charter has been elevated to the rank of a source of fundamental law. This quasi-constitutional nature ensures that it prevails over ordinary legislation. Accordingly, "all Québec law should be interpreted in conformity with the Québec Charter." Simply put, "the provisions of the Charter" that protect fundamental rights form an integral part of every statute without the statute itself having to say so. Under section 52 of the Québec Charter, the Legislature of Québec confirms that the Charter is above other Québec laws, giving it "an identity that is independent"[100] of the statutes of Québec.

Moreover, the scope of the Québec Charter is different from that of the Canadian Charter, which applies exclusively to relationships between the State and individuals. The Québec *Charter of human rights and freedoms* applies both to relationships between individuals and the State (as broadly defined) and to relationships between one individual and another, including dealings between companies and their employees or clients, and it applies to all areas falling within Québec's legislative powers.

Given that insurance essentially involves private relationships and falls under provincial jurisdiction, the Québec *Charter of human rights and freedoms* constitutes a significant source of law that is increasingly referred to before the courts by those who feel they have been harmed. One of the basic principles in the Québec Charter as it applies to insurance matters stems from its section 10 which

---

99. *Québec Charter of Human Rights and Freedoms*, CQLR, c. C-12.
100. Christian BRUNELLE and Mélanie SAMSON, « L'objet, la nature et l'interprétation des Chartes des droits », in École du Barreau du Québec, Droit public et administratif, Collection de droit 2023-2024, vol. 8, Montréal, Éditions Yvon Blais, 2023, p. 25 et suivantes; *Charter of Human Rights and Freedoms,* CQLR c. C-12, art. 52; *Winnipeg School Division No. 1 v. Craton*, [1985] 2 S.C.R. 150, 153, 154 et 156; *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, 251 (paragr. 91); *Commission des droits de la personne et des droits de la jeunesse du Québec v. Montréal (City)*, [2000] 1 S.C.R. 665 *Commission des droits de la personne et des droits de la jeunesse du Québec v. Montréal (City)*, [2000] 1 S.C.R. 665, 683 (paragr. 27); *Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3, paragr. 32;*Commission des droits de la personne et des droits de la jeunesse du Québec v. Communauté urbaine de Montréal*, [2004] 1 S.C.R. 789, paragr. 20; *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, [2015] 2 S.C.R. 789, paragr. 30; *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R.. 791, paragr. 25; *Béliveau St-Jacques v. Fédération des employées et employésde services publics inc.,* [1996] 2 SCR 345, paragr. 132; *Gauthier c. Commission scolaire Marguerite-Bourgeoys*, 2007 QCCA 1433 (CanLII), paragr. 51.

provides that no one may discriminate on the basis of race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

However, section 20.1 of the Québec *Charter of human rights and freedoms* provides that "[i]n an insurance or pension contract;, a social benefits plan;, a retirement, pension or insurance plan;, or a public pension or public insurance plan, a distinction, exclusion or preference based on age, sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefore is a risk determination factor based on actuarial data." That section also provides that "[i]n such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10."[101]

It is worth noting that the Court of Québec has already ruled that refusing to insure a person because they have a criminal record does not infringe on the right to equality provided for in section 10 of the *Charter of human rights and freedoms*. The Court determined that this distinction does not relate to the recognition and exercise of the right to dignity, honour or reputation or to any other right and that no right to insurance existed. In the same matter, the Court of Québec also ruled that having a criminal record was not a social condition within the meaning of section 10 of the Charter.[102]

1.3.2 *Insurers Act* and *Regulation under the Act respecting insurance*

The *Insurers Act* entered into force on June 13, 2019, pursuant to *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money, and the operation of financial institutions*.

101. *Audet et Commission de la construction du Québec*, 2012 QCCRT 505 (CanLII), Kim Legault, administrative judge; *Kowalewski et Commission de la construction du Québec*, 2012 QCCRT 335 (CanLII), Mtre. Sophie Mireault, administrative judge; *Piro et Commission de la construction du Québec*, 2017 QCTAT 5778, Yves Lemieux, administrative judge; *Syndicat des salariés de Lactantia (CSD) et Aliments Parmalat inc. (union grievance)*, 2005 CanLII 92591 (QC SAT), Mtre. Denis Tremblay, arbitrator; *R.P. v. Régie des rentes du Québec*, 2008 QCTAQ 041251, Mtre. Odette Lacroix, administrative judge; *Agropur, coopérative agro-alimentaire et Syndicat des salariées et salariés de la fromagerie (CSD) Robert Janelle*, D.T.E. 2001T-120 (T.A.), Mtre. Robert Choquette, arbitrator (an employee over the age of 65 who wants to be covered by an insurer rather than the RAMQ Public Prescription Drug Insurance Plan must bear the cost of the additional premium alone); *Commission des droits de la personne et des droits de la jeunesse v. Industrielle Alliance, assurances auto et habitation inc.*, 2013 QCTDP 7, Michèle Pauzé, J., Mtre. Claudine Ouellette and Mtre. Jean-François Boulais, assessors. See also sections 79.3, 81.15 and 84.0.8 of the *Act respecting labour standards*, CQLR, c. N-1.1; *Barry Callebault Canada inc. et Syndicat des salariées et salariés de Barry Callebault Canada inc., usine de St-Hyacinthe (group grievance)*, D.T.E. 2010T-801 (T.A.), Mtre. Serge Brault, arbitrator (an employer is not required to contribute to an employee's group RRSP while the employee is on sick leave or parental leave because a group RRSP is not a pension plan within the meaning of the *Act respecting labour standards*).
102. *Wagner v. I.N.G., Le groupe Commerce, compagnie d'assurances*, 2001 CanLII 24422 (QC CQ).

The *Insurers Act* replaces the *Act respecting insurance,*[103] which came into force on October 20, 1976. The *Insurers Act* subsequently reformed all the rules relating to insurance in Québec. The first part of this statute originally included rules relating to insurance contracts; those provisions were incorporated into the *Civil Code of Lower Canada* in force at the time. The second part was incorporated into the *Act respecting insurance* as it existed until June 12, 2019.

Purpose of the Act

This statute sets out the rules relating to the setting up (creation) and administration of Québec-chartered-insurers and governs all insurers operating in Québec. It also deals with certain powers of the AMF which, pursuant to the Act, is responsible for overseeing the activities of insurers in Québec.

The *Insurers Act* governs the issuance of licences to insurers and sets out the rules relating to the assets, reserves, investments and record-keeping of insurers. It is complemented by the *Regulation under the Act respecting insurance*,[104] which includes certain rules relating to advertising, in order to protect the public. *The Insurers Act* and the regulation thereunder thus constitute an important source of law with respect to insurance of persons.

1.3.3 *Act respecting the distribution of financial products and services* (Distribution Act)

The *Act respecting the distribution of financial products and services*[105] (Distribution Act) is an important source of law with respect to the distribution of insurance in Québec. It replaced the *Act respecting market intermediaries* as of October 1, 1999 (some provisions, however, came into force on August 26, 1998, and others on February 24, 1999, and others still on July 19, 1999).

Amendments, some significant, were recently made to the Distribution Act pursuant to *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*.[106]

Regulation of types of distribution

The Distribution Act governs not only representatives and insurance firms, but also the way insurance is distributed.

103. *Act respecting insurance*, CQLR, c. A-32.
104. *Regulation under the Act respecting insurance,* CQLR, c. A-32.1, r. 1. A new implementing regulation aligned with and adjusted and complementary to the Insurers Act is expected to be published shortly. Until this new implementing regulation is published and comes into force, the Regulation under the Act respecting insurance will continue to apply with the necessary adjustments.
105. *Act respecting the distribution of financial products and services,* CQLR, c. D-9.2.
106. *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation,* S.Q. 2018, c. 23. This Act (Bill 141), which proposes a reform of the laws governing the financial sector, came into force on June 13, 2018 (with some exceptions).

Regulations relating to the distribution of financial products and services

The purpose of the regulations adopted under the Distribution Act, which are also a major source of insurance law, is to specify the content of certain rules or the manner in which they are to be applied.

Regulations governing the activities of insurance representatives

The following are some of the regulations that govern the activities of insurance representatives:

- *Regulation respecting the pursuit of activities as a representative*;
- *Regulation respecting the registration of firms, representatives and independent partnerships*;
- *Regulation respecting firms, independent representatives and independent partnerships*;
- *Regulation respecting the keeping and preservation of books and registers*;
- *Regulation respecting fees and contributions payable*;
- *Code of ethics of the Chambre de la sécurité financière*;
- *Regulation of the Chambre de la sécurité financière respecting compulsory professional development*;
- *Regulation respecting information to be provided to consumers*; and
- *Regulation respecting the issuance and renewal of representatives' certificates.*

The *Regulation respecting Alternative Distribution Methods*[107] also came into force on June 13, 2019.

The Distribution Act and the regulations thereunder will be discussed in detail in Chapter 4 when we review that statute and the rules relating to the activities of insurance of persons representatives.

1.3.4 *Act respecting the protection of personal information in the private sector* (APPIPS)

Application of the APPIPS

The *Act respecting the protection of personal information in the private sector*[108] (APPIPS) came into force on January 1, 1994. It applies to every person who carries on business in Québec and has a major impact on insurance of persons.

107. *Regulation respecting Alternative Distribution Methods*, CQLR, c. D-9.2, r. 16.1. The AMF published its *Notice relating to the application of the Regulation respecting Alternative Distribution Methods* on May 15, 2019. See also: Autorité des marchés financiers, *Notices - Distribution of financial products and services*.
108. *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1.

Moreover, the National Assembly passed significant changes to the *Act respecting the protection of personal information in the private sector* on September 21, 2021.[109] The main changes concern, in particular, the handling of incidents affecting the confidentiality of personal information, requirements relating to the consent that must be obtained prior to the collection, use, communication or release of personal information, and changes to the penal provisions applicable to violations of the Act, including increased fines.

Persons governed by the APPIPS

This statute imposes strict obligations on the operators of businesses in Québec that collect, hold, use and communicate personal information about natural persons. Accordingly, insurance firms, insurance of persons representatives, employers, unions and associations must abide by its requirements.

Information protected by the APPIPS

The APPIPS was enacted to enforce the provisions of the C.C.Q. relating to the protection of privacy (arts. 3 and 35 to 41 C.C.Q.). However, it is important to note that this Act applies to information allowing a natural person to be identified (name, address, including e-mail addresses, date of birth, social insurance number, etc.). Therefore, it does not protect information relating to businesses or legal persons. Personal information held by a public body is governed by another statute (the *Act respecting Access to documents held by public bodies and the Protection of personal information*).[110]

Rules relating to the collection of information

Any person carrying on a business may, provided there is a serious and legitimate reason, establish a file on a natural person, indicating its object (s. 4 APPIPS). When establishing such a file, a notice must be given to the natural person stating the object of the file, the use of the information, the individuals within the business who will have access to the information, and the rights of access and rectification.

109. See: Commission d'accès à l'Information, Rapports, études et documents officiels (in French only).
110 See also the Act respecting Access to documents held by public bodies and the Protection of personal information, CQLR, c. A-2.1.

The object of a file is the purpose for which it is established. The information requested must be necessary[111] for the stated object of the file (s. 5 APPIPS).

Furthermore, a business collecting personal information may collect such information only from the person concerned, unless the latter consents to collection from third persons (s. 6 APPIPS).

Security measures

A business that holds personal information must take and apply the security measures necessary needed to ensure that the personal information remains confidential (s. 10 APPIPS). This could mean:

- locking up files;
- ensuring the security of the premises;
- training employees on the importance of protecting personal information; or
- installing reliable computer security systems.

Rules relating to the communication of information

With some exceptions, the person concerned must give his consent to the business communicating personal information about him to a third person or to the use of the information for purposes not relevant to the stated object. Such consent must be manifest, free and enlightened, and must be given for specific purposes.[112]

Effect of the APPIPS on the practice of insurance

The APPIPS is a very important source of law in insurance of persons. Personal information is the cornerstone of any insurance business. It is therefore not surprising that this statute has a considerable effect on the practice of this activity. However, it is not the only legislation to have such an impact,

as the APPIPS sets out the rules relating to the distribution of financial products and services by insurance of persons representatives and contains specific provisions with respect to the protection of personal information. It is therefore in the absence of provisions in the Distribution Act that insurance of persons representatives must refer to the APPIPS, which sets out the general rules in this regard.

---

111. The word “necessary” must be interpreted narrowly in the sense of “indispensable,” “essential” or “vital.” Something that is merely convenient, useful, advantageous or expedient is therefore not necessary within the meaning of the APPIPS (*Regroupement des comités logement et associations de locataires du Québec v. Corporation des propriétaires immobiliers du Québec*, investigation report, [1995] C.A.I. 370 (C.A.I.); *Syndicat des employées et employés professionnels-les et de bureau, section locale 57 v. Caisse populaire Saint-Stanislas de Montréal*, [1999] R.J.D.T. 350 (T.A.); *Praderes v. Les Immeubles de la Montagne Ste-Catherine (1974) inc.*, PV 97 17 29, April 4, 2001, M. Laporte, E.R. Luticone, D. Boissinot; *Gauthier v. Nautilus Plus inc.*, PV 98 14 62, February 12, 2002, M. Laporte, J. Stoddard, C. Constant).
112. See, for example, *Lavoie v. Industrielle Alliance, assurances et services financiers inc.*, 2014 QCCS 6316, Alicia Soldevila J. (transmission of personal information to MIB inc., a risk management company that provides services to life and health insurers in the North American market).

1.3.5 *An Act respecting prescription drug insurance* (Québec)

In Québec, everyone must be covered by prescription drug insurance at all times. Two types of insurance plans offer such coverage:[113]

- the public plan;[114]
- private plans.

The public plan

The Public Prescription Drug Insurance Plan, which came into force on January 1, 1997, is administered by the RAMQ. It is intended for persons who are not eligible for a private group insurance plan covering prescription drugs, for persons aged 65 or over, and for beneficiaries of last-resort financial assistance, and other holders of a claim booklet. This plan also covers children of persons registered for the plan.

Private plans

Private prescription drug insurance plans are usually available in the form of group insurance or uninsured employee benefit plans (ASO plans). Private plans are particularly common in the workplace, where group insurance often forms part of the employee benefits offered by employers to their employees. Associations, professional orders and unions also offer this type of plan to their members. A person may also be eligible through their spouse or, in the case of minors or students, through their parents. Persons who are eligible for such a plan must join it and must cover their spouse and dependants.

Only those who are not eligible for a private plan may register for the public Prescription Drug Insurance Plan, except persons 65 years of age or over.

Coverage varies from one private plan to another depending on the agreement entered into between the employer or association and the insurer. However, in Québec, all private insurers offering prescription drug insurance must fulfill minimum conditions regarding the coverage they provide and the financial participation they require from Québec residents they insure. Chapter 2 and the section in this Chapter on the Québec Prescription Drug Insurance Plan deal with this topic.

1.3.6 *Supplemental Pension Plans Act*

Certain businesses choose to contribute financially to their employees' retirement.

113. See the document produced by the RAMQ entitled *Info assurance médicaments*, September 2021 (in French only). See also: *Assurance médicaments,* RAMQ, 2020 (in French only).
114. See also *Dufour v. Agence du revenu du Québec*, 2017 QCCA 1409, in which the plan arising from the *Veterans Health Care Regulations* was deemed equivalent to the RAMQ public plan.

They do so through a supplemental pension plan (also referred to as a “registered pension plan” or “pension fund” - a synonym for “retirement fund” - or simply “pension plan”). Excluding businesses that fall under federal jurisdiction, these plans are governed, in Québec, by the *Supplemental Pension Plans Act*[115] (the (SPPA), except for public and parapublic sector employees.[116]

All the Canadian provinces, except Prince Edward Island, have passed legislation similar to the SPPA. To determine which provincial law applies to a particular individual, we must consider where the person works, not where (s)he or she resides, unless the business is federally regulated. For example, the SPPA may not apply to a resident of Québec, but may apply to a resident of Ontario.

Some employers may decide to offer group RRSPs. This type of contribution is discussed in Chapter 3.

Businesses with 10 or more employees are required to offer a pension plan under the *Voluntary Retirement Savings Plans Act*. (s. 45), unless the employees have an opportunity to make contributions, through payroll deductions, to a designated registered retirement savings plan or tax-free savings account within the enterprise of the employer, or belong to a category of employees who benefit from a registered pension plan (supplemental pension plan) within the meaning of the *Income Tax Act* (federal) to which this employer is a party. This topic is also discussed in Chapter 3.

In the case of a pension plan, with the exception of the VRSP, the employer is required to contribute, and employees are also often required to do so. Except in the case of a simplified pension plan (SIPP) and a VRSP, employer and employee contributions are generally locked in (i.e., the employee cannot withdraw them) for the purpose of providing retirement income.

Different types of pension plans

Depending on the type of benefit payable, a pension plan can be:

- a defined contribution pension plan (DCPP);
- a defined benefit plan (DBPP);
- a combined plan: defined contribution and defined benefit (DC/DB) plan.

Other plans are considered defined benefit plans, but the benefit may vary depending on their solvency level. The member may receive less than the defined benefit. These plans are the member-funded pension plan and the target benefit plan. In these plans, the financial risk is borne by the members, not the employer.

Currently, most sums invested in pension funds are in DBPPs. However, most newly established plans are defined contribution plans (DCPPs). In fact, in the early 2000s, many employers closed their DBPPs and added a defined contribution component for new contributions or new employees.

115. *Supplemental Pension Plans Act,* CQLR, c. R-15.1.
116. Retirement plans of this type are mainly governed by specific laws.

Moreover, pursuant to the *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act,* there is another type of defined contribution supplemental pension plan, the SIPP, which will be discussed in Chapter 3.

Retraite Québec is the agency charged with ensuring that the administration and functioning of the pension plans concerned comply with the *Supplemental Pension Plans Act*.

1.3.7 *Act to establish a legal framework for information technology*

It should be noted that pursuant to the *Act to establish a legal framework for information technology,*[117] subject to certain conditions, technology-based documents have the same legal value as paper documents or documents in a medium other than paper.

1.4 Other important federal legislation

Other important federal legislation includes the *Canadian Charter of Rights and Freedoms*, the *Criminal Code*, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Personal Information Protection and Electronic Documents Act*, the *Telecommunications Act*, the *Canada's Anti-Spam Legislation* and the *Pension Benefits Standards Act, 1985*. These statutes will be briefly discussed in this section.

Also noteworthy is the *Genetic Non-Discrimination Act*,[118] whose constitutional validity has just been upheld by the Supreme Court of Canada.[119] Among other things, this Act prohibits anyone from requiring a person to undergo a genetic test as a condition precedent for providing goods or services, for entering into or maintaining a contract with the person, or for offering or maintaining particular terms in a contract. The Act contains the same prohibition on the disclosure of genetic test results.

1.4.1 *Canadian Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms*[120] gives Canadian citizens fundamental rights and freedoms, and protects them against any infringement of such rights. This Charter forms part of the Canadian Constitution. It guarantees the right to vote and freedom of conscience, religion, thought, opinion and expression, as well as the right to life, freedom, and protection against unreasonable search or seizure. The *Canadian Charter of Rights and Freedoms* is the supreme law of Canada and takes precedence over all other statutes.

117. *Act to establish a legal framework for information technology*, CQLR, c. C-1.1. See also: CAIJ, *Loi concernant le cadre juridique des technologies de l'information annotée* (in French only).
118. *Genetic Non-Discrimination Act*, S.C. 2017, c. 3.
119. *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17, July 10, 2020.
120. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

In theory, no law voted by the federal Parliament or by a provincial legislature can be incompatible with the provisions of the Canadian Charter. However, there are exceptions to this principle; for example, a provision of a law may infringe on a right guaranteed by the Canadian Charter if it is justified in a free and democratic society. Therefore, a court may conclude that a provision of a statute infringes on a right guaranteed by the *Canadian Charter of Rights and Freedoms*, but rule that the provision is nonetheless valid because the infringement is justified in today's society. It is important to remember that the Canadian Charter applies only to dealings between the State and individuals, while the Québec Charter applies to everyone (including private dealings).

However, the federal Parliament also passed its own *Canadian Human Rights Act*[121] to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.[122]

1.4.2 *Criminal Code*

The *Criminal Code*[123] is a federal statute that deals with crimes liable to lead to criminal prosecution in Canada. Under subsection 91(27) of the *Constitution Act, 1867,* criminal law falls within the powers of the Parliament, and only it can legislate and determine what constitutes a crime. In addition to the *Criminal Code,* other federal laws, such as the *Controlled Drugs and Substances Act,* punish other offences of this type. The first Canadian Criminal Code was enacted in 1892.

As for the provinces, they have jurisdiction over the administration of the justice system, which gives them powers regarding the application of laws and judicial proceedings.

Moreover, the provinces have the power to define penal offences (for example, offences under provincial tax laws, securities laws, insurance laws, road safety laws, and environmental laws, etc.). These are similar to criminal offences, but are not qualified as such because of the division of legislative powers. Consequently, as with criminal offences, they can result in imprisonment or fines. However, in the event of imprisonment, sentences are not as severe as in criminal matters.

121. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.
122. *Ibid.*, s. 2.
123. *Criminal Code*, RSC (1985), c. C-46.

Relevant provisions for insurers include those relating to insurers' anti-terrorism obligations[124] (*Criminal Code*, s. 83.11), and those relating to lottery and gaming (*Criminal Code*, ss. 206 and 207).

1.4.3 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

The *Proceeds of Crime (Money Laundering)* Act was passed in 2000 as part of the creation of Canada's anti-money laundering regime. In 2001, the scope of this law was widened to include terrorist financing, becoming the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.[125]

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[126] has the following key objectives:

- to implement specific measures to detect and deter money laundering and the financing of terrorist activities;
- to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences;
- to respond to the threat posed by organized crime; and
- to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime.

This statute is analyzed in greater detail in Chapter 4, particularly in relation to the obligations of insurance representatives.

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) was created in July, 2000. Its role is to receive, analyze and disclose financial intelligence on suspected money laundering and terrorist financing.

Certain individuals, including staff of financial institutions and insurance of persons representatives, are required to report suspicious financial transactions to FINTRAC.

More information about FINTRAC and its activities as well as instructions for completing a suspicious transaction report are available on its Web site.

---

124. With respect to the matter of terrorism, the following laws, regulations and references also apply: *Regulations Establishing a List of Entities*, SOR/2002-284 [Public Safety Canada, *Currently Listed Entities*]; *United Nations Act*, R.S.C. 1985, c. U-2; *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, SOR/2001-360 [Autorité des marchés financiers (AMF), Combating Terrorism; Justice Canada, Consolidated Canadian Autonomous Sanctions List; United Nations Security Council, United Nations Security Council Consolidated List; *Special Economic Measures Act*, LC 1992, c. 17 [Associated Regulations (32)]; *Freezing of Assets of Corrupt Foreign Leaders Act*, LC 2011, c. 10; *Justice for Victims of Corrupt Foreign Leaders Act (Sergei Magnitsky Act)*, LC 2017, c. 21.
125. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.
126. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

FINTRAC published guidance that applies to insurance of persons representatives.[127] This guidance reiterates the obligations imposed on insurance representatives by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the regulations adopted thereunder. The following are the principal obligations:

- establishment and implementation of a compliance program;[128]
- record-keeping requirements;[129]
- reporting requirements (suspicious transactions, terrorist property, large cash transactions, large virtual currency transactions);[130]
- know-your-client requirements (including client identification requirements):
  - verification of clients' and beneficiaries' identities (individuals and entities);
  - ongoing monitoring of the business relationship;
  - identification of beneficial owners;
  - third party determination; and
  - determination of politically exposed persons and heads of international organizations.[131]

1.4.4 *Personal Information Protection and Electronic Documents Act* (PIPEDA)

By contrast with the *Act respecting the protection of personal information in the private sector*, which falls under provincial jurisdiction, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) falls under federal jurisdiction.

Since January 1, 2004, the PIPEDA has applied to the collection, use and disclosure of personal information in the course of commercial activities in a province, including businesses under provincial jurisdiction, such as insurance companies and firms. However, the federal government can exclude from the application of the PIPEDA organizations or activities in provinces that have adopted legislation substantially similar to the PIPEDA.[132] Under this provision, pursuant to an order enacted in 2003, the collection, use and disclosure of personal information in the province of Québec are not subject to the federal statute.

However, it would be wrong to think that the PIPEDA does not apply at all in Québec. In fact, the PIPEDA applies to the collection, use and disclosure of personal information by a business under federal jurisdiction such as a bank, as well as the disclosure of personal information outside Québec.

127. Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). See: *Summary of requirements for life insurance companies, brokers and agents*.
128. See: FINTRAC, Compliance program requirements.
129. See: FINTRAC, *Record keeping requirements for life insurance companies, brokers and agents*.
130. See: FINTRAC, Reporting suspicious transactions to FINTRAC, April 8, 2024.
131. See: Life Insurance companies, brokers and agents (under "Know your client").
132. *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

1.4.5 *Telecommunications Act* (National Do Not Call List [National DNCL])

The National Do Not Call List (National DNCL) allows Canadian consumers to decide whether they want to receive phone calls from telemarketers.

Consumers can decide to reduce the number of unsolicited telemarketing calls they receive by registering their cellular, residential, fax or VoIP telephone numbers on the National DNCL.

The National DNCL therefore imposes new responsibilities on Canadian telemarketers. They must use the Web site of the Canadian Radio-television and Telecommunications Commission (CRTC) to register their business information, obtain and buy a subscription to the National DNCL, and download or query the National DNCL. The "Telemarketers" section of the CRTC Web site contains information about subscription rates and file formats as well as other useful information.[133]

1.4.6 *Canada's Anti-Spam Legislation*

Canada's Anti-Spam Legislation[134] is designed to deter spam and applies to all electronic messages (e-mails and texts, including messages sent through social media such as LinkedIn or Facebook, etc.) in connection with a commercial activity. Its key feature is the requirement for persons who send commercial electronic messages from or to Canada to obtain the prior consent of recipients.

Canada's Anti-Spam Legislation and the *Electronic Commerce Protection Regulations* adopted thereunder set out certain exceptions to the anti-spam provisions.[135]

1.4.7 *Pension Benefits Standards Act, 1985*

The *Pension Benefits Standards Act, 1985*, is the federal equivalent of the *Supplemental Pension Plans Act* (Québec).

It applies to fields falling under federal jurisdiction. Here are some examples:

- any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;
- any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;

133. For more information, see: Government of Canada, *Canada's National Do Not Call List*.
134. The following is the full title of the statute: *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23.*
135. Government of Canada. *Canada's Anti-Spam Legislation,* March 19, 2021.

- any line of steam or other ships connecting a province with another province or extending beyond the limits of a province;
- any ferry between a province and another province or between a province and a country other than Canada;
- any aerodrome, aircraft or line of air transportation;
- any radio broadcasting station; and
- any bank or authorized foreign bank within the meaning of section 2 of the *Bank Act*.

In summary, any private business operating in an area of activity that falls under exclusive federal jurisdiction, such as a bank, railway, airline, shipping company or telecommunications company, as well as any private business in the Yukon Territory, the Northwest Territories or Nunavut, that has established a supplemental pension plan is governed by the *Pension Benefits Standards Act, 1985*, not Québec's *Supplemental Pension Plans Act* or any similar legislation of another province.

The Office of the Superintendent of Financial Institutions (OSFI) is the agency charged with ensuring that the administration and functioning of plans comply with the *Pension Benefits Standards Act, 1985.*

The Canada Revenue Agency is responsible for assigning registration numbers to registered pension plans (RPPs) for tax purposes.

CHAPTER 2

LEGAL ASPECTS OF INSURANCE OF PERSONS AND GROUP - INSURANCE OF PERSONS CONTRACTS

Competency component

- Integrate into professional practice the legal aspects of insurance and annuity contracts.

Competency sub-components

- Characterize the parties involved in the contract;
- Contextualize the rules relating to the contract's formation, taking effect, reinstatement, and cancellation or termination (annulment);
- Explain the main provisions and clauses of an insurance or annuity contract;
- Integrate into professional practice the rules relating to beneficiary designation and exemption from seizure of benefits;
- Contextualize the rules relating to claims and the payment of benefits.

2

LEGAL ASPECTS OF INSURANCE OF PERSONS AND GROUP INSURANCE OF PERSONS CONTRACTS

This Chapter first discusses the features of insurance of persons contracts and the various parties involved in the contract.

It then moves on to the formation of insurance of persons contracts depending on the circumstances, the effective date of the contract, the declaration of risk, the term of the contract and its cancellation or termination (annulment), as well as the assignment and hypothecation (mortgaging) of insurance of persons contracts.

Next, it examines the general provisions of insurance contracts (including the various coverages), exclusion clauses, and claims in insurance of persons.

The rules pertaining to the payment of the death benefit, the designation and revocation of beneficiaries, and the exemption from the seizure of the rights conferred by insurance of persons contracts are also examined.

Finally, the Chapter discusses group insurance of persons, including the determination of the group and prescription drug insurance.

2.1 Characteristics of insurance of persons contracts

2.1.1 Definition of “insurance contract”

According to article 2389 C.C.Q., “[a] contract of insurance is a contract whereby the insurer undertakes, for a premium or assessment, to make a payment to the client or a third person if a risk covered by the insurance occurs.”[136]

Three elements are necessary in order to have an insurance contract:

- a risk;
- a premium;
- a payment (benefit).

136. See also *Association pour la protection des automobilistes inc. v. Toyota Canada inc.*, 2008 QCCA 761.

2.1.1.1 Definition of "risk"

Risk is defined as an uncertain event, the occurrence of which leads to a financial loss against which the client wishes to protect himself. Without this element, the insurance contract would not exist.

To be insurable and the object of an insurance contract, the risk must be an uncertain event beyond the will of the parties to the contract.

To be "uncertain," the risk must be a possible and future event. If the event against which the client wishes to protect himself cannot occur, the insurance contract is null, as it does not have an object (arts. 2389, 1385, para. 2, and 1412 C.C.Q.). In addition to the notion of a "possible" event, the risk must be "future." An insurance contract covering an event that has already occurred is null.[137]

With respect to the "independence" of the risk, this means the client cannot make it certain by his will alone; if this is the case, the risk is not insurable.

In life insurance, although the death of the insured is certain, the time and circumstances are uncertain.

2.1.1.2 Definition of "premium"

The premium is the amount the client must pay the insurer and in consideration of which the insurer agrees to pay a benefit to the client (or to the designated beneficiary or the client's succession, as the case may be) when the insured risk occurs. It must be proportional to the risk. Thus, when there is a high probability the event will occur (such as an illness liable to lead to an early death), the premium will be increased accordingly. If not, the insurer will refuse to cover the risk. Determination of the premium is based on statistical and actuarial calculations.

In individual life insurance, there are different rules applicable to the initial premium and to subsequent premiums. This topic will be discussed later on. Moreover, although it is assumed that the premium will be paid by the client, it can be paid by someone else.[138]

2.1.1.3 Definition of "benefit"

The benefit is the sum the insurer must pay upon the occurrence of the insured event. The client takes out insurance to protect himself against the pecuniary consequences of the occurrence of the event. In theory, when the insured event occurs, the insurer is required to pay the client (or the designated beneficiary or the client's succession, as the case may be) a benefit which, most often, involves the payment of a sum of money.

---

137. *Laurendeau v. Mutuelle du Canada (La), Cie d'assurance*, [1989] R.R.A. 447 (C.S.).
138. *Caisse populaire des Deux Rives v. Société mutuelle d'assurance contre l'incendie de la Vallée du Richelieu* [1990] 2 S.C.R. 995. See also *Boucher, Leblanc, Amirault Inc. v. Atlas Trucking Co.*, J.E. 78-124 (C.P.).

2.1.2 Insurable interest: an additional condition in individual insurance to ensure the validity of the contract

2.1.2.1 Definition of “insurable interest”

Although the definition of “insurance contract” in article 2389 C.C.Q. does not mention it, an insurance contract requires a fourth element: an insurable interest. According to article 2418 C.C.Q., this is an essential condition for the validity of an insurance contract. An insurance contract is therefore null if the client does not have an insurable interest in the life or health of the insured.

Article 2419 C.C.Q. sets out every situation in which a person has an insurable interest. The following are some examples. Life insurance or accident and sickness insurance may be taken out when the insured is:

- the client;
- the client’s spouse (which includes a married spouse, a civil union spouse, and a *de facto* spouse [or common-law spouse]);
- a descendant of the client (children, grandchildren, great-grandchildren);
- a descendant of the client’s spouse;
- an employee or staff member of the client (when the client is a business);
- a person who contributes to the client’s support or education; or
- a person in whose life or health the client has a pecuniary or moral interest.

The client thus has an insurable interest when that interest results from emotional, economic or moral ties with the insured.

In the absence of an insurable interest in the life or health of the insured, the client must obtain the written consent of the insured for the contract to be valid.

However, to ensure the validity of contracts and avoid problems when a claim is made, insurers normally require the insured’s signature when the client and the insured are not the same person. This approach also allows the insurer to obtain the insured’s declaration regarding his health.

Lastly, it should be noted that the insurable interest must be assessed when the insurance contract is signed or assigned, not when a loss occurs. Thus, the disappearance of the insurable interest after the policy has been underwritten will not put an end to the insurance.[139]

139. *Piché v. Arontec inc.*, 2006 QCCS 2721, appeal dismissed in *Piché v. Arontec inc.*, 2008 QCCA 744. See also: *Silver Point Life (Silver Point Capital) v. Empire, Compagnie d'assurance-vie*, 2024 QCCS 383.

EXAMPLE

Paul and Manon have been married for eight years. Paul takes out a $200,000 life insurance policy on Manon's life. He has an insurable interest in her life since she is his wife. Three years after the insurance is taken out on Manon's life, the couple divorce. Paul can keep this insurance on Manon's life, even though she is no longer his wife. Upon her death, he will receive $200,000.

2.1.3 Insurance contract: a contract of the utmost good faith

Good faith governs the parties' conduct at all stages of the contract, including when it is entered into and during its performance (arts. 6, 7 and 1375 C.C.Q.). However, the degree of good faith required for insurance contracts is higher than for other contracts. As a result, it is said that an insurance contract is a contract "of the utmost good faith."[140]

For the client, the utmost good faith means, first and foremost, being honest and competent (or effective),[141] such that even if he is acting in good faith, an inaccurate statement by him could result in a sanction (nullity of the contract).[142] The client must declare everything relevant to the examination and appreciation of the risk, as he is the only one who is aware of all the circumstances. This characteristic of the insurance contract is apparent particularly at the stage of pre-contractual declaration of risk, as well as at the time of insurance contract renewal and application for benefits.

Although this obligation of utmost good faith historically applies to the client at the time of the initial declaration of risk, the client and the insurer are also bound to act with good faith in their obligations (or other obligations in the case of the client). The insurer must inform the client of the scope of the coverage offered, failing which the client (or the beneficiary) could claim the benefit to which he would have been entitled, were it not for his lack of information. In addition, the insurer must compensate the insured diligently and have the necessary financial resources to compensate its insured. The client must also act in good faith in its his claims with the insurer, because otherwise, he could forfeit of his right to receive benefits.[143]

140. Didier Lluelles, *Précis des assurances terrestres*, 6th ed., Montréal, Les Éditions Thémis, 2017, Nos. 51 to 53, pp. 31 to 35. See also: *Sirois v. Crum & Forster du Canada Ltée*, 1994 CanLII 3776 (QC CS), para. 151.
141. Didier Lluelles. *op. cit.*, No. 52, p. 32.
142. *Turgeon v. Atlas Assurance Company Limited et Fortin*, [1969] S.C.R. 286; *Dunn v. La Mutuelle d'Omaha cie d'assurance*, [1979] C.S. 967.
143. In *Boulianne v. S.S.Q. Mutuelle d'assurance-groupe*, 1997 CanLII 9348 (QC CS), Pierre A. Dalphond, J., the Superior Court forfeited the insured from her right to benefits because she voluntarily amplified her condition in order to maximize her chances of receiving invalidity insurance benefits. In the same vein, see also *Lefort v. Desjardins Sécurité financière*, 2006 QCCQ 10192, Raoul P. Barbe J.

2.1.4 Insurance contract: a contract of adhesion in the majority of cases

A contract is said to be a contract of adhesion when its essential terms were imposed or drafted by one of the parties, without being freely negotiated. This is generally the case with insurance contracts.[144] In the event of an ambiguity or doubt regarding the interpretation of a contract of adhesion, it will be interpreted in favour of the adhering party.[145]

Insurance contracts also have certain secondary characteristics. In addition to being governed by general rules applicable to contracts of adhesion, insurance contracts are subject to several rules to protect "consumers of insurance." Therefore, in its contract, the insurer cannot grant fewer rights to the client, the insured or the beneficiary than those granted by law (art. 2414, C.C.Q.).[146] In addition, the provisions of the C.C.Q. relating to insurance of persons contracts contain certain specific rules regarding protection, such as the discrepancy rule (art. 2400, C.C.Q.), the exclusion rule (art. 2404 C.C.Q.), and the rule about the express stipulation of the nature of the coverage under accident and sickness insurance or the rule about the express stipulation of the nature and extent of the disability covered in disability insurance (art. 2416, C.C.Q.).

2.1.5 Other characteristics of insurance contracts

The following are the other secondary characteristics of an insurance contract. An insurance contract is:

- a bilateral (or synallagmatic) contract;[147] i.e., both parties to the contract take on obligations (payment of the premiums by the client, and payment of benefits by the insurer in the case of the occurrence of the risk by the insurer);
- an aleatory contract;[148] i.e., the contract is subject to uncertainty (risk component). The client pays the premiums without knowing when he or his beneficiary will receive benefits from the insurer, and the insurer could have to pay much higher benefits than the value of the premiums collected from the client;
- a contract by onerous title,[149] as opposed to a contract by gratuitous title; i.e., the client has to pay the premiums;
- a consensual contract formed by the simple consent of the parties[150] as soon as the insurer accepts the client's application, subject to certain conditions.

144. *Industrielle Alliance (L'), compagnie d'assurance sur la vie v. Blais*, 2008 QCCA 258; *Cantin v. Industrielle Alliance (L'), compagnie d'assurance sur la vie*, 2005 CanLII 17091 (QC CS).
145. *Civil Code of Québec*, CQLR, c. C-1991, arts. 1432 and 1379.
146. The articles of the "Insurance" chapter of the *C.C.Q.* are public protection policy and therefore cannot be the subject of a contractual clause to the contrary (*Laurentienne-vie (La), compagnie d'assurances inc. v. Empire (L'), compagnie d'assurance-vie*, 2000 CanLII 9001 (QC CA)).
147. *Civil Code of Québec*, CQLR, c. C-1991, art. 1380.
148. Ibid., art. 1382.
149. Ibid., art. 1381.
150. Ibid., arts. 1385 and 2398.

2.1.6 Insurance of persons contract: scope

According to article 2392 C.C.Q., insurance of persons deals with the life, physical integrity or health of the insured, and it can be individual or group insurance (while damage insurance is always individual insurance[151]).

We have completed our examination of the definition and characteristics of insurance of persons contracts. Next, we will look at the various documents related to insurance of persons contracts.

2.1.7 Documents pertaining to individual insurance contracts and discrepancies

2.1.7.1 Documents

Individual insurance of persons contracts generally involve a number of documents. First, there is the insurance application which the client must complete and submit to the insurer, and which may be accompanied by a medical questionnaire and a declaration of insurability. When the insurer accepts the insurance application, it issues the client an insurance policy, which is the document evidencing the existence of the insurance contract.

The insurer must remit a copy of the policy to the client, together with a copy of any application made in writing by the client, as well as a copy of the declarations made by the client or the insured, and the other conditions applicable to the insurance contract (arts. 2399, 2400 and 2403 C.C.Q.).

The rules regarding the content of an insurance policy are discussed in the section that provides general information on group insurance, because the rules are the same in individual and group insurance.

2.1.7.2 Discrepancies

In case of a discrepancy between the insurance policy and the insurance application, the application prevails unless the insurer has indicated to the client, in a separate document, indicated to the client the particulars in respect of which there is a discrepancy. Every difference is not necessarily a discrepancy; there must be some incompatibility or a conflict between the policy and the application.[152]

151. Bill 150 (*An Act to improve the performance of the Société de l'assurance automobile du Québec, to better regulate the digital economy as regards e-commerce, remunerated passenger transportation and tourist accommodation and to amend various legislative provisions (modified title)*) included an amendment to article 2392 *C.C.Q.* to allow group damage insurance. However, this provision was dropped from the final version (S.Q. 2018, c. 18).
152. *Robitaille v. Madill*, [1990] 1 S.C.R. 985.

2.2 Parties involved in insurance of persons contracts

2.2.1 Parties involved in individual insurance

There are several parties involved in an individual insurance contract. The words “parties involved in” refer to the people who are part of the contractual relationship as signatories to the contract (the insurer and the client), as well as those affected by the effects of the contract, namely, the insured and the beneficiary. The following are the four main parties involved in an insurance of persons contract:

- the insurer;
- the client;
- the insured; and
- the designated beneficiary.

2.2.1.1 Insurer

The insurer is the party that pays benefits to the client (policyholder), the participant, the succession of the client or participant, or the specified beneficiary upon the occurrence of a risk covered by the insurance contract. It is one of the two contracting parties to an insurance of persons contract. In Québec, insurers must comply with the *Insurers Act* and obtain the proper licences from the *Autorité des marchés financiers* (AMF).

2.2.1.2 Client (policyholder) and subrogated policyholder

The client is the person who takes out insurance with the insurer. He is the other contracting party to an insurance of persons contract. Generally, he asks the insurer for coverage, declares a risk and pays the insurance premiums. The client is the “owner” of the insurance contract. The term “policyholder”[153] is also commonly used.

The client is the original holder of the insurance contract. Therefore, in the event where the client assigns the policy to another person, such person becomes the new owner, which means the new “policyholder,” but does not become the client, the client being the original policyholder.

The client can exercise the rights arising under the insurance contract, namely designate one or more beneficiaries, revoke the designation of the beneficiary or beneficiaries, claim the cash surrender value or other benefits attached to the insurance contract, and assign or hypothecate (mortgage) the contract.[154]

153. In this manual, the term ‘policyholder’ is used.
154. Isabelle Nadia Tremblay, *L’assurance de personnes au Québec*, Brossard, Les Publications CCH/FM Inc., 1989 (loose-leaf edition), No. 15-075, pp. 1/1197 and 1/1198.

In the majority of cases, the client and the insured are one and the same.

When the client has taken out a policy on the life of a third party rather than on his own, he may designate a “subrogated” policyholder who will become the owner of the contract (the holder of the policy) if the client dies before the insured. Thus, upon the death of the “initial” policyholder (the client), the “subrogated” policyholder will become the holder of the rights and obligations of the client (or initial policyholder), including the right to receive the face amount in the absence of a designated beneficiary.

However, contrary to an assignment of the policy during the lifetime of the policyholder, the designation of a “subrogated” policyholder does not lead to the revocation of the revocable beneficiary.[155]

EXAMPLE

Jean’s mother, Marie, took out a $100,000 insurance policy on the life of her grandson, Alexis, Jean’s son, when he was only a few months old. At the time, she named Jean as “subrogated” policyholder and did not designate a beneficiary. Marie dies. All Marie’s rights and obligations under the insurance contract are therefore transferred to Jean. He could be paid the face amount upon the death of his son, as no beneficiary has been designated.

2.2.1.3 Insured person

The insured person is the person to whose life the risk applies. This person is also commonly referred to as the “insured.”

EXAMPLE 1

Owen takes out life insurance on his own life. In this situation, Owen is both the client (since he is the one who took out the insurance) and the insured person (since the risk applies to his life).

EXAMPLE 2

A grandfather takes out insurance on the life of his grandson. The grandfather is the client and the grandson is the insured person. The grandfather intends to assign the policy to his grandson when he turns 18 (policy assignment during the client’s life).

155. Didier Lluelles, *op. cit.*, No. 682, pp. 459 and 460.

EXAMPLE 3

XYZ Inc. takes out insurance on the life of its principal shareholder, Yves. The company is the client and Yves is the insured person.

2.2.1.4 Beneficiary, subrogated (contingent) beneficiary and client's succession

The beneficiary is the person designated by the client to receive the insured amount upon the occurrence of the risk (e.g., life insurance and accidental death insurance). The designated beneficiary has no obligation under the contract, but may exercise rights if the risk occurs, i.e., upon the death of the insured person.

The client is not required to designate a beneficiary. He may choose to make the insured amount payable to his succession. Thus, when no beneficiary has been designated, the insured amount will be paid to the client's succession (or to the client if he is not the insured person).

However, the client can also designate a subrogated beneficiary, also referred to as a "contingent beneficiary," "replacement beneficiary," "secondary beneficiary" or "subsequent beneficiary," even though the C.C.Q. does not mention this type of beneficiary. If the designated beneficiary dies before the client, this designation lapses and the subrogated beneficiary becomes the new designated beneficiary of the insured amount, replacing the designated beneficiary who died before the client.

2.2.2 Parties involved in group insurance contracts

There are also several parties involved in a group insurance contract.

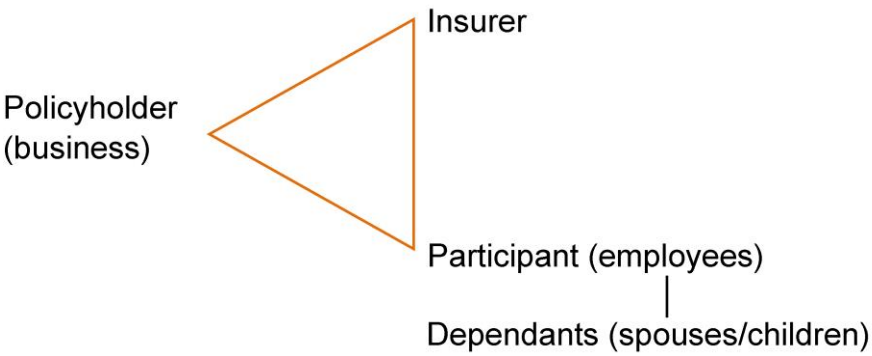
In Québec civil law, a group insurance contract is considered to be a tripartite relationship between the insurer, the policyholder and the participant,[156] as shown in Diagram 2.1. Even though the contract is entered into between the insurer and the policyholder, the participants have a direct right of action against the insurer[157], because a group insurance contract is entered into between an insurer and a policyholder for the benefit of a group of persons (the participants).

In addition to these people, the other main people involved in the contract are those affected by the effects of the contract, namely, the beneficiaries and the participant's dependants (spouse and children).

156. *Côté v. Compagnie mutuelle d'assurance-vie du Québec*, 1995 CanLII 5046 (QC CA); *Fortier v. Sun Life du Canada, compagnie d'assurance-vie*, 2010 QCCS 4923; *Dubé v. Shawinigan (Ville de)*, 2004 CanLII 14512 (QC CQ).
157. *Robert v. Industrielle (L')*, compagnie d'assurance sur la vie, J.E. 96-2169 (C.S.).

DIAGRAM 2.1:

Tripartite relationship



2.2.2.1 Insurer

As mentioned above, the insurer bears the financial risk when an event covered by the insurance contract occurs. It decides whether a claim made to it is eligible. If the insurer rejects a participant's claim, the participant can take an action against the insurer. In certain cases, the participant can also take action against his employer based on the employment relationship between them.

2.2.2.2 Policyholder

The policyholder can be an employer (most often a corporation or company), an association, a parity committee, a professional order (or professional corporation[158]), a professional association, or a lending institution. It manages the administrative aspects of the contract, negotiates the terms of a group insurance contract, and enters into the insurance contract with the insurer for the benefit of members of a specified group of persons. It generally looks after subscriptions by members of the group to the group insurance contract.

2.2.2.3 Participant and scope of coverage for the other insured persons (spouse and dependants)

The "participant" (or member) is the person who, as an individual eligible under a group insurance contract purchased by the group, subscribes to the contract.[159] As mentioned above, depending on the master policy, the participant has the option of subscribing to it, or must subscribe to it if the insurance is mandatory. In addition, his participation may sometimes be subject to certain conditions established by the policyholder and the insurer.[160] One of these conditions may be to have completed a probation period before being able to subscribe to the contract.

158. The expressions 'professional order' and 'professional corporation' are used in this manual.
159. Michel Gilbert, *L'assurance collective en milieu de travail*, 2nd ed., Cowansville, Les Éditions Yvon Blais, 2006, No. 23, p. 16.
160. *Bouthillette v. Industrielle Alliance (L'), compagnie d'assurances sur la vie*, [1996] R.R.A. 414 (C.S.).

Dependants (often the spouse and children) are the ones who, because of their relationship with the participant, benefit from the insurance coverage without having to subscribe to the master policy.[161] Their participation is limited to benefitting from the insurance coverage.

2.2.2.4 Beneficiary

As mentioned above, the beneficiary is the person designated to receive the benefits of an insurance of persons contract, more specifically under a life insurance and accidental death insurance contract. The beneficiary is designated by the participant; in the case of life insurance, the beneficiary will be entitled to the face amount under the master policy upon the participant's death. In certain cases, the policy provides for the payment of benefits to the participant, the creditor, or a predetermined survivor.

2.3 Individual insurance: formation, effective date, declaration of risk, term of the contract (termination (annulment), cancellation and reinstatement) and assignment and hypothecation (mortgaging) of the contract

2.3.1 Rules relating to the formation of the contract

The two stages of the formation of the contract are:

- the client's offer; and
- the insurer's acceptance.

For an insurance contract to be validly formed, there must be a meeting of minds between the client, who submits an insurance application, and the insurer.

Under article 2398, C.C.Q., a contract of insurance is formed upon acceptance by the insurer of the client's application.[162] In addition, the place where the contract is formed is the place where the insurer accepted the application.[163] The differences between the formation of an insurance contract and its effective date are discussed later on.

161. *Civil Code of Québec*, CQLR, c. C-1991, art. 2392, and *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 59. See also sections 16 and 17 of the *Act respecting prescription drug insurance*, CQLR, c. A-29.01.
162. *Robitaille v. Madill*, [1990] 1 S.C.R. 985; *Roy v. Capitale (La), assurances et gestion du patrimoine inc. (Capitale (La), assurances de personnes inc.)*, 2012 QCCS 4464; *169912 Canada inc. v. Compagnie d'assurance-vie Transamerica du Canada*, 2005 CanLII 8590 (QC CS).
163. *2966-2814 Québec inc. v. Groupe Commerce (Le), compagnie d'assurances*, J.E. 95-2149 (C.S.). However, pursuant to article 43 of the new *Code of Civil Procedure*, CQLR, c. C-25.01, an action based on an insurance contract may be instituted before the court of the insured's domicile or residence despite any stipulation to the contrary in the contract.

Given that an insurance contract is consensual by nature,[164] the agreement between the client and the insurer is sufficient for its formation. An insurance application is not subject to any particular form[165] and may therefore be verbal.[166]

It is important to note that the insurance application accepted by the insurer constitutes the insurance contract, while the insurance policy is only the document evidencing the contract.[167]

Moreover, in order for an insurance contract to be validly formed, it must also satisfy the general conditions for the validity of contracts.

2.3.1.1 General conditions for the validity of contracts

To be valid, an insurance of persons contract must satisfy the conditions for the formation of contracts set forth in the C.C.Q.; these conditions apply to all contracts. Article 1385, C.C.Q. sets out the four conditions required for the validity of a contract:

- consent;
- capacity;
- an object; and
- a cause.

Consent

For a contract to be validly formed, each party to the contract must first give its consent. Article 1386, C.C.Q. states that the consent may be express or tacit. Express consent is the clear and specific manifestation of a person's will.

EXAMPLE

Express consent

Lucien wants to rent an apartment and the lessor agrees. This is express consent.

Tacit consent is the manifestation of an implicit wish under certain circumstances from which the conduct of the parties is inferred.

164. Formed merely with the consent of the parties.
165. *Airmac systèmes Ltée v. Cie d'assurance Continentale du Canada,* [1990] R.R.A. 200 (C.S.), settled out of court on appeal (C.A., 1996-02-27), 500-09-000036-905.
166. *Lussier v. Assurance-vie Banque Nationale, compagnie d'assurance-vie*, 2013 QCCS 234.
167. *Poulin-Doyon v. Aeterna-Vie,* [1986] R.R.A. 499 (C.S.).

EXAMPLE

Tacit consent

Martin asks Victor if he wants to buy his home theatre system and Victor responds: “Deliver it to me on Saturday!” In this case, Martin can infer that Victor agreed to purchase his home theatre system. This is tacit consent. In insurance matters, however, insurers require express consent.

In addition, to ensure that a contract is valid, the consent must be free and enlightened. This means the consent must not be the result of the error, fraud (error induced by deceit), fear or lesion of one of the contracting parties (art. 1399 C.C.Q.). A contract affected by one of these defects of consent is not necessarily null. It will be deemed to be null only if one of the parties shows that his consent was vitiated (or impaired) due to an error, fraud, fear or lesion.

Defect of consent: Error

Error is the first defect of consent (art. 1400 C.C.Q.). It involves a false view of reality. If there is an error as to the nature of the contract, that error is associated with a lack of consent, which results in the nullity of the contract, unless the error is inexcusable.

EXAMPLE

Luce thinks she is taking out a registered retirement savings plan (RRSP), when in fact she is taking out life insurance. There is an error as to the very nature of the contract.[168]

Defect of consent: Fraud

In some cases, one of the parties enters into a contract on the basis of misrepresentations. This is an error resulting from fraud committed by the other party (art. 1401 C.C.Q.).

EXAMPLE

Marc purchases a life insurance contract. He declares that he never had surgery, even though he had heart surgery. This fraud vitiates (impairs) the insurer’s consent and results in the nullity of the contract. The misrepresentation led the insurer to accept the insurance application, whereas it would not have insured Marc or would have insured him under different conditions if Marc had declared his heart surgery.

168. *Bolduc v. Decelles*, [1996] R.J.Q. 805 (C.Q.).

Defect of consent: Fear

Fear is a defect of consent. If consent is obtained through moral or physical constraint (violence, threats or blackmail), it is not given in a free and enlightened manner (arts. 1402 and 1403, C.C.Q.).

EXAMPLE

Pierre's boss forces him to sign an individual life insurance contract, or he will be fired.

Defect of consent: Lesion

Lesion, the last defect of consent, results when one of the parties exploits the other. It leads to a serious disproportion of the obligations between the parties. However, under article 1405 C.C.Q., lesion vitiates (impairs) consent only in respect of minors and persons of full age under protective supervision who take out insurance without their tutors or representatives.

The term "person of full age under protective supervision" refers to a person at least 18 years of age who is unable to take care of himself or to administer his property. Depending on the circumstances, in order to take out insurance, a person of full age under protective supervision must be assisted or must take out the insurance through a curator, a tutor, or an adviser to a person of full age, depending on his degree of incapacity.[169] The term "person of full age under protective supervision" also refers to an incapable person who has a mandatary pursuant to a mandate given in anticipation of incapacity that has been homologated (arts. 2166 to 2174 C.C.Q.). Under these circumstances, the curator, tutor, adviser or mandatary could, for example, be asked to collect disability benefits on behalf of the person of full age under protective supervision.

Lesion does not apply automatically or as of right. Minors or persons of full age under protective supervision must prove that they actually suffered harm and that the person with whom they entered into the contract took advantage of their state.

EXAMPLE

A 16-year-old minor buys a car he cannot afford at a price that is much higher than its value. In this case, there is economic harm that results from exploitation by contract.

169. Édith Deleury and Dominique Goubau, *Le droit des personnes physiques*, 5th ed., Cowansville, Éditions Yvon Blais, 2014, pp. 627 to 718.

The C.C.Q. is based on the principle that persons of full age and of sound mind must know what they are doing when signing a contract. Consequently, the law does not allow them to plead lesion in insurance matters[170] (art. 1405, C.C.Q.).

Capacity

For a contract to be valid, there must be an exchange of consents between the parties. For their consent to be valid, the parties must have the legal capacity to bind themselves by contract (art. 1398, C.C.Q.).

Capacity means that a person holds rights and has the ability to exercise them alone. In theory, every person is fully able to exercise his civil rights (art. 4, C.C.Q.). This topic as it relates to legal persons was discussed in the previous Chapter and is discussed in Table 2.1.

However, the C.C.Q. provides that minors (persons under 18 years of age) and incapable persons of full age cannot exercise their civil rights alone, with a few exceptions.

Incapacity and persons of full age

Therefore, persons of full age who are incapable[171] cannot take out insurance without the consent of their tutor to the property. Curatorship to a person of full age was abolished on November 1, 2022 owing to a major reform of the protection and assistance regimes.

As a result, curatorships existing prior to this date have become tutorships for which the tutor has only powers of simple administration of the property of others, whereas, beforehand, the curator to the property had full administration of the property of the person of full age, giving him more powers. The new tutorships to a person of full age are now adusted according to their abilities and must take their wishes and preferences into account. It is therefore necessary to read the tutorship judgment in order to determine which acts the person of full age iIs or iIs not capable of performing him or herself.

The tutor to property cannot be the same person as the tutor to the person. While, in principle, there is only one tutor to the person, since the reform, it has been possible for both parents of a child of full age to be appointed as tutors at the same time (arts. 268 and 268.1 C.C.Q.).

In addition to this regime, there is the protection mandate mandate (formerly known as the “mandate in anticipation of incapacity”). The situation arises when the occurrence of the mandator’s incapacity has been homologated (i.e., confirmed and approved) by a court at the request of the mandatary named in the protection mandate.

170. Under section 8 of the Consumer Protection Act, a person of full age may demand the nullity of a contract based on lesion. However, pursuant to paragraph 5(a) of the *Consumer Protection Act* (CQLR, c. P-40.1), the most important parts of this statute (sections 8 to 214.11 and 254 to 260) do not apply to insurance contracts.

171. *An Act to amend the Civil Code, the Code of Civil Procedure, the Public Curator Act and various provisions as regards the protection of persons,* S.Q. 2020, c. 11, passed on June 20, 2020, ~~will~~ coame into force on November 1, 2022. Among other things, t~~T~~his Act ~~mainly proposes a revision of the legislative provisions relating to the protection of incapable persons and proposes, in particular, to~~ abolishes two forms of~~he~~ projective ~~two forms of protective~~ supervision of~~or~~ a person~~s~~ of full age~~:~~, ~~namely~~ curatorship~~s~~ and adviserships. Tutorship~~s to persons of full age~~ is therefore the remaining form of~~will become the sole~~ protective supervision of a person of full age~~re-gime available~~.

Since November 1, 2022, a person of full age has beeen able to ask the Public Curator to appoint an assistant (the adviser to a person of full age ceased to exist on that date).[172] The assistant is not allowed to sign documents on behalf of the person of full age or give consent in the person's stead. He acts as an intermediary, facilitating communication between the person of full age and third parties. Insurance representatives and insurers cannot require that the assistant intervene in a matter, but they cannot refuse to deal with the assistant, either.

It is important not to confuse the assistant to the person of full age with the trusted contact person that may be appointed in the context of mutual funds and securities, a topic not covered in this document.[173]

Finally, a person of full age may also ask the court to appoint a temporary representative when the person iIs in a specific situation that is unmanageable for him (or her), even although he does not otherwise need assistance or representation in his daily activities, for example, for the sale of a business or property or a proceeding brought before the court.

Incapacity and minors

In individual insurance of persons, a minor cannot take out insurance without the consent of his tutors (often the parents), unless he is fully emancipated (following a marriage or a court order). A minor who takes out insurance could ask for it to be terminated (annulled) on the basis of lesion and be reimbursed the premiums paid.

In addition, a minor does not have the capacity to collect insurance benefits. Fathers and mothers are tutors to their children as of right. The tutorship extends to the person and property of the minor. Thus, parents are also responsible for the administration of property devolved to the child, including the payment of insurance benefits.[174]

If a child is entitled to insurance benefits exceeding $40,000, the parents (or the designated tutor, as the case may be) must make an inventory of the property and comply with the requirements to that effect in article 209 C.C.Q.,[175] and the insurer must notify the Public Curator (art. 217 C.C.Q.).

However, the C.C.Q. provides that a minor, i.e., 17 years of age or less, may exercise certain rights alone, including:

- having a bank account;[176]

172. *Code civil du Québec*, RLRQ 1991, art. 297.10 et suivants.
173. See the document entitled *Protecting vulnerable clients – A practical guide for the financial services industry*, published by the AMF on May 23, 2019, as well as Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (s. 1.1 "trusted contact person", 13.2.01 and 14.2 l.1). The purpose of designating a trusted contact person is to obtain confirmation or information regarding: a) concerns about possible financial exploitation of the client, b) concerns about the client's mental capacity to make decisions regarding financial matters, c) the name and contact information of a legal representative of the client, if applicable, and d) the client's contact information.
174. *Civil Code of Québec*, CQLR, c. C-1991, arts. 192 to 194.
175. *Civil Code of Québec*, CQLR, c. C-1991, arts. 177, 185 and 192.
176. *Bank Act*, S.C. 1991, c. 46 , subs. 437(1); *Act respecting financial services cooperatives*, CQLR, c. C-67.3, s. 74 (even, in this case, a person under the age of 14 or an incapable person).

- accessing his medical file as of the age of 14;[177]
- consenting to certain medical care as of the age of 14;[178] and
- performing all acts pertaining to his employment or to the practice of his craft or profession as of the age of 14.[179]

EXAMPLE 1

Samuel, age 17, works for himself (lawn-mowing business). He can purchase a life or health insurance contract on the life of his partner, because this contract can be considered an act pertaining to his employment.

EXAMPLE 2

Liam, age 16, works as a day labourer in a warehouse. His employer took out group insurance with an insurer for the employees. Liam can subscribe to the group insurance, because it is an act pertaining to his employment,[180] and he can designate a beneficiary.

Furthermore, a fully emancipated minor or a minor assisted by his tutor has the legal capacity to take out life insurance.

When a minor reaches the age of maturity but is still incapable, it is now possible for both parents to be appointed as tutors to the minor. Before November 1, 2022, only one parent could be appointed as tutor (art. 268.1, C.C.Q.).

Registers[181]

Since the 2022 reform, the Public Curator of Québec has maintained two registers, one of which iIs called the Public register of representation measures[182], and includes information concerning:

- persons of full age placed under tutorship;
- homologated protection mandates;
- tutorships to minors;
- authorizations for temporary representation.

177. *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1, s. 38.
178. Ibid. See also *Civil Code of Québec*, CQLR, c. C-1991, art. 14.
179. Ibid., art. 156.
180. *SSQ, Société d'assurance-vie inc. v. Rouillard*, 2005 CanLII 46512 (QC CS).
181. *Public Curator Act*, CQLR, c. C-81, s. 54, and *Regulation respecting the application of the Public Curator Act*, CQLR, c. C-81, r.1, ss. 7 to 7.2.
182 Public Curator, *Public register of representation measures*, May 30, 2023.

The other, the *Public register of assistants*,183 is a new register created for assistants to persons of full age.

These free registers can be used by insurance representatives to check whether a client is under a protection regime pursuant to a Superior Court judgment, as well as whether an assistant to a person of full age is authorized to intervene in the client's matters and, if so, what responsibilities the assistant has.

If an insurance representative has doubts about his client's capacity (e.g., if he realizes that the client has cognitive problems that prevent him from understanding or giving valid consent, and the client is not in the Public Curator's registers), he or she should not make an insurance of persons or annuity contract with the client. In such cases, he or she may contact other members of the client's family or loved ones, or even social services (CLSC), if the situation is serious. These situations are becoming increasingly common.[184]

Object

The object of the contract is the juridical operation contemplated by the parties at the time of its formation.[185] It may be an obligation to do or not to do something, to provide or not provide goods, or to provide or not provide a service. It may be the sale of a house, the lease of an automobile, or the donation of a sum of money. In most insurance contracts, the object, from the insurer's point of view, is to pay a benefit upon the occurrence of an insured event.

The possible objects of a contract are limitless, but the object must comply with the law and public order.[186] It must be licit. In other words, it must be allowed by law.

EXAMPLE

The object of a contract cannot be the sale of drugs, because the law prohibits the object of the contract (the sale of illegal substances).

In insurance of persons, the object of the contract is licit, as it is not prohibited by law or contrary to public order.

In addition, the object of the contract must be possible, i.e., the person who has the obligation must be able to perform it. In life insurance, in the event of death, the insurer fulfills its obligation when

183 Public Curator, *Public register of assistants*, April 2, 2024.

184. An insurance representative who suspects that an older client is a victim of mistreatment should refer to the document entitled *Protecting Vulnerable Clients – A practical guide for the financial services industry*, published by the AMF on May 23, 2019. See also the quick reference prepared by the AMF entitled Quick reference - Detecting financial mistreatment. See also the guide entitled Trust must be earned! prepared by the AMF in partnership with the Groupe de travail pour la protection des personnes vulnérables. See also: Obodzinsky (Succession de Obodzinsky) v. Caisse Desjardins du Centre-Est de Montréal, 2019 QCCQ 3506, Mark Shamie J.

185. *Civil Code of Québec*, CQLR, c. C-1991, art. 1412.

186. Ibid., art. 1413.

the insured dies; in accident and sickness insurance, the insurer fulfills its obligation when the insured makes a claim following an accident or sickness covered by his policy.

Furthermore, the object must be determined or determinable, and the person undertaking an obligation must be aware of its extent.

In insurance of persons, the object is determined; the insurer knows the benefit it will have to pay (or the method for calculating it [in group life insurance, for example, the benefit is equal to twice the policyholder's salary]) upon the insured's death. In accident and sickness insurance, the insurer knows the amount of the maximum benefits it will have to pay to the insured in the event of a particular accident or illness.

Cause

According to article 1410 C.C.Q., the cause of a contract is the reason that drove each party to enter into the contract. It therefore justifies the existence of the contract. The cause must not be prohibited by law or contrary to public order (art. 1411 C.C.Q.).

EXAMPLE

A nominee agreement to shelter a person from his creditors is illegal because it is contrary to public order.[187]

In life insurance, the premium is the reason that caused the insurer to agree to pay a benefit upon the death of the insured. The premium is therefore the cause of the contract for the insurer, and the benefit that will be received is the cause for the client.

In conclusion, four conditions are necessary for a contract - —be it an annuity contract or an insurance contract - —to be valid:

- the parties must give their consent to the contract;
- the parties must have the capacity to bind themselves;
- the object must not be contrary to law or public order; and
- the cause of the contract must not be contrary to law or public order.

Table 2.1 summarizes the necessary conditions for an insurance of persons contract to be valid.

187. *Durand v. Drolet*, 1993 CanLII 4058 (QC CA).

TABLE 2.1:

Necessary conditions for an insurance contract to be valid

CONSENT	Express	It is free and enlightened, not vitiated (impaired) by error, fraud, fear or lesion. It is the clear and specific manifestation of a person's will.
	Tacit	It is free and enlightened, not vitiated (impaired) by error, fraud, fear or lesion. It is an implicit manifestation of a person's will; it is inferred from the conduct of the parties.
CAPACITY TO ENTER INTO A CONTRACT	In the case of a minor	He enters into a contract: ▪ for his usual needs; ▪ for acts pertaining to his employment; or ▪ as a married or fully emancipated person or with the consent of his tutors.
	In the case of a capable person of full age not under protective supervision	He has the capacity to enter into any type of contract not prohibited by law or contrary to public order. He may, however, receive assistance from his assistant to a person of full age.
	In the case of a person of full age under protective supervision	He enters into a contract through his tutor or protection mandatary. The tutorship judgment may, however, allow him to perform certain juridical acts on his own.
	In the case of a legal person	It has the capacity to enter into an insurance of persons contract provided it is authorized to do so by its charter and by-laws. Moreover, the representative (employee) who acts on behalf of the legal person must have the authority to bind the legal person under the contract.
OBJECT	Juridical operation contemplated by the parties	The operation must not be prohibited by law. The operation must not be contrary to public order.
CAUSE	Reason that leads the parties to enter into a contract.	The reason must not be prohibited by law. The reason must not be contrary to public order.

2.3.1.2 Client's application and acceptance of the application by the insurer

The application for insurance is the client's offer presented to the insurer for the purpose of obtaining insurance coverage. This written application is usually made on a form provided by the insurer. The client indicates on the form the type of coverage required, as well as the amount and duration of the coverage. The client must also declare to the insurer the facts likely to influence the insurer's appraisal or acceptance of the risk and the setting of the premium (art. 2408,

C.C.Q.). The application is filled out by the client or his insurance representative, as the case may be. In the latter case, however, the application must always be reviewed and signed by the client.

EXAMPLE

Hugo, who is 35 years old and a non-smoker, wants to purchase $250,000 of term life insurance (2 years). His insurance of persons representative, Claude, analyzes his needs. Claude presents Hugo with a proposal on an application form from *ABC Assurance-vie inc*. that has to be filled out. The application form indicates that the insurer requires evidence of insurability, namely a paramedical exam with a urine test and blood profile as well as three blood pressure readings. Hugo fills out and signs the application, gives it to Claude and also pays the amount of the initial premium. A nurse contacts him a few days later and schedules an appointment to carry out the paramedical examination and tests. Once the insurer has received the insurance application and the paramedical results, its underwriting team analyzes the file in order to accept or refuse the application, or submit a counterproposal (counteroffer).

An insurance application alone does not create a contract. According to article 2398 C.C.Q., the contract is formed only when the insurer accepts the client's application. The acceptance must be clear and unequivocal and cannot merely be presumed from the insurer's silence.

Moreover, the acceptance must be substantially in compliance with the insurance application submitted; it cannot differ as regards material elements, such as the requested amount or the duration of the coverage. If the insurer does not accept the material elements of the application, no contract is formed, even if the initial premium was paid. For example, an increase in the price of the premiums (subprime) represents an amendment equivalent to a refusal of the application with a counteroffer by the insurer.[188]

If the insurer decides to refuse the application as submitted, it can make a counterproposal. The client must accept the counterproposal in order for an insurance contract to be formed.[189] Certain insurers prudently require that the client sign a document evidencing his acceptance of the counterproposal, which seems wise.

188. *Balthazar v. New York Life Insurance Company*, J.E. 87-2 (C.S.).
189. *Balthazar v. New York Life Insurance Company*, J.E. 87-2 (C.S.); *Gauthier (Succession) v. Assurance vie Banque Nationale*, 2005 CanLII 717 (QC CQ).

EXAMPLE

After analyzing Stéphane's insurability file, including the results of the paramedical examination and tests, *ABC Assurance-vie inc*. refuses his application as submitted. It provides a counterproposal in which it indicates its willingness to insure him under the same conditions as those in his initial application, subject to an increase in the premiums (additional premium). Stéphane accepts the counterproposal and signs it in the place indicated by the insurer. The insurance contract was therefore formed as of Stéphane's acceptance of the counterproposal.

The formation of a contract and its effective date, however, are two different matters. The effective date is the date on which the contract of insurance takes effect.

2.3.2 Effective date of insurance of persons contracts

2.3.2.1 Effective date of life insurance

Once the application (or counterproposal) has been accepted and the contract has been formed, the effective date must be determined. Sometimes, the date of formation of the contract is the same as its effective date, but not in all cases. Articles 2425 and 2426 C.C.Q. deal with the effective date of life insurance contracts and accident and sickness insurance contracts, respectively; in this regard, each is governed by different rules.

With respect to life insurance, article 2425 C.C.Q. sets out three essential conditions for a contract to take effect:

- acceptance of the application by the insurer without modification;
- payment of the initial premium; and
- no change in the insurability of the risk since the application was signed.[190]

If those three conditions are not met, the life insurance policy does not come into effect.

Therefore, in practice, the insurance representative has the applicant confirm in writing that there has been no material change since the application was signed, and to verifies that the applicant has paid the premiums (verify that there are no outstanding premiums owed to the insurer). Then the insurance representative can deliver the policy.

However, if the applicant cannot confirm this in writing or fails to remit the proper premium payment, or if the insurance representative has reason to suspect that there has been a material change in the insurability of the applicant (or of the insured, if different from the applicant) despite the

190. *Biscuits Leclerc ltée v. Transamerica occidental, compagnie d'assurance-vie*, 2000 CanLII 6574 (QC CA); *Caron v. Industrielle-Alliance, compagnie d'assurance-vie*, 2008 QCCS 1520.

applicant's assurance or promise that everything is fine, the insurance representative must not complete delivery. Instead, he must retrieve the policy documents and return them to the underwriter for further consideration. He should also advise the client that the contract is not yet in force. Finally, the insurance representative should always have the policyholder sign and date an acknowledgement stating that he has received and accepted the policy.

In *Artisans Coopvie*,[191] the Supreme Court of Canada established that the three conditions set forth in article 2425 C.C.Q. must exist concurrently in order for the contract to take effect. In this case, the Court found that the insurance policy had never come into effect because the insured's insurability had changed between the date on which the unmodified application was accepted and the date on which the initial premium was paid.

Even if the application is accepted without modification and there is no change in the insured's insurability after the signing of the application, the life insurance contract only comes into effect when the initial premium is paid. The payment is a suspensive condition for the coming into effect of the contract.[192]

Since article 2425 C.C.Q. is a provision of relative public order (as opposed to absolute public order), the parties can agree on an earlier effective date.[193]

2.3.2.2 Effective date of accident and sickness insurance contracts

An accident and sickness insurance contract takes effect upon the delivery of the policy to the client, whether delivery is made by the insurer itself or by the insurance representative (art. 2426, C.C.Q.).

In contrast with life insurance, the obligation to pay the initial premium is not a condition for the coming into effect of accident and sickness insurance.[194]

Even though the insurer may subject the coming into effect of this type of contract to the payment of the initial premium, the insurance cannot take effect on a date later than the date of delivery of the policy. However, there is nothing preventing the insurer from providing that the policy will take effect before its delivery to the client, since this is more advantageous for the client than what is provided for by law.

Unlike in life insurance (art. 2425, C.C.Q.), the C.C.Q. does not mention the change in the insurable nature of the risk between the date of the signature of the application and the delivery of the policy in accident and sickness insurance. Consequently, if the insurer sends out the accident and sickness insurance policy without any modifications to the insurance representative for delivery to the policyholder, any change to the insurable nature of the risk between the date of the signature of the application and the delivery of the policy will not affect the validity of the policy. However, if the insurer requires from the insurance representative a confirmation from the applicant, in writing, that there has

191. *Trust général du Canada v. Artisans Coopvie, Société coopérative d'assurance-vie*, [1990] 2 S.C.R. 1185.
192. *Compagnie d'assurance-vie Transamerica du Canada v. Toutant*, 1999 CanLII 10961 (QC CS).
193. *Chablis Textiles Inc. (Trustee of) v. London Life Insurance Co.*, [1996] 1 S.C.R. 160; *Blais v. Union commerciale du Canada, compagnie d'assurance-vie*, 2001 CanLII 19219 (QC CA); *Industrielle Alliance, compagnie d'assurance sur la vie v. Blais*, 2008 QCCA 258. This case involved an interim cover note.
194. *Martel v. Excellence (L'), compagnie d'assurance-vie*, 2003 CanLII 34274 (QC CQ).

been no change in the insurability of the risk, such would be considered a condition imposed by the insurer, and the policy would only come into effect upon the applicant/policyholder providing such confirmation that there has been no change to in the insurability of the risk between the time of the application and the time the policy has been delivered.

2.3.2.3 Interim cover notes

Even if, in general, the life insurance contract only takes effect at the time of acceptance of the application by the insurer, provided that the application has been accepted without modifications, that the first premium has been paid, and that no change has occurred in the insurability of the risk since the signature of the application by the client, it can, in some cases, be enforceable earlier.

In fact, a client can obtain insurance coverage as soon as he signs the application, upon payment of the initial premium, even before the insurer has accepted the application. This situation involves an “interim cover note.”

An interim cover note is a contract pursuant to which the insurer offers immediate, but temporary, coverage to the insured while his application is being reviewed. With this interim cover note, the client gets immediate coverage. Therefore, if the insured dies before the effective date of the insurance contract, the insurer could have to pay the face amount. A cover note takes effect as soon as the insurance application is signed, in return for payment of a certain portion of the premium, which is generally one-twelfth of the annual premium.[195] An interim cover note may also be subject to a maximum coverage amount.

As for the duration of the interim cover note in life insurance, the insurer may stipulate that it will apply until the permanent contract takes effect, but without exceeding a specific time limit of 30 to 60 days after the application has been signed. In *Industrielle Alliance, compagnie d’assurance sur la vie* v. *Blais*, it was decided that when the duration of an interim cover note is not specified, the temporary insurance will end only if the insured is informed of the insurer’s refusal or of the coming into effect of the permanent insurance.[196] Before the permanent policy is issued, the insurer can cancel the conditional insurance as long as one of its conditions of enforceability of the policy has not been fulfilled (e.g., change in the insured’s insurability), provided the insured event has not occurred.[197]

195. *Daoust-Jean v. Laurentienne-vie (La), compagnie d’assurances inc.*, J.E. 92-1210 (C.S.); *Industrielle Alliance, compagnie d’assurance sur la vie v. Blais,* 2008 QCCA 258; *Compagnie d’assurance-vie Transamerica du Canada v. Toutant*, 1999 CanLII 10961 (QC CS); *Flibotte v. Industrielle (L’), compagnie d’assurances*, 1991 CanLII 3750 (QC CA); *Union du Canada, assurance-vie v. Dépanneur Centre-ville (1980) Ltée*, 1987 CanLII 1142 (QC CA).
196. *Industrielle Alliance, compagnie d’assurance sur la vie v. Blais,* 2008 QCCA 258.
197. *Daoust-Jean v. Laurentienne-vie (La), compagnie d’assurances inc.*, J.E. 92-1210 (C.S.).

It is important that the client be informed of the possibility of obtaining immediate coverage. If an insurance of persons representative fails to offer it even though it is available, he could be sued for damages due to professional negligence if the client (or his succession) sustains harm as a result.

An insurance of persons representative must not hesitate to inform his clients of the possibility of obtaining this type of coverage, except in rare cases, such as when the representative has reason to believe that the insured has serious health problems.

EXAMPLE

An insurer may instruct its insurance of persons representative not to offer an interim cover note to an applicant (the person who submits the insurance application to the insurer, i.e., the future client) who has cancer or has had a heart attack.

In short, since an interim cover note is a bona fide insurance contract subject to the general rules of contracts and the specific rules of insurance contracts, the consent of the parties must be obtained.

In the event of a misstatement or omission by the client, the insurer may seek a civil sanction (e.g., refusal to pay, or termination or cancellation of the contract). The following section deals with this subject.

2.3.3 Obligations of the client (and of the insured person, where applicable): declaration of risk

An insurance contract is an agreement requiring the utmost good faith of the parties. In this regard, the insurer expects to obtain precise and accurate information from the client so that it can properly assess the risk, which forms the basis of the insurance contract.

The declaration of risk includes the obligation for the client and the insured (if the insurer requires it when the client and the insured are not the same person) to relay to the insurer any fact that could impact its assessment of this risk.[198] The insured's pre-existing illnesses must be declared,[199] as must any unexplained weight loss[200] or any drug use,[201] tobacco use,[202] alcoholism,[203] or criminal record,[204]

198. *169912 Canada inc. v. Compagnie d'assurance-vie Transamerica du Canada*, 2005 CanLII 8590 (QC CS).
199. *Massy v. Compagnie d'assurances American Life*, 1991 CanLII 3510 (QC CA); *Desjardins Sécurité financière, compagnie d'assurance-vie v. Deslauriers*, 2012 QCCA 328; *Marcoux v. L'Alternative, 2003 CanLII 10835 (QC CQ)*; *Transamerica Life Insurance Co. of Canada v. Patel*, 2002 CanLII 434 (QC CS), upheld in *Patel v. Transamerica Life Insurance Co. of Canada*, 2008 QCCA 258; *Lehoux v. Union-vie (L'), compagnie mutuelle d'assurances*, 2003 CanLII 12967 (QC CS).
200. *Assurance-vie Desjardins Laurentienne inc. v. Poirier-Wilson*, 2003 CanLII 32938 (QC CA).
201. *Hardy v. Industrielle-Alliance (L'), compagnie d'assurance sur la vie*, 2002 CanLII 512 (QC CS).
202. *Ouellet v. Industrielle (L'), Cie d'assurance sur la vie*, 1993 CanLII 3597 (QC CA).
203. *Bacon v. Desjardins Sécurité financière, compagnie d'assurance-vie*, 2005 CanLII 536 (QC CQ).
204. *Plante v. Métropolitaine (La), Compagnie d'assurance-vie*, J.E. 91-423 (C.S.) (impaired driving). See also: *Union-Vie (L'), compagnie mutuelle d'assurances v. Landry*, 2005 QCCA 1036.

or any symptoms such as persistent fatigue or a fever that occurs at the end of the day, and any blood or urine test results.[205] The insurer may also require the insured to submit to blood or urine tests.

At times, the client may be tempted to hide certain information from the insurer in order to obtain insurance or obtain it at a better price. In such circumstances, one of the roles of the insurance of persons representative is to make sure the client (and the insured person if different from the client, as the case may be) fully understand that any breach of the obligation to provide all the information required for a fair assessment of the risk could have serious consequences.

Unless the medical questionnaire gives rise to particular circumstances, the client is not generally obliged to declare any ordinary or insignificant discomfort.[206]

Furthermore, an insurance of persons representative must be very careful if he fills out the insurance application; he must ensure that what he writes down accurately reflects the statements of the client or the insured, as the case may be. Otherwise, the client or the insured may be able to prove that the representative misinterpreted or suggested these statements. In such a case, the client, the insured, the beneficiary or the succession could successfully sue the insurer and the insurer could, in turn, exercise recourse or institute an action in warranty against the insurance of persons representative.

In addition, when an insurance of persons representative fills out the application form on behalf of his client, he must be very careful because he is acting as his client's mandatary and the insurer could terminate (annul) the insurance contract in the event of a misstatement or misrepresentation. A good way for a representative to avoid writing misinformation on the application is to read each question on the form to the client or the insured, without any interpretation on his part, and to fully indicate the answer of the client (or of the insured, as the case may be), also without interpretation.

The client's obligation to make a declaration exists:

- when he fills out the insurance application himself;
- when the insurance of persons representative fills out the insurance application; and
- when, during the term of the contract, certain circumstances result in an aggravation of the occupational risk (see the following section entitled *Warranties and aggravation of risk*).

In insurance of persons, the client must represent all facts liable to help the insurer assess the risk at the time of the insurance application, before the insurer agrees to provide insurance coverage. If, before the insurer's acceptance or before the payment of the initial premium, the client learns of a material element affecting the appraisal of the risk, he has the obligation to inform the insurer thereof. If he has informed the insurance representative, said representative has the obligation to immediately inform the insurer. However, this obligation ends after the insurer's acceptance of the client's application and payment of the initial premium to the insurer in life insurance, or after delivery of the policy in accident and sickness insurance (subject to the exception mentioned in the following

205. *Biscuits Leclerc ltée* v. *Compagnie d'assurance-vie Transamerica occidental*, 2000 CanLII 6574 (QC CA).
206. *Compagnie d'assurance-vie RBC (Unum Life Insurance Company of America) v. Gagnon*, 2012 QCCA 1150; *Bernier v. Mutual Life Assurance Co. of Canada*, [1973] C.A. 892; *Smith v. Desjardins*, 2005 QCCA 1046; *Geoffroy v. Westbury Canadienne, compagnie d'assurance-vie*, 2000 CanLII 18942 (QC CS).

section [aggravation of the occupational risk]).

The fact that the client has given the insurer the authorization to consult his medical record is not an excuse for the client's failure to disclose his health condition.[207]

In response to a question from the insurer relating to the risk, the client or the insured must answer truthfully, to the extent he knows the truth[208] (arts. 2408 and 2409, C.C.Q.). Even in the absence of a question, the client has the obligation to relay any event or information that is relevant to the risk.[209]

2.3.4 Warranties and aggravation of risk

2.3.4.1 Warranties

Pursuant to article 2412, C.C.Q., a warranty is an obligation requiring the client to act prudently in order to reduce the risk, for example, by installing an alarm system and a smoke detector. The warranty must be express, not implied, and it must be relevant to the risk.

Although an insurer may impose warranties on a client in insurance of persons, warranties are much more common in damage insurance.

2.3.4.2 Aggravation of the occupational risk

Once the contract is enforceable, the question is whether the client must bring to the attention of the insurer a change of circumstances that makes the initial declaration of risk inaccurate after the fact or that could generally change the assessment of the risk.

In life insurance, the client does not have to notify the insurer of an aggravation of the risk, as the assessment of the risk occurs when the contract is entered into. The insured under a life insurance contract is therefore not required to declare, during the contract, that he now has a serious illness.

In sickness and accident insurance, the situation is sometimes different, particularly when there is an aggravation of the occupational risk.

In such a case, the insured has every interest in informing the insurer, during the contract, of any aggravation of his occupational risk that has lasted for six months or more (art. 2439, para. 1 C.C.Q.). In such a situation, the C.C.Q. provides for the corresponding reduction of the indemnity. The insured is not required to declare it, but if he does and agrees to the proposed premium increase, there will be no reduction of the benefit. An insurer who has been informed of the situation might not ask for an increased premium, thereby indicating its wish not to change anything about the initial contract entered into by the parties. If there is a reduction in the occupational risk, the insured's insurance premiums may be reduced.

---

207. *Gravel (Succession de) v. Compagnie d'assurance du Canada sur la vie « Canada-Vie »*, 2007 QCCS 5796; *Audet v. Industrielle-Alliance (L'), Compagnie d'assurance sur la vie*, [1990] R.R.A. 500 (C.S.).
208. *Compagnie d'assurance-vie Transamerica du Canada v. Nourcy*, 1999 CanLII 13769 (QC CA), leave to appeal to the Supreme Court of Canada refused on March 23, 2000, File No. 27335.
209. *Italchain v. J.A. Madill*,1982 CanLII 2747 (QC CS); *Landry v. St-Maurice (La), compagnie d'assurances*, [1995] R.R.A. 1221 (C.Q.).

EXAMPLE

Luc, a self-employed trucker, purchased an individual disability insurance contract. For the past six months, he has been transporting hazardous materials, but does not inform his insurer about this aggravation of the risk. If Luc has an accident that leaves him disabled, the insurer may decide to reduce the disability benefit based on the premium that would have been payable if it had known about this risk.

2.3.5 Term and end of the contract (annulment or cancellation)

2.3.5.1 Term of the contract

Insurance coverage remains in effect for the entire term of the contract. At the end of the coverage period, the parties are released from their respective obligations unless the contract is renewed. However, other circumstances may put an end to an insurance contract: its termination (annulment) or cancellation.[210]

Annulment of the contract

An insurance of persons contract, like any other contract, may be terminated (annulled) if there is a defect of consent, such as error or fraud (deceit) (arts. 1398 et seq. C.C.Q.).

An annulment of the insurance contract places the parties in their pre-contractual state, as though the contract had never existed.

Certain reasons specific to insurance law allow for the termination (annulment) of an insurance contract, such as the absence of an insurable interest (art. 2418, para. 1, C.C.Q.) or, in case of misrepresentations, concealment or fraud regarding the risk (arts. 2408 to 2413 and 2420 to 2424 C.C.Q.).

210. *Bélanger v. Great West, compagnie d'assurance-vie*, 1999 CanLII 11254 (QC CS).

Right of termination of the contract by the client for certain insurance contracts.

Pursuant to the CLHIA's *Guideline G10* entitled "10-Day Insurance Contract Rescission Right,"[211] with which member insurers are required to comply, a policyholder (client) can cancel an insurance contract within 10 days of signing it, without penalty and with a reimbursement of the premiums paid.

In the case of individual variable annuity contracts, also referred to as "individual annuity contracts relating to segregated funds" (also known as "individual variable insurance contracts" or "IVICs"), the contract holder has a right to cancel (or "rescind") the contract, without penalty and with a reimbursement of the contributions (subject to any fluctuation in the value of the segregated funds), within two business days starting from the earlier of when the contract holder receives the confirmation or five business days after the confirmation is mailed.[212]

Under CLHIA *Guideline G7* entitled "Creditor's Group Insurance,"[213] the application must include a statement that the debtor has a specified period of time, to be not less than 20 days, after receipt of the insurance certificate to review the insurance, during which time the insurance can be cancelled for a full refund.

Under section 440 of the *Act respecting the distribution of financial products and services*, "[a] distributor that, at the time a contract is made, causes the client to make an insurance contract must give the client a notice, drafted in the manner prescribed by regulation of the Authority, stating that the client may rescind the insurance contract within 10 days of signing it."[214]

An insurance representative who, at the time a contract is made, causes the client to make an insurance contract must give the client a notice, drafted in the manner prescribed by regulation of the Authority, stating that the client may rescind the insurance contract within 10 days of signing it.[215]

Lastly, under section 64 of the new *Insurers Act*, "[t]he client for an insurance contract may, if no insurance representative interacted with the client at the time the latter consented to the contract, cancel the contract within 10 days after receiving the policy, unless the contract has already expired at that time." This right to cancel applies mainly to insurance contracts made between an insurer and a client during an on-line sale through a firm's digital space, such as a Web site or mobile app, without the involvement of an insurance representative.

---

211. The Canadian Life and Health Insurance Association (CLHIA). *Guideline G10 - 10-Day Insurance Contract Rescission Right*, online document. See: https://www.clhia.ca/web/CLHIA_LP4W_LND_Webstation.nsf/page/D99B8079BC50934685258226006FE573!OpenDocument.updated September 2009.
212. *Regulation respecting information to be provided to consumers*, CQLR, c. D-9.2, r.18, s. 4.20. See also CLHIA *Guideline G2 (Individual Variable Insurance Contracts Relating to Segregated Funds)*, Form 1, Part B, Item 8 (p. 59), and Item 9 (p. 61) of the AMF *Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds*.
213. See: CLHIA, *Guideline G7 - Creditor's Group Insurance*, June 8, 2016.
214. See also section 31 of the Regulation respecting Alternative Distribution Methods, CQLR, c. D-9.2, r. 16.1.
215. Act respecting the distribution of financial products and services, CQLR, c. D-9.2, s. 19; Regulation respecting information to be provided to consumers, CQLR, c. D-9.2, r. 18, s. 2.

The firm must also inform the client of the right of cancellation pursuant to section 64 of the *Insurers Act* and provide him with the notice of cancellation set out in Schedule 1 of the *Regulation respecting Alternative Distribution Methods*.[216] It is important to note that section 64 creates a 10-day right to cancel a contract only if no representative interacted with the client at the time the client entered into the contract. Therefore, the right of cancellation does not apply when a transaction is concluded with a representative, even if the process was initiated through a digital space.

Cancellation and annulment of the contract

Unlike annulment (also referred to as resolution in the C.C.Q.), cancellation (also referred to as resiliation in the C.C.Q.) only cancels the contract for the future (arts. 1439 and 1606, C.C.Q.).

In addition to the grounds an insurer can invoke (including those for default of payment of premiums) in order to cancel an insurance contract, a policyholder can also cancel an insurance contract.

After the 10-day period mentioned above with respect to individual life insurance contracts or accident and sickness insurance contracts, a policyholder can still cancel his insurance contract at any time. However, in such a case, the premiums paid will not be reimbursed to the policyholder and the policy may impose penalties. As regards individual variable annuity contracts, in general, a contract holder can redeem his annuity contract at any time and receive the value of any accrued amounts, but he may be required to pay withdrawal or repurchase (surrender) fees (or penalties).

2.3.5.2 Annulment for fraud, misrepresentation or concealment

During the first two years following the effective date of the contract, the insurer can seek to have it nullified if the insured's statements were false or inaccurate, for example, if they were likely to influence the insurer in the decision to cover the risk or set the premium, whether or not the insured acted in good faith. After this period, the insurer cannot seek the nullity of the contract, except in case of fraud on the part of the insured (art. 2424, C.C.Q.). The connection between the omitted or concealed fact and the occurrence of the loss is irrelevant.[217]

The following are considered breaches of the client's obligation to represent the facts, pursuant to which the insurer may terminate (annul) or cancel the insurance contract:

- misrepresentation with respect to age;
- other misrepresentations;
- concealment; and
- fraud.

216. *Regulation respecting Alternative Distribution Methods*, CQLR, c. D-9.2, r. 16.1, s. 12.
217. *Civil Code of Québec*, CQLR, c. C-1991, art. 2410. See also: *Impériale (L') Cie d'assurance-vie v. Roy (Succession de)*, 1990 CanLII 2695 (QC CA).

Misrepresentation with respect to age

The review of an insurance contract may show that there was a misrepresentation as to the insured's age. The law provides that such a situation does not necessarily lead to the nullity of the insurance contract (art. 2420, para. 1, C.C.Q.).[218]

In life insurance, the benefit (face amount) can be adjusted in proportion to the premium collected compared with that which should have been collected, if the true age of the insured is within the age limits set by the insurer's rates.

EXAMPLE

Michèle represents that she is 30 years old when, in fact, she is 40. She takes out $10,000 of life insurance. The insurance premium is $100 per year for a 30-year-old non-smoking woman. By paying this premium, a 40-year-old woman would only be entitled up to $7,000 of coverage. Upon Michèle's death, the insurer will therefore pay $7,000.[219]

In accident and sickness insurance, the insurer can adjust the premium to make it correspond to the premium applicable or reduce the insured amount proportionately (art. 2420, para. 1, C.C.Q.).

When the insurance is to end at a specified age and the misrepresentation is discovered before death, the end of the contract will be based on the true age of the insured (art. 2422, para. 1, C.C.Q.).

There are, however, two exceptions that allow the insurer to ask for the nullity of the contract (arts. 2410, 2421 and, 2424, C.C.Q.):

- if there was fraud;
- if, at the time of the formation of the contract, the age of the insured exceeded the age limits fixed by the insurer's rates. In such a case, the insurer must act within three years of the effective date of the contract, provided it does so during the lifetime of the insured and within 60 days after becoming aware of the insured's real age.

EXAMPLE

Christian, who is 68 years old, dies. His $10,000 life insurance contract was to end at the age of 65. According to the insurer's records, Christian is 64 years old. In this case, the insurer will nevertheless have to pay the $10,000 because the misrepresentation as to age was not discovered before death (unless the insurer is able to demonstrate fraud on the part of the client).

218. Luc Plamondon. "*L'erreur sur l'âge en assurance de personnes*," (2006) 40 *R.J.T.* 509.
219. *Jean-Paul v. Desjardins Sécurité financière, compagnie d'assurance-vie*, 2018 QCCQ 5812 (Small Claims). In this case, the Court stated that the fact that the error was on the insurance representative's part and the policy-holder acted in good faith in no way changed the application of article 2420 C.C.Q.

Other misrepresentations

Misrepresentation is the giving of inaccurate information that could affect the premium rate or the decision to cover the risk[220] (art. 2408 C.C.Q.).

EXAMPLE 1

A person declares that he saw his doctor five times during the past five years for routine examinations. In fact, the person saw his doctor 10 times because he suffered from migraines.

EXAMPLE 2

A person declares that he has not smoked in the past year. In fact, he smoked several cigarettes at a high school reunion.

In *Lavoie* v. *Cie d'assurance-vie de Montréal*,[221] the client, who was also the insured, declared that he had never taken narcotics, which was not true, and also failed to declare that he had consulted a psychiatrist on a few occasions. The Court of Appeal terminated (annulled) the insurance contract due to the client's misrepresentations.

In *Massy* v. *Cie d'assurance American Life*,[222] the Court of Appeal dismissed the beneficiary's claim. In response to a specific question asking whether the beneficiary had ever suffered from headaches, asthma or allergies, he had answered "no." However, three years earlier, he had stated the contrary to his physician. The Court of Appeal stated that if the client had not made misrepresentations in the insurance application, a reasonable insurer would have reviewed the application much more exhaustively, and the client might have been subject to an additional premium or the requested insurance coverage might have been refused.

In *Ouellet* v. *Industrielle (L'), Cie d'assurance sur la vie*,[223] the insured died as a result of a car accident. He had declared that he had not used tobacco in the previous 12 months, although he had, in fact, smoked a few small cigars. The Court of Appeal ruled that the questionnaire left no room for interpretation, and it terminated (annulled) the insurance contract due to the insured's misrepresentation.

However, a client does not need to declare common symptoms, whose importance he does not realize, and for which he did not consult a doctor.[224]

220. *2958-2951 Québec inc. v. Assurance-vie Desjardins inc.*, 1999 CanLII 11159 (QC CS).
221. *Lavoie v. Compagnie d'assurance-vie de Montréal*, 1989 CanLII 590 (QC CA).
222. *Massy v. Compagnie d'assurance American Life*, 1991 CanLII 3510 (QC CA).
223. *Ouellet v. Industrielle (L'), compagnie d'assurance sur la vie*, 1993 CanLII 3597 (QC CA).
224. *Geoffroy v. Westbury Canadienne, compagnie d'assurance-vie*, 2000 CanLII 18942 (QC CS).

In the absence of fraud, a misrepresentation or concealment must be invoked within two years following the effective date of the policy.[225] In disability insurance, when there is a misrepresentation or concealment, the insurer may terminate (annul) or reduce the insurance coverage if the disability occurs during the first two years of the insurance.[226]

Concealment

Concealment is a voluntary or involuntary omission of a fact or information that could affect the premium rate or the insurer's decision to accept the risk. Concealment is caused by the insured's oversight or by his failure to declare information he did not consider relevant.[227] The insured's intent is not to mislead the insurer.[228]

The term "relevant" is important, because the insurer can argue that the client or the insured is guilty of concealment, even if the client or the insured considered this element as being irrelevant with respect to his obligation to declare.

EXAMPLES

- Not disclosing a urinary tract infection treated one year earlier.
- Not declaring that a person regularly takes certain medication.
- Not declaring that a person was hospitalized or had surgery.

In some situations, the applicant may be unaware that he is concealing facts.

EXAMPLE

Martine has cancer. Out of concern, her doctor never told her the truth about her state of health. If Martine purchases life insurance, the insurer will not be able to ask for the termination (annulment) of the contract under the pretext that there was concealment. The insured cannot be faulted for being unaware of her real state of health.

Once discovered, misrepresentations and concealment can influence the insurer's appraisal of the risk and then justify the termination (annulment)[229] or reduction of insurance coverage.

225. *Civil Code of Québec*, CQLR, c. C-1991, art. 2424. See also: *Gagnon v. Constellation-vie (La),* J.E. 88-379 (C.S.).
226. *Gagnon v. Constellation-vie (La)*, J.E. 88-379 (C.S.).
227. *Biscuits Leclerc ltée v. Compagnie d'assurance-vie Transamerica occidental*, 1997 CanLII 9146 (QC CS), upheld in *Biscuits Leclerc ltée v. Compagnie d'assurance-vie Transamerica occidental,* 2000 CanLII 6574 (QC CA).
228. Didier Lluelles. *op. cit.*, *No. 329,* p. 238, and No. 391, pp. 280–281.
229. *Assurance-vie Desjardins v. Éthier (Succession de)*, 1997 CanLII 10463 (QC CA).

In this regard, an insurer who discovers a misrepresentation or concealment can ask for the termination (annulment) of the insurance contract, provided it does so within two years of the effective date of the insurance coverage (art. 2424, C.C.Q.).[230] This gives rise to two situations:

- If the insured is alive (for example, disability insurance), the insurer will send him a letter notifying him of the termination (annulment) of the contract and a cheque representing all the premiums paid. If the insured wants to contest the decision, he must bring the dispute before a court of competent jurisdiction.;
- If the insured dies within two years of the effective date of the insurance, the insurer may refuse to pay the face amount. It is then up to the beneficiary to take measures against the insurer.

If the insured dies more than two years after the effective date of the insurance, the insurer cannot refuse to pay the insured amount unless the misrepresentation or concealment is fraudulent.

In conclusion, any misrepresentation, no matter how unimportant it may seem today, can lead the insurer to refuse to pay the face amount, even if the cause of death is unrelated to the misrepresented facts.

EXAMPLE

Mathieu takes out life insurance. He declares that he has not smoked in the past year. This statement is false, because he smoked three cigarettes during an evening out at a discotheque. A few months later, he dies following an automobile accident. The insurer refuses to pay the face amount, because it learned during its investigation that there was a misrepresentation with respect to the use of tobacco. Several people who were at the discotheque that evening testify to this. They are unfamiliar with the field of insurance and believe that, in such a case, the court will order the insurer to pay the face amount, but they are wrong. The fact that Mathieu died due to an automobile accident will not make any difference to the court.[231]

Fraud

Fraud is an action carried out in bad faith in order to deliberately deceive. In the case of an insurance contract, fraud consists of voluntarily giving misinformation or not revealing certain essential information with the clear and firm intention of misleading the insurer.[232]

230. If the death or disability (loss) occurs within two years of the policy's validity period following the misrepresentation or concealment, the insured or the latter's successors at law cannot argue to the insurer that their claim was made after the policy's two-year validity period. See: David Norwood and John P. Weir, Norwood on Life Insurance Law in Canada, 3rd ed., Toronto, Carswell, 2002, p. 402.
231. *Ouellet v. Industrielle (L'), Cie d'assurance sur la vie*, 1993 CanLII 3597 (QC CA).
232. *Boulianne v. SSQ Mutuelle d'assurance groupe*, 1997 CanLII 9348 (QC CS).

In insurance of persons, fraud also results from a misrepresentation by the client or the insured who is aware that if the truth were told, the insurer might not issue the policy under the negotiated terms.[233] Although the misrepresentation must be intentional (or deliberate),[234] it need not be premeditated.[235] Since everyone is presumed to act in good faith,[236] the insurer has the burden of proving the fraud.[237]

If fraud is proven, the insurer can ask for the termination (annulment) of the contract at any time. It is not always easy to draw a line between misrepresentation and fraud. The insurance of persons representative must be vigilant and perceptive.

Facts known to the insurer or presumed to be known from their notoriety

The client does not have to declare facts known to the insurer or presumed to be known from their notoriety (art. 2408 C.C.Q.).

In *Jobin-Blouin* v. *La Mutuelle du Canada, Cie d'assurance sur la vie*,[238] the insurance of persons representative knew that the insured had an alcohol problem and high blood pressure. Since the insurance representative, the apparent mandatary of the insurer for the insured, "knew" about the insured's problems,[239] the insured was not obliged to declare them to the insurance of persons representative.

However, the insurance representative must declare these facts to the insurer, which could otherwise exercise recourse against the representative.

A notorious fact is one that a reasonably competent insurer should know when it operates in a particular field.[240] For example, the health risks of asbestos is a notorious fact.[241]

233. *Giguère v. Mutuelle vie des fonctionnaires du Québec*, 1995 CanLII 4658 (QC CA); *Desjardins sécurité financière, compagnie d'assurance-vie v. Tétreault*, 2009 QCCA 2183; *Axa Assurances inc. v. Délicatesse Nourcy inc.*, 2002 CanLII 63606 (QC CA); *Phillipp v. Sun Life du Canada, compagnie d'assurance-vie*, 2007 QCCS 555; *Transamerica Life Insurance Co. of Canada v. Patel*, 2002 CanLII 434 (QC CS), upheld in *Patel v. Transamerica Life Insurance Co. of Canada*, 2008 QCCA 258; *Tremblay v. Clarica, compagnie d'assurance sur la vie*, 2000 CanLII 18863 (QC CS); *Union-Vie (L'), compagnie mutuelle d'assurances v. Laflamme*, 2005 QCCA 394; *McDuff v. Industrielle Alliance (L'), assurances et services financiers inc.*, 2009 QCCS 530.
234. *Falduto v. Compagnie d'assurance-vie Federated du Canada*, 2008 QCCA 438; *Gravel (Succession de) v. Compagnie d'assurance du Canada sur la vie*, 2007 QCCS 5796.
235. *Union-Vie (L'), compagnie mutuelle d'assurances v. Laflamme*, 2005 QCCA 394; *Gravel (Succession de) v. Compagnie d'assurance du Canada sur la vie,* 2007 QCCS 5796.
236. *Civil Code of Québec*, CQLR, c. C-1991, art. 2805.
237. *Rongionne v. Mutuelle des fonctionnaires du Québec*, [1989] R.R.A. 673 (C.S.), appeal dismissed in *Rongionne v. Mutuelle des fonctionnaires du Québec*, 1995 CanLII 5480 (QC CA); *Giguère v. Mutuelle des fonctionnaires du Québec*, 1995 CanLII 4658 (QC CA); *S.A. v. Compagnie d'assurance-vie RBC*, 2009 QCCS 3280; *Gravel (Succession de) v. Compagnie d'assurance du Canada sur la vie,* 2007 QCCS 5796.
238. *Jobin-Blouin v. La Mutuelle du Canada, Cie d'assurance sur la vie*, J.E. 85-1056 (C.S.).
239. See also *Lehoux v. Union-vie (L'), compagnie mutuelle d'assurances*, 2003 CanLII 12967 (QC CS).
240. *2849-7378 Québec inc. v. Groupe Commerce (Le), compagnie d'assurances*, J.E. 2002-513 (C.S.).
241. *Canadian Indemnity Co. v. Canadian John-Manville Co.*, [1990] 2 S.C.R. 549.

2.3.5.3 Cancellation for non-payment of life insurance premiums

In life insurance, other than the initial premium that must be paid in order for the life insurance to come into effect (art. 2425, C.C.Q.), non-payment of the premiums leads to the automatic cancellation of the contract after 30 days (art. 2427, para. 1, C.C.Q.). This cancellation is automatic, and the insurer does not have to send a notice of default to the client.[242]

It should be noted that if the client pays the premium within the 30-day grace period given to him, the insurance will remain in effect.[243] Failing payment within that period, the insurance is cancelled. In case of death within the 30- day grace period, the insurer is required to pay the insured amount.

However, if the life insurance contract has a cash surrender value, the insurer can pay the premium from the cash surrender value in order to keep the contract in effect.

The cancellation is not always final, however (also see the section dealing with reinstatement following cancellation for non-payment of premiums), since the insurer is obliged to reinstate the individual life insurance under the following conditions (art. 2431, para. 1, C.C.Q.):

- the client applies for the reinstatement within two years of the date of the cancellation; and
- the insurer determines that the insured still meets the insurability conditions of the cancelled contract.[244]

2.3.5.4 Cancellation for non-payment of sickness and accident insurance premiums

In sickness and accident insurance, non-payment of the premiums while the policy is in effect leads to the cancellation of the contract only if the insurer gives the client 15 days' prior notice to such effect (art. 2430, C.C.Q.). Thus, in the case of sickness and accident insurance, if the insurer fails to send a prior written notice of cancellation to the client, the coverage will remain in effect.

2.3.5.5 Reinstatement following cancellation for non-payment of premiums

Only an individual life insurance contract that has been cancelled for non-payment of the premium (art. 2427, C.C.Q.) can be reinstated under certain conditions to be met by the client. These conditions are set forth in article 2431, C.C.Q., as follows:

- apply for the reinstatement within two years of the date of the cancellation;
- prove that the insured still meets the insurability conditions under the cancelled contract;
- pay the overdue premiums; and
- Repay the advances obtained on the policy.

---

242. *Économie (L'), mutuelle d'assurance v. Roy*, J.E. 85-343 (C.A.); *Compagnie d'assurance-vie Eaton v. Roy*, 1996 CanLII 5894 (QC CA).
243. *Rocheleau v. Union-vie, compagnie mutuelle d'assurance*, 1999 CanLII 11266 (QC CS).
244. *Harvey-Côté v. National Life Assurance Co. of Canada*, 1991 CanLII 3145 (QC CA); *Compagnie d'assurance-vie Eaton v. Roy*, 1996 CanLII 5894 (QC CA).

Time limit for reinstatement

To meet the first condition, the client must apply to the insurer to reinstate the policy. This application must be made within two years following the date of the cancellation.

EXAMPLE

The life insurance contract purchased by Dimitri took effect on May 1, 2020. According to his contract, the premium (other than the first one, arts. 2425 and 2427, *C.C.Q.*) must be paid on the first day of each month. On May 1, 2022, Dimitri forgets to pay it. His insurance will thus remain in effect for 30 days, i.e., until May 31, 2022.

Dimitri also fails to pay the premium before the expiry of that 30-day period. The insurance contract will therefore be cancelled automatically. Dimitri then has a period of two years from the date of the cancellation of his contract (May 31, 2022) to apply to the insurer for the reinstatement of his contract, i.e., until May 31, 2024. Had Dimitri died during the period from May 1, 2022, to May 31, 2022, inclusively (during the grace period), the insurer would have been obliged to pay the face amount to the designated beneficiary or to Dimitri's succession, as the case may be. However, if Dimitri were to die on January 1, 2024, without reinstating his insurance policy, the face amount would not be payable by the insurer.

Proof of insurability

The client's application for reinstatement of the cancelled contract will be refused if the insured's state of health deteriorated since the contract was purchased and the insured no longer satisfies the insurability conditions.

Payment of overdue premiums

When reinstatement is requested, all overdue premiums (including accrued interest) must be paid.

Repayment of advances

A "policy advance" is an amount of money advanced by the insurer to the owner of the contract (policyholder) from its actuarial reserve for the individual policy. The advance reduces the future benefit by the amount of the advance.[245] When reinstatement is requested, all advances made by the insurer before the cancellation of the policy must be repaid. The repayment must include interest at the rate in effect at the time of the advances (art. 2431, C.C.Q.).

245. Didier Lluelles, *op. cit.,* 2009, Nos. 699 to 702, pp. 468 to 470.

Effect of reinstatement

Pursuant to article 2434, C.C.Q., as of the date of the reinstatement of the insurance contract, the two-year period during which the insurer can seek the termination (annulment) of the contract or a reduction of coverage by reason of misrepresentation or concealment (art. 2410, C.C.Q.), or invoke an exclusion clause due to suicide (art. 2441, C.C.Q.), starts again.[246]

2.3.6 Assignment and hypothecation (mortgaging) of rights arising from a contract of insurance

2.3.6.1 Assignment of policy

Assignment during the client's lifetime

Assignment consists in transferring the client's rights and obligations under an insurance policy to another person with an interest in the insured's life or health and thereby replacing the client. As of January 1, 1994, article 2418, C.C.Q. provides that if the new policyholder does not have an insurable interest at the time of the assignment, the assignment will be null and void, unless the insured has given his written consent to the assignment.

Upon assignment, the designation of beneficiaries and subrogated policyholders is automatically revoked (art. 2462, C.C.Q.), thereby allowing the assignee (the new client) to designate a new beneficiary. However, there is one exception: if the beneficiary was irrevocable, the assignee cannot change the irrevocable beneficiary unless the irrevocable beneficiary consents. Thus, the designation of an irrevocable beneficiary, unlike that of a revocable beneficiary, is not automatically revoked by an assignment.[247]

Pursuant to article 2461 C.C.Q., an assignment cannot be set up against the insurer, the beneficiary or third parties until the insurer receives notice thereof. Where there are multiple assignees, priority is determined by the date on which the insurer receives the notice.

EXAMPLE

Jeannot's mother, Megan, takes out a $100,000 insurance policy on the life of her grandson, Alexis, Jeannot's son, when he is only a few months old. She designates her husband Étienne as the irrevocable beneficiary. On her 70th birthday, Megan assigns the contract to Jeannot. This is an assignment by Megan to an individual, Jeannot, who has an insurable interest in the life of Alexis, his son (the insured person). The insurer is required to give effect to this assignment only if it receives a notice thereof. Moreover, if Alexis dies, Étienne will receive the face amount in his capacity as the irrevocable beneficiary.

246. *1858-0894 Québec inc. v. La Compagnie d'assurance Standard Life*, 1999 CanLII 13734 (QC CA); *Solidarité (La), compagnie d'assurance sur la vie v. Poulin*, 1999 CanLII 19881 (QC CA).
247. Didier Lluelles, *op. cit.*, No. 207, p. 152.

The assignee (the person to whom the insurance policy is assigned) must have an insurable interest in the life of the insured, unless the insured has consented in writing to the assignment.[248] However, it is not necessary for the assignor (the person assigning the policy) to have maintained his insurable interest on the date of the assignment.[249]

Assignment due to the death of the policyholder

See the section dealing with clients (policyholders) and subrogated policyholders.

Note that the required insurable interest of the assignee does not apply in cases of "assignment" upon death.[250]

2.3.6.2 Hypothecation (mortgaging) or collateral security

Article 2660, C.C.Q. defines a hypothec (mortgage) as a real right on property - —that is, a right that attaches to immovable or movable property, and not to a person - —that guarantees the performance of an obligation. "It confers on the creditor the right to follow the property into whatever hands it may come, to take possession of it, to take it in payment, to sell it or to cause it to be sold, and thus to have a preference upon the proceeds of the sale, according to the rank as determined in this Code."

A client can hypothecate (mortgage) his rights under the insurance policy in favour of one of his creditors in order to secure a debt. The hypothecation (mortgaging) automatically entails the revocation (cancellation) of the designation of any revocable beneficiary and any subrogated policyholder up to the amount of the debt. The hypothec (mortgage) confers a right on the hypothecary (mortgage) creditor only up to an amount equal to the balance of the debt, interest and included accessories (art. 2462, C.C.Q.).

EXAMPLE

Jean-Simon wants to borrow $30,000 from François. François agrees to lend him the money, but requires a guarantee to ensure he will be reimbursed if Jean-Simon dies.

248. *Civil Code of Québec,* CQLR, c. C-1991, art. 2418, para. 2.
249. *Piché v. Arontec inc.*, 2006 QCCS 2721, appeal dismissed in *Piché v. Arontec inc.*, 2008 QCCA 744. See also: *Silver Point Life (Silver Point Capital) v. Empire, Compagnie d'assurance-vie*, 2024 QCCS 383.
250. Isabelle TREMBLAY, *L'assurance de personnes au Québec*, Brossard, Les Publications CCH/FM Inc., 1989 (looseleaf edition), No. 15-850, pp. 1-1279; Sébastien LANCTÔT, "L'intérêt d'assurance en assurance de personnes : une étude de droit comparé", in: Assurances et gestion des risques, vol. 80(1), April 2012, 95-136; Didier LLUELLES, *Droit des assurances terrestres*, 4th ed., Montréal, Les Éditions Thémis, 2005, pp. 164 to 166; Hubert REID, *Dictionnaire de droit québécois et canadien*, 5th ed., Montréal, Wilson & Lafleur, 2015, p. 96 (cession).

Jean-Simon holds a $100,000 life insurance policy. The revocable beneficiary designated in the policy is Carole, his wife. Jean-Simon decides to grant François a movable hypothec (mortgage) and, as a result, he consents to hypothecate (mortgage) his insurance contract as collateral security to guarantee the $30,000 debt. If Jean-Simon dies while he still owes François $20,000, i.e., before having fully reimbursed his debt, François will have the right to receive an amount equal to the unpaid balance owed to him, namely, $20,000. As the designated beneficiary, Carole will receive the balance of the face amount, namely, $80,000.

The hypothecation (mortgaging) of rights arising from an insurance contract does not have the effect of revoking the designation of an irrevocable beneficiary for an amount equal to the balance of the hypothecary (mortgage) creditor's loan, except if the irrevocable beneficiary has consented thereto.

As with an assignment, the hypothecation (mortgaging) of a right resulting from an insurance contract cannot be set up against the insurer, the beneficiary or third parties until the insurer receives notice thereof. Where there are multiple hypothecs (mortgages), priority is also determined based on the date on which the insurer receives the notice (art. 2461 C.C.Q.). Insurers often have a form that constitutes the notice of hypothec (mortgage).[251]

EXAMPLE

Jason has $100,000 of life insurance. He takes the following steps:

- On February 15, 2014, he designates Lily as a revocable beneficiary on a form that he sends to the insurer.;
- On March 15, 2014, he hypothecates (mortgages) his insurance contract in favour of Mario in order to guarantee a $100,000 loan and he notifies his insurer in writing.;
- On April 15, 2014, he once again hypothecates (mortgages) his insurance contract, but this time in favour of Sandrine, in order to guarantee another loan for an amount of $5,000, and he notifies his insurer in writing.

If Jason dies and he still owes Mario $100,000 and Sandrine $5,000, Mario will receive the entire face amount. Lily will not receive anything, because her designation was totally revoked by the hypothec (mortgage) whose balance is equal to the face amount. Moreover, Sandrine will not receive anything due to the priority granted by law to the notice of hypothec (mortgage) received first by the insurer.

251. However, it should be noted that, as of January 1, 2009, the formalities for the creation of a movable hypothec without delivery apply. See: Louis PAYETTE, *Les sûretés réelles dans le Code civil du Québec*, 5th. ed., Montréal, Les Éditions Yvon Blais, 2015, No. 1262, p. 665; Aurore Benadiba, "La Loi sur le transfert des valeurs mobilières et l'obtention des titres intermédiés ou les excès d'un régime d'exception en matière de sûretés mobilières,", (2012) 53 Les *Cahiers. de droit.* 303, p. 337 (in French only).

A movable hypothec (mortgage) on the rights arising under a policy can also confer upon the creditor the right to request the cash surrender value in the event of default.

2.3.6.3 Other rights of the client

Participation right (participating policies)

Some individual life insurance policies entitle the client to receive dividends. These are referred to as participating policies.

Pursuant to article 2454, C.C.Q., the client has the right to receive these dividends, even if an irrevocable beneficiary has been designated.

Cash surrender value

Term life insurance policies generally do not have a cash surrender value, unlike whole life (permanent) insurance policies.

The client has the power to exercise his right to the cash surrender value, in whole or in part. If he asks the insurer for the entire cash surrender value, this puts an end to the life insurance policy. If he asks for only part of the cash surrender value, the life insurance policy will remain in effect, but in most cases, the face amount will be reduced in proportion to the partial surrender.

If the client asks for the cash surrender value of his policy when an irrevocable beneficiary has been designated, the insurer will refuse the request unless the client provides the insurer with the designated beneficiary's written consent.[252] If the irrevocable beneficiary is a minor, the client will have to wait until the beneficiary reaches the age of majority before asking him to consent to the surrender of the policy.[253]

Policy advance

When an individual life insurance policy has a cash surrender value, the client can ask the insurer to lend him part of that value.[254] If the insurer agrees, the policy remains in effect for the entire face amount.

The client can repay the insurer. The insurer's loan bears interests from the date of the disbursement by the insurer to the client.

If the client has not reimbursed the insurer by the time the insured dies, or has only partially reimbursed the insurer, the face amount will be reduced by the unpaid amount of the loan and any interest owed to the insurer.

252. *Civil Code of Québec*, CQLR, c. C-1991, art. 2460.
253. *Bélanger v. Bélanger (Succession de)*, 2009 QCCS 6159, paras. 29 and 30, 32 to 34 and 42 to 44.
254. Didier Lluelles, *op. cit.*, Nos. 699 to 702, pp. 468 to 471.

2.4 General provisions of individual insurance contracts, exclusion provisions and claims

2.4.1 General provisions of individual insurance contracts

2.4.1.1 Types of insurance coverage (insurance coverage or protections)

The word “coverage” refers, in simple terms, to the insured risk. It is the insurance protection offered by the insurer. The scope of the coverage set out in the contract as well as the reductions or exclusions imposed by the insurer in an insurance of persons contract will be examined below. An insurance of persons contract can contain several types of coverage, especially in group insurance. It is therefore frequent, mostly in group insurance, for an insurance policy to contain not only life insurance coverage, but also insurance coverage in case of accidental death, disability insurance coverage (which is insurance against sickness and accidents), and various other insurance coverages against sickness and accidents.

The insurance contract determines the risk covered; in other words, it specifies the event for which coverage is provided (arts. 2399, 2415 and 2416 C.C.Q.). It is important for the client to carefully read these clauses and definitions, because they form the basis for the insurer’s acceptance or refusal of a claim.

Life insurance is one type of coverage offered in insurance of persons, but a life insurance policy can also contain other insurance coverage, such as coverage against sickness and accidents. These clauses are then referred to as being accessory to the life insurance contract (art. 2394 C.C.Q.). The opposite is also possible: an accident and sickness insurance contract can contain life insurance coverage as an accessory.

However, when it is impossible to determine which coverage is the principal coverage under an insurance contract with multiple insurance coverages, the rules of life insurance must be applied to claims based on the life insurance coverage, and the rules of accident and sickness insurance must be applied to claims based on the accident and sickness coverage.[255]

An insurance contract does not only define the scope of the coverage, but also sets out the coverage limitations, reductions and exclusions.

2.4.2 Coverage exclusion, limitation and reduction provisions

2.4.2.1 Distinction between coverage exclusion, limitation and reduction provisions

Limitations can apply, among other things, to the maximum amount of benefits the insurer will pay, or to the number of months (or weeks, or age limit) during which the insurer will pay benefits. Coverage can also apply only to a certain type of situation or event.

255. *Excelsior (L’), Compagnie d’assurance-vie v. S.S.Q. Mutuelle d’assurance-groupe*, 1993 CanLII 3889 (QC CA).

In insurance of persons contracts, one speaks of a “reduction” or, sometimes, a “restriction.” These terms refer to a decrease in coverage: the coverage will not apply in certain situations, or it will be limited, reduced or decreased based on certain facts, conducts, circumstances or conditions established by the insurer.

EXAMPLE

Restriction

An accident insurance policy states that a fracture or break must be diagnosed within 30 days of the accident, otherwise no benefits will be payable. This is a restriction.

EXAMPLE

Reduction

An insured who is 65 years or older on the date of the accident will only be entitled to 50% of the amounts indicated in the schedule of loss due to an accident. This is a reduction.

The term “exclusion” refers more particularly to an exception, that is, an event or a circumstance that is not covered by the insurance contract. In a situation involving an exclusion expressly mentioned in the contract, no insurance coverage will be provided.

2.4.2.2 Legal exclusions

An insurance of persons contract contains legal exclusions and contractual exclusions. The client’s intentional fault is considered to be a legal exclusion; it is a risk excluded by law without the contract having to mention it.

The example codified in the C.C.Q. is an attempt on the insured’s life by the policyholder (art. 2443, para. 1, C.C.Q.), or by the designated beneficiary (art. 2443, para. 2, *C.C.Q.*).

2.4.2.3 Contractual exclusions

Contractual exclusions are set out by the insurer, and generally pertain to an illness,[256] the origin of the loss[257] or the circumstances in which it occurred, suicide, or the commission of an indictable offence[258] (arts. 2402, para. 1, and 2441, C.C.Q.).

These terms all involve circumstances that have the same effect: —the absence of benefits or the reduction of the specified benefit if the situation or event indicated in the insurance policy occurs. According to article 2404, C.C.Q., the insurer cannot invoke any exclusions or reductions of coverage clauses except those clearly indicated under an appropriate heading in an insurance of persons contract.[259]

EXAMPLE 1

In an accident insurance policy, the insurer may state that it will not pay any benefits for an accident resulting from the practice of gliding, hang gliding, parachuting, mountain climbing, scuba diving or bungee jumping, or the participation by the insured in car racing.

EXAMPLE 2

An insurer may state that it will not pay any benefits for an accident resulting from a riot, insurrection or war, or the participation by the insured in a crime.

Exclusion of a disclosed disease or ailment

Provided the insurer complies with the conditions set forth in article 2417 C.C.Q., it can exclude from the policy certain diseases or ailments known to the participant before the effective date of the contract. The following expressions are generally used to describe these types of clauses: “pre-existing illness,” “pre-existing condition” or “pre-existing medical condition.”

In group insurance, participants must sometimes fill out a medical questionnaire. In such case, the insurer may not exclude or reduce the coverage by reason of a disease or ailment disclosed in the enrolment form, unless a clause in the policy clearly indicates the disease or ailment in question under an appropriate heading (arts. 2404 and 2417, para. 1, C.C.Q.). An exclusion clause that does not meet these requirements is null. However, this rule does not apply in the case of fraud.

256. *Bastien v. Crown, compagnie d’assurance-vie*, 1998 CanLII 11551 (QC CS).
257. *Chevrier v. Union canadienne, compagnie d’assurance*, 1998 CanLII 13182 (QC CA).
258. *Desjardins Financial Security Life Assurance Company v. Émond*, 2017 SCC 19, March 31, 2017, Rosalie Silberman Abella, Michael J. Moldaver, Andromache Karakatsanis, Richard Wagner, Clément Gascon, Suzanne Côté and Russell Brown, JJ., upholding *Desjardins Sécurité financière, compagnie d’assurance-vie v. Émond*, 2016 QCCA 161, St-Pierre, Vauclair and Mainville, JJ., upholding *Émond v. Desjardins Sécurité financière*, 2014 QCCQ 2565 (CanLII), Céline Gervais J.
259. *Lemay v. Assurance-vie Desjardins*, J.E. 88-351 (C.A.). See also *Beneva inc. v. Bolduc*, 2024 QCCA 589.

EXAMPLE

Lucie has diabetes. In 2015, she decides to subscribe to the group insurance plan of her professional association. The insurer agrees to cover Lucie. However, an exclusion clause explicitly provides that no benefits will be paid for 20 weeks following the effective date of her insurance certificate for a disability resulting from her diabetes.

In group insurance, a specific exclusion clause concerning declared diseases or ailments applies, in theory, for limited periods of 13 or 26 weeks. After that time, the exclusion is no longer in effect if the participant worked during that time.

Exclusion of an undisclosed disease or ailment

Generally in individual insurance and sometimes in group insurance, the client/participant fills out a medical questionnaire. In such case, except in the case of fraud, an insurer may not, by a general clause, exclude or limit the coverage by reason of a disease or ailment not disclosed in the enrolment form, unless the disease or ailment appears within the first two years of the insurance (art. 2417, para. 2, C.C.Q.). In the event of an undisclosed disease or ailment, it can be a disease or ailment known or unknown by the client or the insured.

EXAMPLE

Martin purchased an individual disability insurance policy in August 2014. In March 2015, he had to leave work for an indeterminate period of time due to his illness, multiple sclerosis. He claimed benefits from his insurer. The insurer refused to pay, because when Martin's policy came into effect, he had previously received medical care for his pre-existing illness during the 12 months preceding the date of his application. Martin sued his insurer. Martin's insurance policy contains an exclusion with respect to an undisclosed disease or ailment: "No benefits will be payable for disability directly or indirectly resulting from one or more of the following: limitations relating to a pre-existing medical condition, injury or illness for which treatment was received within 12 months preceding the date on which you became an insured… " Martin's medical reports revealed that he had consulted a doctor in the 12 months preceding the effective date of his policy, and the doctor had noted that he had multiple sclerosis. He had prescribed Motrin, an over-the-counter drug.The court held that the insurer's decision was well-founded given the circumstances of the case and the exclusion clause.[260]

260. *Tassé v. Canada-Vie, 2000 CanLII 18646 (QC CS)*.

2.4.2.4 Distinction between co-ordination and reduction of benefits

This distinction is discussed in Chapter 1 of this manual.

2.4.2.5 Disability and retirement benefits and other amounts governed by co-ordination and reduction provisions

This subject is discussed in Chapter 1 of this manual, in the section that deals with co-ordination and integration of benefits between public plans and private insurance plans.

2.4.2.6 Suicide exclusion

One of the most common contractual exclusions found in life insurance is the "suicide clause." Suicide is defined as intentionally causing one's own death. Unless a life insurance contract contains a clause excluding suicide, the insurer cannot invoke suicide to refuse payment of the life insurance benefit.[261]

Moreover, unlike other contractual exclusions, a suicide clause is limited in time (two years). Thus, insurers cannot exclude suicide if it occurs after two years of uninterrupted insurance[262] (art. 2441, C.C.Q.). This period may be reduced by agreement between the insured and the insurer, but it cannot be increased (art. 2414, C.C.Q.).

The starting point for the time limit is the effective date of the contract, that is, when the insurer accepts the initial application, without modification, provided the initial premium has been paid and there has been no change in the insurability of the risk[263] since the application was signed (art. 2425, C.C.Q.). If the insurance coverage is increased, the effective date of the additional coverage (additional amount) constitutes the starting point for the two-year time limit of the suicide clause as regards the additional amount.

Furthermore, pursuant to article 2434, C.C.Q., when an insurance contract is reinstated, the suicide clause and any misrepresentations or concealment pertaining to risk begin to run again as of the reinstatement date.

The burden of proving suicide rests on the insurer.[264]

Moreover, in accidental death insurance, suicide is not considered an accident.[265]

---

261. *Landry-Chicoine v. Assurance-vie Desjardins,* 1990 CanLII 2945 (QC CA). See also *Beneva inc. v. Bolduc*, 2024 QCCA 589.
262. *Cardinal v. Sun Life du Canada, compagnie d'assurance-vie*, 1999 CanLII 13240 (QC CA).
263. *Biscuits Leclerc ltée v. Compagnie d'assurance-vie Transamerica occidental*, 1997 CanLII 9146 (QC CS), upheld in *Biscuits Leclerc ltée v. Compagnie d'assurance-vie Transamerica occidental*, 2000 CanLII 6574 (QC CA).
264. *Parenteau* v. *Personnelle (La), compagnie d'assurances du Canada*, B.E. 99BE-618 (C.Q.); *Shallow* v. *Colonia Life Insurance Co.*, J.E. 95-1734 (C.S.).
265. *Vallée v. Assurance-vie Desjardins*, 2001 CanLII 39972 (QC CA); *McGuerrin-Houle v. Cie d'assurance Combined d'Amérique (La)*, [1986] R.R.A. 701 (C.P.).

2.4.3 Contract amendments (riders)

Article 2405, C.C.Q. provides that once an insurance contract has been entered into, any changes the parties wish to make to the contract must be evidenced in a separate document; this document is generally referred to as a “rider” to the policy. Article 2405, C.C.Q. also specifies that any rider stipulating a reduction of the insurer’s liability or an increase in the insured’s obligations, other than an increased premium, has no effect unless the client consents to the change in writing.

2.4.3.1 Amendment other than upon renewal of an insurance contract

The contract may be amended, before it is terminated or is renewed, by means of a rider. The client must consent thereto in writing if the amendment has the effect of reducing the insurer’s obligations or increasing the client’s obligations (other than a premium increase).

2.4.3.2 Amendment upon renewal

Unless the contract contains an automatic renewal clause, it ends upon the expiry of the specified term (e.g., term life insurance). If the client wishes to extend the coverage beyond that date, the parties must agree on the issuance of a new policy.

When the insurer wishes to amend the contract upon its renewal (accident and sickness insurance contracts often contain end dates with a renewal), it must clearly indicate the change in a separate document from the rider that stipulates it. In such a case, the change is presumed to be accepted by the insured 30 days after receipt of the document.

Renewal of an insurance contract is an agreement in and of itself. To be valid, it must comply with the rules relating to consent. The coverage may be extended on the same terms as in the initial contract or contain modifications. In order to be set up against the insured, the modifications must comply with article 2405, C.C.Q. The renewal may be evidenced by a certificate of renewal or the issuance of a policy. Even where a policy is issued, the renewal does not constitute a new insurance contract, unless substantial amendments have been made to the basic contract.[266]

Unless otherwise stipulated in an individual life insurance contract, the client must make a new declaration of risk when a term life insurance contract is renewed.

266. For matters of group insurance, see the ruling in *Lachapelle v. Croix Bleue (La) (Mutuelle-vie du Québec)*, 1996 CanLII 6246 (QC CA).

2.5 Rules relating to the designation and revocation of beneficiaries, to the payment of the death benefit and to the exemption from seizure of benefits

The rules relating to the beneficiary of an insurance policy upon the death of the insured are set out in articles 2445 to 2460, C.C.Q.

2.5.1 Death benefit payable to a designated beneficiary

The beneficiary is the person designated to receive benefits under an insurance or annuity contract. In individual insurance of persons and annuity contracts, only the client, as the owner of the contract, has the right to designate a beneficiary.[267] Upon the death of the insured person, the beneficiary will be entitled to the death benefit under the contract.

Article 2447, C.C.Q. specifies that it is not necessary for the beneficiary to exist or be expressly determined at the time of the designation. What is important, is that he exists "at the time his right becomes exigible," i.e., upon the death of the insured person. Thus, as regards a child who has been conceived, but is not yet born at the time of the death of the insured person, the C.C.Q. stipulates that his designation as a beneficiary will be valid, provided he is born alive and viable and his quality as beneficiary is recognized.

EXAMPLE

The designation of beneficiary indicates "all my children." Pierre has only one child when he makes the designation. At the time of his death, he has two children and a third on the way. The three "children" will therefore be beneficiaries, unless the third unborn "beneficiary" is not born alive and viable.

The face amount that is payable to the designated beneficiary does not form part of the client's succession. Therefore, it cannot be used to pay the succession's debts or be seized by the creditors of the succession (art. 2455, C.C.Q.).[268]

267. *Citadelle Assurance v. Beaulé, 1987 CanLII 824 (QC CA)* (in group insurance, insurance on the life of the participant's spouse must be paid to the participant's succession in accordance with the contract (in this case, to the participant's succession); *Bourgoin v. Clarica,* 2002 CanLII 8722 (QC CQ, Small Claims), Lina Bond J.

268. *Clément v. Clément*, 2001 CanLII 18308 (QC CQ); *Industrielle-Alliance (L'), compagnie d'assurance sur la vie v. C.C.*, 2003 CanLII 72058 (QC CA). See also *Kerslake v. Gray*, [1957] S.C.R. 516. An exception to this principle arises under article 691 C.C.Q. (survival of the obligation to provide support). For survival of the obligation to provide support, see: *L.C. v. M.B.*, 2000 CanLII 3967 (QC CA); *Droit de la famille — 2588*, 1996 CanLII 4432 (QC CS).

2.5.1.1 Right and capacity to designate a beneficiary

Pursuant to article 2445, C.C.Q., the policyholder (or a participant under a group insurance contract, as the case may be) has the right to designate one or more beneficiaries of the insured amount.

Since this is a personal right, a mandatary acting pursuant to a power of attorney, a mandatary in the event of incapacity, a tutor, or a curator does not have the right to designate a beneficiary instead of the policyholder (client).[269] A minor (except in certain situations[270]) or a person of full age who is incapable does not have the right to designate a beneficiary.

A policyholder's "designation" of the succession as the recipient of the insured amount does not constitute the designation of a beneficiary.[271]

As regards insurance taken out on the life of the client, if no beneficiary is designated and the "succession of the policyholder" box has not been checked, the death benefit will be payable to the client's succession upon the latter's death. As regards insurance taken on the life of a third party (someone other than the client), if no beneficiary has been designated, the death benefit will be payable to the policyholder (client) upon the death of the insured.

When the policyholder designates himself as the beneficiary of insurance on his own life, which is not a genuine designation of a beneficiary,[272] the death benefit will be payable to his succession. When the policyholder designates himself as the beneficiary of insurance on a third party's life, upon the death of the insured, the death benefit will be payable to the policyholder.

2.5.1.2 Difference between designated beneficiary and succession

When the death benefit (the insured amount) is payable to a designated beneficiary, it does not form part of the policyholder's succession (art. 2455 C.C.Q.) as mentioned above.

When the death benefit is payable to the client's succession, the client's creditors (in other words, the creditors of the client's succession) must be paid before its legatees and heirs. This means the client's creditors will be paid in preference to the legatees by particular title and the heirs of the client's succession.

---

269. *Bourgoin v. Clarica*, 2002 CanLII 8722 (QC CQ, Small Claims), Lina Bond J. See also: Madeleine Cantin Cumyn and Michelle Cumyn, *L'administration du bien d'autrui*, 2nd ed., Cowansville, Les Éditions Yvon Blais, 2014, No. 216, p. 205. See also: *Re Moss (Bankrupt)*, 2010 MBCA 39 (CanLII) and David Norwood and John P. Weir, *Norwood on Life Insurance Law in Canada*, 3rd ed., Toronto, Carswell, 2002, p. 86.
270. See section 2.3.1.1, "Incapacity and minors."
271. *Civil Code of Québec*, CQLR, c. C-1991, art. 2456. See, in contrast, art. 2455.
272. *Citadelle Assurance v. Beaulé, 1987 CanLII 824 (QC CA)*. See, however, *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375, para. 54 (*obiter*).

Consequently, if the policyholder's succession has more debts than assets, the legatees by particular title and the heirs of the policyholder's succession may not receive anything from the death benefit paid by the insurer.

What forms part of the succession

The face amount (death benefit or insured amount) under an insurance of persons or annuity contract will be paid to the succession if the client has indicated that the benefit is to be paid to its (art. 2456, para. 1, C.C.Q.):

- succession;
- assigns;
- heirs;
- liquidators;
- legal representatives.

The insured amount will also be paid to the succession if the client has used a term "similar" to those mentioned above. The following may be considered similar terms:[273]

- successor at law;
- legatees;
- testamentary executors; and
- trustees (in the absence of a trust that exists at the time of death).

Lastly, the insured amount will also be paid to the succession if the designated beneficiary is already deceased when the insured dies, unless a contingent beneficiary has been designated (art. 2447, C.C.Q.).[274]

2.5.1.3 Revocable beneficiary

Effective October 20, 1976, the designation of a person as a beneficiary may be revoked at any time, unless otherwise stipulated (art. 2449, C.C.Q.). This means the client can change the designation of a beneficiary.

However, there are two important exceptions to this rule: the irrevocable beneficiary, and the presumption in favour of the legal spouse (married spouse or civil union spouse).

273. Didier Lluelles, *op. cit.*, No. 642, p. 442. See also: *Robitaille v. Dion*, [1979] 1 S.C.R. 359.
274. Didier Lluelles, *op. cit.*, No. 650, p. 445 (the author uses the expression "substitute beneficiary"). On occasion, he also uses the terms "secondary beneficiary", "subrogated beneficiary", "replacement beneficiary", "successor beneficiary', and "conditional beneficiary". It is important to consider the definitions in the insurance application and insurance policy.

First exception: Person designated irrevocably

If the client wishes, he can state that his beneficiary will be irrevocable. However, in most cases he should avoid doing so, especially if the beneficiary is a minor. A client who has designated his beneficiary irrevocably must obtain the beneficiary's consent if he wishes to change the designation or take certain steps, as the case may be. According to case law, a minor cannot consent to the revocation of his designation as an irrevocable beneficiary.[275]

Second exception: Married or civil union spouses

The designation of a person with whom the client (or policyholder) is married (spouse), or in a civil union, as a beneficiary in a written document other than a will - —such as a form provided by the insurer or the insurance application itself - —is irrevocable,[276] unless otherwise stipulated in the document.

Thus, when a policyholder designates his legal spouse as a beneficiary, without further specification, the designation will be considered irrevocable.

However, the irrevocable nature of such a designation is not final until the insurer receives the written document (art. 2451, C.C.Q.). After this time, the client can no longer revoke the beneficiary unless he obtains his consent. Moreover, only a written waiver from the irrevocable beneficiary can bind the insurer.[277]

Clearly, the client does not have to obtain this consent if the irrevocable beneficiary has died. The client is also not required to obtain it if there has been a divorce, annulment of marriage, or dissolution or annulment of a civil union since 1982. These rules will be examined in greater detail below.

Insurers' forms for designating a beneficiary generally contain a clause authorizing the client to choose whether the designation of the legal spouse (married spouse or civil union spouse, but not a *de facto* spouse [or common-law spouse]) as a beneficiary will be revocable or irrevocable.

2.5.1.4 Multiple beneficiaries

Very often, the client will designate several people as beneficiaries of his insurance. They are referred to as "co-beneficiaries" (art. 2456, para. 2, C.C.Q.). Where one of the co-beneficiaries predeceases the insured, the provisions of the C.C.Q. concerning accretion in matters of successions generally apply.[278] Here are an example of an accretion and an example where there is no accretion.

275. *Bélanger v. Bélanger (Succession de),* 2009 QCCS 6159, paras. 29 and 30, 32 to 34 and 42 to 44.
276. *C.C.Q.,* art. 2449, para. 1.
277. *Blanchard v. Lapointe,* 2000 CanLII 9534 (QC CA).
278. *C.C.Q.*, art. 755; Didier Lluelles, *op. cit.*, 2009, No. 652, p. 446.

EXAMPLE 1

Maxime designates Geneviève, Sofia and Jonathan as beneficiaries of his life insurance without specifying the share each one will receive. If Geneviève predeceases Maxime, when Maxime dies, Sofia and Jonathan will each receive half of the total insured amount (art. 2456, para. 2, C.C.Q.).

EXAMPLE 2

Maxime designates Geneviève, Sofia and Jonathan as beneficiaries of his life insurance. However, he specifies that Geneviève will receive half the insured amount, and Sofia and Jonathan will each receive one quarter of the insured amount. If Sofia predeceases Maxime, when Maxime dies, Geneviève will be entitled to half of the insured amount and Jonathan will be entitled to one quarter. In the absence of any other provision, the quarter originally intended for Sofia will be paid to Maxime's succession (arts. 756 and 2456, C.C.Q.).

2.5.1.5 Designation of beneficiary null under the law

Pursuant to sections 275 and 276 of the *Act respecting health services and social services*,[279] neither the owner of an establishment (a local community services centre, a hospital centre, a social services centre, or a reception centre), a member of the establishment's board of directors, an individual employed in the establishment nor a member of a foster family may solicit or accept a gift or bequest from a person housed in the establishment or taken charge of by a foster family.

Article 761, C.C.Q. is similar. It provides that a bequest made to the owner, director or employee of a health or social services establishment who is neither the spouse nor a close relative of the testator is without effect if it was made while the testator was receiving care or services from the establishment, and that a bequest made to a member of a foster family while the testator was residing with that family is also without effect.

In such a context, the case law has likened the designation of a beneficiary to a testamentary disposition or gift.[280]

It should also be noted that case law and doctrine applicable to matters of undue influence[281] also apply to the designation of beneficiaries.[282] Undue influence consists in attempting to obtain a succession or receive a gift from someone through reprehensible tactics.

279. *Act respecting health services and social services*, CQLR, c. S-4.2.
280. *Charbonneau (Succession de) v. Gauthier,* 2005 CanLII 43246 (QC CS). See also: *Commission des droits de la personne (Succession de Poirier) v. Bradette Gauthier, 2010 QCTDP 10*.
281. This doctrine and case law is based, in particular, on articles 4, 154, 703, 706, 707, 1398, 1399, 1811 and 2849 *C.C.Q.*
282. *J.G. v. C.D.*, 2008 QCCQ 3201, Lina Bond J.

An insurance representative must not agree to be his client's designated beneficiary (excluding, for example, when the policyholder is his spouse, or one of his parents or children). According to the *Code of ethics of the Chambre de la sécurité financière*, an insurance representative who is designated as a beneficiary represents a situation of conflict of interest with his client. Insurers will refuse such a designation if they realize that the beneficiary is the client's insurance representative (except in the cases mentioned above) or that the insurance representative has falsely indicated a relationship with the policyholder so that the insurer will accept the designation of beneficiary. In addition, in such a situation, the insurance representative's certificate may be revoked.

2.5.2 Means of designating a beneficiary

A beneficiary must be designated in writing. This can be done in a number of ways (art. 2446, C.C.Q.):

- in a written document other than a will (most often in the application or in a form prepared for that purpose by the insurer); or
- in a will.

In Québec, a beneficiary may be designated electronically, because an electronic designation can constitute a written document within the meaning of the *Act to establish a legal framework for information technology*. However, not all insurers currently accept this method.

2.5.2.1 Means of designating a beneficiary in an application (group insurance enrolment form), in a change of beneficiary form or in another written document

Conditions for validity

A designation need not be made in the application or in a form provided by the insurer. It may simply be written on a sheet of paper, in a letter addressed to the insurer, on a postcard or by any other means (art. 2446, C.C.Q.). However, it is more prudent to include it on a form provided by the insurer. Moreover, it must be possible to recognize and identify the beneficiary or beneficiaries the client or the policyholder wishes to designate.

EXAMPLE

The designation of a beneficiary on a sheet of paper found in a deceased client's chest of drawers is valid. However, it must be brought to the insurer's attention.

It is not necessary that the designation of a beneficiary be dated to be valid. If it is the only one there is, a signed but undated designation is valid. However, it is more prudent to date it. Where there are two dated and different designations of revocable beneficiaries, the most recent one will prevail. However, where there are two designations, one dated and the other undated, the insurer must request a court to determine the designation that applies.[283]

Revocability of a designation

A client or a policyholder may change the designation of a revocable beneficiary at any time. As the owner of the contract, he is the only person who can revoke the status he conferred on the beneficiary. To do so, it is preferable to use the change of beneficiary form provided by the insurer. However, the designation of a revocable beneficiary can be changed or revoked in any other written document. When such a change or revocation is made by will, the language used is very important.

2.5.2.2 Means of designating a beneficiary in a will

Before discussing how to designate a beneficiary in a will, we must first define the word "will," and then analyze the various forms of wills and the requirements for their validity.

Wills: Recap (see Chapter 1)

A will is a set of directions (usually written) in legal form for the disposition of one's property after death.[284] There are three forms of will:

- notarial wills;
- wills made in the presence of witnesses; and
- holograph wills.[285]

Transmission of face amount through a will

There are several ways to transmit the face amount of an insurance contract in a will. However, the wording proposed in the following examples is the most common.

EXAMPLE

A transmission in the form of a "bequest"[286] (also referred to as a "legacy") can be worded as follows in the will: "I bequeath all my property to Michel, including my insurance policies."

283. New *Code of Civil Procedure*, CQLR, c. C-25.01, arts. 33, 34, 112 and 529 to 535.
284. *The Canadian Oxford Dictionary*, Toronto, Oxford University Press, 1998.
285. C.C.Q., art.712.
286. The word "bequest" means the disposition of one or more items of property—described specifically in a will—in favour of a person who is clearly identified or identifiable.

In this type of transmission, the face amount passes through the insured's succession first before being given to Michel. If the succession has more debts than assets, Michel may not receive any amount, since creditors are the first to be paid by law. In such case, the insurer will pay the succession or its liquidator.

The following is an example of the designation of a beneficiary made by will.[287]

EXAMPLE

"I designate Michel as the beneficiary of my $50,000 insurance policy No. 1234 issued by *DEF Assurance-vie inc.* on November 6, 1982."

In this case, the face amount no longer forms part of the succession. The insurer will give the face amount to Michel directly. Thus, even if Michel's succession has more debts than assets, Michel's creditors will not be able to touch the face amount.

Conditions for the validity of a designation of beneficiary in a will

Any designation in a will is subject to specific rules. How each of these rules applies must be known when the face amount is transmitted in the form of a bequest or the designation of a beneficiary.

A will is always revocable, i.e., it can be cancelled. If the testator revokes his will, the transmission of the face amount in the form of a bequest or the designation of a beneficiary is also revoked (art. 2450, para. 1, C.C.Q.). It should also be noted that the designation of a beneficiary in a will is always revocable (art. 2449, C.C.Q.), even if the testator has specified that the designation is irrevocable.

If a court invalidates the will for a defect of form only, the transmission of the face amount in the form of a bequest will be invalidated. However, the transmission in the form of a designation of beneficiary will not be invalidated, provided the will is dated and signed by the testator (the client)[288] (art. 2450, para. 1, C.C.Q.). A defect of form is an irregularity in a juridical act due to non-observance of a formality required by law.

287. *Therreault v. Therreault (Succession de),* J.E. 87-231 (C.S.). Principle applied in *Lepage v. Lepage*, EYB 1994-84349 (C.S.). See also Beauchamps v. Dubé, J.E. 92-1162 (C.S.) and *Dawn-Reed v. Reed*, J.E. 94-1646 (C.S.).
288. Isabelle Nadia Tremblay, *op. cit.*, No. 15-350, p. 1/1278.

EXAMPLE

In his will made in the presence of witnesses, Jean designated Alexis as the beneficiary of his $100,000 life insurance policy No. 1234 issued by *DEF Assurance-vie inc.* However, Jean's will is being challenged in court, because although the names of the witnesses appear on the document drafted using a word processor, those witnesses did not sign it. The court can invalidate the will due to a defect of form, without the designation of the beneficiary being invalid as a result.

Furthermore, it is important to note that a designation or revocation contained in a will does not take precedence over a designation of a beneficiary made prior to the signing of the will, unless the will refers to the insurance policy in question, or unless the intention of the testator is manifest (art. 2450, C.C.Q.).[289]

EXAMPLE

At the time Jean's will was drafted, he had already named Sandrine as the revocable beneficiary in the insurance application for his policy issued by *DEF Assurance-vie inc*. However, in his will, Jean made the following bequest: "I bequeath to my children the policy I took out with *DEF Assurance-vie inc*." This bequest had the effect of revoking the prior designation of a beneficiary, because Jean's intent was manifest. Moreover, because of the terms used ("I bequeath"), this is not a designation of a beneficiary. The insurer will therefore pay the insured amount to the succession.

289. *Brossard v. Journal La Presse ltée,* 2006 QCCS 3887, appeal dismissed on other grounds in *De Montigny (Succession de) v. Brossard (Succession de)*, 2008 QCCA 573; *Gélinas v. Simard (Succession de), 2002 CanLII 26506 (QC CS)*, Gratien Duchesne J., appeal dismissed in *Gélinas v. Simard (Succession)*, 2003 CanLII 75109 (QC CA); *SSQ, Société d'assurance-vie inc. v. Richard,* 2005 CanLII 45362 (QC CS), Bernard Godbout J.; *Memmi v. Compagnie d'assurance générale Héritage,* 1997 CanLII 9366 (QC CS), Diane Marcelin J., motion for revocation of judgment dismissed, July 11, 1997; *G.P. v. M.L.*, 2003 CanLII 72008 (QC CA), Proulx, Thibault and Rochette JJ.; *Simard v. Beaulieu, 2002 CanLII 19944 (QC CS)*, para. 81, Jacques Babin J.; *Pommet v. Mailloux,* 1996 CanLII 4684 (QC CS), Armand Carrier J.; *Labranche v. Hébert,* J.E. 95-1900 (C.S.), Léo Daigle J.; *Régime de sécurité sociale, Syndicat des débardeurs, section locale 375 v. Berthelet,* 2000 CanLII 18640 (QC CS), Carol Cohen J.; *Morin v. Nault,* 2001 CanLII 25046 (QC CS), pp. 40 to 43, Clément Trudel J., out-of-court settlement on appeal, C.A.M., nº 500-09-010818-011, 2005-06-09; *Shaw, ès qualités « Tutrice » v. Sénéchal,* 1998 CanLII 12048 (QC CS), Jean-Jacques Crôteau J.; *Rousse v. Beaulieu,* 2000 CanLII 18413 (QC CS), Carole Julien J., appeal dismissed on motion, C.A.M., No. 500-09-010425-007, February 5, 2001; *Gagné v. Aetna, Cie d'assurance-vie du Canada,* 1999 CanLII 4317 (QC CQ); *G. (L.-M.) (Succession de),* 2003 CanLII 74709 (QC CS), Jean Bouchard J.

2.5.3 Effect of designations against the insurer

The client must inform the insurer in writing of any designation or change of beneficiary. Article 2452, C.C.Q. states that designations and revocations may be set up against the insurer only from the day it receives them.

The insurer will therefore be deemed to have fulfilled its obligation by paying the face amount to the last known beneficiary, i.e., to the designated beneficiary appearing in its files when the insurer has paid the insured amount. As regards the insurer's obligation, the most recent change received by it will prevail over the others (art. 2452, C.C.Q.).

If a will revokes the designation of a beneficiary, the will must be brought to the insurer's attention. An adviser who is aware that his client has made, or will make, a will must discuss with the client the importance of ensuring his will and his designations of beneficiaries are properly co-ordinated, so that his most recent wishes can be respected. When warranted, the client should be advised to consult a legal adviser.

EXAMPLE

Jean had a life insurance in which he had designated his son Alexis as the revocable beneficiary. He had informed the insurer thereof. Jean died on March 15, 2014. Some 10 days before his death, he had designated his wife Juliette as his sole beneficiary of this insurance in his will, and had indicated the policy number. However, he had not informed the insurer of this change. At the time the succession is opened, the liquidator must inform the insurer of this change to the designation of the beneficiary as quickly as possible. If he does not do so, no one may hold the insurer responsible for paying the face amount to Alexis. In such case, Alexis may be required to make restitution and give Juliette the amount received from the insurer.

2.5.3.1 Receipt of designation by the insurer

In order for a designation of beneficiary to be set up against the insurer and third parties, the insurer must receive it. Sometimes, after the death of the insured, his succession or a relative will send the insurer a written document that includes the designation of a beneficiary made by the client before his death. The fact that a designation is sent to the insurer after the death of the policyholder will not nullify the designation.[290]

Moreover, it is important to note that "every designation of beneficiaries remains revocable until received by the insurer" (art. 2451, C.C.Q.).

Where there are several irrevocable designations of beneficiaries, "they are given priority according to their dates of receipt by the insurer" (art. 2452, para. 1, C.C.Q.).

290. *M.L. v. Desjardins Sécurité financière*, 2010 QCCA 586; *Gamache v. Sun Life du Canada*, 2013 QCCS 321; *Bouffard v. Assurance-vie Desjardins inc.*, 1997 CanLII 8561 (QC CS).

2.5.3.2 Payment in full discharge

For the insurer, it is important to make a payment in full discharge because it does not want to have to pay the insured amount twice.

Consequently, the insurer is entitled to require several documents from the succession or from the party claiming to be the designated beneficiary. The co-operation of the claimant and the insurance representative is therefore important.

Moreover, the insurer has a maximum of 30 days in life insurance and 60 days in accident and sickness insurance to pay the insured amount. However, this time limit runs only once the insurer has received all the requested documents (proof of loss).

The insurer is discharged by paying the insured amount “in good faith… to the last known person entitled to it” (art. 2452, para. 2, C.C.Q.).

2.5.4 Consequences of conjugal breakdown for a spousal beneficiary

2.5.4.1 Divorce, separation from bed and board, nullity (annulment) of marriage or a civil union and dissolution of a civil union

Definition of “breakdown”

The term “breakdown” refers to separation from bed and board, divorce, nullity of marriage, or dissolution, or nullity of a civil union, as well as their effects on the spouse who is the beneficiary under insurance or an annuity.

Separation from bed and board

Separation from bed and board does not automatically cancel the designation of a spouse as a beneficiary. However, as of December 1, 1982, a court may, when granting a separation from bed and board (art. 2459, para. 1, C.C.Q.), a court may:

- declare that an irrevocable designation is revocable; the policyholder can then designate a new beneficiary, failing which the spouse continues to be the beneficiary;
- declare that the designation of the spouse as revocable or irrevocable beneficiary has lapsed (i.e., to cancel it); in such case, if the client does not appoint a third party as the beneficiary after such a declaration, the insurance benefit will be payable to the succession; or
- declare the designation of the spouse as a subrogated policyholder to have lapsed.

Divorce

Any divorce rendered since December 1, 1982, results in and of itself in the cancellation of the designation of a spouse as beneficiary or subrogated policyholder. This rule applies to both revocable and irrevocable designations (art. 2459, para. 2, C.C.Q.).

However, after the divorce, if the client wishes, he can once again designate his former spouse as a beneficiary in his will or otherwise (such as on a designation of beneficiary form).

Furthermore, within the scope of their divorce, the parties may, in the agreement regarding accessory measures, agree to maintain the designation of beneficiary or agree to designate the former spouse as beneficiary of a life insurance policy. If this agreement is breached, the aggrieved former spouse can exercise recourse against the succession of the former spouse who committed the breach.[291]

EXAMPLE

David designates his wife Katia as the beneficiary of his insurance contract on October 28, 2010. David and Katia divorce on June 4, 2015. Katia is therefore no longer the beneficiary of David's insurance as of July 5, 2015, because the judgment of divorce takes effect the 31st day following the date when the judgment is pronounced[292]. If, notwithstanding the divorce, David wants the face amount to be paid to Katia, he will have to once again designate Katia as beneficiary of his insurance contract.

Annulment of marriage and dissolution or annulment of a civil union

When a judgment declares the nullity of a marriage, or the dissolution or nullity of a civil union, the designation of the spouse as beneficiary or subrogated policyholder is subject to the same rules as those that apply at the time of a divorce; it is automatically revoked (art. 2459, C.C.Q.).

291. *SSQ, Société d'assurance-vie inc. v. Richard*, 2005 CanLII 45362 (QC CS), Bernard Godbout J. See also: *Zawada v. Zawada (Estate)*, 2002 CanLII 63627 (QC CS); *King (Succession de)*, 2006 QCCQ 11568; *M. (R.) v. M. (L.)*, 2000 CanLII 18630 (QC CS). See, however: *V.P. v. Compagnie d'assurance-vie Manufacturers*, 2020 QCCS 838; *Droit de la famille — 20281*, 2020 QCCS 677, paras. 35, 47, 84 and 113, Christian J. Brossard J. (in a non-death context). See also: *Droit de la famille — 21919*, 2021 QCCA 872, Marcotte, Gagné and Fournier JJ.
292. *Divorce Act,* R.S.C., 1985, c. 3 (2nd Suppl.), s. 12.

2.5.4.2 Designations of beneficiaries made before October 20, 1976

Definition of "preferred beneficiaries" and "ordinary beneficiaries"

In Québec, prior to the coming into force of the *Act respecting insurance* on October 20, 1976, there were two categories of beneficiaries:[293]

- preferred beneficiaries, i.e., those designated as beneficiaries under the *Husbands and Parents Life Insurance Act*.[294] Under this statute, a husband could designate his wife as a beneficiary; and
- ordinary beneficiaries, i.e., those designated as beneficiaries under the *Civil Code of Lower Canada*.

Insurance representative's obligation to check

It is important to remember that many designations of beneficiary that were made before October 20, 1976, are still in effect today. If the examination of a designation of a beneficiary made before October 20, 1976, reveals that the beneficiary designated in the policy was the client's spouse or children, the representative must check whether there was a change of beneficiary during the time it was possible to submit such a change, i.e., between October 20, 1976, and October 20, 1977.

Due to the very complex nature of the rules relating to beneficiaries designated before October 20, 1976, the representative must check the legal provisions applicable to each case. To this end, the Canadian Life and Health Insurance Association (CLHIA) published a table (reproduced below in Table 2.2). It would therefore be prudent to refer to this table each time a client wishes to change a designation of beneficiary made before October 20, 1976.

293. Isabelle Nadia Tremblay, *op. cit.*, No. 15-225, pp. 1/1247 to 1/1250.
294. *Husbands and Parents Life Insurance Act*, R.S.Q., 1964, c. 296.

TABLE 2.2

Designation of beneficiary

	BENEFICIARY DESIGNATED UNDER INSURANCE POLICY	POSSIBLE CHANGE OF BENEFICIARY
MARRIED OR CIVIL UNION SPOUSE	Married or civil union spouse designated on or after 1976-10-20 if indicated as revocable on the enrolment form	Any beneficiary
	Married or civil union spouse designated on or after 1976-10-20 without a stipulation of revocability or with a stipulation of irrevocability	Cannot be changed unless: 1) a waiver is signed; 2) a divorce was granted on or after 1976-10-20 and before 1982-12-01 terminating the husband's rights; or 3) a divorce was granted on or after 1982-12-01.
HUSBAND	Husband designated on or after 1970-07-01 but before 1976-10-20, with or without a stipulation	Any beneficiary
	Husband designated on or after 1970-07-01 but before 1976-10-20, with a stipulation of irrevocability	Cannot be changed unless: 1) a waiver is signed; 2) a divorce was granted on or after 1976-10-20 and before 1982-12-01 terminating the husband's rights; or 3) a divorce was granted on or after 1982-12-01.
	Husband designated before 1970-07-01	Any beneficiary
WIFE	Wife designated before 1976-10-20, and divorce granted before 1976-10-20	Any beneficiary
	Wife designated before 1976-10-20, and divorce granted on or after 1976-10-20, but before 1982-12-01	Child until 1977-10-20; otherwise, wife's designation is irrevocable, unless she waived her right or the divorce terminated her rights.
	Wife designated before 1976-10-20, but divorce granted on or after 1982-12-01	Any beneficiary, provided the beneficiary was designated after the divorce.
CHILD	Child designated on or after 1977-10-20	Any beneficiary
	Child designated on or after 1976-10-20, but before 1977-10-20	Irrevocable if the child replaces a wife or child designated before 1976-10-20. Otherwise, any beneficiary.

	BENEFICIARY DESIGNATED UNDER INSURANCE POLICY	POSSIBLE CHANGE OF BENEFICIARY
	Child designated before 1976-10-20	Wife until 1977-10-20. Other child until 1977-10-20. Otherwise irrevocable, unless a waiver is signed.
OTHER	Any irrevocable beneficiary (beneficiary designated with stipulation of irrevocability on the application form) other than the wife	Cannot be changed unless a waiver is signed.
	Other beneficiary	Any beneficiary

2.5.4.3 *De facto* spouse (or common-law spouse)

As regards the designation of beneficiaries in insurance of persons, a *de facto* spouse (or common-law spouse) is not recognized in the same manner as a married spouse or civil union spouse.[295]

Thus, the designation of a *de facto* spouse (or common-law spouse) is revocable unless otherwise stipulated, as is the case with any other beneficiary.

Moreover, when the relationship between *de facto* spouses (or common-law spouses) ends, it does not have the effect of revoking a designation of the beneficiary, unlike divorce.[296]

Note that Bill 56, *An Act respecting family law reform and establishing the parental union regime*, S.Q. 2024, c. 22,[297] assented to by the National Assembly on June 4, 2024, and scheduled to come into force on June 30, 2025 (with some exceptions), will apply to de facto spouses who become the father and mother or the parents of the same child after June 29, 2025. Such spouses will be considered to be in a "parental union." However, the Act does not change the law applicable to parental union spouses with respect to the law applicable to the designation of beneficiaries.[298]

EXAMPLE

Luc designates Manon as his revocable beneficiary on January 1, 2010. They marry on January 1, 2011, and divorce on July 1, 2013. Luc dies on January 1, 2014. Manon will receive the insured amount as the beneficiary, because the designation of beneficiary was made before the marriage, and the divorce did not have the effect of revoking the designation of beneficiary made on

295. Arts. 2449 and 2457 C.C.Q.
296. *Smith v. La Survivance, cie mutuelle d'assurance-vie*, [1995] R.R.A. 676 (C.S.).
297 *An Act respecting family law reform and establishing the parental union regime*, S.Q. 2024, c. 22. In fact, this Act does not amend articles 2449, 2457 and 2459 of the *Civil Code of Québec*.
298 See: Serge Lessard, "Les subtilités du projet de loi sur l'union parentale – Réponses à 10 bonnes questions sur ce projet de Québec", *Finance et Investissement* (in French only), April 10, 2024.

January 1, 2010.

2.5.5 Death benefit payable to the succession of the policyholder (or the participant): importance of the liquidator

Pursuant to article 2455, C.C.Q., the insured amount payable to a designated beneficiary "does not form part of the succession of the insured."

However, if the insured amount is payable to the succession, the insurer will want to know the identity of the succession's liquidator so it can pay the insured amount to him, regardless of who, under the will (or pursuant to the legal rules of devolution of successions in the case of an intestate succession), is the legatee or heir who will receive the insured amount.

Some insurers send the liquidator of the succession a cheque payable to "Succession of X," while other insurers send a cheque payable to the order of the liquidator "in his capacity as liquidator of the succession of X."

2.5.6 Exemption from seizure

The property of a debtor is the common pledge (collateral) of his creditors (art. 2644, C.C.Q.). Seizability is the rule and unseizability is the exception.

Rights arising under life insurance contracts (including annuity contracts) and certain insurance of persons contracts may, in certain circumstances, be exempt from seizure.

2.5.6.1 Life insurance: designation of the policyholder's (or participant's) ascendant, descendant or legal spouse

Pursuant to article 2457, C.C.Q., the designation as beneficiary of the policyholder's (or participant's) ascendant, descendant or legal spouse (married spouse or civil union spouse) renders the rights conferred by the insurance contract unseizable by the policyholder's creditors or trustee in bankruptcy until the beneficiary has received the insured amount.

The designation of a *de facto* spouse (or common-law spouse) as revocable beneficiary does not render the rights conferred by the insurance contract exempt from seizure.

It should be noted that beneficiaries whose contract renders their rights unseizable are sometimes referred to as "preferred beneficiaries."

Since unseizability is the exception, it is interpreted restrictively and is subject to limits. The federal Crown may refuse to recognize unseizability arising under provincial rules.[299]

299. *Marcoux v. Canada (Procureur Général)*, 2001 FCA 92, Noël, Décary and Létourneau JJA.; *London Life Insurance Company v. Canada*, 2014 FCA 106, leave to appeal to the Supreme Court of Canada dismissed, January 29, 2015 (File No. 35961); *M.N.R. v. Anthony*, 1995 CanLII 5595 (NL CA); *Ross v. Canada (Minister of National Revenue)*, Federal Court of Appeal, A-966-96, 1997-12-15; *Pembina on the Red Development Corp. Ltd. v. Triman Industries Ltd.*, 1991 CanLII 2699 (MB CA).

2.5.6.2 Life insurance: irrevocable designation

Pursuant to article 2458, C.C.Q., the designation of any person (including a *de facto* spouse [or common-law spouse]) as irrevocable beneficiary renders the rights conferred by the contract unseizable by the policyholder's creditors or trustee in bankruptcy as long as the designation remains irrevocable.

2.5.6.3 Life insurance: designation of a non-preferred beneficiary and no designation of beneficiary

The cash surrender value of a life insurance policy is seizable by the trustee in bankruptcy if the policyholder has designated as revocable beneficiary a person other than a preferred beneficiary or if no beneficiary has been designated.[300]

Moreover, if the policyholder dies and there is a designated beneficiary (whether or not preferred), the insured amount is payable directly to the designated beneficiary, without regard to the succession (art. 2455, C.C.Q.). Therefore, the policyholder's creditors (including a trustee in bankruptcy) cannot assert a right against the insurer or the beneficiary for the insured amount.[301]

2.5.6.4 Accident and sickness insurance

Accident and sickness insurance benefits may be seized by the policyholder's creditors, because these amounts form part of his patrimony.

Until December 31, 2015, periodic disability insurance benefits were exempt from seizure under paragraph 8 of article 553 of the former *Code of Civil Procedure*.[302]

As of January 1, 2016, the date on which the new *Code of Civil Procedure* entered into force, disability insurance benefits are seizable.[303] However, such benefits remain unseizable in the hands of the insurer.[304]

2.6 Rules pertaining to claims and the payment of benefits

2.6.1 Rules pertaining to claims

The C.C.Q. sets out the procedure and the respective obligations of the insured and the insurer with respect to the settlement of a loss, whether it be the notice of loss, the time limit for sending in documents relating to the analysis of the claim, providing evidence by means of a medical examination, or the time limit given to the insurer to pay the benefits. The insurance contract can also contain relevant provisions, provided they do not confer fewer rights on the client, the policyholder, the insured, the participant or the beneficiary (art. 2414, C.C.Q.).

300. *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375, paras. 54 to 56.
301. *Coopérative funéraire de la Mauricie v. Gendron*, 2003 CanLII 32374 (QC CQ). See also: *Boudreault v. Laforest*, 2013 QCCS 4575; *Clément v. Clément*, 2001 CanLII 18308 (QC CQ).
302. Former *Code of Civil Procedure*, CQLR, c. C-25.
303. New *Code of Civil Procedure*, CQLR, c. C-25.01, arts. 694 and 696. *Marcoux v. Lemaire-Laporte*, 2017 QCCQ 10039 (Small Claims Division), Chantal Gosselin J., paras. 38 to 42.
304. New *Code of Civil Procedure*, CQLR, c. C-25.01, art. 698.

2.6.1.1 Notice of "loss" in life insurance, proof of death and other information required

The C.C.Q. does not impose any formality regarding the sending of a notice of loss to the insurer. However, the insurer must be notified of the loss in order to be compelled to pay benefits. In such case, the provisions of the contract must be checked to determine what it provides in this regard. In Québec, an insured is presumed deceased at the age of 100 in accordance with the *Unclaimed Property Act* (CQLR, c. B-5.1, s. 3, para. 9), pursuant to which the insurer may be required to remit the sums to the *Ministère du Revenu* (Ministry of Revenue).[305]

Proof of death: Attestation of death

The payment of life insurance benefits is subject to certain rules prescribed by the C.C.Q. An attestation of death is the document evidencing the occurrence of the insured risk. The physician who establishes that the death has occurred fills out the attestation of death and gives it to the funeral director, who provides a copy of it to the individual who fills out the declaration of death. The attestation and declaration of death are sent to the *Directeur de l'état civil* (Registrar of Civil Status). At the request of the person making the declaration, the Registrar of Civil Status will provide a death certificate (act of death) or a copy thereof (arts. 122 et seq., C.C.Q.).[306] In general, the insurer will ask for a death certificate or a copy of the act of death as proof of death. Sometimes, it will accept as proof of death a declaration of death signed by the funeral director.

Additional information

The insurer may require additional information regarding the circumstances surrounding the death in order to determine whether the contract covers this type of death. For example, the insured's suicide may be excluded by the insurer if it occurs within the first two years of the effective date of the insurance.

Proof of the insured's age

The attestation of death is admissible as proof of the insured's age at the time of death. If the insured's true age does not correspond to that declared to the insurer and falls within the range of rates established in the contract, the insured amount will be adjusted in such proportion as the premium collected bears to the premium that should have been collected based on the insured's true age (art. 2420, C.C.Q.).

When the insured's age exceeds the limits fixed by the insurer's rates, the insurer may bring an action in nullity of the insurance coverage only under certain conditions. The second paragraph of article 2421, C.C.Q. states that the insurer must apply for the nullity within three years of the effective date of the contract, provided the insured is still alive. The insurer must therefore pay the insured amount even if the age of the participant at the time of his death exceeds the limits fixed by the contract.

305. *Unclaimed Property Act*, CQLR, c. B-5.1, s. 6.
306. See: Directeur de l'État civil, Certificates and copies of acts, 2024-02-12.

EXAMPLE

Nicole fills out an insurance application and inadvertently indicates that she is 50 years old, although she just turned 59. She did not write the “9” clearly and it looks like a “0” on the application form. She dies four years later. The insurer notices the error and adjusts the face amount in such proportion as the premium collected bears to the premium corresponding to Nicole’s age at the time she died, because this age falls within the limits of its rates.

Time limit for notifying the insurer about the death and prescription

In life insurance, unlike in accident and sickness insurance (art. 2435, C.C.Q.), the C.C.Q. does not impose a time limit whose expiry entails forfeiture. In accident and sickness insurance, a person with rights under a policy must act diligently within the time limit, after which the person can no longer assert those rights.[307]

307. *M.B. v. Financière Manuvie*, 2016 QCCA 498; *Bourcier v. Citadelle (La), compagnie d’assurances générales*, 2007 QCCA 1145 (CanLII).

Thus, in theory, a person who has rights with respect to the proceeds of life insurance has three years from the date of the insured's death within which to take action against the insurer (arts. 2925 and 2880, C.C.Q.), that is, the ordinary prescription period.[308]

308. Under the *Civil Code of Lower Canada* (CCLC) (applicable until December 31, 1993), a rule similar to that of article 2880 C.C.Q. was provided for in section 2495 of the CCLC: Jean-Guy Bergeron and Nathaly Rayneault, *Précis de droit des assurances*, Sherbrooke, Les Éditions Revue de droit Université de Sherbrooke, 1996, p. 283. Under the *Insurance Act*, R.S.Q., c. 295, in effect until October 19, 1976, the prescription period for insurance of persons was one year, but up to 18 months after the death of the insured. See: *Gagné v. New York Life Ins. Co.*, (1934) 57 B.R. 60; *Canada Life Ins. v. Poulin*, (1934) 57 B.R. 78; *Shoiry v. London Lancashire Guarantee et Acc. Cy.*, (1949) C.S. 315; *Continental Assurance Cy. v. Dame Dion*, (1959) B.R. 777. The starting point of the prescription period would therefore be the date of death: *Caisse populaire Duberger v. Beaulé*, [1981] C.P. 232, Gill Fortier J.; *Syndic de Baker*, 2018 QCCS 5493, Christine Baudouin J., 2018-12-13; *169912 Canada Inc. v. Cie d'assurance-vie Transamerica du Canada*, 2005 CanLII 8590 (QC CS), Danielle Richer J.; *Real's Truck Stop Ltd. v. Financière Manuvie*, 2018 QCCQ 2580 (Small Claims), Marie Michelle Lavigne J.; Michel Gilbert, *L'assurance collective en milieu de travail*, 2nd ed., Cowansville, Les Éditions Yvon Blais, 2006, No. 382, p. 264; Isabelle Nadia Tremblay, *L'assurance de personnes au Québec*, Brossard, Les Publications CCH/FM Inc., 1989 (loose-leaf edition), Nos. 5-100 and 50-075, pp. 1/633 and 1/3609. It could also be the day on which the right of action arises (date of death plus 30 days under article 2436 C.C.Q.: François-Xavier Simard Jr. and Gabrielle De K. Marceau, *Le droit des assurances terrestres depuis 1976 (ss. 2468 to 2605 CCLC)*; Montréal, Wilson & Lafleur Ltée, 1988, p. 80; Louise Poudrier-LeBel, *Droit des assurances de personnes*, Québec, Les Presses de l'Université Laval, 2000, pp. 12−16 and 12.17; Jean-Guy Bergeron, *Les contrats d'assurance : lignes et entre-lignes*, Volume 2, Sherbrooke, Les Éditions SEM inc., 1992, pp. 364 to 367; Isabelle Nadia Tremblay, "*Bénéficiaires et titulaires subrogés*," in Collectif, *JurisClasseur Québec – Contrats nommés II*, Montréal, LexisNexis Canada, loose-leaf edition, No. 72, pp. 19–47. Article 2436 C.C.Q. therefore does not interrupt prescription (arts. 2892 and 2898 C.C.Q.). Before that time (30 days after the insurer receives supporting documents for the claim), interest cannot accrue against the insurer: *Côté v. L'Excellence, compagnie d'assurance vie*, 2006 QCCQ 1236, Charles-G. Grenier J. Article 2436 C.C.Q. therefore merely reproduces section 2528 CCLC, which itself reproduced section 126 of the *Insurance Act* (the period then was 60 days). However, according to another stream of case law and doctrine, "the day on which the right of action arises" is 30 days after the supporting documents have been provided to the insurer: Geneviève COTNAM, "*De l'exécution du contrat d'assurance en assurance de personnes*" (arts. 2435–2444 C.C.Q.), in Sébastien Lanctôt and Paul A. Melançon (ed.), *Commentaires sur le droit des assurances et textes législatifs et réglementaires*, 3rd ed., Montréal, LexisNexis, 2017, pp. 114 and 115; Odette Jobin-Laberge and Luc Plamondon, "*Les assurances et les rentes*," in *La réforme du Code civil*: *Obligations, contrats nommés*, Québec, Les Presses de l'Université Laval, 1993, No. 199, p. 1147 (in connection with art. 2473 C.C.Q. regarding damage insurance); Céline Gervais, *La prescription*, Cowansville, Thomson Reuters, p. 46; Édith Lambert, "*Commentaires sur l'article 2880 C.c.Q.*," in *Commentaires sur le Code civil du Québec (DCQ)*, EYB2013DCQ1480, December 2013, p. 10. See also *Lamirande v. Industrielle Alliance, assurances et services financiers inc.*, 2016 QCCQ 6975 (Small Claims), Richard Landry J. In *Agence du revenu du Québec v. SSQ Évolution – Gestion invalidité et vie*, 2019 QCCQ 4748 (CanLII), Chantal Sirois J., the Court of Québec ruled that the limitation period does not begin to run on the day of the loss, in this case the death, but from the moment the insurer is required to meet its contractual obligations, i.e., at the expiry of the 30-day grace period following receipt of the supporting documents. The Court of Québec also ruled that the claim must be submitted to the insurer within one year of the loss, as provided for in the insurance contract. Outside Québec, the *Insurance Act* in most Canadian jurisdictions provides that the action must be instituted no later than the earlier of (a) the date that is two years after the required documents are produced to the insurer or (b) the date that is six years after death (see for example *Insurance Act*, CPLM, c. I40, subs. 184(1)). See: *Kissoondial v. Prudential Insurance Co. of America*, 1987 CanLII 4121 (ON CA). This reconciles the two streams of doctrine and case law. A similar application for Québec would be to consider a three-year limitation period for submitting a claim to the insurer from the death of the insured, and, for a claimant who has submitted a claim to the insurer within that three-year period to have a new three-year limitation period run from the time the supporting documents were provided to the insurer, with the two limitation periods running concurrently.

However, in life insurance, the insurer cannot generally set up this prescription against Québec's Minister of Revenue, and it must remit any life insurance proceeds that qualify as unclaimed property to *Revenu Québec*.[309] The person entitled to the death benefit may claim this amount from the *Revenu Québec* at any time.[310]

2.6.1.2 Notice of "loss" in accident and sickness insurance, information required and proof of losses

In accident and sickness insurance, the C.C.Q. requires that the policyholder, the beneficiary or the insured notifies notify the insurer in writing of the loss within 30 days of acquiring knowledge thereof (art. 2435, C.C.Q.).[311]

Within 90 days of the loss, the policyholder, the beneficiary or the insured must give the insurer all information regarding the circumstances and extent of the loss (art. 2435, para. 1, C.C.Q.). In some situations, the insurer could also request a copy of the coroner's report, in order to determine whether the death was accidental in the case of accidental death insurance.

If the person entitled to payment of the benefit proves that it was impossible for him to act within the prescribed time, he will be entitled to receive the benefit if a notice is sent to the insurer within one year of the loss (art. 2435, para. 2, C.C.Q.). This is a time limit whose expiry entails forfeiture.[312]

Medical examination requirement

In matters of disability insurance, the insured must submit to a medical examination when the insurer is entitled to require it owing to the nature of the disability. If the insured refuses to prove his disability or to submit to a medical examination, he is failing to fulfill an obligation under the insurance policy. In such circumstances, the insurer may refuse to pay or to continue to pay the benefits (art. 2438, C.C.Q.).[313]

309. *Unclaimed Property Act*, CQLR, c. B-5.1, ss. 3 and 10
310. Ibid., s. 30.
311. *Métropolitaine, compagnie d'assurance-vie v. Manufacturers Life Insurance Company*, 1997 CanLII 8095 (QC CS), upheld in *Manufacturers Life Insurance Company v. Métropolitaine, compagnie d'assurance-vie*, 2003 CanLII 12192 (QC CA).
312. *Bourcier v Citadelle (La), compagnie d'assurances générales*, 2007 QCCA 1145; *M.B. v Financière Manuvie*, 2016 QCCA 498. The prescription and forfeiture periods were suspended from March 15, 2020, to August 31, 2020, due to the COVID-19 pandemic (Order No. 2020-4251 issued by the Chief Justice of Québec and the Minister of Justice on March 15, 2020, passed in accordance with article 27 of the *Code of Civil Procedure*). However, as of September 1, 2020, the days resumed counting from where they left off on March 15, 2020 (press release from the Chief Justice of Québec and the Minister of Justice dated July 13, 2020). See also: *Fournier v. Pelletier*, 2020 QCCS 1629, giving retroactive effect to the suspension of time limits to March 13, 2020.
313. *Caisse populaire de Maniwaki v. Giroux*, [1993] 1 S.C.R. 282; *R.W. v. Industrielle Alliance*, 2011 QCCS 3314; *Taillon v. Desjardins Sécurité financière, compagnie d'assurance-vie*, 2007 QCCS 1510.

2.6.2 Payment of benefits

2.6.2.1 Time limit for paying benefits in life insurance

General rule

The insurer must pay the insured amount within 30 days after receipt of the proof of loss (art. 2436 C.C.Q.).

EXAMPLE

Stéphanie is involved in a car accident and dies from her injuries in the hospital a few days later. Her succession will send all the documents required by the insurer, including the death certificate, in order to obtain the insured amount under Stéphanie's life insurance. The insurer will be required to pay within a period of 30 days following receipt of the requested documents.

Disappearance of the insured

In the case of a disappearance of the insured, it may be impossible to prove the insured's death even though the death seems likely. Where death is uncertain, a declaratory judgment of death can only be obtained after seven years have elapsed since the disappearance. This period may be reduced where the death of the insured is considered to be certain (e.g., the sinking of a ship, or a plane crash) even though it is impossible to draw up an attestation of death. An application for a declaratory judgment of death may be made by any interested person, including the beneficiary of the life insurance (art. 92, C.C.Q.).[314]

EXAMPLE

A woman disappeared from her home five years ago and no one has heard from her since. The beneficiary of her insurance policy will have to wait seven years (i.e., two more years) before obtaining a declaratory judgment of death.

314. It is appropriate here to reproduce the following wording from Jean-François Lamoureux, "*Le droit des assurances*," in École du Barreau du Québec, *Contrats, sûretés, publicité des droits et droit international privé*, *Collection de droit 2023-2024, Volume 7,* Montréal, Éditions Yvon Blais, 2023, pp. 93 and 121: [translation] "When the insured disappears, the insurer is not required to pay the benefit until the death has been declared judicially. If the person simply disappeared, seven years must elapse before the death can be declared (art. 92, para. 1, C.C.Q.) in order to be eligible for the life insurance benefit, and the premiums must have been paid during those seven years because the insured is presumed to be alive. Where a person is deceased, but the body cannot be found (for example, an airplane crash at sea), the death can be judicially declared immediately and is deemed to have occurred at the time of the accident (art. 92, para. 2, C.C.Q.). The premiums are therefore due only until the time that the death is declared."

2.6.2.2 Time limit for paying benefits in accident and sickness insurance

The insurer must pay the sums claimed within 60 days after receipt of the proof of loss (art. 2436, para. 2, C.C.Q.). Where the insurance covers losses of income due to disability, payment of the initial benefit must occur within 30 days of receipt of supporting documents establishing the disability or, if the policy stipulates a waiting period, the 30 days are counted from the expiry of that period (art. 2437, para. 1, C.C.Q.).

2.6.2.3 Insured amount payable to a beneficiary who is a minor, to a tutor or to a curator

Benefits: Person of full age who is incapable

In the case of a person of full age, the benefit payable is remitted directly to him.

However, if the client or the beneficiary to whom the benefit is payable is incapable of administering his property, the benefit is paid to the person who administers his property, i.e., the tutor (curatorships to persons of full age were abolished on November 1, 2022) to the insured's property (arts. 258, 281 and 285, C.C.Q.) or the mandatary (under a protection mandate homologated by the court) (arts. 2166 et seq., C.C.Q.). In certain cases, the benefit may be payable to the Public Curator (if the person of full age who is incapable does not have a tutor to the property) or to Revenu Québec (if the property [financial product] is unclaimed).[315]

Benefits: Minors

When the benefit is payable to a minor, it is paid to the father and mother, who are the tutors of their children as of right (art. 192, C.C.Q.).

It is important not to confuse the designation of a minor as beneficiary with the designation of a beneficiary that, for example, is a testamentary trust established for the benefit of a minor.

Benefits: Father and mother deprived of parental authority

Firstly, it should be noted that the expression "deprived of parental authority" means the loss by either parent, or both of them, of parental authority over their children. As stated in article 606, C.C.Q., a court will deprive parents of their parental authority for a grave reason and in the interest of the child.

If a father and mother are deprived of parental authority, they lose the tutorship of their child (art. 197, C.C.Q.), and the benefit is paid to the person appointed as a tutor. If no such tutor is appointed or otherwise acting, the director of youth protection is appointed as legal tutor (art. 199, C.C.Q.).

315. *Unclaimed Property Act*, CQLR, c. B-5.1.

Benefits: Deceased father and mother

Article 200, C.C.Q. states that a father and mother may appoint a tutor to their minor child by will, by a mandate given in anticipation of their incapacity, or by filing a declaration with the Public Curator. In such a case, the benefit is paid to that person upon presentation of the documents evidencing his status as tutor (generally a judgment of homologation). Only the appointment of a tutor by the surviving parent is valid.[316]

The benefit may also be paid to the Public Curator if the appointed tutor refuses to assume his duties (arts. 180 et seq., C.C.Q).

Benefits: Trusts

Pursuant to article 1262, C.C.Q., a trust can be created by will, by contract, by law or by judgment (where authorized by law).

Thus, in practical terms, a trust can be created by will or by contract. A policyholder can designate a trust as beneficiary. According to a Québec Superior Court judgment, a trust cannot be created merely through a designation of beneficiary on the insurer's enrolment form or insurance application.[317]

Where a trust has been validly created, the insurer will have to pay the insured amount to the trustee under the trust, who, in a testamentary trust, may often be the same person as the liquidator of the succession.

Benefits: Administrator appointed in accordance with article 210 C.C.Q.

Pursuant to article 210, C.C.Q., it is possible to give or bequeath property to a minor on the condition that the property be withdrawn from the administration of the tutor and be administered by a third party appointed by the donor or testator.

Such a situation can arise, for example, if the parents are divorced and one of the parents does not want the surviving parent (a former spouse or partner) to administer the property on behalf of the child.

Again, according to a Québec Superior Court judgment, such an administrator cannot be appointed through a designation of beneficiary on the insurer's enrolment form or insurance application.[318] In such a situation, the insurer will have to pay the death benefit to the surviving parent.

316. Example: Jennifer and Frédéric are Alicia's parents. Alicia's grandmother has been designated in Jennifer's will to act as tutor to Alicia upon Jennfer's death. Frédéric, meanwhile, has appointed Jasmine, Alicia's aunt, as tutor. If Jennifer dies, Frédéric will continue to be the child's tutor; the role will not be assumed by the grandmother. If Frédéric dies after Jennifer, Jasmine will then become Alicia's tutor.
317. *Compagnie d'Assurance-Vie Manufacturers (Financière Manuvie) v. Massouh*, 2010 QCCS 2060, Bernard Godbout J.
318. Ibid. *See also SSQ, Société d'assurance inc. v. Froidebise, 2014 QCCS 205.*

2.7 Group insurance contracts

The subject of the parties involved in group insurance contracts was discussed earlier.

Moreover, the rules regarding the designation of beneficiaries, exemption from seizure, and exclusions, as well as the other rules previously discussed, also apply to group insurance.

However, there are certain principles specific to group insurance that must be considered.

2.7.1 General

Definition: insurance policy

The group insurance policy or master policy is defined as the document evidencing the existence of the contract of insurance, and must contain the particulars prescribed by law. The policy specifically sets out the obligations of the parties and the scope of the insurance coverage (arts. 2399, para. 2; 2415; and 2416, C.C.Q.).

Content of the policy

As is the case with individual insurance, article 2399, C.C.Q. states that the policy is the document evidencing the existence of the contract of insurance. To that effect, the policy must set out the following elements:

- the name of the policyholder and of the insurer;
- the object and amount of the coverage;
- the nature of the risks;
- the time from which the risks are covered;
- the term of the coverage; and
- the amount and rate of the premiums and the dates on which they are due.

This article is supplemented by articles 2415 to 2417, C.C.Q., which state what an insurance of persons policy must contain. The policy must indicate, among other things, the right to convert group life insurance into individual insurance.

A group insurance contract generally includes several types of insurance protection or coverage. The following are the most common:

- basic insurance on the life of the participant and additional insurance (with proof of insurability in the latter case);
- insurance on the life of the participant's spouse;
- insurance on the life of the participant's dependant children;
- accidental death insurance on the life of the participant;
- accidental dismemberment insurance;
- critical illnesses insurance;
- short-term salary insurance (disability insurance);

- long-term salary insurance (disability insurance);
- health-care insurance, which can be divided as follows:
  - prescription drug insurance;
  - hospitalization (private or semi-private hospital room);
  - health-care establishment (convalescent home);
  - health professionals: (acupuncturist, audiologist, chiropractor, dietitian, occupational therapist, naturopath, speech therapist, osteopath, physiotherapist, physical rehabilitation therapist, podiatrist, homeopath, homeopathic remedies, psychoanalyst, psychiatrist, psychologist, social worker, kinesitherapist, massage therapist, orthotherapist);
  - vision care (optometrist, ophthalmologist, eye glasses, contact lenses, laser vision correction);
  - other medical care (ambulance, laboratory analyses, hearing aids, respirators, braces, orthopaedic shoes, detoxification programs, ultrasounds, electrocardiograms, wheelchairs, home nursing care, hospital beds, artificial limbs, insulin pumps, prostheses, X-rays, dental treatment for natural teeth following an accident, etc.);
  - medical assistance (second medical opinion);
- travel insurance and trip-cancellation insurance (with travel assistance); and
- dental care insurance.

Rules specific to group insurance

The C.C.Q. contains few provisions specific to group insurance.[319] It is sometimes difficult to reconcile the provisions applicable to individual insurance with the principles of group insurance, but, unless otherwise indicated, these rules apply with the necessary changes.

Article 2401, C.C.Q. provides that the insurer must deliver a copy of the group insurance policy (also referred to as the “master policy”) to the client (i.e., the policyholder). In order to inform participants about the contents of the master policy, the insurer must deliver insurance certificates to the policyholder (often a booklet or an explanatory brochure). The certificate provides participants with a general description of the coverage. According to the C.C.Q., the policyholder then has the obligation to distribute the certificates to the participants. This can be done electronically. As regards the master policy, the participant and the beneficiary are entitled to consult it at the policyholder’s place of business and obtain a copy thereof.

Some of the provisions of the C.C.Q. are of public order, i.e., the insurer cannot derogate therefrom by contract (unless it offers more advantageous conditions).

For example, a clause of a master group insurance policy providing that the insurer may pay within 90 days of receipt of the sickness and accident insurance claim would be null, as it would give the participant fewer rights than those provided at by law (article 2436, para. 2, C.C.Q. provides for a 60-day period). However, a clause could provide that the payment will be made within 45 days of receipt of the claim; such a clause would be valid, as this derogation is to the advantage of the participant.

319. See section 62 of the *Insurers Act*, CQLR, c. A-32.1.

EXAMPLE

Mariette is claiming the reimbursement of her sessions with a psychologist. *Les belles épargnes assurances inc*. (the insurer) has 60 days to pay her the insured sums upon receipt of the proof of loss (art. 2436, para. 2, C.C.Q.).

The insurer also has the obligation to furnish a copy of the medical questionnaires to the participant when they are applicable, e.g., when a participant wishes to purchase additional insurance. The insurer must do so in order to be able to invoke misrepresentations or concealments by the participant (arts. 2406 and 2424, C.C.Q.).

Discrepancies between the policy and the insurance certificate

The second paragraph of article 2401, C.C.Q. states that, in case of discrepancies between the policy and the insurance certificate (which may be the brochure), participants may invoke the one that is most favourable to them.[320] In some cases, an insurance certificate may contain a note stating that, in case of discrepancy, the provisions of the policy will prevail. In Québec, this note is not valid.

However, a difference is not necessarily a discrepancy.[321]

EXAMPLE 1

François had an accident that caused him back pain. He consulted a doctor and a chiropractor. The doctor was unable to determine with what illness François was afflicted. However, the chiropractor diagnosed it. He gave François a certificate stating that he was unable to perform his work. François claimed disability insurance benefits from the insurer, which refused to make the payments because François was not under the care of a doctor, and because the disability had to be diagnosed by a doctor. François had not received a copy of the policy; he had only received an insurance certificate, which did not state that the disability had to be diagnosed by a doctor.

In a similar case, the Court ruled that in the absence of any indication to the contrary, a disability report signed by a chiropractor was sufficient proof of the inability to work.[322]

320. *SSQ Mutuelle d'assurance groupe v. Larrivée*, 2000 CanLII 10180 (QC CA); *Gestion AVD Verville inc. v. Great West, compagnie d'assurance-vie*, 2013 QCCS 4336. See also *Roy v. Capitale (La), assurance de personnes inc.*, 2012 QCCS 4464.
321. *Robitaille v. Madill*, [1990] 1 S.C.R. 985.
322. *Dubreuil* v. *Lavigne Ltée,* 1989 R.R.A. 451 (C.Q.).

EXAMPLE 2

In February, 1989, Julien's employer offered its employees group insurance, even though the contract between the employer and the insurer had not yet been signed. At the time, Julien was on sick leave. He decided to subscribe to the group insurance. A few weeks later, he received a certificate of insurance stating that coverage for dependants was in effect. While Julien was on disability leave, his wife died. The contract between the insurer and Julien's employer was finally signed in June, 1990, retroactive to February 1, 1989. Julien claimed from the insurer the face amount on the life of his wife. The insurer refused to pay the amount, claiming that the insurance could not have come into effect as long as Julien had not returned to work.

In court, the judge noted that the certificate of insurance was silent as to the requirement of being actively at work. Consequently, the judge held that the certificate should prevail over the wording of the policy, and ordered the insurer to pay Julien the face amount.[323]

2.7.1.1 Disability insurance: some specific considerations

Disability insurance constitutes accident and sickness insurance. Although disability insurance exists as individual insurance, it is more common to find this type of coverage as part of workplace group insurance. It can also be found as part of a debtor group health insurance in connection with a hypothecary (mortgage) loan.[324]

In disability insurance, the insurer must set out, expressly and in clearly legible characters, the terms and conditions of payment of the indemnities and the nature and extent of the disability covered. Failing clear indication as to the nature and extent of the disability covered, the inability to carry on one's usual occupation constitutes the disability (art. 2416, C.C.Q.).[325]

In certain individual policies, the definition of disability may consist in the inability of a person to perform a number of daily tasks, such as washing up or making food. Long-term care insurance is often involved in such cases, and the benefits are not necessarily salary insurance benefits (income replacement), but frequently coverage of costs related to a loss of independence.[326]

---

323. *Syndic de Les Coopérants* v. *Curadeau*, 1993 R.R.A. 716 (C.S.).
324. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, ss. 75 to 85. This type of group insurance contract is generally sold through "distributors" covered by the distribution regime without a representative provided for in sections 408 et seq. of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2. The distributor secures the policyholder's adhesion; it does not sell the group contract.
325. An insurer cannot object to the insured's salary insurance benefits (disability insurance) claim that his leave from work (due to adjustment disorder with depressed mood) stems from an occupational problem: M.D. v. *Desjardins Sécurité financière, compagnie d'assurance-vie*, 2011 QCCQ 10314 (Small Claims), para. 31.
326. See: Autorité des marchés financiers, *Long-term care insurance*.

In group insurance, disability insurance is also referred to as salary insurance, because benefits are linked to the participant's salary. The standard definition of the term "disability" in this type of policy is generally two-fold: one definition applies during the first 24 months of the disability (referred to as "own occupation"), and the other definition applies after the first 24 months of the disability (referred to as "any occupation").

Definition of disability (standard clause)

During the first 24 months of a period of disability:

- total and continuous incapacity caused by an accident or illness that prevents you from carrying out the main duties of your usual occupation.

After the above-mentioned period:

- total and continuous incapacity caused by an accident or illness that prevents you from performing any remunerative occupation for which your education, training or experience has reasonably prepared you, regardless of the availability of employment.

2.7.2 Group insurance: a contract entered between the policyholder and the insurer for the benefit of the participants

Article 2392, C.C.Q. states that group insurance of persons, under a master policy, covers the members of a specified group and, in some cases, their dependants (spouse, children). In group insurance, the same contract covers more than one person. The relationship is no longer simply between the insurer and policyholder, as in individual insurance; the holder of the master policy is also involved. However, the group insurance contract is entered into for the benefit of the participants, not the policyholder, and the participants have, subject to certain exceptions, the same rights as an individual policyholder, subject to certain exceptions.

The relationship between the insurer, the policyholder and the participant is a tripartite relationship (three parties). However, for a group insurance contract to be validly formed or amended, only the agreement of the insurer and the policyholder is required. Once the contract is entered into, a person forming part of the group will be asked to participate in the contract. Often, participation is mandatory, i.e., the employer obliges the employee to enrol in the employee benefits plan as a condition of employment. The aim of this condition is to prevent anti-selection and ensure that premiums are as low as possible.

According to the C.C.Q., the main characteristic of a contract of insurance is that it is an adhesion contract based on good faith.[327] In group insurance, the notion of contract of adhesion primarily involves the relationship between the insurer and the participant. The policyholder and the insurer have often negotiated the terms of the contract (or often have the possibility of doing so, except, at times, for smaller groups where the contract is more standard). As for good faith, it must be present in any contract, regardless of what kind of contract it is. The concepts of adhesion and good faith are not the only characteristics of group insurance contracts; there is also the concept of group.

327. Didier Lluelles, *op. cit.*, Nos. 51 to 53, pp. 31 to 35.

It should be noted that the general rules of contracts apply to uninsured employee benefit plans (referred to as administrative services only [ASO] plans) or financial agreements, or agreements on costs and services that exist in group insurance. ASO plans are sometimes negotiated by the parties in a collective agreement. In some cases, a group plan may include insurance coverage provided by an insurer (e.g., life and disability insurance) and other protections offered under an ASO plan (e.g., medical and dental protections). Effective July 1, 2014, employers under federal jurisdiction (see Chapter 1 to find out which firms are under federal jurisdiction [section 1.4.7]) that offer their employees long-term disability coverage are required to insure this coverage with an insurer in insurance of persons.[328] It should be noted that this manual deals with insurance contracts subscribed through an insurer.

2.7.3 Laws applicable to contracts (place of residence of the participant) and the jurisdiction of Québec Courts

Even if the master policy was entered into in another province, the laws of Québec will apply to the participant if he resided in Québec at the time he became a participant.[329] The laws of Québec will continue to apply to him even if he moves.

Moreover, Québec courts have jurisdiction to hear an action based on a contract of insurance where the policyholder, the insured, or the beneficiary of the contract is domiciled or resident in Québec, the contract covers an insurable interest situated in Québec, or the loss took place in Québec (art. 3150, C.C.Q.).

2.7.4 *Civil Code of Québec, Regulation under the Act respecting insurance* (RARI) and determination of the group

The characteristic that distinguishes group insurance and annuities from individual insurance and annuity contracts is the specified group of persons for whose benefit the contract is issued, i.e., the participants.

A group is a set of individuals with something in common, such as social, economic or cultural interests. In general, it is composed of persons who have or had an employment relationship with one or more employers, or persons in the same profession or occupation. The members of a financial services co-operative or of a mutual insurance association can also constitute a group.

There is no particular requirement with respect to the type of business; however, insurers normally require a minimum of three or five employees. Most of the time, the insurer and the employer agree on the coverage to be offered to the group, and the employees decide whether or not to enrol when participation is optional. However, in Québec, there is an important exception as regards prescription drug insurance.

---

328. *Canada Labour Code*, R.S.C., 1985, c. L-2, s. 239.2.
329. *C.C.Q.,* art. 3119. See also: *Johnston v. Great West Life*, 2013 QCCS 1404. However, article 3119 C.C.Q. does not preclude the application of a foreign law to an insurance contract entered into abroad for a foreigner (*Tar-aby v. Smith (Succession de)*, 2008 QCCS 1591). See also: *Avantys Health Inc. v. Boët*, 2023 QCCA 1182 with respect to the jurisdiction of foreign courts.

2.7.5 *Act respecting prescription drug insurance* and its mandatory nature

Prescription drug insurance

Since January 1, 1997, all Quebeckers must be covered by prescription drug insurance, whether through a private insurance plan or through the public plan administered by the *Régie de l'assurance maladie du Québec* (RAMQ).[330] The law sets out, among other things, the list of medications that are mandatorily covered (over 8,000), the minimum percentage of coverage (65% of the cost of the drug), as well as the maximum annual contribution.[331] However, private plans may be more generous and, for example, cover 80% of the cost of prescription drugs, but they cannot cover listed medications for less than the minimum percentage.

Private plans

For purposes of the *Act respecting prescription drug insurance*, "a private plan is a group insurance or employee benefit plan offering basic coverage for prescription drugs."[332] Moreover, within the meaning of this Act, an employee benefit plan is an ASO plan that, in practice, is often administered by an insurer. All Quebeckers under the age of 65 who have access to a private plan offered to a group in accordance with the law must subscribe to the prescription drug insurance coverage under a group insurance contract for a group described under section 15.1 of the *Act respecting prescription drug insurance* (where applicable), and have all their dependants enrol in such coverage.[333]

The definition of "group" in the *Act respecting prescription drug insurance* is narrower than that in the C.C.Q. and the RARI, as only groups listed in section 15.1 of the *Act respecting prescription drug insurance* qualify. Thus, associations not related to a professional order must consist of

330. See RAMQ, *Info assurance médicaments* (in French only), September 2021. See also the sheet entitled *Responsabilité des employeurs et des assureurs* on the RAMQ website. See also the Treasury Board of Canada Secretariat press release entitled "Important Information for Public Service Health Care Plan Members Residing in Quebec" published in May 1997.

331. From July 1, 2023~~2022~~ to June 30, ~~2023~~2024, the maximum annual contribution is $~~1,161~~1,196 for individuals between 18 and 64 years of age and for individuals 65 and over not receiving any ~~if they are not receiving a g~~Guaranteed ~~income~~ Income ~~supplement~~ Supplement (GIS), $0 for individuals under age 18~~ years of age and $661~~, for individuals 18 to 25 without access to a private plan, in full-time attendance at a secondary-, college-, or university-level educational institution, spouseless, domiciled with their parents or legal guardian, for persons with a functional impairment and persons age 65 or over receiving 94% or more of the maximum GIS, and $674 for individuals over 65 who receive a GIS at a rate between 1% and 93%~~ ($0 for those with a GIS with a rate between 94% and 100%)~~. The annual premium on the income tax return (contribution paid to Revenu Québec) is $0 to $~~710~~ 731 per person, depending on net family income. See: RAMQ, *Rates in effect*. See also: RAMQ, *Annual premium*. See also: RAMQ, ~~https://www.ramq.gouv.qc.ca/en/citizens/prescription-drug-insurance/rates-effect and https://www.ramq.gouv.qc.ca/en/citizens/prescription-drug-insurance/annual-premium. See also: *Amount to pay for prescription drugs*https://www.ramq.gouv.qc.ca/en/citizens/prescription-drug-insurance/amount-pay-prescription-drugs~~.

332. Régie de l'assurance maladie du Québec. *Prescription Drug Insurance*.

333. *Act respecting prescription drug insurance*, CQLR, c. A-29.01, s. 16.

persons engaged in the same trade or occupation.[334]

EXAMPLE

The insurer ABC offers life insurance and as well as accidental death and dismemberment insurance to the *Association des femmes d'affaires de l'Estrie*. However, it cannot offer prescription drug insurance to this group, because its members do not all perform the same work, and this group is not covered by section 15.1 of the *Act respecting prescription drug insurance*.

It is interesting to note that an insurer or an administrator of an employee benefit plan must offer prescription drug coverage that complies with the law if it offers coverage for accidents, illness or disability (e.g., disability insurance, accidental death and dismemberment insurance, or merely a health spending account) to a specified group of employees; or to members of a professional association, a union, or an association whose membership consists of persons engaged in the same trade or occupation.[335]

Individual prescription drug insurance is prohibited under the *Act respecting prescription drug insurance*. An insurer that offers individual sickness and accident insurance contracts with one or more characteristics specific to group insurance is also contemplated. Insurers therefore cannot skirt the law by offering accident and sickness insurance by means of individual contracts to the members of a group contemplated in the *Act respecting prescription drug insurance* so as to avoid the requirement of having to include prescription drug coverage.[336] It is, however, possible to offer only group life insurance without having to include prescription drug coverage.

EXAMPLE

Génie inc. only offers a health spending account to its retired employees. The plan administrator must also offer prescription drug insurance, even if certain retirees are over the age of 65. However, persons who are 65 years of age or over have the right to opt for the RAMQ's public plan instead of the private

334. Ibid., CQLR, c. A-29.01, s. 15.1. See also: *AREQ (CSQ) (Association des retraitées et retraités de l'éducation et des autres services publics du Québec) v. Régie de l'assurance maladie du Québec,* 2011 QCCS 1088, Benoît Moulin J.; *Association québécoise des directeurs et directrices d'établissement d'enseignement retraités v. Procureur général du Québec (Conseil du Trésor)*, 2023 QCCA 1033, upholding *Association québécoise des directeurs et directrices d'établissement d'enseignement retraités v. Procureur général du Québec (Conseil du Trésor)*, 2022 QCCS 228 (CanLII), j. Bernard Synnott; *Sogedent Assurances inc. v. Régie de l'assurance maladie du Québec,* 2006 QCCS 3970, Michel A. Caron J.; *Robillard v. Société canadienne des postes,* 2017 QCCS 2707, Donald Bisson J.; *Graillon v. Agence du revenu du Québec,* 2016 QCCQ 430, Jean Faullem J.; *Taylor v. Agence du revenu du Québec,* 2014 QCCQ 5042 (Small Claims); *Maltais v. Québec (Sous-ministre du Revenu),* 2014 QCCQ 1548; *Beauchesne v. Québec (Sous-ministre du Revenu),* 2008 QCCQ 10365.

335. *Act respecting prescription drug insurance*, CQLR, c. A-29.01, ss. 34, 35 and 38. See the decision in *Association québécoise des pharmaciens propriétaires v. Régie de l'assurance maladie du Québec*, 2021 QCCA 872 on the pharmacist's obligation to give the customer a detailed invoice.

336. *Finances Québec*. *Harmonization with certain federal tax measures and other tax measures* (pp. 32 to 34).

prescription drug insurance plan to which they have access.[337]

An insurer may offer prescription drug insurance to members of a professional corporation. It can also offer it to employees of members of the professional corporation, if the contract so provides.

337. See RAMQ, *Info assurance médicaments*, September 2021, section 3.1.

2.7.6 Eligibility of participants and the *Charter of human rights and freedoms* (Québec)

In order to determine eligibility for group insurance, certain eligibility requirements are often established within a group. This helps define the group. It is a preliminary step taken before a group insurance contract is entered into. For example, a group plan may require a minimum number of hours worked or impose a probation period as an eligibility criterion. A plan can also exclude part-time workers, temporary workers or retirees.

The insurer must know how the group is defined in order to have an idea of the risk the applicant is asking it to assume, and in order to determine the relevant rates.

To establish the premium rate, the insurer must determine the risk factor for the group using statistical data compiled for groups having similar characteristics. The greater the likelihood that the risk will occur, the higher the premium will be.

2.7.6.1 Discriminatory distinctions under the Québec *Charter of human rights and freedoms* (Québec) – Role of section 10

An insurer cannot use certain criteria if they result in a distinction or exclusion contrary to law.

Section 10 of the Québec *Charter of human rights and freedoms* states the criteria that are considered discriminatory:

> 10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap, or the use of any means to palliate a handicap.

However, in the case of insurance and annuities, the legislature has limited the effects of these distinctions or exclusions by enacting section 20.1 of the *Charter of human rights and freedoms.* This provision allows insurers, on certain conditions, to use criteria that would otherwise be discriminatory.

2.7.6.2 Distinctions deemed valid under the *Charter of human rights and freedoms* – Role of section 20.1

This section states that, in insurance, certain criteria may be used to define a group. Section 20.1 of the *Charter of human rights and freedoms* reads as follows:

> In an insurance or pension contract; a social benefits plan; a retirement, pension or insurance plan; or a public pension or public insurance plan; a distinction, exclusion or preference based on age,

> sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefore is a risk determination factor based on actuarial data.
>
> In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

Thus, an insurer can use age, sex and civil status as a criterion for eligibility in the group, but it must have actuarial data in order to do so, and the use of the distinction must be warranted. Moreover, the insurer may also include the status of health as a factor to determine risk, without having to look to actuarial data. Furthermore, the insurer may also include the life habits of an insured (e.g., smoker or non-smoker), since it is not discriminatory under section 10 of the *Charter of human rights and freedoms*.[338]

2.7.7 Group representation

In group insurance and annuity contracts, the contract is entered into between the insurer and the policyholder. The policyholder must have the capacity to bind itself by contract and the authority to represent the group. The person who represents the group is most often the employer, acting for the benefit of its employees, but a union, an association or a professional order can also enter into such a contract. The policyholder must also have the capacity to administer the master policy, to provide for enrolment by participants, and to collect and remit the premiums to the insurer. However, section 61 of the *Regulation under the Act respecting insurance* provides that if the policyholder is an association of employees or a professional syndicate, it may enter into an agreement with the employer or a third party so that the employer or third party manages the master policy.

2.7.7.1 Policyholder and rules of mandate

In certain cases, the collective agreement between the employer and the union contains provisions respecting the insurance coverage to be negotiated for the benefit of the employees. It may also contain an obligation for the union and the employer to take out insurance jointly. The terms of a collective agreement cannot be set up against the insurer, because it has no knowledge of the content of the collective agreement, and it is not a party thereto.

In most cases, the employer is the policyholder and represents the participants. Its consent when the contract is entered into will bind the members of the group. A company sometimes takes out group insurance not only for all staff who work directly for it, but also for staff who work for its subsidiaries or affiliates. An insurance committee may be formed to negotiate the insurance contract and to deal with the insurer thereafter. Sometimes, an association or a professional order also has the mandate to represent its members.

338. *Wagner v. I.N.G., Le groupe Commerce, compagnie d'assurances*, 2001 CanLII 24422 (QC CQ).

Requirements for a mandate to exist

Where the policyholder is not the employer, the existence of a mandate given to the policyholder may stem from a collective agreement, or it may result from a statute (such as a statute that creates a professional order) or from another written instrument that states who has the authority to represent the members. Written instruments are not the only way to confirm the existence of a mandate; all facts surrounding the negotiation and signing of a group insurance contract may be taken into consideration to establish the existence of a mandate.

Consequences of a mandate

As seen in Chapter 1, pursuant to the C.C.Q., a mandatary is subject to certain obligations, including the obligation to act with loyalty; this means he must put the interests of his mandator before his own.

Application of the theory of mandate

The courts may use the theory of mandate to satisfy a participant's claim by recognizing the employer as mandatary of the insurer.[339]

2.7.7.2 Policyholder's obligation to inform

The law does not require a policyholder to inform members of the group before they subscribe to the contract. However, the obligation to inform is considered to stem from the requirements of good faith and the concept of enlightened consent.[340]

Similarly, when the coverage is modified during the term of the contract, the case law recognizes that the policyholder has a certain obligation to inform the participants.[341] This obligation is not as demanding as the duty imposed on group insurance representatives, because the policyholder is not an insurance specialist (see Chapter 4 of this manual).[342]

EXAMPLE

Jules, who owns a business called *Les fines herbes inc.*, would like to offer his employees a group insurance plan, the cost of which would be shared by the employer and the employees. Following his conversation with Marika, a group insurance representative, he meets with his staff to explain the coverage offered as well as the associated costs. He mentions that they can apply for additional protection over and above the basic protection. The information provided by Jules will allow the employees to make an informed decision when subscribing

339. Julien *v.* Zurich du Canada, Cie d'assurance-vie, [1984] C.S. 6; Huet *v.* Citadelle, Cie d'assurance-vie, [1987] R.R.A. 743 (C.S.); *Bohl v. Great-West Life Assurance Company*, 1973 CanLII 921 (SK CA); *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 464 v. Taylor-Read Enterprises Inc.*, 1980 CanLII 535 (BC SC).
340. Michel Gilbert, *L'assurance collective en milieu de travail,* 2nd ed., Cowansville, Les Éditions Yvon Blais, 2006, p. 44.
341. *Fortier v. Sun Life du Canada, compagnie d'assurance-vie*, 2010 QCCS 4923.
342. Michel Gilbert, op. cit., pp. 44 to 46.

to the master policy.

2.7.8 Types of group insurance

2.7.8.1 Workplace group insurance offered by employers or unions

As previously mentioned, the policyholder in workplace insurance can be an employer or a union. Sometimes, it can be both, by means of a parity committee. It is important to ensure that they are duly constituted legal persons. The employer is generally a business enterprise (a business corporation) or a partnership.

Distribution of insurance costs

The cost of basic insurance coverage is generally paid for by both the employer and the employee. The amounts paid by the employee are deducted at source by the employer. Once deducted, premiums no longer belong to the employer; they belong to the insurer.[343] The employer's participation may be total or partial, i.e., the employer may pay for all the coverage offered or only part of it. Even if the employer does not always contribute financially to the various types of insurance coverage, its administrative role, i.e., managing the contract, is a substantial contribution.

2.7.8.2 Insurance offered through professional associations and orders

Definition: Professional association or order

A professional association is an association formed to protect and promote the privileges and rights of a profession or occupation, to ensure the competence of those who engage in it, to impose a code of ethics and, generally, to develop the economic, social and educational interests of its members. A professional order (or professional corporation) brings together those in the same profession and has regulatory and disciplinary powers; the *Barreau*, the *Chambre des notaires* and the *Ordre des pharmaciens* are professional orders.

EXAMPLES

- An association of business people and a sports association are associations constituted for a specific purpose when they charge annual dues and elect directors.
- The *Ordre des ingénieurs du Québec* is a professional order of which engineers must be members; it offers its members the possibility to enrol for group insurance subscribed by the order.

343. *Corporation Jetsgo (Syndic de)*, 2010 QCCA 1286.

2.7.8.3 Group insurance contracts on the life or health of debtors and/or depositors

A financial institution (e.g., a bank or *caisse populaire* [credit union]) can also offer insurance and be the policyholder of a group insurance policy issued by an insurer in insurance of persons. It offers insurance on the life or health of debtors to consumers when they take out a loan, in order to purchase a car or house, for example.

Group insurance on the health or life of debtors is often referred to as “loan insurance,” “credit insurance” or “creditor’s life insurance.” Insurance taken out when a house is purchased is hypothecary (mortgage) insurance, which guarantees the balance of the hypothecary (mortgage) loan or line of credit. It guarantees the repayment of the loan in the event of the death or disability (and even, at times, the involuntary loss of employment) of the borrower.

Group insurance on the life or health of investors is less common. One example of this type of insurance is life or disability insurance offered when a scholarship plan is purchased for a registered education savings plan (RESP).

In all cases, the lender is both the holder of the group insurance policy and the beneficiary. Therefore, the borrowerlender will receive the death benefit upon the death of the borrower (the participant) or the disability insurance benefits in the event of the borrower’s disability, up to the balance of the loan.

EXAMPLE

Jacques takes out a $10,000 loan from a bank to purchase furniture and, at the same time, subscribes to the group insurance offered by the bank. The insurance will cover the repayment of his loan in the event of death or his monthly payments in the event of disability.

Definition: Creditor

Only a creditor (or an entity representing a group of creditors) can be a policyholder under this type of insurance on the life or health of a debtor. A creditor can be a *caisse populaire* (credit union), a bank, a trust company, or any enterprise carrying on activities similar to those of a lender. In such case, the enterprise is referred to as a “distributor of group insurance.” No registered representative is involved in offering the insurance to consumers; it is offered by employees of the financial institution (or of another provider according to the *Act respecting the distribution of financial products and services*, such as a car dealer) who are not registered as insurance representatives with the AMF. This type of distribution is further discussed in detail in Chapter 4.

2.7.9 Rules relating to formation and effective date

2.7.9.1 Application, call for tenders and specifications

The two stages of the formation of a contract are the offer by the policyholder (the application) and the acceptance by the insurer.

The application is a request for insurance in which the applicant indicates the type of coverage required, the amount of coverage and the duration of the coverage. At this time, the policyholder also mentions the risks against which it wishes the members to be protected and declares to the insurer any circumstances likely to influence the acceptance of the risk (e.g., the types of occupations).

In group insurance, unlike individual insurance, the application is a detailed offer; it specifically sets out the details of the group insurance plan provided to the members. It is written and filled out by the policyholder or the representative, and sometimes by an actuary. The policyholder must comply with the undertakings made in favour of the members of the group, which are sometimes contained in a collective agreement.

Larger businesses often prepare a set of specifications and proceed by way of a call for tenders. When the policyholder is a public body such as a municipality, it must proceed by way of a public call for tenders. The contract must be awarded to the lowest compliant bidder, subject to a scoring system that also includes a qualifying component.

Once the parties have given their consent, the group insurance policy takes effect on the date determined by the policyholder and the insurer.

2.7.9.2 Effective date for the participant: active attendance at work

Requirements: workplace group insurance

In workplace group insurance, the most common requirement is the need to work for a certain time before becoming eligible or to have completed the probation period. Some businesses also require that an employee work a minimum number of hours per week in order to be eligible for workplace group insurance.

EXAMPLE

In order to be able to subscribe to the group insurance offered by his employer, Charles must have been employed for 3 months before his application and work at least 24 hours per week.

As mentioned earlier with respect to individual insurance, for a person to benefit from group insurance protection, the event against which he wishes to protect himself must not have occurred: a person who knows that he has cancer and who would like to take out insurance to cover this type of illness (such as critical illness insurance) will not be insurable because the event has already occurred before the coming into force of the group insurance contract.

In group insurance, proof of insurability of participants is often limited to their presence at work on the date the contract takes effect. The insurer assumes that if the person is working, he is in good health. Thus, in the vast majority of cases, no medical questionnaire is required for basic insurance in employer-employee group insurance. However, if the employee wishes to enhance his life insurance with additional optional coverage, the insurer may ask him to fill out a medical questionnaire, make a declaration of insurability and undergo certain tests.

When an employee is eligible for insurance, but is absent on the date the contract takes effect, such as in the case of annual vacations, he must not be deprived of the protection offered under the insurance, because the absence has nothing to do with his health.[344]

Subject to situations involving a change of insurer in group insurance (ss. 68 et seq. of the *Regulation under the Act respecting insurance*), the effective date of the protection offered under certain insurance coverage will be postponed when the absence from work is due to the employee's health. In some cases, the insurer may ask the participant to fill out a medical questionnaire.

As regards group insurance offered by associations or professional orders, the insurer will generally require evidence of insurability (questionnaire regarding the state of health), that members be in good standing and that their dues be paid.

2.7.9.3 Participant's representations

As previously mentioned, an insurer will sometimes require a potential participant to fill out a questionnaire about his state of health. It may also ask him to undergo a medical examination if it considers it necessary to prove his insurability.

Questions in the application

When appropriate, as in individual insurance, when applying for group insurance, or for group insurance on the life and health of debtors and depositors, the applicant must correctly and honestly answer the questions asked about his state of health. If he answers "no" to all the questions, he will obtain the insurance coverage without any further formality.

If the applicant does not answer honestly and the insurer finds out, the insurer may refuse to pay the insured amount. Its grounds for doing so will be clear: the applicant failed to indicate, for example, certain health problems when applying for the insurance.

344. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 71.

EXAMPLE

Béatrice fills out an application in order to obtain life insurance to cover the balance of her hypothecary (mortgage) loan. There is a question about the condition of her heart. Although she is being treated for high blood pressure, she nonetheless answers “no” when asked whether she has heart problems. She dies six months later of a heart attack. The insurer refuses to pay the face amount because Béatrice stated that she did not have this type of problem. Even if she dies for another reason, the insurer may also deny the claim.

If the applicant answers “yes” to any of the questions, his file will be transferred to the underwriting department for further review. The applicant may be asked additional questions about his state of health. Once the insurer has obtained all the information necessary to for assessing the risk, it will decide whether or not to accept it (and will also decide on the rates).

The applicant must be specific when answering questions about his state of health. If the question has several elements and only one involves the applicant, he must indicate it in the questionnaire.

EXAMPLE

Philippe subscribes to the master life insurance policy offered by his association. One of the questions on the application is the following: “Have you been treated or hospitalized during the past year or have you taken medication?” Philippe answers “yes” to the question, even though only one aspect of the question involves him, namely the taking of medication.

Protection conditional upon acceptance by the insurer

The insurer may impose conditions (e.g., a medical examination). Under these circumstances, the contract often contains provisions stating that the participant’s coverage comes into effect when the participant meets the eligibility requirements set by the insurer.

2.7.10 Enrolment and coverage of insured persons (spouse and dependants)

2.7.10.1 Mandatory enrolment according to eligibility rules

Subscription to the master policy by the members of the group completes the tripartite relationship between the insurer, the policyholder and the participant. Once the member of the group has subscribed to the master policy, he becomes a full party to the contractual relationship. Enrolment by a member is mandatory or optional, depending on what the master policy states.

Mandatory enrolment

When enrolment is mandatory for all members of a group, the policyholder gives the insurer the list of members covered by the contract. Enrolment then becomes an obligation from which the member cannot be exempt. He loses the ability to choose whether or not he will participate. However, as regards prescription drug insurance and health insurance coverage (dental care, vision care, health professionals, travel insurance), an employee who is covered by his spouse's plan may unsubscribe from this coverage by providing evidence of insurance to his employer, unless participation in this coverage is a condition of employment.[345] Nonetheless, even in such a case (of unsubscribing), he must be covered by his employer's group insurance as regards life insurance and salary insurance (disability insurance), where applicable.

Optional enrolment

There are plans that offer the possibility of subscribing or not subscribing to the master policy. Under these circumstances, the participant has a choice. Some plans provide basic coverage that can be combined with other coverage. Other plans, referred to as "à la carte" or "flexible," are more sophisticated. They give participants the choice between several types and degrees of coverage. Nonetheless, pursuant to the *Act respecting prescription drug insurance*, the participant must subscribe to the prescription drug insurance and also cover his spouse and dependants, unless he is already covered by another private drug insurance plan.

An employee can decide to maintain medical and/or dental coverage under his own group insurance plan in addition to that of his spouse. In such case, insurers refer to CLHIA *Guideline G4 (Coordination of Benefits – Group Health and Dental)*[346] to determine which insurer is the first payer, including with regard to dependant children.

2.7.10.2 Mandatory enrolment for coverage under the prescription drug insurance plan and mandatory coverage of spouse and children

As previously mentioned, a participant in a group plan must subscribe to the prescription drug insurance of that plan, unless he has access to another plan, such as through the group insurance of his spouse or his professional association. Participants are also obliged to ensure that coverage is provided to their spouse, if they share the same domicile (unless, of course, the spouse is a member of another plan), to their children, and to persons suffering from a functional impairment who share the same domicile.[347]

345. *Act respecting prescription drug insurance*, CQLR, c. A-29.01, s. 44.1.
346. See: CLHIA, *Guideline G4 - Coordination of Benefits - Group Health and Dental*, September 12, 2012.
347. Ibid., s. 18.

Under the *Act respecting prescription drug insurance*,[348] two persons (of the opposite or same sex) are considered to be spouses in the following cases:

- they are married or in a civil union;
- they have been cohabiting in a conjugal relationship for at least 12 months; or
- they are cohabiting in a conjugal relationship and have a child together.

EXAMPLE 1

Paul and Mia are spouses and have two children. Paul, a self-employed worker, is not a member of any association, a professional order or a union. Mia works as a lawyer in a manufacturing company. As such, she has disability insurance and prescription drug insurance. Pursuant to the *Act respecting prescription drug insurance*, Mia must enrol in the plan offered by her employer, and have Paul and their children enrol in the plan.

EXAMPLE 2

Louise has decided to become a member of the *Association des chirurgiens-dentistes du Québec* (ACDQ) since she is a dental surgeon. Membership in the association is optional; Louise is not obliged to join it in order to practice her profession. If she decides to join the association, she must enrol in the prescription drug insurance offered by the association, unless she has access to another private plan through her spouse.[349]

A child whose father or mother is covered by a private plan must also benefit from this coverage until his 18th birthday. Afterwards, this insurance coverage must continue if he is domiciled with the participant and is a full-time student, until the age of 25, or if he is suffering from a functional impairment. It should be noted that an insurer may have definitions of spouse and child that are broader than those in the Act (e.g., the plan may define a child as a person 21 years of age or younger).

EXAMPLE

Sébastien is 22 years old. He is single, a full-time student at the University of Québec at Trois-Rivières and lives with his parents. His father has group insurance covering prescription drugs. Sébastien must therefore enrol in the prescription drug insurance plan offered by his father's private plan. He cannot be covered by the public plan.

348. Ibid., s. 17.
349. *Sogedent Assurances inc. v. Régie de l'assurance maladie du Québec*, 2006 QCCS 3970.

The public plan

The public Prescription Drug Insurance Plan is the plan offered by the Government of Québec (the RAMQ). It covers all Quebeckers who do not have access to a private drug insurance plan.

The following persons are eligible for the public Prescription Drug Insurance Plan:

- persons 65 years of age or over. It should be noted that they can choose between coverage under a private plan, if they are eligible, and the public plan;
- recipients of last-resort financial assistance and holders of a claim slip;
- persons who do not have access to a private plan (e.g., self-employed workers); and
- children of persons covered by the public plan.[350]

In most cases, the RAMQ must be contacted in order to benefit from the public Prescription Drug Insurance Plan. Persons who pay a premium when filing their income tax return are not automatically registered for the public plan. Only certain individuals will be automatically registered for the plan without having to make an application, such as persons 65 years of age or over. These individuals may choose to participate in a private plan, if they are still eligible, and unsubscribe from the public plan.

Moreover, a person under the age of 65 who retires and has access to a private plan (e.g., through a professional association) must enrol in the private plan; that person cannot be covered by the RAMQ.

The RAMQ monitors the eligibility of registrants on a regular basis. Some must rectify the situation either by reimbursing to the RAMQ the cost of the medications paid by the RAMQ or by retroactively claiming back the premiums paid to the RAMQ.

On the RAMQ Web site, the *Bulletin Info Assurance-médicaments* (available in French only) sets out the RAMQ's position regarding the Act. On its Web site, the RAMQ has also set up a questionnaire allowing any Québec resident to determine whether he should be covered by a private insurance plan or by the public plan.[351]

2.7.11 End of a group insurance contract, non-payment of premiums and cancellation notice

The insurance coverage is in effect for the term of the master policy. However, the insurance may end earlier if the master policy expires or is cancelled. In addition, an insurance contract whose term will expire can be renewed. These rules are discussed in this section.

350. *Act respecting prescription drug insurance*, CQLR, c. A-29.01, s. 15.
351. *Régie de l'assurance maladie du Québec*. *Info assurance médicaments* (in French only), September 2021.

Renewal of the master policy

If the policyholder wishes to extend the insurance coverage, whose term is generally one year, the parties must agree to renew the contract.

Rules respecting renewal

The coverage may be extended under the same terms as in the initial contract or contain changes. In accordance with paragraph 3 of article 2405, C.C.Q., these changes must be indicated clearly in a separate document separate from the rider that stipulates them. A change is presumed to be accepted 30 days after receipt of the document.

Nature of renewed master policy

The renewal may be evidenced by a certificate of renewal or the issuance of a policy. Even where a policy is issued, it does not constitute a new insurance contract, unless it was preceded by genuine negotiations or unless substantial changes were made to the basic contract.

End of the master policy

Expiry of the term

Upon the expiry of the coverage period, the parties are released from their respective obligations, except the insurer as regards insured events that occurred before the expiry, unless the contract is renewed, as mentioned above.

It is important to note that a participant who has been insured for at least five years has a right to convert his life insurance into individual insurance when the master policy expires (without being replaced by another insurer's group insurance contract). The right of a participant to convert his group insurance coverage into individual insurance will be discussed further below. However, other circumstances may lead to the end of an insurance contract, including the cancellation of the contract due to the policyholder's failure to pay the premium.[352]

Cancellation of the master policy before the expiry of the term

Cancellation only puts an end to the master policy for the future. Once the cancellation is in effect, the insurer ceases to have obligations toward the participants if a new insured event occurs. However, there are certain exceptions in disability insurance and life insurance. This topic will be discussed further below.

Cancellation agreed upon between the insurer and the policyholder

The insurer and the policyholder may agree on certain reasons justifying the cancellation of the contract. For example, if the number of members of the group falls below the number set by the insurer and the policyholder, the insurer can cancel the contract.

352. *Bélanger v. Great-West, compagnie d'assurance vie*, 1999 CanLII 11254 (QC CS).

Cancellation of a group insurance contract resulting from non-payment of the premium by the policyholder

At times, the policyholder, who is responsible for paying (or remitting) the premium, is unable to pay the insurer the premiums specified in the contract, due to financial difficulties. The law provides for these situations by setting out different rules for life insurance, accident and sickness insurance, and prescription drug insurance (which is a type of accident and sickness insurance). These provisions also have consequences for participants.

The insurer will provide a 30-day cancellation notice to the group insurance policyholder in order to terminate all the coverages of the group insurance contract.[353]

Non-payment of premium by the employer or participant

The payment of the premium is an obligation generally assumed by the policyholder.

However, when a plan member does not receive a salary from his employer, the employer is no longer able to deduct premiums from his employee.

This situation occurs when an employee is not at work (on leave without pay, parental leave, strike, etc.) and there are no premiums that can be deducted. In such situation, the employer and employee must absolutely determine how to resolve this issue.

Where neither the employer nor the employee has remitted the participant's premiums to the insurer, the participant's insurance coverage ends when the participant fails to remedy the default following written notice (where required) received from the insurer.[354]

Consequences of non-payment of the premium: Life insurance

In life insurance, non-payment of the premiums, other than the initial premium, results in the cancellation of the contract after 30 days (art. 2427, para. 1, C.C.Q.). Pursuant to the first paragraph of article 2415, C.C.Q., the insurance policy must indicate the time limits for payment of premiums.

If the policyholder pays the premiums within the 30-day grace period, the insurance will remain in effect.[355] The 30-day period is a minimum. Nothing prevents the insurer and the policyholder from agreeing on a longer time limit. The insurer can, in fact, extend the time limit to allow the policyholder to pay the premium. If a loss occurs during the grace period, the participant is covered, even if the premium has not been paid.

---

353. See article 2427 (no notice required for life insurance: 30-day grace period) and article 2430 (15-day written notice required for accident and sickness insurance) of the C.C.Q. and section 47 of the *Act respecting prescription drug insurance* (30-day written notice required to the policyholder or participant as applicable for prescription drug insurance).
354. See article 2427 (no notice required for life insurance: 30-day grace period) and article 2430 (15-day written notice required for accident and sickness insurance) of the C.C.Q. and section 47 of the *Act respecting prescription drug insurance* (30-day written notice required to the policyholder or participant as applicable for prescription drug insurance).
355. *Rocheleau v. Union-Vie, compagnie mutuelle d'assurance*, 1999 CanLII 11266 (QC CS).

Consequences of non-payment of the premium: Accident and sickness insurance

In accident and sickness insurance, non-payment of the premiums while the contract is in effect leads to the cancellation of the contract only if the insurer sends the policyholder a 15 days' prior written notice (art. 2430, C.C.Q.).

However, in prescription drug insurance, the law requires the insurer (or the ASO plan administrator) to give a prior notice of 30 days in order to cancel the contract.[356]

Difference compared with life insurance

Under accident and sickness coverage, and contrary to life insurance, article 2430, C.C.Q. requires that an insurer give prior notice before cancelling the contract. This allows the person concerned to remedy the default. If non-payment of the premium by the policyholder involves all the employees, the contract will be cancelled. However, if the participant is the person involved and he does not make the payment, his insurance coverage (and those of his dependants) will be cancelled.

End of insurance coverage for the participant

A participant's insurance coverage can end for a variety of reasons. In examining them, we will analyze the factors that lead to the loss of eligibility by a participant (non-payment of the premium and end of affiliation with a group, among other things) as well as the right to convert group insurance coverage into individual insurance.

Loss of eligibility for insurance

In order to keep his insurance coverage in effect, a participant must maintain his eligibility for the insurance. To do so, he must continue to satisfy the eligibility criteria. A participant's insurance coverage (and that of his covered dependants) will cease if he is dismissed by or voluntarily leaves his employer, if he retires, or if he is no longer a member of an association or professional corporation. Normal absences provided for in the employment contract between the employer and the employee (maternity leave, sick leave) do not put an end to the insurance coverage of the employee in question. Pursuant to the *Act respecting labour standards*, the employer must maintain the coverage of employees who are on maternity or parental leave, subject to payment of the participant's premium.[357] Laid-off employees or those on strike, on lock-out, or on leave of absence may sometimes continue to be covered if the policy so provides.

An employer may offer group coverage to retirees (usually a less generous plan than that offered to active employees), but this type of plan is less common now than it used to be.

All of these situations involve a person ceasing to be affiliated with a group. As soon as a participant is no longer a member of the group to which he belonged, his insurance coverage ceases.

356. *Act respecting prescription drug insurance*, CQLR, c. A-29.01, ss. 47 and 48.
357. *Act respecting labour standards*, CQLR, c. N-1.1, ss. 49, 70, 79.3 and 81.15.

2.7.11.1 Participants' rights when a group insurance contract ends and the contract is not replaced

Conversion right

Pursuant to section 66 of the *Regulation under the Act respecting insurance,* a participant who has been insured for at least five years before the end of a group insurance contract has the right, without having to provide evidence of insurability, to convert his group life insurance coverage to individual life insurance within 31 days after the expiry of the master policy if the master policy is not replaced or if it is replaced by another group insurance contract that provides a lesser amount of life insurance.

The amount of insurance that may be converted must be at least $10,000 or 25% of the amount of the participant's life insurance on the expiry of the master policy, whichever amount is greater.

The conversion option does not apply to sickness or accident coverage included in the group insurance contract.

Disability insurance

A participant who is disabled within the meaning of the insurance policy before the end of the group insurance contract has the right to receive disability insurance benefits from the insurer even if the group insurance contract is ended after his disability; he is entitled to such benefits as long as he is disabled within the meaning of the policy (subject to the end of coverage under the terms of the policy, e.g., once the participant reaches the age of 65).[358]

In some cases, a participant will be entitled to receive disability insurance benefits in the event of a recurrence after the end of the group insurance contract if the contract has not been replaced by a new group insurance contract. However, the participant will not be entitled to receive disability insurance benefits in the event of a recurrence of the disabling affliction after the expiry of the contract if it has been more than 180 days since the participant was disabled.[359]

2.7.11.2 Participants' rights when a group insurance contract ends and the contract is replaced by another contract with a new insurer

Where there is a change of insurer, there are rules that provide which risks are assumed by the former insurer and which ones are assumed by the new insurer. The following are the principal rules.

Risks assumed by the former insurer

If a loss occurs before the master policy is replaced, the former insurer must cover it, whether the situation involves life insurance or accident and sickness insurance.

358. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 69.
359. Ibid., s. 70.

Rules respecting disability insurance

If a participant's disability (disability date) occurs prior to the expiry of the master policy, the former insurer must assume responsibility therefore; it will have to pay insurance benefits throughout the duration of the disability (subject to any insurance limits set forth in the policy). It must be responsible for any consequences that occurred prior to the end of the master policy. N.B.: The insurer's obligation will arise only at the end of the waiting period, provided the participant is still disabled.

EXAMPLE

Rolande subscribed to the master group insurance policy of her professional order. She has life insurance and disability coverage. She has been very tired for some time. Her doctor signs a note for her to stop working due to chronic fatigue. She claims disability benefits from the insurer, who tells her that she will only be eligible for benefits at the end of the 30-day waiting period. Three months after the disability began, Rolande is still unable to return to work. The employer renewed the master group insurance policy with another insurer. Since Rolande is still disabled at the time of the change of insurer, the former insurer will continue to pay her disability benefits as long as she remains disabled.

Recurrence

The former insurer may be required to pay disability benefits again if a participant has a recurrence of the same disability, but only if the recurrence arises within 180 days after the end of the initial period of disability and provided the participant has not returned to work for 30 days of full-time work since the expiry of the former contract.[360]

Cancellation of the contract

When the former master policy is cancelled and replaced by a new contract with coverage comparable to the previous one, the former insurer no longer has to cover the consequences of a risk that occurs prior to the expiry of the master policy, if the new insurer agrees to cover the risk, which may happen frequently.[361]

Conditions of replacement of a contract

The replacement must take place within 31 days of the cancellation of the former contract.[362] Replacement of the contract by another contract with comparable provisions within 31 days ensures that participants are covered, as of right, by the new master policy.[363] Moreover, this rule prevents

360. Ibid., ss. 70 and 72.
361. Michel Gilbert, *op. cit.*, p. 196; *Regulation under the Act respecting insurance*, s. 70, para. 2.
362. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, ss. 67 and 71.
363. Ibid.

the new insurer from invoking pre-existing condition limitations, including those concerning declared diseases or ailments.

In addition, a participant covered under the former contract may not be refused by the new insurer for the sole reason that he was not actively in attendance at work when the new master policy came into effect.

2.7.11.3 Participants' rights upon leaving the group

When a participant's insurance coverage ends before the age of 65 because he ceases to be an employee of the policyholder or to belong to a group, he has the right to convert his group life insurance coverage into individual life insurance without having to provide proof of insurability.

This conversion right is very advantageous for former employees, and even more so for those who are no longer insurable, because the insurer cannot ask for evidence regarding their state of health.

In the group insurance contract, the insurer may grant more generous conversion privileges to certain participants, such as those over the age of 65, or for a period extending after the age of 65 (the age at which life insurance coverage ends under most group life insurance contracts).

At the time of the conversion, the participant must be able to obtain coverage comparable to that of his group insurance without interruption of that coverage, subject to the prescribed maximum. Since September 10, 2009, the conversion privilege has also extended to dependants (spouses and children) who are insured. Table 2.3 sets out the rules applicable as of September 10, 2009, and the former rules that are still in force if the contract was entered into before September 10, 2009.

TABLE 2.3:

Rules applicable to the conversion right in group insurance

	REGULATION SINCE SEPTEMBER 10, 2009	REGULATION BEFORE SEPTEMBER 10, 2009
Participant	▪ **Minimum amount :** $10,000 ▪ **Maximum amount :** The lesser of: $400,000 or amount covered under the group contract	▪ **Minimum amount :** $5, 000 $ ▪ **Maximum amount :** $200, 000 $
Dependant	▪ **Minimum amount :** $5,000 ▪ **Maximum amount :** The lesser of: $400,000 or amount covered under the group contract	▪ **Minimum amount :** Not applicable ▪ **Maximum amount :** Not applicable

The conversion right under the law applies only to life insurance.

EXAMPLE

Benoît, who is 60 years old, decides to retire. His group insurance offers $100,000 of life insurance until the age of 65. Pursuant to the *Regulation under the Act respecting insurance,* he has a right to convert his group life insurance to $100,000 of individual life insurance until the age of 65. Benoît has 31 days to exercise his conversion privilege. Some insurers even offer a right to convert to whole life insurance (permanent insurance).

Conditions for exercising the conversion right

Section 62 of the *Regulation under the Act respecting insurance* sets out the rules allowing a participant to convert his group life insurance to individual life insurance.

A participant who wishes to convert his insurance coverage must be less than 65 years of age when he ceases to be eligible for the insurance. The loss of eligibility must result from the end of employment or of affiliation with a group.

To exercise his conversion privilege, the participant must apply within 31 days of the end of his employment or his affiliation with the group. In general, the participant will obtain the same amount of insurance he had under the group insurance, subject to the $400,000 maximum set by law.[364]

Another rule regarding the conversion privilege applies when the master policy ends and is not replaced, or if the new contract provides for an amount of coverage that is less than the amount provided for in the master policy being replaced (see the section entitled *Participants' rights when a group insurance contract ends and the contract is not replaced*).

The participant therefore has 31 days to convert his life insurance coverage. During that period, he continues to benefit from the life insurance coverage provided under the group insurance contract.[365] Thus, if he dies during this 31-day period, the insurer will have to pay the insured amount to his designated beneficiary or, failing such, to the participant's succession.

The individual products offered by the insurer must comply with the following rules:

- the insurance (temporary until age 65, or permanent if offered by the insurer) must provide coverage comparable to that offered under the group contract. The premium for the first year must not exceed the premium for temporary one-year insurance; and
- one-year insurance must provide coverage comparable to that offered under the group contract, and convertible into insurance described above.[366]

364. Ibid., s. 62.
365. Ibid., s. 66.
366. Ibid., s. 64.

Section 67 of the *Regulation under the Act respecting insurance* describes comparable coverage as follows: “[P]rotection is comparable if the content is the same despite differences in the amounts of insurance, the amounts of premium waivers, or the conditions of eligibility.”

The premiums may be established on the basis of the participant’s age, sex and lifestyle (smoker or non-smoker), but not his health condition.

If the participant does not exercise his conversion right, the group insurance coverage ends after the 31-day period.

Obligation to inform

According to case law, it is up to the employer,[367] who is the policyholder, to properly inform participants about the existence of the conversion privilege and the conditions for exercising it, more particularly at the time the group coverage ends. While the insurer has the obligation to offer the conversion privilege, it does not generally know when a person’s employment ends.

EXAMPLE

Maude works as a human resources manager in a dinnerware manufacturing company. She has life and disability insurance under her employer’s group insurance plan. Following various health problems, Maude learns that she has skin cancer. She has to stop working to undergo chemotherapy. She receives disability benefits during that time.

Two months after her disability begins, her employer reorganizes the company’s administration and her position is abolished. The employer informs Maude about the situation in writing. It tells her that, as long as she is disabled, she will receive her disability benefits. As regards her life insurance coverage, it says that she will keep her group insurance coverage as long as she is disabled. According to the employer, when she is no longer considered disabled, and if she does not come back to work, she will benefit from her group life insurance coverage for 31 days. However, if she wants to continue to benefit from that coverage during the 31-day period, she will have to convert her group insurance coverage into individual insurance and pay her first premium. She will also be entitled to exercise a conversion privilege as regards her spouse and dependent children if they are already covered.

367. *Laflamme v. Acier Bouchard inc.*, 2004 CanLII 15682 (QC CQ); *Germain v. Desjardins Sécurité financière*, 2010 QCCQ 1190 (Small Claims); Michel Gilbert, *op. cit.*, Nos. 60 and 330, pp. 44 to 46 and 218.

2.8 Assuris guarantees

Assuris is a not-for-profit organization that protects Canadian policyholders should their life insurance company become insolvent. It is funded by its members, who are life insurance companies doing business in Canada.

Its role is to protect policyholders by minimizing the loss of benefits and ensuring a quick transfer of their policies to a solvent insurance company, where their protected benefits will continue.

Assuris's *Supplementary Rules relating to coverage dated December 10, 2009*, replaced the *Supplementary Rules dated September, 2001*.

Under these rules, other than the coverage applicable to annuities (see Chapter 4), Assuris provides guarantees (or protection) for life insurance products. A summary of these guarantees is provided and explained on the Assuris Web site.[368] On May 29, 2023, Assuris announced higher levels of policyholder protection.[369]

The insolvent insurer's clients (or their assigns) will enjoy the following protection, among others, upon the transfer:

- **Life insurance:**
  Assuris guarantees that the client will retain up to $1,000,000 or 90% of the promised death benefit, whichever is higher. If the product includes a cash surrender value, the protection offered is $100,000 or 90% of the cash surrender value, whichever is higher;
- **Disability or long-term care insurance:**
  Assuris guarantees that the client will retain up to $5,000 per month or 90% of the promised monthly income benefit, whichever is higher;
- **Medical expenses and critical illness insurance:**
  Assuris guarantees that the client will retain up to $250,000 or 90% of the promised death benefit, whichever is higher.

If the client has several types of coverage with the same life insurer, all similar benefits issued will be added together under certain categories before Assuris's protection is applied.

Since 1990, four Canadian life insurers have become insolvent. All their policies were transferred to other life insurance companies with the help of Assuris and a liquidator.

368. See: Assuris, *How Am I Protected?*.
369. See: Assuris May 29, 2023 news release (Assuris Announces Higher Levels of Policyholder Protection).

CHAPTER 3

INDIVIDUAL AND GROUP ANNUITY CONTRACTS (-INCLUDING - SUPPLEMENTAL PENSION PLANS)

Competency component

- Incorporate the legal aspects of annuity contracts into professional practice.

Competency sub-components

- Explain the terms and main clauses of an annuity contract;
- Characterize the parties involved in the contract;
- Integrate into practice the rules relating to the beneficiary designation and exemption from seizure of benefits;
- Contextualize the rules relating to claims and the payment of benefits.

3

INDIVIDUAL AND GROUP ANNUITY CONTRACTS (INCLUDING SUPPLEMENTAL PENSION PLANS)

This Chapter discusses annuity products, including investment and retirement products that may be distributed by financial security advisers, group insurance plan advisers, and group annuity plan advisers, as the case may be.

Important legal concepts about individual investment and retirement products as well as group products, including segregated funds, will also be examined.

We will also discuss notions applicable to individual investment and retirement products as well as those involving only group investment and retirement products, including supplemental pension plans.

3.1 Introduction to investment and retirement products

Investment and retirement products available in the market are issued by various financial institutions or entities such as banks, financial services co-operatives (also known as credit unions or "*caisses populaires*"), trust companies, life insurance companies, and investment fund managers. Various people distribute these products: insurance representatives, mutual fund dealer representatives, and investment dealer representatives.

Chapter 4 deals with products that these financial institutions and other entities may issue or distribute. Note also that in Québec, approximately 79 insurers are currently licensed by the AMF to issue life insurance policies, of which about 15 are effectively active in the segregated fund business.

In this Chapter, since the only types of contracts that may be distributed by financial security, group insurance, and group annuity, advisers and group annuity plan advisers are life insurance contracts (including accident and sickness insurance policies), and since annuity contracts issued by insurers are assimilated to life insurance by law,[370] it is advisable to carefully study such annuity contracts, which are the basis for all[371] investment and retirement products issued by insurers.

370. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 13 and *Civil Code of Québec*, art. 2393.
371. Other than with respect to Québec-chartered insurers licensed by the AMF to receive deposits under the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2, ss. 1.4 and 24.

3.2 Legal nature of annuity contracts

In Québec, annuity contracts are governed by articles 2367 to 2388, C.C.Q.[372]

According to article 2367, C.C.Q., "[a] contract for the constitution of an annuity is a contract by which a person, the debtor, undertakes, by gratuitous title or in exchange for the alienation of capital for his benefit, to make periodic payments to another person, the annuitant, for a certain time."

To be considered an annuity contract, the contract must meet the five criteria set forth in the C.C.Q., as interpreted by the Supreme Court of Canada in *Bank of Nova Scotia* v. *Thibault:*[373]

- there must be a debtor (art. 2367, C.C.Q.), i.e., the debtor of the annuity: the insurer;
- there must be an annuitant (art. 2367, C.C.Q.), i.e., the person who receives the annuity: the payee;
- there must be an alienation of capital,[374] i.e., the payment to the insurer of a sum of money, as capital, for the constitution of an annuity entailing control of this sum of money by the insurer (art. 2367, C.C.Q.);
- there must be an obligation to pay an annuity (art. 2367, C.C.Q.);
- there must be a specification of a periodic amount for a fixed time (art. 2367, C.C.Q.).[375]

It should be noted that this Supreme Court of Canada case involved a trust company, not an insurer. When an annuity contract is purchased from an insurer, there must also be an insured life (the person on whose lifetime the duration of the annuity contract is based) (art. 2371, C.C.Q.) for life annuity contracts.

The word "annuity" often refers to the periodic payments received, for example, monthly. However, it also refers to the type of contract. This is what we will discuss in this Chapter.

372. *Civil Code of Québec*, CQLR, c. C-1991. The definition of "annuity contract" is found in article 2367 C.C.Q. For purely historical purposes, see the ruling in *Gray v. Kerslake*, [1958] S.C.R. 3, a decision rendered by the Supreme Court of Canada in a case originating in Ontario. After this ruling, Canadian provincial and territorial legislators changed the definition of "life insurance contract" so that an annuity contract issued by an insurer is considered a life insurance contract within the meaning of provincial and territorial legislation.
373. *Bank of Nova Scotia v Thibault,* [2004] 1 S.C.R. 758.
374. In response to the interpretation of this requirement by the Supreme Court of Canada in *Bank of Nova Scotia v. Thibault*, the Québec legislator introduced subsections 33.4(1) and (2) of *An Act to amend the Act respecting insurance and the Act respecting trust companies and savings companies*, S.Q. 2005, c. 51, which states that the fact that an insurance company offers a choice of investments does not preclude the company from having control of the capital accumulated for the payment of the annuity and that right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the insurance company's obligations correlatively. These provisions are reproduced in section 69 of the *Insurers Act*.
375. In response to the interpretation of this requirement by the Supreme Court of Canada in *Bank of Nova Scotia v. Thibault*, the Québec legislator introduced subsection 33.4(3) of *An Act respecting insurance* through *An Act to amend the Act respecting insurance and the Act respecting trust companies and savings companies*, S.Q. 2005, c. 51, which states that the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract. These provisions are reproduced in section 69 of the *Insurers Act*, CQLR c. A-32.1.

Annuities are for life (for the lifetime of a certain person) or a fixed term (payable for a set duration of time).

Annuity contracts are generally purchased from an insurer or sometimes from a trust company. However, trust companies cannot issue life annuity contracts.[376]

Moreover, when a life or fixed-term annuity contract is purchased from an insurer, it is assimilated to life insurance, under article 2393, C.C.Q. and section 13 of the *Regulation under the Act respecting insurance.*[377]

Under article 2393, para. 2, C.C.Q., life or fixed-term annuities provided by insurers are governed by the chapter on “Insurance” and the chapter on “Annuities”. In addition, the rules in the Chapter on “Insurance” that apply to unseizability (exemption from seizure) take precedence. The principles studied in Chapter 2 therefore apply to annuity contracts, adapted as required.

More specifically, individual and group annuity contracts are used as investment, tax, retirement, financial planning, estate planning and asset protection vehicles.

From a tax perspective, an annuity contract may be non-registered with the tax authorities, or it may be registered as an RRSP, RRIF, TFSA, RPP, LIRA, LIF, DPSP, VRSP, PRPP, etc. These plans, which are registered with the Canada Revenue Agency, are given special tax status.

It must also be determined what products (investment instruments or investment vehicles) are provisioned (or capitalized) in the registered plan (for example, term deposit, mutual fund, annuity contract with a guaranteed interest account, or segregated fund contract) and what rules apply to them. In this Chapter, we will study registered plans funded through an annuity contract purchased from an insurer.

Depending on the client’s intentions, the annuity payment may be deferred or immediate.

3.2.1 Types of annuity contracts (life or fixed-term)

Life annuity contract

A life annuity is an annuity payable by the insurer, during the payment phase, to the annuitant throughout the lifetime of the person on whose lifetime the duration of the annuity is based.

The payments therefore end upon the death of the person on whose lifetime the duration of the annuity is based.

376. *Act respecting trust companies and savings companies*, CQLR, c. S-29.01, s. 170, para. 4. These provisions are reproduced in sections 43 and 44 of the new *Trust Companies and Savings Companies Act*, CQLR, c. S-29.02. For federally chartered trust companies, see: *Trust and Loan Companies Act*, S.C. 1991, c. 45, subss. 416(2) and (6).
377. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1.

Fixed-term annuity contract (annuity certain)

A fixed-term annuity is an annuity payable by the insurer to the annuitant for a period of time determined by the parties in advance. It is also called an “annuity certain” or fixed annuity.

Fixed annuity contract

A fixed annuity contract is a fixed-term annuity contract under which the annuity results solely from interest generated by the capital. At the end of the annuity contract (when the term has ended), the capital is either renewed or reimbursed, as requested by the holder.

Life annuity contract with guarantee

A life annuity with guarantee is a contract according to which the insurer provides the annuitant with regular payments, during the payment phase, for the life of the person on whose lifetime the duration of the annuity is based (the life insured).

However, it also includes a guarantee ensuring the annuity payments are made for a given minimum term, such as 10 years, from the date the contract is issued.

As a result, if the life insured dies before the end of the guaranteed term, the insurer remains bound to make the remaining annuity payments until the guaranteed term expires. Generally, the annuity continues to be paid if the beneficiary is the life insured’s spouse. Otherwise, the present value of the balance of the guaranteed payments is paid to the beneficiary or succession in a lump sum.

Joint and survivor life annuity

A joint and survivor life annuity is a contract according to which the insurer pays the annuitant (generally the policyholder), during the payment phase, for the lifetime of the person on whose life the duration of the annuity is based (generally the policyholder) and that of his spouse (until the death of the survivor). Therefore, for example, when the policyholder, who is also the annuitant and life insured, dies, his spouse becomes the new policyholder, annuitant and life insured of the annuity contract. After the death of the spouse of the initial policyholder (client), the insurer then ceases to pay the annuities.

3.3 Different parties to an annuity contract

There are several parties to an annuity contract. Sometimes, the same person plays different roles, as is stated in this Chapter.

In the case of a registered annuity contract (RRSP, RRIF, TFSA, etc.), the policyholder is also the life insured and the annuitant, and the policyholder must be a natural person.

For non-registered annuity contracts, although in most cases the policyholder is also the life insured and the annuitant, the life insured and the annuitant can be different people. For example, a grandparent may purchase an annuity contract on the life of his son (the life insured) and designate his grandson as the annuitant. Also, a legal person, partnership, association or trust may hold a non-registered annuity contract.

3.3.1 Policyholder and participant

The policyholder (or "participant," for group annuities) is the person who purchases an annuity from the insurer (or who becomes a member of a plan, for group annuities).

The policyholder (or certificate holder participant for group annuities) owns the annuity contract (or certificate for group annuities). He is the person who may designate one or more beneficiaries, an annuitant, a subrogated policyholder, and a subrogated annuitant. The initial holder of the individual annuity contract is also called the "client." Note also that the policyholder is called the "subscriber" or "investor" in the annuity contracts of some insurers.

In the case of individual non-registered annuity contracts, the policyholder may choose the annuitant (the payee), provided he has an insurable interest in the life of the insured (see Chapter 2).

3.3.2 Subrogated policyholder

As in life insurance, when the life insured is not the holder of the non-registered annuity contract, the policyholder may designate a subrogated policyholder to replace him if he dies before the life insured (arts. 2393, 2445 and 2446, C.C.Q.).

There cannot be a subrogated policyholder for registered annuity contracts.

However, for RRIFs and TFSAs only, the policyholder may designate his spouse in the policy as the successor holder, in the event of the policyholder's death.[378] The successor holder or survivor (under the *Income Tax Act*) is to a certain extent a subrogated policyholder within the meaning of the C.C.Q.

3.3.3 Insured person or "person on whose lifetime the duration of the annuity contract is based" (life insured)

In a life annuity contract, the life insured is the equivalent of the insured in life insurance, i.e., the person on whose lifetime the duration of the annuity contract is based (and whose lifetime determines the insurer's obligation). The life insured must be a natural person (arts. 2371 to 2376, C.C.Q.). The life insured may be the person who constitutes the annuity (the policyholder) or a third party, in which case the policyholder must either have an insurable interest in the life of the third party (such as the person's spouse or child) or have obtained the third party's written consent.

378. Otherwise, in the case of a TFSA, CRA Form RC240 must be filled out.

EXAMPLE

Pierre would like to constitute an annuity on the life of the famous singer Céline Dion (whom he does not know) and designate a charity as the beneficiary. He must obtain Céline Dion's consent in order to subscribe to an annuity contract on her life.

Although the phrase "person on whose lifetime the duration of the annuity is based" is not used per se in the C.C.Q. (article 2371, C.C.Q. refers to "lifetime of one or several persons"), the words are often used by insurers. The term "annuitant" is used in the English version of the C.C.Q. to refer to the payee, but in practice, this term is often used by insurers to refer to the person on whose life the annuity is based. In French, the word "rentier" is often used to mean "life insured," even if it is not a word that is used in the C.C.Q. In this Chapter, the term "life insured" is used. It is therefore important for the adviser and the client to carefully read the definitions in every annuity contract. Finally, in the *Income Tax Act*, the word "annuitant" refers to the person who holds the registered contract (policyholder or participant), and it applies whether the contract or arrangement underlying the registered plan is a contract taken out with an insurer, a contract or arrangement with a deposit institution, or a contract or arrangement with a trust company.

3.3.4 Annuitant (payee)

The annuitant is the person who is entitled to receive, for a certain period of time, payments (or periodic income) from the debtor during the annuity payment phase (art. 2367, C.C.Q.). Note that some contracts are using the term "payee" or "annuity grantee" to designate the annuitant. For the purpose of this manual, the term "annuitant" will be used to refer to the person receiving (or who will receive) the annuity payments. Generally, the annuitant, the client and the life insured are the same person for non-registered products, and always the same person for registered products.

3.3.5 Debtor

In an annuity contract, the debtor is generally an insurer or a trust company. It is the debtor who has the obligation to pay an annuity to the payee pursuant to the annuity contract. This manual will focus on annuity contracts issued by insurers.

3.3.6 Designated beneficiary

This person receives the death benefit (the market value of the rights of the holder of the annuity contract or the participant) upon the death of the life insured during the capitalization phase of the annuity (arts. 2393, 2445 and 2446, C.C.Q.). There can also be a beneficiary in the case of an immediate fixed-term annuity or an immediate life annuity with a guaranteed payout period.

3.3.7 Client in group annuities

As mentioned in the Chapter on group insurance, in a group annuity contract, the client is the legal person or entity (for example, the employer, the pension committeee or association) who entered into a group annuity contract with an insurer for its employees or members. The employees or members are the participants in the group annuity contract. They have essentially the same rights as the holders of an individual annuity contract (arts. 2392, 2393 and 2401, C.C.Q.), but cannot negotiate the terms of the group annuity contract (that role belongs to the policyholder).

3.4 Phases of an annuity contract

When an annuity contract is purchased from an insurer, the holder alienates capital to the insurer to constitute the capital of the annuity contract (i.e., the premiums or contributions become the property of the insurer). In exchange, the holder obtains the right to claim from the insurer, in addition to certain other rights.

Annuities are immediate (to obtain a periodic income right away) or deferred (for investment purposes or with a view to retirement).

In the case of an immediate annuity contract, there is no accumulation phase. The contract starts with the payment phase.

In a deferred annuity contract, there may be a capitalization phase and a payment phase. The alienation of the capital marks the beginning of the capitalization phase for a segregated fund contract, and the start of the periodic payments by the insurer marks the beginning of the payment phase of the annuity.

3.4.1 Accumulation (capitalization) phase

In an immediate annuity contract, there is no capitalization phase. The holder alienates capital (a sum of money) to the insurer in order to immediately receive annuity payments (generally monthly). The holder does not choose an investment.

In a deferred annuity contract, there is usually a capitalization phase (accumulation or investment phase) as in the case of investment-type deferred annuity contracts (GICs, segregated funds). Note that, in a traditional deferred annuity contract, the capital is paid out immediately, but annuity payments will not begin until a later date, without capital accumulation.

In an investment-type deferred annuity contract, the capital is invested in a variable capital product (for example, in one of the insurer's segregated funds), or in a product guaranteed by the insurer for which the capital is not variable (for example, in a guaranteed interest account [(GIA])) during the capitalization phase.

3.4.2 Payment phase of the annuity

When a person alienates capital to the insurer in order to receive an annuity right away, it is called an immediate annuity and the payment phase starts immediately.

An annuity contract in the capital accumulation phase begins paying out at a date (age) provided for in the contract or, in the majority of cases, when the holder asks the insurer to set up an immediate annuity. The insurer often issues another contract for the annuity being paid out. In group annuities, the insurer issues an annuity certificate. Effective March 1, 2006,[379] for annuity contracts in the capitalization phase, the amount of the annuity paid periodically must be either determined when the contract is signed or at least determinable based on variables and according to a formula indicated in the contract. Most annuity contracts have an expiry date (often at age 100), after which the life annuity will begin to be paid if the holder has not given instructions before then.

In a life annuity, during the payment phase, the annuity (generally payable each month) is payable until the life insured's death. Note that a life annuity may include a guaranteed minimum term (for example, 15 years) as of the effective date of the contract, or be payable to the surviving spouse.

In the case of a fixed-term annuity (or annuity certain), the payment phase ends on the date agreed to by the parties (at the end of the term).

3.5 Types of annuity contracts on the market

3.5.1 Annuity contracts with guaranteed interest: guaranteed interest account (GIA)

The amounts (called "contributions" or "premiums") alienated by the holder to the insurer to purchase a non-variable annuity contract (for example, a GIA with 4% annual interest for 5 years) are paid into the insurer's general funds.

This type of annuity contract resembles a guaranteed investment certificate (GIC) issued by banks or credit unions (*caisses populaires*). However, in Québec, a beneficiary cannot be designated for a GIC issued by a bank or credit union. Annuity contracts with guaranteed interest benefit from guarantees or additional protections in case of default by the insurer. This was discussed above.

In the case of a GIA, both the capital and interest are fully guaranteed by the insurer out of its own general funds.

379. *An Act to amend the Act respecting insurance and the Act respecting trust companies and savings companies*, S.Q. 2005, c. 51.

3.5.2 Individual variable capital annuity contracts relating to a segregated fund

3.5.2.1 Segregated funds

Segregated funds (also called “seg funds”) are funds that belong to an insurer, but must be separated from its general funds. The value of the amounts received from an investor by the insurer varies based on the value of a particular group of assets, hence the name “variable capital.” Only insurers with a licence to sell life insurance can issue annuity contracts relating to segregated funds.[380] This type of contract is also called an “individual variable insurance contract” (IVIC).

Under civil law, a segregated fund is not a legal entity; rather, it is a fund that belongs to the insurer. For accounting purposes, it contains the money paid by the holders of annuity contracts (or participants in group annuities) who have chosen to invest in the same fund. However, the holders of annuity contracts relating to one or more segregated funds have a right or claim against the insurer, which varies according to the fund’s performance and the proposed guarantees, not an ownership right to the content of the segregated fund or funds relating to the annuity contract.

To be able to offer an individual variable insurance contract, the insurer is legally required to guarantee the payment at maturity of a benefit equal to at least 75% of the premiums paid before age 75.[381] Some insurers offer more generous capital guarantees than the minimum prescribed by law, as well as capital guarantees in the event of death, or even from other guarantees or rights, such as guaranteed withdrawal benefit[382] or reset rights. The maturity and death benefit guarantees included in individual variable annuity contracts attached to segregated funds are backed by the insurer’s general funds. Group annuity contracts does not offer such guarantees.

For each fund selected, the representative must give his client an information folder, as well as the Fund Facts (overview) before the application is signed (the information folder, policy and Fund Facts are often printed together).[383]

According to the regulations,[384] when delivering documents to the client, a representative is required to present the content and provide appropriate explanations so that the client has a proper understanding of the documents. In particular, he must bring to the client’s attention the Fund Facts relating to the selected segregated funds, regardless of whether the Fund Facts are included in the information folder or delivered to the client separately.

---

380. *Autorité des marchés financiers*, *Segregated Funds*. Moreover, only financial security advisers are authorized by the AMF to sell individual annuity contracts issued by an insurer.
381. *Securities Act*, CQLR, c. V-1.1, s. 3, para. 13.
382. See CLHIA’s *Guideline G15* entitled *Guaranteed Withdrawal Benefit (GWB) Illustrations*. All the guarantees for which the insurer obligated itself are guaranteed by the general funds of the insurer. In other words, when an annuity contract guarantee relating to a segregated fund is made, the insurer must respect its obligations from its own general funds. In case of the insurer’s default, the segregated funds benefit from additional guarantees or protections.
383. *Regulation respecting information to be provided to consumers*, CQLR, c. D-9.2, r. 18, ss. 4.17, 4.18 and 4.19.
384. Ibid., ss. 4.14 to 4.19. See also the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, ss. 27 and 28, and the *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, ss. 6 and 16.

He must also obtain from the client an acknowledgement of receipt of the proper delivery of each of these documents. A representative must also, no later than when the contract is entered into, inform the client that he may obtain from his insurer at any time a copy of the most current Fund Facts for all segregated funds. He must provide the client with the necessary information or instructions so that the client may obtain these documents from his insurer.

3.5.2.2 Protection for owners of individual variable capital insurance contracts (segregated funds) if the insurer fails

If an insurer fails,[385] its segregated funds are not part of its assets that could be liquidated for the benefit of its creditors. The insurer's assets related to its segregated funds are reserved in priority for holders of annuity contracts or variable capital annuity or insurance contracts.[386] This also applies to group annuity contracts.

Since segregated funds are distributed through annuity contracts, it is important to analyze the features and uses of such contracts, especially those purchased from an insurer.

GIA annuity contracts and individual variable capital annuity contracts also benefit from additional guarantees or protections. These are examined below.

3.5.3 Immediate annuity contracts

As mentioned above, an immediate annuity contract is a contract according to which the payment phase begins as soon as the constituting capital is paid to the insurer.

It may be a life annuity or a fixed-term annuity, and the annuity may or may not be payable to the surviving spouse. It may also be guaranteed for a certain period of time.

The capital that constitutes the annuity is alienated to the insurer and placed in its general funds. In consideration thereof, the insurer agrees to pay the annuitant an annuity according to the terms agreed to by the parties. These annuities are guaranteed by the insurer from its own general funds.

Like GIA annuity contracts and individual variable capital annuity contracts related to segregated funds, immediate annuity contracts also benefit from additional guarantees or protections.

---

385. Since the definition of "corporation" in section 2 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, explicitly excludes banks, insurance companies, trust companies and loan companies, the *Bankruptcy and Insolvency Act* does not apply to them. If an insurer incorporated under Québec law fails, the *Winding-up Act*, CQLR, c. L-4 applies, as do sections 76 and 237 of the *Insurers Act*, CQLR, c. A-32.1. Segregated funds are therefore not available for the insurer's creditors. The *Act respecting insurance* included specific provisions in the event of an insurer's wind-up (ss. 390.1 to 405), but the legislator did not consider it necessary to reproduce them in the new *Insurers Act*.
386. *Insurers Act*, CQLR, c. A-32.1, ss. 76 and 237. The former *Act respecting insurance* contained specific provisions in this respect (s. 402), but the legislator did not consider it necessary to reproduce them in the new *Insurers Act*, CQLR, c. A-32.1.

3.6 Non-registered and registered annuity contracts (RRSP, RRIF, TFSA, etc.)

3.6.1 Non-registered annuity contracts

Annuity contracts are often associated with pension plans and other plans given favourable tax status. However, annuity contracts are also an investment option for someone who is unable to contribute to an RRSP or other registered plans such as TFSA (regardless of the reason), or who wishes to invest outside an RRSP or TFSA.

Non-registered annuity contracts constitute an investment option for legal persons or entities wishing to invest money and take advantage of the insurer's undertaking to pay an annuity.

3.6.2 Registered annuity contracts

It is important to recall that RRSPs, RRIFs, TFSAs, etc., are neither property nor an investment. Instead, they refer to the tax status of the investments held in them.

3.6.2.1 Registered retirement savings plan (RRSP)[387]

The RRSP was created under the *Income Tax Act* at the end of the 1950s. Insurers were the first to sell RRSPs.[388]

The *Income Tax Act* defines an RRSP as a contract between a carrier within the meaning of the Act and an individual, under which the individual or his spouse pays amounts in order to give the individual a retirement income at the end of the plan.

The amounts accrue tax-free until they are paid out. They can be transferred to another RRSP of the member for which he is the annuitant. The RRSP must be closed by the end of the year the annuitant turns 71.[389]

In tax law, the individual for whom the RRSP provides retirement income is called the "annuitant."[390] His spouse may also become the annuitant. Note that the term "annuitant" is used even if the product registered as an RRSP does not legally constitute an annuity (for example, GICs of a bank).

387. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 146.
388. *Les Coopérants, Société mutuelle d'assurance-vie (In re): Firstcliff Development inc. v. Raymond, Chabot, Fafard, Gagnon inc.*, 1993 CanLII 4036 (QC CA).
389. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), para. 146(2)(b.4).
390. Ibid., subs. 146(1).

At the close of the RRSP, the annuitant must make certain choices:

- a life annuity, payable to the surviving spouse or not;
- a fixed-term annuity (annuity certain) as prescribed by law;
- a registered retirement income fund (RRIF);
- the withdrawal of cash amounts (less tax).

However, when the RRSP is funded by an annuity contract with an insurer, the annuity must be paid by the insurer on maturity if no other choice has been made by the holder or participant before maturity, unless the contract contains a provision to the contrary (e.g., a default RRSP to RRIF conversion clause).

From a tax perspective, the annual contribution to an RRSP is deductible from the individual's income. However, there are limits to the annual contributions that can be made.[391]

If the annuitant also participates in a supplemental pension plan (called a "registered pension plan" [RPP] in tax law) or a deferred profit sharing plan (DPSP), the pension adjustment (PA)[392] decreases the contribution limit, and the pension adjustment reversal (PAR) increases it. The PAR is used to restore the RRSP deduction limit of an individual who terminates their membership in a defined benefit or deferred profit sharing plan.[393]

Unused contribution room can be carried forward from one year to the next.

Under the *Income Tax Act,* three types of RRSPs are registered by the CRA:

- **an RRSP with a licensed annuities provider:** (for example, an insurer);
- **an RRSP with a trustee:** (for example, a self-directed RRSP with securities dealers through a trust company);
- **an RRSP with a member of Payments Canada[394]:** (for example, banks and credit unions).

An RRSP purchased from an insurer falls under the first category of RRSPs, i.e., an RRSP with a licensed annuities provider. To capitalize or fund the RRSP, the insurer offers its guaranteed funds (GIAs) or its segregated funds which, for individual annuities, include a guarantee, as explained above.

391. 18% of income earned during the previous year. However, there is a ceiling ($~~30,780~~31,560 in 202~~3~~4)~~, which is indexed every yea~~r. S~~F~~or more information, see: Government of Canada, *MP, DB, RRSP, DPSP, ALDA, TFSA limits, YMPE and the YAMPE*. ~~https://www.canada.ca/en/revenue-agency/services/tax/registered-plans-administrators/pspa/mp-rrsp-dpsp-tfsa-limits-ympe.html.~~
392. Canada Revenue Agency, *Pension Adjustment Guide*, updated May 19, 2023.
393. Canada Revenue Agency, *Pension Adjustment Reversal (PAR)*, 2003-04-17. See also: Canada Revenue Agency, *Pension Admustment Reversal Guide*, 2018-04-17.
394. See: Payments Canada, *Members*.

The financial institution must have the annuity contract, the text of the plan and the subscription form approved by the CRA. The contract must contain the conditions set forth in the *Income Tax Act.*[395]

3.6.2.2 Spousal registered retirement savings plan (spousal RRSP)

In a spousal RRSP, spouse A (the payer) contributes to an RRSP taken out in the name of spouse B (spouse B owns the RRSP).

However, spouse A must have accumulated unused RRSP contribution room. In fact, his unused contribution room is impacted (spouse A's unused contribution room is reduced), not the unused contribution room of spouse B (who may not have any at all). Also, spouse A is the one who receives the tax credits.

This strategy is used to split the spouses' retirement income. That way, spouse B benefits from a lower tax rate when he withdraws the money, that is, during retirement, since spouse B normally earns the lower income of the two.

3.6.2.3 Registered retirement income funds (RRIF)[396]

Whereas an RRSP is an annuity product in the accumulation phase, a RRIF consists of a registered product in the payment phase. The amounts received from the insurer by the holder following a voluntary or mandatory withdrawal do not constitute annuity payments. Until the fund has been depleted, the annuitant may make investments, in accordance with tax laws. The annuity payments and withdrawals (voluntary or mandatory) are taxable.

The *Income Tax Act* defines a registered retirement income fund as an arrangement between an authorized carrier (i.e., the same as for an RRSP) and an annuitant according to which the carrier undertakes to pay amounts to the annuitant and, where the annuitant so elects, to the annuitant's spouse after the annuitant's death.

It is important to recall that, with an insurer, a RRIF is usually offered through an individual annuity contract, although some employers offer it through a group annuity contract; also, if segregated funds are available in an individual annuity contract, there must be a guarantee, as was discussed above.

The annuitant can ask for a refund of the amounts accumulated in the RRIF or ask an insurer for a life annuity or fixed-term annuity at any time. However, even in the case of a deferred annuity contract registered as a RRIF, i.e., without annuity payments, the holder must make a minimum withdrawal each calendar year, as prescribed by the *Income Tax Act.* The amounts received by the holder in such a case are not annuity payments, but are considered withdrawals (if all the money is withdrawn from the account, it is considered a full surrender or transfer).

395. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), subs. 146(2).
396. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 146.3.

Such annuity payments or withdrawals (often annual, in the case of the mandatory minimum withdrawal prescribed by law, or monthly, if there are annuity payments) must be at least equal to the prescribed minimum amount (which varies according to the age of the annuitant or his spouse),[397] and begin no later than the first calendar year after the year in which the RRIF was set up.[398] Until the fund has been depleted, the annuitant may make investments in accordance with tax laws.

As for an RRSP, the financial institution must have the annuity contract, the text of the plan, and the membership form approved by the Canada Revenue Agency. The contract must contain the conditions set forth in the *Income Tax Act.*[399]

The amounts in a RRIF generally come from an RRSP. As in the case of RRSPs, insurers can also issue RRIFs. The insurer offers its guaranteed funds (GIAs) or segregated funds to fund the annuity contract.

3.6.2.4 Locked-in retirement account (LIRA)[400]

A locked-in retirement account (LIRA) is an account in which the funds derived directly or initially from a supplemental pension plan and the return (capital gains, dividends and interest) accrue. The funds are locked-in, i.e., no withdrawal is permitted other than in certain exceptional cases. A LIRA is, from a tax perspective, subject to not only the provisions of tax laws applicable to RRSPs, but also the rules applicable to supplemental pension plans arising from the *Regulation respecting supplemental pension plans* (therefore subject to oversight by *Retraite Québec*, which is the supplemental pension plan regulator in Québec). It is offered by a financial institution authorized to offer RRSPs.

Not later than December 31 of the year the member turns 71, the LIRA must be converted either into a life annuity contract or into a LIF to receive a minimum annual income. However, if at any time the member wishes to receive income before age 71, he can ask for a life annuity from an insurer or transfer his LIRA into a LIF.

There are some exceptions to the funds being locked-in:

397. Canada Revenue Agency, *Information Circular IC78-18R6*, March 6, 2002, No. 5, p. 1.
398. Canada Revenue Agency, *Information Circular IC78-18R6*, March 6, 2002. *Income Tax Regulations*, C.R.C., c. 945, s. 7308. *As of age 71, the minimum annual withdrawals from a RRIF vary from 7% to 20% depending on the annuitant's age.* See: Government of Canada, *Chart – Prescribed factors*, 2024-01-18.
399. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 146.
400. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 98; *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, ss. 28 and 29.

- if the member is over 65 years of age, he can withdraw the balance in cash if the total of the sums credited to locked-in retirement instruments does not exceed 40% of the maximum pensionable earnings (MPEs) for the year in which he applies for the payment;[401]
- if the member has not resided in Canada for at least two years;[402]
- if the member has a physical or mental disability that reduces his life expectancy.[403]

Moreover, the repayment cannot be before the investment term (e.g., a GIC with a 5-year term), except if the contract allows for it. In this case, redemption fees may apply.

In these cases only, the member may receive the total credited amounts as a lump-sum payment (after tax, where applicable).

EXAMPLE

Pierre held $52,000 in a LIRA; the money came from a supplemental pension plan with a former employer. He left Canada over two years ago to work in Africa. As he has not lived in Canada since, he may withdraw the balance of his LIRA in cash, and the amount he withdraws will be taxable.

The equivalent of the LIRA under the *Pension Benefits Standards Act, 1985* (pension plans under federal jurisdiction) is the locked-in registered retirement savings plan.[404] In addition to being registered as an RRSP with the CRA, it is overseen by the Office of the Superintendent of Financial Institutions (OSFI), which is the regulator of pension plans under federal jurisdiction. The *Pension Benefits Standards Act, 1985* applies to employers of businesses under federal jurisdiction (see Chapter 1).

3.6.2.5 Life income fund (LIF)[405]

Like a LIRA, the sums in a life income fund come directly or initially from a pension plan. From a tax perspective, the LIF is subject to not only the provisions of tax laws applicable to RRIFs, but also to the rules applicable to supplemental pension plans arising from the *Regulation respecting supplemental pension plans* (therefore subject to oversight by *Retraite Québec*, which is the supplemental pension plan regulator in Québec). It may be opened at a financial institution offering

401. *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 16.1. The maximum is $~~66,600~~68,500 in ~~2023~~ 2024 under section 40 of *An Act respecting the Québec Pension Plan*, CQLR, c. R-9. Therefore, the total sums accumulated in 202~~3~~4 must not be more than $~~26,640~~27,400, or 40% of $~~66,600~~68,500. In 2024, as part of an enhancement to the Canada Pension Plan, the Government of Canada introduced the Year's Additional Maximum Pensionable Earnings (YAMPE), which is $73,200 in 2024. See: Canada Revenue Agency, *The Canada Pension Plan enhancement - Businesses, individuals, and self-employed: what it means for you*, 2023-12-15. Retraite Québec also introduced an *additional plan* (YAMPE), will be gradually increased starting in 2024.
402. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 66.1.
403. Ibid., s. 93, para. 4.
404. *Pension Benefits Standards Regulations, 1985*, SOR/87-19, s. 20. There is also a similar plan called the "restricted locked-in savings plan" (s. 20.2 of the Regulations).
405. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 98; *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, ss. 18 and 28.

a RRIF. Like an RRIF, a LIF requires the withdrawal of the minimum prescribed by tax laws. However, contrarily to an RRIF, the member cannot withdraw more than the authorized maximum each year (calculated based on age, the balance, and the reference rate for the year). This makes sense since the purpose of retirement legislation is to give members an income from the date they retire until death. If the financial institution pays more than the maximum calculated according to the Regulation, the member may require that the financial institution pay him a sum equal to the surplus income paid.[406] The exceptions to the funds being locked in mentioned above also apply to LIFs, except in the case of a disability that reduces the person's life expectancy, which only applies to a LIRA (a LIF must therefore be transferred to a LIRA first, which is only possible before the end of the year in which the person turns 71).[407]

Each year, the financial institution must calculate the minimum and maximum amounts permitted. Some establishments offer the temporary income option in their life income fund contract. Temporary income is additional income offered to people under 65 years of age which may not exceed 40% of the maximum pensionable earnings for the year in which the application is made. Additional conditions apply to members who are under 54 years of age.[408]

EXAMPLE

Marie-Anne is 45 years old. She has $40,000 in a life income fund with an insurer. Marie-Anne asks the insurer for the maximum LIF income, approximately $2,440, which the insurer calculated according to the applicable formula. This amount of $2,440 does not include temporary income.

A person who purchases a LIF may receive his life income until his death. However, he may ask the insurer for a life annuity that meets the conditions set forth in the LIF at any time.

A LIF under the federal *Pension Benefits Standards Act, 1985*, is a restricted life income fund.[409] In addition to being registered as an RRIF with the CRA, this plan is overseen by the Office of the Superintendent of Financial Institutions (OSFI).

3.6.2.6 Tax-free savings account (TFSA)[410] and First Home Savings Account (FHSA)

TFSA

The federal government set up tax-free savings accounts (TFSA) in 2009.

406. *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 19, para. 10.1.
407. *Retraite Québec*. *A refund of your LIRA or LIF*~~, online document consulted on July 21, 2017. See: https://www.rrq.gouv.qc.ca/en/retraite/cri_frv/Pages/remboursement.aspx.~~
408. ~~See~~Retraite Québec, *Terms for withdrawal from an LIF.*~~ https://www.rrq.gouv.qc.ca/en/programmes/rcr/cri_frv/frv/Pages/modalites_retrait.aspx.~~
409. *Pension Benefits Standards Regulations, 1985*, SOR/87-19, s. 20.1. There is also the restricted life income fund (s. 20.3).
410. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 146.2.

All residents of Canada aged 18 years and over have the right to contribute to a TFSA. In order to do so, it is not necessary to earn any income and there is no age limit to contribute, contrarily to an RRSP (71 years old). The CRA monitors the contributions of all Canadian residents.

Each calendar year, a Canadian resident may contribute up to the TFSA limit for the current year, plus any unused contributions from previous years. The annual limit was $5,000 for 2009 to 2012; $5,500 for 2013 and 2014; $10,000 for 2015; $5,500 for 2016, 2017 and 2018; $6,000 for 2019 to 2022; $6,500 for 2023~~.~~ and $7,000 for 2024. Therefore, a person aged 18 years or over in 2009 who has never contributed to a TFSA has unused TFSA contribution room of $~~88~~95,000 in ~~2023~~2024.

Contrarily to an RRSP, all income earned in a TFSA (capital gains, dividends and interest) as well as withdrawals are tax-free. Contributions to a TFSA are also not tax deductible.

Moreover, also unlike an RRSP, withdrawals from a TFSA during the year are added to the holder's unused contribution room, and may be paid back during the following or subsequent years.

The surviving spouse has the right to include the amounts of his deceased spouse in his own TFSA if he is the only beneficiary of his spouse's TFSA (or otherwise the only person who inherits the TFSA).

FHSA[411]

On April 1, 2023, the federal government introduced the First Home Savings Account (FHSA).

The purpose of this new product, which combines features of a TFSA and an RRSP, is to facilitate the purchase of a first home. Savings grow tax-free. Like an RRSP, contributions are income-deductible, and, like a TFSA, withdrawals are non-taxable.

The program is meant for Canadian~~Candian~~ residents 18 years of age or older on December 31 of the year they are eligible to contribute to an FHSA, provided they qualify as first-time homebuyers.

Contributions are set as follows: contribution limit of $8,000 annually, for a lifetime maximum of $40,000, with the option of deferring the $8,000 to the following year. There is no accumulation of participation room for the years when the maximum amount was not contributed. So, if no contribution is made for three years, only $8,000 may be carried forward to year four.

The maximum participation period begins when an individual opens a first FHSA and ends on December 31 of the year in which the first of the following events occurs:

- the 15th anniversary of the opening of the individual's first FHSA;
- the individual turns 71; or
- the year following the individual's first qualifying withdrawal from the FHSA.

Insurers may issue TFSAs and FHSAs; they offer their guaranteed funds (GIA) or segregated funds in an individual or group annuity contract, as discussed above. The segregated funds offered in an individual annuity contract must include a guarantee.

411. Canada Revenue Agency, *First Home Savings Account (FHSA)*, 2024-01-18.

As in the case of an RRSP and an RRIF, the financial institution must have its contracts approved by the Canada Revenue Agency, and the contract must contain the conditions listed in the *Income Tax Act.*[412]

3.6.2.7 Individual pension plans (IPPs)

An individual pension plan (IPP) is a registered pension plan (RPP) that has a defined benefit provision if, at any time in the current year or a preceding year,

- the plan has fewer than four members, and at least one of them is related to a participating employer in the plan; or
- it is a designated plan, and it is reasonable to conclude that the rights of one or more members to receive benefits under the plan exist primarily to avoid the application of the preceding paragraph.[413]

From a tax perspective, an IPP is therefore a defined benefit RPP.

Depending on the circumstances, some insurers consider it an individual plan, whereas others consider it a group plan. Given the special nature of this product, it is up to each insurer to describe this plan as individual or group in the materials given to the client. The permit required for the insurance representative is therefore based on how the product is described by the insurer.

In Québec, certains provisions of the *Supplemental Pension Plans Act* may apply.[414] Although this Act makes it a trust patrimony, and the Canada Revenue Agency does not require a trust to be constituted for a plan governed by the Act, the rules governing pension committees do not apply. It is therefore recommended that a deed of trust be prepared providing for the operation of the trust patrimony and specifying who will be able to act and contract for the purposes of the IPP.

3.6.2.8 Annuity contract purchased in an RPP[415]

The *Regulation respecting supplemental pension plans*[416] defines this type of annuity as follows:

> An annuity contract is a contract under which, in consideration for capital originating directly or initially from the fund of a supplemental pension plan, an insurer guarantees to the purchaser, who is a former member, a current member or the spouse thereof, a life pension of which payment begins immediately after the transfer of the capital or is deferred to a later date.

412. Ibid., s. 146.2(2).
413. See: Government of Canada, *Registered Pension Plans Glossary, Individual pension plan*, 2024-06-19. ~~https://www.canada.ca/en/revenue-agency/services/tax/registered-plans-administrators/registered-pension-plans-glossary.html.~~
414. See section 2 (1) of the *Supplemental Pension Plans Act*, CQLR, c. R-15.1.
415. *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 30.
416. Ibid.

This type of life annuity does not have to be registered with Retraite Québec, formerly known as *Régie des rentes du Québec* (R.R.Q.), but it must contain the terms prescribed by regulation.[417] It is issued in the context of a transfer from a supplemental pension plan (often upon the termination of employment), a locked-in retirement account (LIRA) or a life income fund (LIF). It must be 60% or more payable to the spouse (upon the annuitant's death) on the day payment of the annuity begins, unless the spouse has waived his rights.[418]

EXAMPLE

Arsène leaves his job after 20 years of service. He contributed to a defined contribution pension plan (DCPP). He is 60 years old and would like to receive equal monthly payments. He decides to transfer the amounts accrued in his pension plan to a life annuity, which must comply with the applicable regulations.

A life annuity may also be governed by the federal *Pension Benefits Standards Act, 1985*[419] or by any other act governing pension plans.

3.7 Group annuity contracts: general principles

As discussed in Chapter 1, the *Retraite Québec* Québec Pension Plan (QPP) is a public pension plan to which the employer and the employee must contribute during the employee's active lifetime.[420] Private pension plans must be used in order to receive other income during retirement (for example, RRSPs and employer supplemental pension plans [or RPPs]).

Of all the plans covered in this Chapter, we note, in particular, supplemental pension plans (including simplified pension plans [SIPPs], voluntary retirement savings plans [VRSP], group RRSPs, deferred profit-sharing plans [DPSPs], and plans not registered for tax purposes that are funded or capitalized by life insurers in a group annuity contract. All these types of plans (other than defined benefit pension plans [DBPPs]) belong to the large family of capital accumulation plans in which members can usually make investment choices.

3.7.1 Mandatory participation by businesses

Employers with an establishment in Québec that are not under federal jurisdiction, have ten employees or more,[421] and meet certain additional criteria must facilitate retirement savings within their organization. If they do not have a group RRSP or TFSA with payroll deductions or a supplemental pension plan on a given date, they must set up a voluntary retirement savings plan

417. Ibid, s. 88.1.
418. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 88.1.
419. *Pension Benefits Standards Regulations, 1985*, SOR/87-19, s. 21.
420. *Régie des Rentes du Québec*, *Plan stratégique 2012-2016*, (in French only).
421. The Voluntary Retirement Savings Plans Act, CQLR, c. R-17.0.1 applies to employers with 5 employees or more (s. 140) at a date to be determined later by the government. However, the government has not yet implemented it for employers with five to nine employees due to pressure from employers.

(VRSP).[422]

3.7.2 Notion of "group"

The word "group" refers to a set of people. As discussed in Chapter 2, under articles 2392 and 2393 of the C.C.Q. and sections 59 to 61 of the *Regulation Uunder the Act Respecting Iinsurance,* the following policyholders are entitled to purchase a group annuity contract from an insurer on behalf of a specified group of persons:

- a current or former employer;
- a union;
- a professional association;
- a professional order;
- a financial services co-operative;
- a mutual insurance association;
- another entity whose members share common activities or interests before a group insurance plan is offered to them, including socio-economic or cultural interests. The industry recognizes, in particular, pension committees and joint employer/employee committees as such other entity.

In addition, this regulation specifically recognizes (s. 60.1) that members of a VRSP or a pooled registered pension plan (PRPP) (the federal counterpart to the VRSP) constitute a specified group of persons, notwithstanding the above description. This clarification was necessary because the VRSP and PRPP, both of which are unique plans, bring together several unrelated employers and allow self-employed workers to become members.

Before July 1, 2016, under section 60 of the *Regulation Under the Act Respecting Iinsurance,* a specified group of persons could not be constituted for the sole purpose of entering into a group insurance contract. Therefore, group insurance could be offered to the members of a group only as a benefit complementary to membership. However, this modification to section 60 of the *Regulation Under the Act Respecting Iinsurance* does not change the fact that the holder of the insurance contract or group annuity must act on behalf of a specified group of persons qualifying as such.

3.7.3 Main distinctions with an individual annuity contract

The main differences between an individual annuity contract and a group annuity contract are the following:

- the capital is not guaranteed at maturity for variable capital contracts (segregated funds) in group annuity contracts;
- there is no information folder remitted to participants with respect to group annuity contracts. The *Guidelines for Capital Accumulation Plans* apply to the information provided to members concerning group annuity contract matters;

422. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1 and *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3.

- a group annuity contract must be distributed by a group insurance and group annuity adviser, a group annuity plans adviser, or an actuary who is a fellow of the Canadian Institute of Actuaries, whereas an individual annuity contract must be distributed by a financial security adviser. However, there are specific rules applicable to VRSP distribution (see section 3.9.1).
- however, likeas in group insurance, the group annuity contract regulates the tripartite relationship between the insurer, the policyholder and the participants.

3.7.4 Service agreement between the insurer and the policyholder

In addition to the group annuity contract, an agreement on costs and services is very common for capital accumulation plans (DCPP, DPSP, group RRSP, group TFSA, or a group non-registered plan). Its purpose is to set out the services the insurer agrees to provide concerning the plan, and establish the related costs that may be assumed by the employer, the employee or the plan. The *Guidelines for Capital Accumulation Plans* (see the section on the parties' responsibilities in group plans) apply to this agreement, that is generally attached to the group annuity contract.

The nature of the services offered by the insurer and its responsibility vary depending on the type of plan (supplemental pension plan, group RRSP or TFSA, DPSP or non-registered plan, etc.), the autonomy and expertise of the administrator, the size of the employer, and whether or not there are other service providers (such as a consulting firm). The following is a brief description of the services provided by an insurer:

- draft the text of the plan, and submit it to *Retraite Québec* (or OSFI, as the case may be) and the CRA;
- draft the information folders for members;
- hold information sessions for members;
- prepare the cost certificates for the plan, annual disclosures and tax slips;
- provide necessary information in the event of bankruptcy, seizures, and marriage breakdowns of members;
- provide tools to follow changes to available funds;
- send statements to members and provide them with access to the insurer's Web site 24 hours per day and to a telephone hotline;
- provide members with tools to help them make investment decisions;
- produce information bulletins for members and the policyholder;
- provide investment advisory services;
- prepare various reports and statements, such as a report on the insurer's internal control procedures, and statistics on Web site use, and so on.

3.8 *Supplemental Pension Plans Act* (SPPA) (Québec) and *Pension Benefits Standards Act, 1985* (federal)

3.8.1 *Supplemental Pension Plans Act* (SPPA) (Québec)

3.8.1.1 Definition of supplemental pension plan

A supplemental pension plan is a contract under which retirement benefits are provided to the member, under given conditions and at a given age, the funding of which is ensured by contributions payable either by the employer only, or by both the employer and the member.[423]

A supplemental pension plan must involve contributions by the employer and, often, by the employee. Other than in the case of a simplified pension plan (SIPP) or a voluntary retirement savings plan (VRSP), member contributions (along with concurrent contributions by the employer) are almost always locked in so as to provide retirement income; the employee cannot therefore withdraw funds. Employer contributions are always locked in, other than in exceptional cases.

Various supplemental pension plans

A supplemental pension plan may be:

- a defined contribution plan (DCPP). A SIPP is a supplemental pension plan with defined contributions. A VRSP is a defined contribution pension plan, but it is not governed by the *Supplemental Pension Plans Act*;
- a defined benefit plan (DBPP);
- a combined plan, with both defined contributions and defined benefits (DC/DB).

Most money in pension funds is currently invested in defined benefit plans. However, most newly established plans are defined contribution plans. In the early 2000s, many employers closed their DBPP and offered new employees a DCPP,[424] or converted their DBPP to a DCPP.

3.8.1.2 Plan features

Pension fund and pension committee

Unless it is guaranteed, every supplemental pension plan must have a pension fund into which contributions and the income derived therefrom are paid. The pension fund constitutes a trust patrimony appropriated to the payment of the refunds and pension benefits to which the members and beneficiaries are entitled.[425]

423. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 6, para. 1.
424. *Mercer's 2009 Global Defined Contribution Survey: Canadian Results*, December 2009.
425. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 6, para. 2.

Under the *Supplemental Pension Plans Act* (Québec), a pension plan may be guaranteed by an insurer when all the benefits are guaranteed by it.[426] As this type of plan is rarely seen in practice, it will not be discussed in this manual.

Note that purchases of annuities to guarantee a portion of pension fund liabilities are on the rise, especially since it has become possible, under certain conditions, to transfer all the annuity payment financial risk assumed by the pension plan to an insurer, even if the plan is not terminated and interest rates are favourable.

A transfer of financial risk is permitted under two types of annuity contracts:

- buy-out annuity contracts. Provided the prescribed conditions are met, the plan is no longer responsible for the annuities so purchased, and the annuitants have no further connection with the plan (with a few exceptions). Also, this type of contract is purchased at the end of the pension plan. ;
- buy-in annuity contracts. The plan continues to have ultimate responsibility for the annuities promised to the annuitants, despite the purchase of such a contract, and the annuitants remain members of the pension plan.

Legally, a pension fund is a trust. The trustee is the pension committee.[427]

Since a pension fund is a trust patrimony, the property of which it consists does not belong to either the employer, the members, the pension committee, or the financial institution where the fund's assets are invested. As a result, the fund's assets are protected in the event of employer bankruptcy and are sheltered from the employer's creditors.

Although the pension fund is a trust patrimony that is out of reach of the employer's creditors, the benefits are not necessarily protected in the event of bankruptcy. Benefit amounts will depend on how solvent the plans are. However, recent changes to the *Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (CCAA) provide super-priority protections to special payments and solvency deficiencies of pension funds in the event of bankruptcy or a reorganization under the CCAA. The changes will come into effect on April 27, 2027,[428] but they will apply to any defined benefit plan established after April 27, 2023. Currently, priority is provided only for unpaid current service contributions by the employer and contributions deducted from employees' pay.

Other features

The normal retirement age may not be greater than 65, but it may be less, provided the various age and years of service eligibility criteria are met. In reality, a member is free to stop working before or after that date. The normal retirement age simply determines when the full pension may be paid (i.e., without reduction in a defined benefit plan [DBPP]). Other types of pensions may also be paid. According to the *Income Tax Act,*[429] the pension must begin by the end of the year in which the member attains 71 years of age.

426. Ibid., s. 9.
427. Ibid., ss. 147 to 167.
428. On April 27, 2023, Bill C-228 (now the *Pension Protection Act*, L.C. 2023, c. 6) received royal assent.
429. *Income Tax Regulations*, C.R.C., c. 945, para. 8506(2)(c.1).

The plan members are generally employees and former employees who still have rights accumulated under the plan. According to the *Supplemental Pension Plans Act,* retirees may remain members of the plan, even if they receive a life annuity from an insurer.[430]

Two types of pension plans are governed by the *Supplemental Pension Plans Act*:

- the defined contribution pension plan (DCPP), in which the pension amount depends on the contributions by the members;
- the defined benefit pension plan (DBPP), in which the pension is usually calculated according to a percentage of the remuneration and the member's eligible years of service.

3.8.1.3 Registration of the plan with *Retraite Québec*

Application to register the text of a plan

The text of the plan must be registered with *Retraite Québec* not later than 90 days after the day on which the plan becomes effective. It must include the prescribed information based on the type of plan.[431]

Registration of a pension plan is not proof of its conformity with the law.[432]

Application to amend a plan

Amendments made to a plan must also be registered with *Retraite Québec*, and only take effect on the date they are registered.[433] Plan members must also be informed of the amendments (s. 26, SPPA).

The application to register or amend a pension plan must include the prescribed elements.[434]

No amendment which reduces the benefits of members (amendment reducing benefits) may become effective before the date on which notice is sent to the members, unless several requirements are met, including obtaining the consent of each person concerned and the authorization of Retraite Québec (s. 20, SPPA).

No amendment may reduce a pension that is already being paid (s. 21, SPPA).

The registration of an amendment, like the registration of a pension plan, does not constitute proof of its conformity with the law (s. 31, SPPA).

430. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 33.
431. Ibid., s. 14.
432. Ibid., s. 31.
433. Ibid., s. 19.
434. Ibid., s. 24.

3.8.1.4 Registration of a plan with the Canada Revenue Agency (CRA) and application of tax laws

A supplemental pension plan (called a "registered pension plan," or RPP, in the *Income Tax Act*[435]) must also be registered with the CRA for the contributions and profits to accumulate tax-free until the benefits under the plan are paid to the member.

The *Income Tax Act* specifies a limit for contributions that may be paid into it.[436] Employer and employee contributions are deductible from the taxable income of the employer and the employee, respectively.[437]

3.8.1.5 Membership and member rights

The same employer can have several pension plans for different groups of employees in its company (for example, unionized and non-unionized employees, senior management, employees in Québec and outside Québec, etc.). It can also also have a single plan that provides benefits and rights that vary by group of employees and individuals.

To become a member, an employee must belong to the class of employees for whom the plan is established and meet the membership requirements, where applicable (for example, complete a certain number of years or months of service or hours worked). Workers whose employment is similar or identical to that of members belonging to the class of employees for whom the plan is established may also become a members of the plan if they meet either of the following requirements:

- have received from the employer annual remuneration equal to or greater than 35% of the Maximum Pensionable Earnings (MPE) established under the Québec Pension Plan. The MPE for the Québec Pension Plan is the limit above which a person's employment earnings are no longer subject to contributions to the public pension plans. For ~~2023~~2024, that amount is $~~66,600~~68,500;
- have worked at least 700 hours.[438]

Membership in the plan may be optional or compulsory for an employee.[439]

Within 90 days of the date on which the employee becomes eligible for membership, the employee must receive a summary of the pension plan[440] (often called an "explanatory brochure"), together with

435. In Québec, the *Taxation Act*, CQLR, c. I-3, states that the plan must be registered at the federal level.
436. In 2024~~2023~~, this ceiling is $~~31,560~~32,490 for a DCPP and $~~3,506.67~~3,610 for a DBPP (i.e., 1/9 of the DCPP) to take account of the pension adjustment (PA). For more information, see: Government of Canada, *MP, DB, RRSP, DPSP, ALDA, TFSA limits and the YMPE*, 2023-12-04. ~~- Canada.ca~~
437. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), ss. 147.1 to 147.4.
438. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 34.
439. Section 49 of the *Act respecting labour standards*, CQLR, c. N-1.1 provides that an employer may make deductions from wages with his consent, or, without his consent if he is required to do so pursuant to an Act, a regulation, a court order, a collective agreement, an order or decree or a mandatory supplemental pension plan.
440. Ibid., s. 111.

an annual statement within 9 months after the end of every fiscal year. Part of the statement must cover the member's benefits, and another part, the financial position of the pension plan. A member is also entitled to a summary of the provisions of the pension plan that were amended during the last fiscal year.[441] Once a year (and upon request), members may examine documents relating to the plan in the establishment of the employer or the office of the pension committee, and may attend the annual meeting.[442]

3.8.1.6 Pension plan administrator: the pension committee

Pension committee's role

In Québec, there is a clear separation between the employer and the plan administrator.

Legally speaking, the employer is not responsible for administering the plan unless the pension committee has delegated some of its powers hereto. The employer is required to make contributions,[443] and is responsible for deficiencies in the case of a defined benefit pension plan (DBPP).[444]

In Québec, every supplemental pension plan must be administered by a pension committee, unless the plan has fewer than 26 members and beneficiaries,[445] or is a SIPP[446] or VRSP.[447]

In the case of a plan with fewer than 26 members and beneficiaries, the employer performs the duties of the pension committee. In the case of a SIPP or VRSP, the financial institution does.

In other provinces, some statutes provide that a pension committee may be set up at the request of plan members, but those committees usually only play an advisory role. Generally, the employer is the plan's administrator.

Pension committee members

The pension committee must be made up of at least three members:[448]

- one member designated by the active members at the annual meeting or, in the absence of such a designation, one plan member designated as and when provided in the plan;

441. Ibid., s. 112.
442. Ibid., ss. 114 and 166.
443. Ibid., ss. 37 to 50.
444. Ibid., s. 39, unless the plan text provides otherwise.
445. *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act*, CQLR, c. R-15.1, r. 7, s. 1.
446. Ibid.
447. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 14.
448. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 147.

- one member designated by the non-active members (retirees) and beneficiaries at the annual meeting or, in the absence of such a designation, one plan member or beneficiary designated as and when provided in the plan;
- one independent member who represents neither the employer nor the members and beneficiaries, designated as and when provided in the plan.

In addition to these three members, each of the two groups (active members and retirees/beneficiaries) may elect an additional member who does not have the right to vote (an observer).[449] The term of office of a member of a pension committee generally does not exceed three years (s. 148, SPPA).

The number of employer representatives on the pension committee and how they are designated is determined by the plan text.

EXAMPLE

Vidorée inc. has a supplemental pension plan. The three members of the pension committee were designated at the annual meeting as follows:

- Aline was designated by the active members;
- Émile was designated by the retirees;
- Bernard, an accountant who works for a consulting firm, was designated by the employer as an independent member as provided in the plan.

The pension committee's duties

The pension committee's main duties are the following:[450]

- ensure that contributions are paid into the pension fund;
- have the plan text registered, along with any amendments (ss. 14 and 24, SPPA);
- manage the fund assets, make them productive and develop an investment policy in accordance with the *Supplemental Pension Plans Act*;[451]
- provide members with information about the plan (for example, a plan summary, an annual statement, a statement of termination of plan membership, and a statement for the beneficiaries in the event of death; the content of these documents is prescribed by regulation);

449. Ibid., s. 147.1.
450. *Régie des rentes du Québec*, The role and responsibility of a pension committee, 2005.
451. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, ss. 169 and 170.

- organize an annual meeting to report on its administration, among other matters;[452]
- pay the pensions as well as death and other benefits;
- ensure that the fund's audited financial statements and, in the case of a DBPP, that the actuarial valuation are prepared;
- repare and file the annual statement with *Retraite Québec*;[453] and the information required by the Canada Revenue Agency;
- adopt internal by-laws establishing its rules of operation and governance.

Note that the person that establishes the plan (usually, the employer), not the pension committee, drafts the pension plan text (s. 14, SPPA).

Liability of the pension committee and its members

Under the *Supplemental Pension Plans Act,* the pension committee has the duties and responsibilities of a "trustee"[454] toward the pension fund.

This means that the members of the pension committee may not act in their own interests; they must act with honesty and loyalty in the best interest of the members or beneficiaries.[455] The *Supplemental Pension Plans Act* requires that the pension committee exercise the prudence, diligence and skill that a reasonable person would exercise in similar circumstances.[456] Note that the pension committee is presumed to have acted with prudence where it acted in good faith on the basis of an expert's opinion (s. 151.1, SPPA).

The members of the pension committee are personally and solidarily liable[457] for any decision made by the committee unless they express their dissent.

The pension committee may delegate all or part of its powers or be represented by a third person (delegatee).[458] The notion of delegation in the SPPA is, however, different from that of mandate.

According to the rules of representation or mandate[459] studied in Chapter 1, the acts of the mandatary acting on behalf of the pension committee in accordance with his mandate are attributable to the pension committee, which is then liable toward the members and third parties.

However, the *Supplemental Pension Plans Act* provides that when the pension committee delegates certain duties to a third party (the delegatee), it is not responsible for the actions of this delegatee, other than in exceptional cases, such as:

452. Ibid., s. 166.
453. Ibid., s. 161.
454. Ibid., s. 150.
455. Ibid., s. 151.
456. Ibid.
457. Ibid., s. 156.
458. Ibid., s. 152.
459. *Civil Code of Québec*, CQLR, c. C-1991, arts. 2130 et seq.

- when the pension committee may not delegate its duties according to the text of the plan (s. 152, SPPA);
- when the pension committee did not select the delegatee with care; this implies that it must select a delegatee with skills commensurate with the delegated powers (s. 154, SPPA);
- when the pension committee did not give the delegatee instructions with care (s. 154, SPPA).

The delegatee acts in his own name. He has the same liability and obligations as the pension committee.[460] He must act in the primary interests of the members, and avoid placing himself in a conflict of interest with respect to the delegated acts. He incurs liability toward the members and third parties.

Although the pension committee may delegate its powers and be released from liability,[461] it nonetheless remains the plan administrator and trustee of the pension fund. It therefore has a general duty to oversee the delegatee.

Lastly, rather than delegate its powers, the pension committee may enter into a service contract with a third party. In such a case, the service provider is hired to perform specific work.[462] The parties are bound by the terms of the service contract. However, it may be important to determine whether, according to the services agreement entered into with the insurer, the insurer is a service provider whose role is to help the pension committee carry out some of its duties. Effective December 13, 2006 (*An Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans*[463]), service providers who exercise a discretionary power belonging to the pension committee are considered to be delegatees (s. 154, SPPA) and therefore have fiduciary duties. Also, service providers may not exclude or limit their liability (s. 154.4, SPPA).

3.8.1.7 Contributions

General

An employer is required to contribute to the pension plan (ss. 37 and 39, SPPA). Its contributions are called “employer contributions” (s. 37, SPPA). There are several types of employer contributions for a DBPP, including:

- current service contributions (including basic contributions and matching employee contributions, required for refunds and benefits for the current fiscal year [s. 38, SPPA]);
- amortization payments (payments required to amortize the unfunded actuarial liability [(s. 38.1, SPPA]);

460. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 153.
461. Ibid., s. 154.
462. *Civil Code of Québec*, CQLR, c. C-1991, art. 2100.
463. *An Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans,* S.Q. 2006, c. 42.

- special payments (payments required as a result of a plan amendment or for annuity purchasing [(s. 38.2, SPPA]).

In a DBPP, there are only current service contributions.

Although a member is also required to make contributions (called “member contributions” in the *Supplemental Pension Plans Act*), it is a contributory plan. The plan may also allow employees to make additional voluntary contributions (without a concurrent contribution by the employer) as well as transfers from other pension plans, RRSPs and DPSPs. As mentioned above, contributions other than voluntary contributions and their returns are generally locked in (i.e., withdrawals are not allowed) in order to provide retirement income.

Member or voluntary contributions, deducted from members’ pay, must be paid to the pension fund by the last day of the month following the month in which they are received.[464]

EXAMPLE

Jean & Jean inc. is in financial trouble. It did not pay the employer and employee contributions from last May into the pension fund for the defined contribution pension plan (DCPP).

The employer, employee and voluntary contributions bear interest as of June 30 at the rate of return of the member’s account.

The administration fees (including investment expenses) of the plan are payable by the fund, unless the plan text stipulates otherwise (for example, they may be paid by the employer).

Vesting of contributions

Under the *Supplemental Pension Plans Act*, effective January 1, 2001, all contributions paid by the employer are vested in the member, i.e., a member who ceases to participate in the plan is entitled to a deferred pension[465] as soon as he becomes a member of the plan with respect to all his accrued rights (member and employer contributions and the return on them).

The rule may be different for pension plans under federal jurisdiction.[466]

464. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 43.
465. Ibid., s. 69.
466. For benefits vested after 1986, the employer contributions only vest in the member after two years of plan membership (subs. 16(3) of the *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.)).

EXAMPLE

Jules is a member of his employer's pension plan, which is governed by the Québec *Supplemental Pension Plans Act*. He left his job after one year of employment. All the amounts accumulated in his account, including employer contributions, are vested in him.

Transfer of contributions

An employee who leaves his employer before he retires may generally transfer the benefits he has accumulated in the plan to authorized transfer instruments; all or part of the amounts transferred remain locked in until retirement.[467] Former employees may also leave the amounts in their former plan (s. 99, SPPA).

The *Supplemental Pension Plans Act* provides that former employees usually have 90 days to ask for a transfer to another plan. However, the plan text may provide that transfers will be accepted after that time. Authorized transfer instruments are:[468]

- a pension plan of a new employer that accepts them;
- a deferred or immediate life annuity with an insurer;
- a locked-in retirement account (LIRA);
- a life income fund (LIF).

EXAMPLE

Robert has held several jobs. After three years of service, he leaves *Lamontagne inc.*, where he was a member of a supplemental pension plan. He had already opened a locked-in retirement account (LIRA) with the insurer *Survie* to invest the benefits accrued in other supplemental pension plans with previous employers. He decides to also transfer all his benefits accumulated at *Lamontagne inc.* to his LIRA.

Refund of contributions

In certain situations, the value of the member's benefits can be refunded in cash (after tax) or transferred to an RRSP to postpone the payment of tax.

467. There are exceptions for members of a defined benefit pension plan who cease to be active when they are less than 10 years under the normal retirement age (s. 99 SPPA).
468. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 98, and *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 28.

- A member who is no longer an active member may receive his accrued benefits if their value is less than 20% of the maximum pensionable earnings for the year.[469]
- A member who has not been residing in Canada for at least two years, who has ceased to be an active member, and who has ceased working for his employer may also ask for a refund of his benefits.[470]
- A member who suffers from a physical or mental disability that reduces his life expectancy may, if the pension plan permits, apply for a refund of his benefits.[471]
- Voluntary contributions (i.e., without a concurrent contribution by the employer) as well as the income from them may be withdrawn on certain conditions.[472] Voluntary contributions, as well as amounts from other plans that are not locked in, and their investment income may generally be withdrawn.[473]

EXAMPLE

Linda has a supplemental pension plan with her employer, Bonne miche inc. She decides to retire. The amount accumulated in her account is $10,000, i.e., less than 20% of the maximum pensionable earnings (the MPE ~~amount~~ (or YMPE) in ~~2022~~ 2024 is $~~64,900~~68,500). She can therefore withdraw the benefits she has accrued as cash.

3.8.1.8 Investment of contributions

This is where a group annuity contract comes into play. It can be used to provide all or part of the capital for a supplemental pension plan.

All investments in the pension fund must be made in the name of the pension fund or for its account.[474] The pension committee must adopt a written investment policy containing the prescribed information.[475]

Only the pension committee or the person or body to which this authority has been delegated (e.g., DBPPs), or, if the plan so provides, the members, can direct what investments are made with the plan assets. If the plan allows members to distribute all or part of the amounts credited to them among various investments (e.g., DCPPs), it must offer a minimum of three investment options, which must not only be diversified and involve varying degrees of risk and expected return, but also

469. Ibid., s. 66. The MPE amount in ~~2023~~ 2024 is $~~66,600~~68,500. See also: *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.), para. 18(2)(c). See also: Government of Canada, MP, DB, RRSP, DPSP, ALDA, TFSA limits, YMPE and the YAMPE~~,~~, 2023-12-04.
470. Ibid., s. 66.1.
471. Ibid., s. 93, para. 4. See also: *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.), para. 18(2)(b).
472. Ibid., s. 67.
473. Ibid.
474. Ibid., s. 171.
475. Ibid., ss. 169 and 170.

allow the creation of portfolios that are generally well-adapted to the needs of the members. Investments must be made according to the law, and investments selected by the pension committee or the delegatee must, in addition, be made in conformity with the investment policy.

Under the policy, the assets of the pension plan may be invested in securities controlled by the employer, but must not be in a proportion greater than 10% of their book value.[476]

Under the *Supplemental Pension Plans Act*, the pension committee is not limited by a list of authorized investments. It may therefore make all types of investments, other than those prohibited or limited by law.[477] However, as mentioned above, the pension committee must act with prudence, diligence and skill, as a reasonable person would under similar circumstances. The pension committee must act with honesty and loyalty, in the greater interest of the members. In addition, the investments must comply with the investment policy established by the pension committee.

In plans not funded with an insurer, other parties may play a role in administering the pension fund and have individual contracts with the pension committee:

- a securities custodian or depositary (generally a trust company);
- portfolio managers.

In the case of a plan funded with an insurer, the pension committee does not need to use these parties, since their services are provided by the insurer.

We will now look at the two main types of pension plans, which may be funded by group annuity contracts. Note that locked-in retirement accounts (LIRAs) and life income funds (LIFs) that are instruments for transferring from a pension plan may also be funded through a group annuity contract.

3.8.1.9 Defined benefit pension plans (DBPPs)

In this type of plan, the amount of the pension benefit (i.e., the annuity that is paid out) is determined in advance according to a formula outlined in the plan text and its explanatory brochure. The benefit does not depend directly on the contributions paid. The formula often takes into account of the highest 3- or 5-year average salary (often the last few years of employment) before

476. Ibid., s. 172.
477. Ibid., ss. 171 to 182. This is not the case for supplemental pension plans governed by the *Pension Benefits Standards Act, 1985* (s. 8), for which investments must be admissible investments, as provided by *Schedule III of the Pension Benefits Standards Regulations,1985*, pursuant to section 6 of this Regulation. The pension committee must also comply with the investment rules under section 8502(h) of the *Income Tax Regulations*, CRC, c. 945.

retiring, multiplied by the number of years of service and a percentage (for example, 2%[478]). The employer's contributions are usually determined by an actuary.

EXAMPLE

Bon voyage inc. has a defined benefit pension plan that pays a pension equal to 1.5% of the average salary over the best three years of service. Jean has reached the normal retirement age under the plan and his highest 3-year average salary out of 15 years with *Bon voyage inc.* was $45,000.

Jean's annual pension will be $45,000 × 1.5% (or 0.015) × 15 = $10,125

The pension committee decides how to invest the pension funds in accordance with the investment policy. The goal is to have a funded plan, i.e., the value of the assets equals that of the commitments on the same date. Contrarily to a defined contribution pension plan (DCPP), in a defined benefit pension plan (DBPP), the assets (the contributions and the income earned from them) are not necessarily equal to the liabilities (the pensions to be paid). This type of plan must be the subject of a complete actuarial valuation at least once every three years.[479] The actuary is also often the person who determines whether the employer may take contribution holidays, if the plan is not showing a deficit. The plan text may provide that the employer has the right to appropriate the surplus assets to the payment of its contributions according to certain rules.[480]

The employer bears the investment risks in the case of a DBPP, except in the case of member-funded pension plans or target benefit plans, in which the employer pays a contribution determined in advance and the members bear the financial risk.[481] Due to increased life expectancy and lower than expected returns, the popularity of DCPPs and other types of capital accumulation plans is increasing to the detriment of DBPPs. Note that when a plan is in a deficit position or, comes to a close, or the employer goes bankrupt, certain benefits risk being reduced.[482]

478. Under subparagraph 8503(3)(g)(ii) of the *Income Tax Regulations*, CRC, c. 945, the maximum accrual rate under a defined benefit pension plan for a joint and survivor pension is 2% on a normalized basis (and 2.33%, in the case of a member whose benefits are provided in respect of employment in a public safety occupation and for whom the formula for determining the amount of the lifetime retirement benefits can reasonably be considered to take into account public pension benefits). The non-taxable threshold for surplus pension funds was 110%, but is 125% for contributions made as of 2010 pursuant to paragraph 147.2(2)(d) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).
479. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 118.
480. Ibid., s. 146.4.
481. Member-funded pension plans have been allowed in Québec since February 14, 2007, through the *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act*, CQLR, c. R-15.1, r. 7, ss. 64.1 to 95. See also: *Retraite Québec*, Newsletter number 23, May 2008. Target benefit plans have been recognized in Québec since December 11, 2020. See the *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 7 and ss. 146.45 and following.
482. The rights of members will be further protected when the *Pension Protection Act*, SC 2023, c. 6 comes into force on April 27, 2027. It will amend the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* (CCAA) to provide super-priority protection to special payments and solvency deficiencies of pension funds in the event of bankruptcy or a reorganization under the CCAA. These amendments will come into force on April 27, 2027 but will apply to any defined benefit plan established after April 27, 2023.

3.8.1.10 Defined contribution pension plans (DCPPs)

This type of plan is easier to administer, since the amount of the pension benefit is based on the contributions and the income they produce as credited to the member's account. Moreover, in this type of plan, the member bears the investment risks.

EXAMPLE

Futur simple inc. has a defined contribution plan. Its contribution is 3% of its employees' salary and the employee contributions are also 3%. Mireille has reached the normal retirement age under the plan. Over the years, $124,000 in contributions and income produced have been credited to her account. This amount is used to determine the amount of her pension. She will not be able to receive it from her employer's plan. She will have to transfer her benefits to a transfer vehicle such as a life income fund, or purchase an annuity from an insurer. Mireille must make a choice when she retires, since *Futur simple inc.* has fulfilled its obligations toward its employee, but is not required to pay her a fixed monthly or annual amount when she retires.

In the case of a contributory plan, the employer's and the employee's contribution often corresponds to a percentage of the salary.

In a DCPP, the pension committee decides what investments will be offered by the plan. When members can make their own investment choices (which is generally the case), the pension committee "must offer a minimum of three investment options which not only are diversified and involve varying degrees of risk and expected return, but also allow the creation of portfolios that are generally well-adapted to the needs of the members."[483] The plan may also not give employees the option of choosing the investments, or may do so only in the case of member contributions.[484]

3.8.1.11 Annuities in payment phase payable to a defined benefit supplemental pension plan

In a defined benefit pension plan (DBPP), the pension is an obligation under the plan unless the law allows it to be relieved of this relobligation through the purchase of annuities from an insurer.

A distinction must be made between:

- purchased annuities that remain a plan obligation (buy-in annuity contract) where:
  - the plan is still active;
  - the insurer generally pays the annuities in a lump sum to the pension fund (or directly to the annuitants under an annuity certificate);

483. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 168.
484. Ibid., s. 168 *a contrario*.

- the contract can cover not only retired members, but also active members and those with a deferred pension;

- purchased annuities that are no longer a plan obligation (buy-out annuity contract) where:
  - the plan is terminated;
  - since the plan is still active, the annuity must be purchased according to an annuity purchasing policy and must apply to retired members only;
  - the annuity is paid directly to the annuitants by the insurer according to an annuity certificate issued to them.

Since 2015, the *Supplemental Pension Plans Act* has allowed a pension plan that is still active to purchase buy-out annuities for retirees in accordance with an annuity purchasing policy.

Several types of annuities may be paid by the plan.

Deferred pension

Any member who ceases to be active is entitled to a deferred pension at normal retirement age.[485]

Early retirement pension

Any member who ceases to participate in the plan within 10 years of the date on which he attains normal retirement age is entitled to an early retirement pension. Its value is that of the normal pension, generally reduced on the date on which payment of the early retirement pension begins (ss. 71 and 72, SPPA). Some plans provide for payment of the early retirement pension without any reduction.

EXAMPLE

The normal retirement age under the pension plan of *Générosité inc.* is 60. Adrien stops working at age 55. He can ask for an early retirement pension. However, the amount of the normal pension he would have received at age 60 will be reduced by a certain percentage for each year preceding the normal retirement age.

Progressive retirement is allowed in Québec pursuant to an agreement with the employer to reduce the working time of members 10 years or less before normal retirement age.[486]

485. Ibid., ss. 68 and 69.
486. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 69.1.

Temporary pension

A member who is less than 65 years old and is 10 years or less underbefore normal retirement age may, on certain conditions, be entitled to a temporary pension rather than asking for an early retirement pension. The amount of the temporary pension may not exceed 40% of the maximum pensionable earnings.[487] A temporary pension is not for life; it ceases at the latest when the person turns 65. Since it is an advance on the pension owed onas of normal retirement age, the amount of the pension is reduced.

Postponed pension

If an employee works after normal retirement age, he is entitled to a postponed pension,[488] i.e., it will be paid to him later. The plan can therefore allow the employee to continue to accumulate benefits. The postponed pension is paid when the member stops working or at the latest when he turns 71.[489] However, the member may ask for his pension to be paid in whole or in part on certain conditions.

Normal pension

When a member reaches retirement age, he is entitled to his normal pension[490] (i.e., not reduced [or without penalties] in a defined benefit plan [DBPP]).

Joint and survivor pension

No matter the type of pension, whether early retirement, normal or postponed, it must be a “joint and survivor” pension (i.e., upon the member’s death, it continues to be paid to the spouse) if the deceased has a spouse[491] when (s)he or she retires (or on the date of death according to the plan text). The joint and survivor pension may not be less than 60% of the amount of the member’s pension.

However, the spouse may waive the joint and survivor pension.[492]

As a result, if 60% of the normal pension under the plan is not payable to the surviving spouse, the amount of the member’s pension will be adjusted, since the insurer takes account of the pension paid to the spouse into account in calculating the amount (unless this joint and survivor pension is subsidized by the fund). However, in the case of a married couple, the right of a member’s spouse to benefits under a joint and survivor pension is terminated by separation from bed and board (by judgment), divorce or marriage annulment.[493] In the case of a de *facto* spouse (common-law spouse),

487. Ibid., s. 91.1.
488. Ibid., s. 75.
489. Ibid., s. 80.
490. Ibid., s. 73.
491. See the definition of “spouse” in the *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 85.
492. The spouse may revoke the waiver of the joint and survivor pension any time before the first payment of the member’s pension (s. 88.1 SPPA).
493. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 89.

the right is terminated by the cessation of the conjugal relationship.[494] In the case of spouses in a civil union, the right to the joint and survivor pension is terminated by dissolution or annulment of the civil union.

When the spouse's rights are terminated, the member may request the restoration of his (or her) pension, but on a single life, which will increase the amount.

EXAMPLE

Louise is married to Jean-Pierre at the time of her retirement. She would be entitled to a pension of $1,000 per month if Jean-Pierre waived the survivor benefits. Since Jean-Pierre has not waived his right, the pension is joint and survivor (i.e., payable to the surviving spouse), and Louise will only receive $925 per month. If Louise dies, Jean-Pierre will receive a monthly pension of $555, which corresponds to 60% of the amount Louise received:

$$\$925 \times 60\% = \$555$$

Special rules (guarantee, indexation, integration, bridging benefit and disability pension)

The plan must provide for at least one pension option with a 10-year guarantee, except in the case of the normal form of pension (s. 92.1, SPPA).[495] It may also provide pension options with shorter or longer guarantee periods (5 or 15 years) within the limits set by the *Income Tax Act.* If the member does not have a spouse or, in the case of a joint and survivor pension, if the deceased member's spouse dies before the end of the guaranteed term, the remaining payments may be made paid as a lump sum, or the pension may continue to be paid, by the insurer to the designated beneficiary or the succession.

The plan may also provide for increases iIn pension payments based on the consumer price index or another rate specified in the plan. Indexing may be part of the normal pension, but all may be offered as an option.[496]

The plan may also provide a guaranteed life annuity for a certain period (5, 10 or 15 years). If the member does not have a spouse or, in the case of a joint and survivor pension, if the deceased member's spouse dies before the end of the guaranteed term, the remaining payments may be made paid as a lump sum, or the pension may continue to be paid, by the insurer to the designated beneficiary or the succession.

The plan may also provide for increases iIn pension payments based on the consumer price index or another rate specified in the plan. Indexing may be part of the normal pension, but all may be offered as an option.[497]

494. Ibid.
495. See also Retraite Québec, *Forms pensions can take*.
496. *Ibid.*
497. *Ibid.*

Certain defined benefit pension plans take into account of the pension paid by the Québec Pension Plan of *Retraite Québec* and the Canada Pension Plan (CPP) to determine the retirement benefits.[498] This is called “integration” of benefits, a concept also found in group disability insurance (see Chapter 1).

A defined benefit plan may provide for the payment of a bridging benefit,[499] i.e., an additional amount paid until benefits are paid under the public plans at age 65. The pension plan may also provide for the payment of a disability pension. Its value must be equal to or greater than the value of the benefits to which the member would have been entitled had he not become disabled.[500]

It may even provide for a dependent children benefit in the event of the retired member’s death.

3.8.1.12 A special type of defined contribution pension plan: the simplified pension plan (SIPP)

In 1994, the QPP created the simplified pension plan (SIPP) to better serve small and medium-sized businesses (SME) through less complicated administration rules.

According to the SIPP rules, the plan administrator is not a pension committee, but rather an insurer, bank, credit union or trust company (the “financial institution”). The list of financial institutions that offer SIPPs is available on the *Retraite Québec* Web site.[501]

The financial institution that administers a SIPP has the same obligations as a pension committee, and therefore has the obligations of a trustee of the pension fund.

Definition: simplified pension plan

A SIPP is a defined contribution pension plan (DCPP) in which the members choose their investments. The investments are offered by the financial institution that administers the plan (at least three investment choices, as in the case of traditional DCPPs). The rules governing SIPPs are found in the *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act*.[502]

General

SIPPs have been even more attractive since June 3, 2004, because member contributions may no longer be locked in if the plan text so provides. However, this change is not retroactive. Also, SIPPs allow members to make voluntary contributions that are not locked in, in addition to the compulsory member contributions.[503] Members may therefore ask for a lump-sum refund from their not- locked-in account at any time while they are employed. As of 2006, an employer can decide to defer refunds of member contributions from a not- locked-in account at the end of active membership or when the

498. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 94
499. Ibid., CQLR, c. R-15.1, s. 58.
500. Ibid., s. 82.
501. Retraite Québec, Simplified pension plan.
502. *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act*, CQLR, c. R-15.1, r. 7, ss. 8 to 19.
503. Ibid., s. 10, para. 25.

member reaches age 55, whichever event occurs first.[504]

The employer contributions are locked in until retirement. The financial institution must keep two accounts for each member: a locked-in and a not- locked-in account. No transfer is permitted between them.

Retraite Québec published a document that includes a table entitled *Les comptes immobilisé et non immobilisé*, which is reproduced in Table 3.1. It summarizes whether or not contributions are locked in.[505]

TABLE 3.1:

Contributions: Locked-in or not locked-in

	LOCKED-IN ACCOUNT	NOT LOCKED-IN ACCOUNT
Employer contribution	√	
Additional employer contribution	√	
Member contribution	Employer's choice	Employer's choice
Voluntary member contribution		√
Transfer from a deferred profit-sharing plan (DPSP)	Employer's choice	Employer's choice
Transfer from a not- locked-in source		√
Transfer from a locked-in source	√	

When the number of members in an SIPP with the same employer exceeds 50, they can set up a retirement information committee whose role is to ensure the plan is understood.[506] The information committee therefore has access to certain documents from the financial institution and may also provide other information about retirement.

The financial institution must register its SIPP with the *Retraite Québec* and the CRA (as an RPP). The same SIPP can be offered to multiple businesses.

504. Ibid., s. 11.0.1.
505. This document is not available online. See, however, *Retraite Québec*, *Simplified pension plan.*
506. *Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act*, CQLR, c. R-15.1, r. 7, s. 10, para. 18.

There are two portions to the text of a SIPP: one setting out the general provisions of the plan, and the other setting out the provisions specific to each employer.[507] Members receive a summary of the plan (s. 111, SPPA). The financial institution must also:

- open and maintain two accounts - —one locked in and the other not locked-in - —on behalf of each member, and allocate the contributions made among the different investments chosen;
- notify *Retraite Québec* and the members, directly or through the retirement information committee, if there is one, within 60 days after any unpaid contribution becomes due;
- give each employer a copy of the annual statement and, upon request, a copy of any document relating to the administration of the plan;
- forward an annual statement to each member.

As for the employer, it must:

- choose the financial institution;
- decide on the conditions for eligibility and membership and the conditions for withdrawal, and whether membership in the plan is optional or compulsory;
- determine who will assume the costs it must pay;
- decide on the contribution rate and whether or not the contributions are locked in;
- pay the contributions.

An employee who ceases to be an active member (due to resignation or dismissal, for example) must transfer his accounts out of the SIPP within 90 days following the sending of the statement required in the event of cessation of active membership. He may:

- ask that his locked-in account be transferred to a LIRA or LIF, a life annuity as prescribed by regulation or another supplemental pension plan.[508] If no instructions are received within the specified time, the amounts are transferred to a plan chosen by the financial institution;
- for an account that is not locked-in, the member may also ask that the funds be transferred to the same transfer instruments mentioned above or to an RRSP or RRIF. He may also cash in the amounts in his not- locked-in account (less income tax). If no choice is made within the time limit, the financial institution chooses whether the amounts are refunded in cash or transferred to an authorized instrument, such as an RRSP with the same financial institution.[509]

Like traditional pension plans, if a member dies, the balance of his account is paid to his spouse or, if he does not have a spouse, to his designated beneficiary or, if he has neither a spouse nor a designated beneficiary, to his succession.

507. Ibid., s. 18.
508. Ibid., s. 10, para. 6(a).
509. Ibid., s. 10, para. 6(b).

A DCPP can be converted to a SIPP on certain conditions.[510]

EXAMPLE

Bon augure is a small business with 50 employees. It would like to offer a pension plan with several investment options, but does not have the resources to manage it (pension committee, annual meeting, etc.). It would like its contributions to be set aside for employee retirement. It therefore opts for a SIPP and chooses a financial institution that offers and administers this type of plan.

3.8.1.13 Transfer instruments (LIRA, LIF and immediate life annuity)

The transfer instruments are those indicated in section 98 of the *Supplemental Pension Plans Act*. They are authorized to receive locked-in amounts from pension plans and, once they do, the person surrenders his membership benefits and is no longer a member of the pension plan. A member who leaves his pension plan (DBPP or DCPP) may transfer the value of his benefits to:

- a locked-in retirement account (LIRA);[511]
- a life income fund (LIF);[512]
- another pension plan not governed by the SPPA (*Supplemental Pension Plans Act*);[513]
- a locked-in VRSP account;[514]
- an RRSP or a not- locked-in VRSP account for sums that can be repaid to the participant or paid in one payment, with interest incurred;[515]
- an annuity.[516]

3.8.1.14 Pension plans with members in more than one province

A pension plan is registered in the province where the largest number of active members are, for whichh the applicable jurisdiction is determined based on:

510. Ibid., ss. 19.1 to 19.4.
511. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 98, and *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 29.
512. Ibid., s. 18.
513. Ibid., s. 28. For example, a VRSP, a federal supplemental pension plan, a Québec public sector supplemental pension plan or a supplemental pension plan from another province (either public or private sector).
514. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, subs. 98(3), and *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, subs. 28(2.1).
515. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, subs. 98(3), and *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, subs. 28(3).
516. Supplemental Pension Plans Act, CQLR, c. R-15.1, s. 98, and *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 6, s. 30.

- the place where the employee works; or
- the nature of the undertaking for which the employee works, in the case of the federal jurisdiction.[517]

The SPPA gives *Retraite Québec* the power to enter into agreements with other authorities so the SPPA will apply to Québec members when the plan is registered in another province.

In 2020, Québec signed the *2020 Agreement Respecting Multi-Jurisdictional Pension Plans* (the Agreement). It covers pension plans with members in more than one province. In practice, the Agreement applies as follows: administrative and procedural issues (aspects that apply to all plan members, such as registration, inspection, solvency and investments) are governed by the laws of the province in which the plan is registered (the province in which most of the members live). This supervisory authority has jurisdiction over the plan itself.[518] However, regarding the individual rights of members, it must apply the law of the province where they are employed.

The agreement was signed between the governments of Québec, Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario and Saskatchewan and the Canadian federal government. It applies to pension plans that fall under one of the supervisory authorities of one of those provinces or the federal government, and that have members and beneficiaries subject to the Act of one or more of those governments. This agreement came into force on July 1, 2020, and replaces, for the governments party to it, both the *Memorandum of Reciprocal Agreement*, which had applied since 1968 to pension plans whose members' benefits had been governed by the laws of the supervisory authorities concerned, and all similar agreements; and, as well as the *2016 Agreement Respecting Multi-Jurisdictional Pension Plans*, signed by the governments of Québec, British Columbia, Nova Scotia, Ontario and Saskatchewan.[519]

In 2023, the governments of Manitoba and Newfoundland and Labrador became signatories to the 2020 agreement. As a result, as of July 1, 2023, all jurisdictions in Canada with pension legislation, and all multi-jurisdictional pension plans in Canada, are subject to the agreement. Prince Edward Island has yet to pass pension legislation.

3.8.1.15 Pension plans in other provinces

There are currently nine supervisory authorities for pension plans in Canada, one for each province (other than Prince Edward Island), as well as the Office of the Superintendent of Financial Institutions (OSFI) for plans under federal jurisdiction and for the Yukon, the Northwest Territories and Nunavut.[520] Although the laws have the same objectives, their provisions may be very different (such as the minimum period for accruing benefits under the plan, the definition of spouse, transfer instruments and the rules for unlocking funds).

---

517. *2020 Agreement Respecing Multi-Jurisdictional Pension Plans*, s. 3.
518. The *2016 Agreement Respecting Multi-Jurisdictional Pension Plans* (2016 Agreement) came into effect on July 1, 2016, between British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan. The 2011 Agreement had been signed by only Québec and Ontario.
519. Retraite Québec, 2020 Agreement Respecting Multi-Jurisdictional Pension Plans.
520. *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.), subs. 4(4).

3.8.2 *Pension Benefits Standards Act, 1985* (federal)

The *Pension Benefits Standards Act, 1985* applies to pension plans for the benefit of employees who work for a federally regulated business according to the Canadian constitution (such as Crown corporations, banks, airlines, railways, ships and navigation, businesses declared to be for the general interest, interprovincial transportation, telecommunications and Indian affairs).[521] The Act also applies to employees of the Yukon, the Northwest Territories and Nunavut.[522]

This statute differs from the SPPA in certain respects. The following are a few differences between them:

- there is no pension committee;[523]
- contributions vest after two years of service;[524]
- cash refund of contributions under different circumstances from those under the SPPA;
- different rules for the pre-retirement death benefit;
- different definition of spouse;
- transfer instruments[525] (no LIRA, but a locked-in RRSP);
- permitted investments.[526]

This ends our study regarding the rules applicable to pension plans and authorized transfer instruments, such as LIRAs and LIFs.

521. Ibid, s. 4(4). See also Chapter 1.
522. Ibid., s. 4(4)i).
523. The plan administrator is generally the policyholder, who is usually the employer.
524. For benefits accrued after 1986, the employer's contributions only vest in the member after two years of membership in the plan (*Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 (2nd Supp.), subs. 16(3)).
525. *Pension Benefits Standards Regulations, 1985*, SOR/87-19, ss. 19.1 and 20(1).
526. *Pension Benefits Standards Regulations, 1985*, SOR/87-19, s. 6 and *Schedule III*.

3.9 Voluntary retirement savings plan (VRSP) and Pooled registered pension plan (PRPP)

3.9.1 Voluntary retirement savings plan (VRSP)

All employers in Québec (other than employers governed by the *Pension Benefits Standards Act, 1985*)[527] who that have 10 eligible employees or more must offer a voluntary retirement savings plan (VRSP) to employees who do not have the opportunity to make contributions, through payroll deductions, to an RRSP or a TFSA, or do not benefit from a supplemental pension plan (RPP) offered by their employer.[528]

An eligible employee is an employee who is 18 years of age or over with one year of uninterrupted service and who:

- works in Québec; or
- performs work both in Québec and outside Québec for an employer whose residence, domicile, undertaking, head office or office is in Québec; or
- is domiciled or resident in Québec and who performs work outside Québec for an employer whose residence, domicile, undertaking, head office or office is in Québec.

An employer may enter into an agreement with a professional order or association that allows the employer's employees to become members of the VRSP subscribed to by the professional order or association.

A VRSP is a voluntary pension plan: employers are not required to contribute to it, contrarily to a supplemental pension plan (including the SIPP). Eligible employees do not have to do anything in particular to become a member: enrolment is automatic. A default contribution rate, which has been 4% of gross salary since 2019,[529] and a default investment option apply. However, employees can opt out of the plan within 60 days of the date the plan administrator sends a notice.[530] Self-employed workers and workers whose employer has not subscribed to a VRSP (workers called "individuals") can subscribe to a VRSP voluntarily.[531]

The plan must not cost much: a maximum 1.25% management fee for the default option and 1.50% for the other options. The administrator can only charge the fees allowed under the *Regulation respecting voluntary retirement savings plans*,[532] which may also not be greater than those charged by the administrator for a pooled registered pension plan (PRPP) (see the next section). Also, it must offer between three and five investment options in addition to the default option (which must be a "lifecycle"

527. Ibid., subs. 4(4).
528. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 45.
529. From July 1, 2014, to December 31, 2017, the default contribution rate was set at 2% of gross salary; from January 1, 2018, to December 31, 2018, 3% of gross salary; and as of January 1, 2019, it is 4% of gross salary. *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3, s. 22.
530. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, ss. 47(3), and 19, para. 2(1).
531. Ibid., s. 2.
532. *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3.

option).[533]

Contrarily to a pooled RRSP, the employer's contributions do not automatically involve contributions through payroll deductions. An employee's contributions to a VRSP are deductible from his taxable income, like contributions to an RRSP;, and they also reduce the amount that may be paid into an RRSP, and vice-versa. The accumulated amounts are not taxable until they are withdrawn. Unlike employer contributions, member contributions are not locked-in.[534] A member can ask for refunds or transfers from his not- locked-in account at the intervals determined in the plan, but never less than once per year.[535]

Contrarily to the SIPP, a member whose employment is terminated can leave the funds in the VRSP. Like a member over age 55, he can also ask for a refund (after tax) or a transfer from his not- locked-in account to the VRSP of another administrator or to another registered plan such as an RRSP. A locked-in account must be transferred to a locked-in product such as a LIRA or LIF.[536]

Note that there are a few exceptions, such as for members who have not resided in Canada for at least two years, members suffering from a physical or mental disability certified by a physician, and members whose balance is less than a certain percentage of the maximum pensionable earnings. In these cases, the funds held in a locked-in account may be refunded.[537]

The employer's responsibilities are very limited. It must choose an administrator authorized by the AMF (the register is available on the AMF's Web site[538]), notify the employees that a VRSP has been set up, enrol them, and then deduct contributions from payroll and give them to the administrator. It must also offer the VRSP again every two years to employees who have opted out or who have set their contributions at 0%.[539]

Otherwise, all the obligations fall on the plan administrator: an insurer, a trust company or an investment fund manager.[540] The administrator may only offer one VRSP.[541] Also, other than in exceptional cases, it may not refuse the application of an employer or an individual to subscribe to its plan. The text of the plan must be approved by *Retraite Québec* and be registered with the CRA.

In the case of an employer who already offers its employees a supplemental pension plan, an RRSP or a TFSA with payroll deductions, but whose employees are not all covered (for example, in the case of part-time employees), those employees, if they have at least one year of uninterrupted service, must be covered by a VRSP (or by the existing plan). Note that if the RRSP or TFSA offered by the employer is optional, the employer does not have to set up a VRSP if all employees are eligible.

---

533. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 25, and *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3, s. 13.
534. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 65.
535. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 69, and *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3, s. 28.
536. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 67, and *Regulation respecting voluntary retirement savings plans*, CQLR, c. R-17.0.1, r. 3, s. 27.
537. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1., ss. 67, 68 and 69.
538. Autorité des marchés financiers, Register - VRSPs.
539. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 48.
540. Ibid., s. 14.
541. Ibid., s. 22.

The CNESST supervises compliance with the employer's obligation to set up a VRSP.[542] Like a traditional pension plan, if a member dies, the balance of his account is paid to his eligible spouse or, if he does not have a spouse, to his designated beneficiary.

Exceptional right to offer VRSPs

Like all group annuity products, group annuity plan advisers and group insurance and annuity advisers may distribute an insurer's VRSP. Financial security advisers and group insurance plan advisers may offer a VRSP to an employer if the employer is not replacing a VRSP to which it is already subscribed with another VRSP.[543] The AMF has been designated to issue authorizations to VRSP administrators and to ensure the criteria for maintaining the authorization are met.[544]

However, only actuaries who are Fellows, group annuity plan advisers and group insurance and annuity advisers may give advice to policyholders about insurers' VRSPs. Financial security advisers or group insurance advisers only (who are not licensed for group annuities) may offer VRSPs to policyholders (groups)[545] (limited to a business's initial VRSP), but they cannot offer other types of group plans or make transfers from another type of plan (such as a SIPP) to a VRSP, which would require providing advice on products for which they are not registered. They also cannot transfer a VRSP from one administrator to another authorized administrator.[546]

Note also that only financial security advisers may give advice to self-employed workers or individuals (participants). The administrator may offer the VRSP directly (on line or otherwise) if no advice is given.[547]

Retraite Québec is responsible for the application of the *Voluntary Retirement Savings Plans Act*, including the registration of plans and amendments thereto.

From a tax perspective, this plan is a PRPP under the *Income Tax Act*.[548]

Lastly, the AMF maintains a register of legal persons authorized to act as administrators of VRSPs.[549]

542. *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, ss. 110 and 111.
543. *Ibid*., s. 42.
544. Ibid., s. 14.
545. *Voluntary Retirement Savings Plans Act*, RLRQ, c.R-17.0.1, s. 42 amended by the *Act to amend various legislative provisions principally in the financial sector 2021*, c. 34, s. 124.
546. Ibid., s. 42.
547. Ibid., s. 42.
548. *Income Tax Act*, R.S.C., 1985, c. 1 (5th suppl.), s. 147.5.
549. See: Autorité des marchés financiers, Register - VRSPs.

3.9.2 Pooled registered pension plan (PRPP)

The federal government enacted the *Pooled Registered Pension Plans Act*[550] after a Canada-wide task force reviewed the retirement income system.

This statute covers employers under federal jurisdiction (banks, interprovincial carriers, etc.) as well as self-employed workers in the territories (Yukon, Northwest Territories and Nunavut). The purpose of the Act is similar to that of Québec's *Voluntary Retirement Savings Plans Act*.

However, there is one major difference from VRSPs: employers are not required to offer a PRPP. Also, all contributions, even members' contributions, are locked in for retirement.

The provinces are free to approve legislative measures equivalent to the PRPP. So far, Alberta, Ontario, Nova Scotia, Saskatchewan and British Columbia have adopted their own statute governing PRPPs.[551] Note that Québec businesses under federal jurisdiction are not required to set up a VRSP since the PRPP applies to them.

In 2016, the Multilateral Agreement Respecting Pooled Registered Pension Plans and Voluntary Retirement Savings Plans was signed by certain governments that had implemented PRPP-type legislation to streamline the regulation and supervision of PRPPs. The Agreement delegates certain responsibilities in respect of PRPPs to the Office of the Superintendent of Financial Institutions. The federal government, British Columbia, Saskatchewan, Québec (albeit with limited participation), Nova Scotia, Manitoba and Ontario signed the agreement.[552]

From a tax perspective, this plan is a PRPP under the *Income Tax Act*.[553]

3.10 Other plans that may be subscribed to through a group annuity contract

Now that we have studied the rules applicable to supplemental pension plans and VRSPs, we will discuss other plans that may be subscribed to through a group annuity contract.

550. *Pooled Registered Pension Plans Act*, S.C. 2012, c. 16, and *Pooled Registered Pension Plans Regulations*, SOR/2012-294.
551. Office of the Superintendent of Financial Institutions, Bureau du surintendant des institutions financières, *Multilateral Agreement Respecting Pooled Registered Pension Plans and Voluntary Retirement Savings Plans*.
552. *Ibid*.
553. *Income Tax Act*, R.S.C., 1985, c. 1 (5th suppl.), s. 147.5.

3.10.1 Group registered retirement savings plan (group RRSP)

Features

A group RRSP may be a good alternative to a traditional defined contribution pension plan due to its flexible rules (for example, no pension committee, no annual meeting, and the funds are, in theory, not locked in).

A group RRSP is sometimes used as a complement to a deferred profit sharing plan (DPSP). In that case, the employer's contributions go to the DPSP and the employee contributions go to the RRSP.

A group RRSP may also be offered in addition to a supplemental pension plan. However, a group RRSP is deemed to be a pension plan where membership in it is a condition precedent to membership in another plan,[554] which is rare.

The *Income Tax Act* does not specifically cover group RRSPs. However, the concept is mentioned in an information circular issued by the CRA.[555] Despite its name, from a tax perspective, a group RRSP is in fact a group of individual RRSPs of which each plan is registered with the CRA for each member (see the section on RRSPs).

In an RRSP, the annuitant may generally withdraw the accumulated funds before the plan expires, in which case they become taxable. However, in a group RRSP, the employer, sometimes called the plan sponsor, can make refunds conditional: refund only of the contributions an employee made during employment, penalties, contribution holiday during a specific period, or no refunds to employees during employment. The plan may also require that a member transfer the accumulated funds if he ceases to be an employee.

The employer's role is to act as the member's mandatary to transfer the member's contributions, generally deducted from his salary (the employee portion and, where applicable, the employer's portion, the latter of which must be treated as salary received by the employee), to the financial institution. The plan text may also provide for a spouse's membership in the group RRSP, and the possibility of a member contributing to his spouse's RRSP ("spousal RRSP").

Like an individual RRSP, an insurer has the plan text, the group annuity contract, and the enrolment form for the group RRSP registered with the CRA, which must approve any change. Members subscribe to the plan (and the group annuity contract) generally through the enrolment form, except when there is a change in insurer, or when the plan is mandatory and the sponsor requests enrolment without a form. A group RRSP is a capital accumulation plan in which the member usually makes his own investment choices. The employer chooses the investment options (guaranteed funds or segregated funds) available to members with the insurer as part of the group annuity contract.

554. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 2.
555. Canada Revenue Agency. *Information Circular 72-22R9*, June 17, 1996.

Fringe benefits (payroll taxes)

An employer that contributes to an employee's group RRSP must add that contribution to the employee's income, along with its own contribution (such as salary) to fringe benefits (such as parental benefits,[556] employment insurance,[557] the Québec Pension Plan of *Retraite Québec*[558] and CNESST[559]) in proportion to the amount of its contribution to its employee's RRSP. This is not the case for DCPPs (including SIPPs), DBPPs, VRSPs and PRPPs. However, when the group RRSP provides that contributions cannot be withdrawn during employment, the employer's contributions are not subject to the employment insurance deduction.[560]

3.10.2 Deferred profit sharing plan (DPSP)[561]

General

Like RRSPs, deferred profit sharing plans (DPSPs) were created under the *Income Tax Act.* According to the arrangement, an employer may share with its employees the profits from the employer's business or the business of the employer and one or more corporations with which the employer does not deal at arm's length (a group of businesses).

The employer contributions are taken out of the employer's profits. Since 1991, only the employer may contribute to a DPSP. The contributions usually correspond to a percentage of an employee's

556. In 20242023, the maximum insurable earnings taken into account to calculate the amount of benefits is $91,00094,000 and the maximum amount the employee and the employer may contribute is $449.54464.36 (0.494%) for the employee and $629.72650.48 (0.692%) for the employer. See: Revenu Québec, *Maximum Insurable Earnings and the Québec Parental Insurance Plan (QPIP) Premium Rate*. https://www.revenuquebec.ca/en/businesses/source-deductions-and-employer-contributions/calculating-source-deductions-and-employer-contributions/quebec-parental-insurance-plan-qpip-premiums/maximum-insurable-earnings-and-premium-rate/.

557. In 2024 2023, the maximum insurable earnings taken into account to calculate the amount of benefits is $61,50063,200. The maximum amount the employee may contribute is $1,002.451,049.12 (except in Québec: $781.05834.24) and the maximum amount for the employer is $1,403.431,468.77 (except in Québec: $1,093.471,167.94). See: Government of Canada, *EI premium rates and maximum*. https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/employment-insurance-ei/ei-premium-rates-maximums.html.

558. In 20242023, the maximum amount the employee and the employer may contribute is $4,038.404,160 for the employee ($8,076.808,320 for a self-employed worker (12.80%, including the contribution to the basic plan and to the supplemental plan)) and $4,038.404,160 for the employer, i.e., a total of 12.80% of $66,60068,500, applied to the portion of employment earnings between the basic exemption (the first $3,500) and the maximum pensionable earnings ($66,60068,500). See: Revenu Québec, *Maximum Pensionable Earnings and Québec Pension Plan Contribution Rate*. https://www.rrq.gouv.qc.ca/en/programmes/regime_rentes/travail_cotisations/Pages/calcul_cotisations.aspx.

559. The CSST is now known as the CNESST (*Commission des nomes, de l'équité, de la santé et de la sécurité au travail*), following an amalgamation of the CSST, the *Commission de l'équité salariale* and the *Commission des normes du travail*. In 2013, the average premium rate payable by an employer was $2 per $100 of payroll. The rate varies from one company to another. In 20242023, the annual maximum earnings are $9194,000, for maximum weekly insurable earnings of $1,745.30802.84. The contribution payable to the CNESST by an employer varies depending on the employer. See: CNESST, Maximum annual insurable earnings (in French only).https://www.cnesst.gouv.qc.ca/fr/demarches-formulaires/employeurs/dossier-dassurance-lemployeur/annexes-tableaux/salaire-maximum-assurable

560. Canada Revenue Agency, *Employers' Guide – Taxable Benefits and Allowances*, 2023-11-10.

561. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 147.

salary (subject to a limit). Profits are defined either as profits of the year or as undistributed profits of the year and previous years[562] of the business or group of businesses. The contributions therefore vary from one year to the next.

This type of plan is non-contributory, i.e., the member cannot contribute to it. The contributions vest when the member has completed 24 months as a member of the plan, unless the plan provides for a shorter period. The contributions and their income accumulate in the plan, and no tax is payable until the sums accumulated by the member are withdrawn. The DPSP limit in 2023 was $15,780, that is, half of the DCPP limit.

The amounts credited to a plan member become payable within 90 days of the day on which the employee ceases to be employed (dismissal, retirement), of the member's death of the member, of the day on which the member turns 71, or of the end of the plan. In this case, the member receives the amount in cash (less applicable taxes) or transfers the amount tax-free to an RRSP if he is under age 71.
If the employee elects so and if permitted by the plan, the amounts payable to the employee can be used to purchase an annuity, and an annuity certain or life annuity (with a maximum 15-year guaranteed term) will be paid to the member.

The *Income Tax Act*, which governs DPSPs, requires them to be in trust with a trust company or at least three trustees (individuals). In the case of a trust company, there is therefore a trust deed. The plan must only include qualified investments according to tax laws.[563]

Under the *Income Tax Act*, beneficiaries must be informed of their rights in the plan. In practice, this is done through an explanatory brochure. Many employers offer a DPSP for the employer's contributions and a group RRSP for member contributions. Some employers do not allow withdrawals during employment, like a group RRSP.

Registration and contract

The deferred profit sharing plan of an employer (or group of employers) must be approved by the CRA and meet certain conditions.[564] The trust deed must also be approved by the CRAit. In the case of a plan funded with an insurer, the trustee of the DPSP purchases a group annuity contract for the benefit of plan members (the beneficiaries of the trust). The insurer is generally the trustee's mandatary to administer the DPSP.

Some features of pension plans, SIPPs, group RRSPs and DPSPs

Table 3.3 sets out a few of the differences between supplemental pension plans, SIPPs, group RRSPs and DPSPs.

562. Canada Revenue Agency, *Information Circular IC77-1R5 Deferred Profit Sharing Plans*.
563. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 204.
564. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), subs. 147(2).

TABLE 3.2:

Some differences between pension plans, SIPPs, group RRSPs and DPSPs

	SUPPLEMENTAL PENSION PLAN (DCPP AND DBPP)	SIPP	VRSP	GROUP RRSP	DPSP
Plan administrator	Pension committee	Financial institution	Life insurer, trust company, investment fund manager	Insurer (the employer is the sponsor)	Trust company
Employer contributions	Mandatory	Mandatory	Not compulsory	Not compulsory	Mandatory
Member contributions	Sometimes	Sometimes	Yes	Yes	No
Contributions locked in or cannot be withdrawn during employment	Yes	Yes for employer contributions Sometimes for member contributions	Yes for employer contributions No for member contributions	Sometimes withdrawals limited	Often withdrawals limited

3.10.3 Employees profit sharing plan (EPSP)[565]

Some employers allow employees to participate in the growth of their business by paying amounts into a plan. The plan is said to be “non-registered” and the amounts paid into it do not grow tax-free. The employer sometimes makes additional contributions equal to a percentage of the employees’ contributions. An employee may also contribute to the EPSP.

Under an EPSP, the employer shares a portion of its profits with the employees designated by the plan. The amounts are paid to a trustee who holds them on behalf of the employees. Sometimes the contributions are invested in shares of the employer (share purchase plan). The employer’s contributions are deductible.

Employees must pay tax on contributions made on their behalf, and the investment income earned is taxable each year as regular income. The employer’s contributions constitute a taxable benefit for members, and if members withdraw money from the plan, they incur capital gains or losses.

In the case of a plan funded with an insurer, the trustee of the EPSP purchases a group annuity contract on behalf of the plan members. Sometimes the insurer is the trustee’s mandatary to administer the EPSP.

565. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 144.

EXAMPLE

Valeur inc. is a publicly traded company. It gives its staff the opportunity to participate in its success by investing money in shares through payroll deductions. This share purchase plan allows employees to participate in the company's profits. The company has committed to paying 50% of the amount employees pay into the plan, up to $1,500 per year per employee. Contributions to the EPSP are not deductible from the employee's income and the investment income does not grow tax-free.

3.10.4 Non-registered plans

Some employers want to give members the option of saving more through the financial institution that funds the pension plan or group RRSP by taking advantage of lower management fees charged in a group situation.

Commonly called "non-registered plans," the investment income is treated as regular income, and member contributions (in practice, an employer rarely contributes to such a plan) are not deductible from income. Sometimes a non-registered plan is used for contributions by executives that exceed the permitted contribution limit.

In this case, the insurer enters into a group annuity contract with a sponsor through which guaranteed funds (GIA) and segregated funds may be offered.

Withdrawing amounts from the plan leads to capital gains or losses for members. The same applies to transfers between funds.

3.10.5 Excess benefit plan (EBP)

This type of plan is also known as a "top hat" plan, or a supplemental executive retirement plan (SERP). As its name indicates, an excess benefit plan is meant to supplement the retirement income from a supplemental pension plan without regard to the tax limits that apply. It is generally suited to high-income and key employees. It can come in the form of a retirement compensation arrangement,[566] a letter of credit other than a retirement compensation arrangement, an employer resolution, or any other promise (written or not) of retirement income by the employer.[567]

Excess benefit plans can be funded (contributions are paid in advance and set aside), usually through a retirement compensation arrangement. They can also be non-funded, which entails a risk of non-payment if, for example, the employer faces financial difficulties or sells the company's assets.

566. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), subs. 248(1), "retirement compensation arrangement"; *Income Tax Regulations*, C.R.C., c. 945, s. 6802; *Taxation Act*, CQLR, c. I-8, s. 890.1. Canada Revenue Agency, *Retirement compensation arrangements*. See also: Canada Revenue Agency, *Employers' Guide - Payroll Deductions and Remittances*, 2023-12-05.
567. See: Retraite Québec, *Private Pension Plans*.

3.10.6 Other plans (TFSA, RRIF, LIRA and LIF)

To conclude this section, note that it is possible to set up and fund, through a group annuity contract, a group TFSA, group RRIF, group LIRA or group LIF.

3.11 Responsibilities of the parties to a group plan according to the *Guidelines for Capital Accumulation Plans*

In 1999, the Joint Forum of Financial Market Regulators (the "Joint Forum") set up an industry task force to determine whether members of defined contribution pension plans and other capital accumulation plans where members are permitted to make investment decisions (defined as capital accumulation plans) are sufficiently informed and assisted. The Joint Forum is made up of the Canadian Association of Pension Supervisory Authorities (CAPSA), the Canadian Council of Insurance Regulators (CCIR), the Canadian Securities Administrators (CSA), and the Canadian Insurance Services Regulatory Organizations (CISRO), represented by the Canadian Investment Regulatory Organization (CIRO).

On May 28, 2004, the Joint Forum published the *Guidelines for Capital Accumulation Plans*.[568]

The Board of Directors of the CLHIA subsequently adopted Guideline G12 entitled "Capital Accumulation Plans"[569] in December, 2004 and expanded the scope of the guidelines to include non-registered plans.

These guidelines are currently being revised by CAPSA, and a final version was expected by the end of 2023.

Guideline G12 sets out regulators' expectations regarding the operation of tax-assisted group savings products (DCPPs, group RRSPs, DPSPs, VRSPs, PRPPs, etc.) in which members exercise investment choices. Those expectations relate to the activities of plan sponsors, administrators, members, and service providers.

Although the practices described in Guideline G12 only apply to tax-assisted plans, life and health insurance companies that are CLHIA members are expected to administer non-tax-assisted plans based on such practices.

The intent of the Guidelines is to:

- outline and clarify the rights and responsibilities of sponsors (such as employers), service providers (insurers) and members;
- ensure that members are provided the information and assistance they need to make investment decisions in a capital accumulation plan.

568. For more information, the *Guidelines for Capital Accumulation Plans* are available on the websites of the Canadian Association of Pension Supervisory Authorities and of the Joint Forum of Financial Market Regulators.

569 CLHIA, *Guideline G12 – Capital Accumulation Plans*, December 16, 2004.

These Guidelines therefore set out uniform principles, regardless of the legislative framework applicable to the plan. Legislation affecting insurance, securities, pension plans and taxes continues to govern, as applicable.

The sponsor is therefore responsible for setting up the plan and providing investment information and decision-making tools to members. It must also choose a default fund (when members do not make investment decisions). It introduces the plan to members and provides them with ongoing communication. It may delegate its responsibilities to a service provider (generally an insurer), which must follow the Guidelines. In this situation, the sponsor must choose the service provider carefully and in the members' interest. According to the Guidelines, members are responsible for making investment decisions using the information and decision-making tools made available to assist them in making those decisions.

Since the Guidelines are not legally binding, they constitute a voluntary code; however, it should be noted that the above-mentioned regulatory organizations have approved them. In legal proceedings, a court is not required to consider them, but it will be more amenable to a sponsor who has followed them.

3.12 Designation of beneficiaries in an annuity contract and death benefits

3.12.1 Designation of beneficiaries in annuity contracts other than annuity contracts governed by the *Supplemental Pension Plans Act*

The rules regarding the designation of beneficiaries as studied in Chapter 2 apply to annuity contracts under article 2393, C.C.Q., which assimilates annuity contracts purchased from an insurer to life insurance.

It is important to note that where a person other than the spouse[570] is a designated beneficiary under an annuity contract registered as an RRSP or an RRIF, the insurer will pay the entire amount to the designated beneficiary, and the succession will be responsible for the income tax payable for the RRSP or RRIF, as the case may be. Under the *Income Tax Act*, the annuitant under an annuity contract registered as an RRSP or an RRIF is deemed to have received, immediately before his death, an amount equal to the fair market value of all his property.[571]

570. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), para. 60(l). A spouse is entitled to "roll over" the RRSP or RRIF into his name without tax consequences.
571. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), subss. 146(8.8) and 146.3(6). See also *Slater v. Klassen Estate*, 2000 CanLII 21113 (MB QB); *Curley v. MacDonald*, 2000 CanLII 22836 (ON SC).

However, where the annuitant's succession is in a deficit, the designated beneficiary is solidarily liable for the succession's tax debt to the CRA if the annuity contract was registered as an RRSP or an RRIF.[572]

3.12.2 Death benefits, designation of beneficiaries and spouse's prior rights under the *Supplemental Pension Plans Act*

3.12.2.1 Death benefit before retirement

Under the *Supplemental Pension Plans Act,* a beneficiary may be designated for the plan (in practice, it is the same person as for the group annuity contract when the plan is invested in a group annuity contract). The C.C.Q. rules regarding the designation of a beneficiary apply.[573]

However, when the *Supplemental Pension Plans Act* applies, the member's qualifying spouse, if he has one when he dies, is paid in priority, not the designated beneficiary. If the member has a qualifying spouse, which includes a *de facto* spouse and a spouse of the same sex according to the definition below, where the member dies before retirement, the benefit is payable to that person (in cash, less applicable income tax), even if he has designated another beneficiary.[574] The spouse receives this amount directly from the financial institution, outside of the succession.[575]

Definition: spouse

In the *Supplemental Pension Plans Act*,[576] the term "spouse" is defined as follows:

> The spouse of a member is the person who:
> - is married to or in a civil union with the member;
> - has been living in a conjugal relationship with a member who is neither married nor in a civil union, whether the person is of the opposite or the same sex, for a period of not less than three years, or for a period of not less than one year if
>   - at least one child is born, or to be born, of their union;
>   - they have adopted, jointly, at least one child while living together in a conjugal relationship; or
>   - one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

572. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), subs. 160.2(1)(2). However, for contracts not registered as an RRSP or a RRIF, the CRA cannot hold the designated beneficiary solidarily liable with the estate, even under subsection 160(1) of the *Income Tax Act*. See in this regard *Higgins v. The Queen*, 2013 TCC 194 (CanLII). However, see *Morrison Estate (Re)*, 2015 ABQB 769.
573. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 64.
574. Ibid., s. 86. The rule is the same for LIFs, LIRAs and annuity contracts subscribed with sums that stem from a supplemental pension plan. See, in this regard, sections 16, 19(4), 29(3) and 30(3) of the *Supplemental Pension Plans Act*, CQLR, c. R-15.1, r. 6, and *Trachy v. BMO Nesbitt Burns inc.*, 2019 QCCS 213. Therefore, in these cases, the spouse (if applicable) will receive the death benefit even if the beneficiary is someone else.
575. *Trachy v. BMO Nesbitt Burns inc.*, 2019 QCCS 213.
576. Ibid., s. 85.

EXAMPLE

Jean named his sister Mireille as the beneficiary of his pension plan when he became a member a few years ago. Some time later, he met Céleste, with whom he lived for five years before he died. Although Jean had designated Mireille was designated as his beneficiary by Jean, the death benefit will be paid to Céleste, his spouse at the time of his death.

Special rules

The spouse may always waive the right to the death benefit by sending the pension committee a statement containing the information prescribed by regulation.[577] The spouse may also revoke the waiver provided the committee is notified in writing before the member's death.[578] If there is no spouse when the person member dies or if the spouse has waived his rights, the insurer or the pension committee must pay the beneficiary, or the succession in the absence of a beneficiary, according to the applicable rules of the C.C.Q.

It is important to note that if a married spouse is also named as beneficiary, his right as spouse to the death benefit is terminated through by separation from bed and board (by judgment), but not as beneficiary[579] (see Chapter 2).

3.12.2.2 Death benefit after retirement

When a member dies while he was receiving a pension and if he had a spouse when he retired, the spouse is entitled to a pension;[580] the amount of the spouse's pension must not be less than 60% of the amount of the pension received by the member.[581] The pension plan may provide that the spouse must qualify on the day preceding the death of the member, rather than on the date of retirement, but this situation is quite rare (s. 85, para. 2, SPPA).

However, the spouse may waive the right to the pension by sending the pension committee a statement containing the information prescribed by regulation[582] before the first payment of the member's pension.

In the case of a married spouse, the right of the member's spouse to the death benefit (mandatory 60% joint and survivor annuity) is terminated by separation from bed and board (by judgment), divorce or marriage annulment. In the case of a *de facto* spouse, the right is terminated by cessation of conjugal relationship. The member may notify the pension committee to pay the pension to the former spouse but must do so in writing (s. 89, SPPA).

577. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 88.1.
578. Ibid., s. 88.1.
579. Unless the judgment granting the separation from bed and board provides otherwise. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 89; *Civil Code of Québec*, CQLR, c. C-1991, art. 2459.
580. If he retired before January 1, 1990, a joint and survivor pension was an option.
581. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 87.
582. Ibid., s. 88.1. Under the same provision, the spouse may also revoke the waiver.

The member may request that the pension be redetermined as if he had never had a spouse. In such a case, the member's payments will be higher than they were before the relationship ended (s. 89.1, SPPA).

If the member does not have a spouse when he retires, even if he has one later[583] (unless the plan provides for qualification on the day preceding death), the remaining pension payments (or the discounted value of the pension upon request) become payable upon his death to the beneficiary or the succession (as the case may be) if the pension included a guaranteed term that has not ended.

EXAMPLE

Catherine, who is single, had been retired from *Beausoleil ltée* for two years when she died. She received a 15-year guaranteed life annuity for which the beneficiary was her niece Émilie, who will receive the same annuity payments as her aunt for 13 years.

3.12.3 Partition of family patrimony and partnership of acquests

In addition to the situations involving partition of the family patrimony for couples who are married or in a civil union, the *Supplemental Pension Plans Act* provides that, where the conjugal relationship ceases, the benefits accumulated in a pension plan during the conjugal relationship must be partitioned.

Although *de facto* spouses are not covered by the family patrimony rules,[584] they have certain rights under the *Supplemental Pension Plans Act*, provided both spouses agree on a partition.

In the event of the death of the pension plan member, there is no partition under the rules governing the partition of family patrimony if, at the time of death, the member was receiving a pension from the plan. The *Supplemental Pension Plans Act* provides for a death benefit for the surviving spouse (art. 415, C.C.Q).

Basic principles of matrimonial law

It is essential for pension plan administrators to be aware of the basic principles of matrimonial law, since they may be asked to fulfill certain duties relating to the partition of benefits in a pension plan. Those basic principles namely involve:

- valuating assets;
- partitioning property;

583. Ibid., s. 85, para. 2.
584. *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61, McLachlin, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

- the rights of *de facto* spouses;
- the rights of spouses in a civil union.

Partitioning under the *Supplemental Pension Plans Act*

Members going through a divorce, separation from bed and board, annulment of marriage, dissolution, or annulment of a civil union, or even family mediation, or their spouse, may apply to the pension committee for a statement of the value of the benefits accumulated by the member under the plan during the marriage or civil union.[585] For de facto spouses, their application for a statement of benefits must be accompanied by an attestation of the dates on which their conjugal relationship began and ended. The statement must be provided within 60 days of receiving the application (s. 35 of the *Regulation respecting supplemental pension plans*). It must indicate the value of the benefits on a specific date, namely, the date the proceedings were instituted (for spouses who are married or in a civil union) or the date the conjugal relationship ended. In the case of defined-benefit pension plans, this value is calculated according to a specific formula.

After obtaining the judgment, the member or his former spouse must submit a written application for partition along with the required documents. For de *facto* spouses whose conjugal relationship has ended, the benefits may only be partitioned if they have agreed in writing to do so during the year following their separation (s. 110, SPPA).

Note that following partition, the spouse cannot receive his share in cash, other than in certain circumstances (if the value to be partitioned is less than 20% of the maximum pensionable earnings for the year in which the partition takes place, or if the former spouse has not lived in Canada for at least two years).[586] The amounts may remain in the spouse's name in the plan (if the plan allows it) or be transferred to another pension plan or a locked-in retirement account (LIRA), life income fund (LIF) or life annuity in the spouse's name. In practice, these situations are very rare.[587]

Partition of a supplemental pension plan cannot confer on the spouse more than 50% of the benefits of the initial holder (including locked-in retirement accounts and life income funds).[588] However, for the same plan, partition cannot have the effect of depriving the member of more

585. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, s. 108.
586. Ibid., s. 109.
587. *Regulation respecting supplemental pension plans*, CQLRL, c.R-15.1, r 6, s. 50.
588. *Civil Code of Québec*, CQLR, c. C-1991, art. 426. See also *Supplemental Pension Plans Act*, CQLR, c. R-15.1, ss. 109 and 110, as well as art. 696, para. 3 (*in fine*), of the new *Code of Civil Procedure*, CQLR, c. C-25, which came into force on January 1, 2016. It is worth noting that in the decision in *T.D. v. R.N.*, 2008 QCCA 1968, Chamberland, Thibault and Giroux JJ., the Court of Appeal of Quebec ruled that, once the agreement regarding accessory measures was upheld by the Court, property was immediately transferred (from the pension plan) to the other spouse and, therefore, even though the application for partition was made several years later, there was no prescription because the *Act respecting the Government and Public Employees Retirement Plan* takes precedence over the *Civil Code of Québec*.

than 50% of the value of the benefits accumulated under the plan, unless otherwise specified in a judgment.[589]

EXAMPLE

Jean and Pierre break up after living together for 10 years without being married or in a civil union. Jean has been a member of his employer's defined contribution pension plan for 20 years, and the value of his benefits is $400,000.

According to the statement, the value accumulated by Jean during the period they lived together is $140,000. Less than one year after their break-up, the spouses enter into an agreement according to which Pierre is entitled to 50% of the value accumulated by Jean during their conjugal relationship, i.e., $70,000. Without this agreement, Pierre would not have an interest in the plan following the break-up.

Table 3.4 summarizes the circumstances authorizing the partition of a plan under the *Supplemental Pension Plans Act* or according to the family patrimony rules.

TABLE 3.3:

Partition of benefits among spouses

	PENSION PLAN	RRSP	DPSP, TFSA, NON-REGISTERED PLANS
Married spouses: separation from bed and board, dissolution (divorce or death), annulment of the marriage	Can be partitioned - — 50% limit, but a judgment may provide for more	Can be partitioned	Does not form part of the family patrimony, but the parties can agree to partition. Can form part of partnership of acquests.
Spouses in a civil union: dissolution (judgment, joint declaration before a notary or death), annulment	Can be partitioned - — 50% limit, but a judgment may provide for more	Can be partitioned	Does not form part of the family patrimony, but the parties can agree to partition. Can form part of partnership of acquests.
De facto spouses: cessation of conjugal relationship	Can be partitioned - — 50% limit, but 100% upon death	The family patrimony rules do not apply, but the parties can agree to partition.	The family patrimony and partnership of acquests rules do not apply, but the parties can agree to partition.

589. *Ibid*., s. 49.

Following partition of a pension in payment, the pension committeee must perform a redetermination of the member's pension as if the member had never had a spouse.[590]

Note also that it is impossible to partition a pension in payment through simple partition of the amount paid as a pension. For example, a monthly pension of $1,000 may not simply be divided in two in order to pay the ex-spouse $500 per month.[591]

Note that, unless otherwise specified in the judgment, partition may not have the effect of depriving a member of more than half of the total value of the benefits accumulated under the plan, despite the rule mentioned in the section above on partition of the family patrimony and the partnership of acquests.[592]

3.13 Unseizability (exemption from seizure) of certain annuity contracts

3.13.1 Unseizability under the *Civil Code of Québec*

An annuity contract meeting the five conditions listed in the section on the legal nature of an annuity contract may be exempt from seizure in the event of bankruptcy or seizure by a creditor where the holder or member (as the case may be) has designated as the beneficiary his married or civil union spouse, a descendant or an ascendant. The designation of one or more of these persons as beneficiaries, even if the designation is revocable, makes the rights under contract exempt from seizure.[593] However, the designation of a *de facto* spouse as the revocable beneficiary does not protect them from seizure.

The designation of any person (including a *de facto* spouse, friend, etc.) as the irrevocable beneficiary also makes the rights under contract exempt from seizure.[594]

The capital of an annuity contract may also be unseizable under article 2378, C.C.Q., even if no beneficiary is designated. However, in this case, only that part of the capital is unseizable which would be necessary, for the duration fixed in the contract, for the payment of an annuity that would meet the requirements of the annuitant for support.[595]

Sections 69 and 70 of the *Insurers Act* also govern the exemption from seizure of an annuity contract.[596]

590. Ibid., s. 89.1. See: *Bernier v. Groupe Pages jaunes cie*, 2010 QCCS 1241; *Ubaldini v. Rio Canada Management Inc.*, 2012 QCCS 4323.
591. See: Retraite Québec, *Calculation of residual benefits*.
592. *Regulation respecting supplemental pension plans*, CQLR, c.R-15.1, r 6, s. 49.
593. *Civil Code of Québec*, CQLR, c. C-1991, arts. 2393 and 2457.
594. Ibid., arts. 2393 and 2458.
595. See *Québec (Sous-ministre du Revenu) v. Fercal inc., 2006 QCCA 68*, paras. 35 to 37.
596. Formerly, sections 33.4 and 33.5 of *An Act respecting insurance*.

3.13.2 Unseizability under the *Code of Civil Procedure*

Under article 553, paragraph 1, subparagraph 7, of the former *Code of Civil Procedure* (in force until December 31, 2015), concerning benefits payable under a supplemental pension plan to which an employer contributes on behalf of his employees, other amounts declared unseizable by an Act governing such plans and contributions paid or to be paid into such plans are exempt from seizure.[597]

Since January 1, 2016, the date on which the new *Code of Civil Procedure* came into force, the relevant provision of article 553, mentioned above, was replaced by article 696, paragraph 2, subparagraph 3 of the new Code. Under that article, contributions paid or to be paid into a supplemental pension plan to which an employer contributes on behalf of employees, or into another pension plan established or governed by law, are exempt from seizure. Under article 696, paragraph 2, subparagraph 4 of the new *Code of Civil Procedure*, the capital accumulated for the payment of an annuity, or accumulated in a retirement savings instrument if the capital has been alienated or is under the control of a third person and satisfies the other prescriptions of law, is also exempt from seizure.[598] Courts have not yet decided how to interpret this section.

It should be noted that the *Code of Civil Procedure* also recognizes "anything declared unseizable by law" as exempt from seizure (art. 696, para. 1, subpara. 4).[599]

---

597. However, under article 553, paragraph 4, of the former *Code of Civil Procedure*, the amount mentioned in subparagraph 7 of that article is unseizable, in the case of effecting partition of a family patrimony or of a debt for support or a compensatory allowance between married or civil union spouses, to the extent of 50%.

598. However, the property that is exempt from seizure under article 696, paragraph 2, subparagraphs 3 and 4, of the new *Code of Civil Procedure* may be seized up to a limit of 50% to execute partition of a family patrimony, a claim for support payment or a compensatory allowance. Moreover, a creditor of support payment obligations may not seize the same payments that could surpass 50% of the accumulated capital, a second time. Therefore, if a spouse has already obtained 50% of the supplemental plan payments from its spouse's pension pursuant to the partition of family patrimony, he may not later seize the 50% remaining for an unpaid support payment (support payment obligation creditor). Subsequent contributions made after the partition of the family patrimony will then be partly seizable. See: *Droit de la famille — 06671*, 2006 QCCS 6961.

599. See, for example: *Canada Pension Plan*, R.S.C., 1985, c. C-8, ss. 65 and 65.1; *Employment Insurance Act*, S.C. 1996, c. 23, s. 42; *Children's Special Allowances Act*, S.C. 1992, c. 48, Sch., s. 7; *Pooled Registered Pension Plans Act*, S.C. 2012, c. 16, s. 47; *Old Age Security Act*, R.S.C., 1985, c. O-9, s. 36; *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), ss. 122.61 (Canada Child Benefit), 222, 222.1, 223, 223.1, 224.1, 224.2 and 224.3; *Act respecting industrial accidents and occupational diseases*, CQLR, c. A-3.001, s. 144; *Automobile Insurance Act*, CQLR, c. A-25, s. 83.28; *Health Insurance Act*, CQLR, c. A-29, ss. 13.4, 90 and 101; *Individual and Family Assistance Act*, CQLR, c. A-13.1.1, s. 20; *Act respecting family benefits*, CQLR, c. P-19.1, s. 22 (this act replaces the *Act respecting family assistance allowances*, CQLR, c. A-17, s. 16.3); *Act to assist persons who are victims of criminal offences and to facilitate their recovery*, CQLR c. P-9.2.1, s. 35; *Act respecting financial assistance for education expenses*, CQLR, c. A-13.3, s. 22; *Act respecting parental insurance*, CQLR, c. A-29.011, s. 33; *Act respecting the Société d'habitation du Québec*, CQLR, c. S-8, s. 3.1 (housing allowance) and 4.1; *Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)*, CQLR, c. F-3.2.1, ss. 8 and 10; *Tax Administration Act*, R.S.Q., c. A-6.002, ss. 31.1.3 and 33; *Financial Administration Act*, CQLR, c. A-6.001, s. 72; *Regulation respecting savings products*, CQLR, c. A-6.001, r. 9, ss. 56 to 66 (Épargne Placement Québec); *Act to facilitate the payment of support*, ss. 11, 12 and 79; *Act respecting the Québec Pension Plan*, CQLR, c. R-9, ss. 145, 145.1 and 146; *Act respecting the Government and Public Employees Retirement Plan*, ss. 122.4 and 222; *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, s. 125; *Act respecting trust companies and savings companies*, CQLR, c. S-29.02, ss. 43 and 44. See also *Marcoux v. Lemaire-Laporte,* 2017 QCCQ 10039 (Small Claims), Chantal Gosselin J.

Under article 698 of the new *Code of Civil Procedure*, money paid as a retirement benefit, a pension, an income replacement indemnity, or judicially awarded support is partly seizable (according to the formula indicated in article 698). However, this money is exempt from seizure in the hands of the payer (such as an insurer). Once deposited in the bank account of the recipient, this money can become seizable.[600]

3.13.3 Unseizability under the *Supplemental Pension Plans Act*

Supplemental pension plans, LIRAs and LIFs are exempt from seizure, regardless of the designation of beneficiaries.[601] However, the Act does not provide any protection for voluntary contributions or amounts representing a share of the surplus assets allocated on plan termination. The amounts paid into a LIRA or LIF (with the exception of voluntary contributions) as well as the resulting benefits cannot be seized,[602] under the SPPA, except in the following cases: partition of the family patrimony and seizures for a claim for support, to execute a judgment.

However, effective January 1, 2016, the date on which the new *Code of Civil Procedure* came into force, pension benefits paid to the member are seizable. Pension benefits paid to the member are not subject to seizure by the financial institution that pays them to the member, but would become so, in part, when they were deposited into the member's bank account.[603]

EXAMPLE

Marilyn had a pension plan with her former employer. Several of her creditors are demanding to be paid. She transferred her accrued benefits to a life income fund (LIF) with a mutual fund manager. Since these amounts come from a pension plan, they are exempt from seizure. This also applies to the annual maximum annual amount paid to Marilyn out of the LIF.

600. *Latulippe v. Leduc*, 2009 QCCQ 6822, Chantal Sirois J.; *Marcoux v. Lemaire-Laporte*, 2017 QCCQ 10039 (Small Claims), Chantal Gosselin J. The prevailing trend in the case law apparently favours maintaining the unseizable nature of benefits paid into a bank account, insofar as they are easy to identify.
601. See, for example, sections 64, 98 and 264 of the *Supplemental Pension Plans Act*, CQLR, c. R-15.1, sections 18, 28 and 29 of the *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 1 and section 18 of the *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.).
602. *Supplemental Pension Plans Act*, CQLR, c. R-15.1, ss. 64, 98 and 264.
603. See the new *Code of Civil Procedure*, CQLR, c. C-25.01, art. 698. This would be a significant change from the law applicable prior to January 1, 2016. See *Coulombe v. Bradette*, 2018 QCCQ 7073, Geneviève Cotnam J. See, however: *Murphy v. Newhouse*, 2019 QCCQ 7034 (Small Claims), 2019-10-08, Jacques Paquet J. Moreover, it should be noted that even under the former *Code of Civil Procedure*, in the case of government and public employees retirement plans, it must be verified in the pension plan's constituting legislation whether the rule of unseizability applies when the member transfers the rights arising from his plan to a LIRA or LIF. In the case of RREGOP, for example, unseizability does not apply once the amounts arising from RREGOP are transferred to a LIRA or a LIF (*Poulin v. Serge Morency et Associés inc.*, [1999] 3 S.C.R. 351).

Pension plans governed by the *Pension Benefits Standards Act, 1985,* are exempt from seizure according to that statute.[604]

3.13.4 Unseizability under the *Bankruptcy and Insolvency Act*

Effective July 7, 2008, all RRSPs, RRIFs and DPSPs[605] are exempt from seizure (whether or not a preferred beneficiary has been designated) in the case of individuals who are bankrupt as of that date, other than contributions made in the 12 months before the date of bankruptcy, further to the coming into force of the new subsection 67(1) of the *Bankruptcy and Insolvency Act*. The same applies to registered disability savings plans (RDSPs) as of November 1, 2019, following an amendment to paragraph 67(1) (b.3) of the *Bankruptcy and Insolvency Act.*

In the event of employer bankruptcy or insolvency, the benefits payable from a pension plan are currently not protected. However, recent changes to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* (CCAA), which will come iInto effect on April 27, 2027, will provide super-priority protection to certain employer obligations toward the fund, ensuring that benefits are better protected in the event of employer bankruptcies and reorganizations, effective April 27, 2027 (See section 3.8.1.2, *Plan Features*, for details).

604. *Pension Benefits Standards Act, 1985,* R.S.C., 1985, c. 32 (2nd Supp.), s. 18. See also the *Pension Benefits Standards Regulations, 1985*, SOR/87-19, subs.21(1).
605. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b.3), and *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, s. 59.2.

TABLE 3.4:

Unseizability by a member's benefis rights in the context of bankruptcy: general rules*

BANKRUPTCY	SUPPLEMENTAL PENSION PLANS, LIRA AND LIF	RRSP, RRIF, RDSP AND DPSP	NON-REGISTERED ANNUITY CONTRACTS AND TFSA
Annuity contract in capitalization phase	Exemption from seizure[606]	Exempt from seizure, other than contributions made in the 12 months preceding bankruptcy[607]	Exempt from seizure for preferred beneficiaries (married or civil union spouse, descendants and ascendants)[608]
Annuity contract in payment phase	Exempt from seizure (capital). Annuity payments (benefits) would be subject to seizure, but not in the hands of the insurer or the pension committee[609]	Capital exempt from seizure, and payments subject to seizure according to jurisprudence[610]	Annuity capital (contributions plus return) generally cannot be refunded under the annuity contract, so the capital is exempt from seizure, the owner no longer having any right to the capital. Annuity payments can be seized according to the case law[611]

***** Some exceptions apply. An insurance representative should refer its client to a lawyer or a notary when the client asks for advice regarding seizure exemptions.

606. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b); *Supplemental Pension Plans Act*, CQLR, c. R-15.1, ss. 64, 98 and 264; *Regulation respecting supplemental pension plans*, CQLR, c. R-15.1, r. 1, ss. 18, 28 and 29; *Pension Benefits Standards Act, 1985,* R.S.C., 1985, c. 32, (2nd Supp.), s. 18.
607. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b.3), and *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, s. 59.2.
608. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b); *Civil Code of Québec*, CQLR, c. C-1991, arts. 2393, 2457 and 2458. In some cases, it is also possible to invoke article 2378 C.C.Q., even in the absence of designation of beneficiary or preferred beneficiary: *Québec (Sous-ministre du Revenu) v. Fercal inc.*, 2006 QCCA 68.
609. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b); *Code of Civil Procedure*, CQLR, c. C-25.1, art. 698.
610. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, para. 67(1)(b.3)) and *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, s. 59.2; *Code of Civil Procedure*, CQLR, c. C-25.1, art. 698; *SMRQ v. Bromage*, [1986] R.R.A. 664 (C.S.); *Procureur général du Québec v. Santilli*, 1997 CanLII 10774 (QC CA); *Tardif v. Raymond Chabot inc.*, 1998 CanLII 13117 (QC CA); *Boisvert (Syndic de)*, J.E. 98-42 (C.S.).
611. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, paras. 67(1)(c) and (d) *a contrario*; *Code of Civil Procedure*, CQLR, c. C-25.1, s. 698; *SMRQ v. Bromage*, [1986] R.R.A. 664 (C.S.); *Procureur général du Québec v. Santilli*, 1997 CanLII 10774 (QC CA); *Tardif v. Raymond Chabot inc.*, 1998 CanLII 13117 (QC CA); *Boisvert (Syndic de)*, J.E. 98-42 (C.S.). The trustee in bankruptcy cannot have more rights than the bankrupt himself: *Lefebvre (Trustee of); Tremblay (Trustee of)*, 2004 SCC 63, para. 37.

However, there is an exception to the exemption from seizure where property is seized to execute the partition of a family patrimony,[612] a claim for support or a compensatory allowance.

Article 553 of the former *Code of Civil Procedure* limited the portion that is exempt from seizure to 50% of the value of the benefits under a supplemental pension plan and the contributions.

Now, in the case of seizure involving a support payment claim, article 696 of the new *Code of Civil Procedure* limits to 50% the exemption from seizure of not only capital accumulated from supplemental pension plan payments, but also capital accumulated from all annuity contracts (even if there is a preferred beneficiary), whereas under the former *Code of Civil Procedure*, this accumulated capital (from annuity contracts with a preferred beneficiary that do not stem from supplemental pension plan payments) was 100% exempt from seizure in the case of seizure involving a support claim.[613] Moreover, pension payments and annuity payments would remain seizable, in part, in all cases.[614]

When the former spouse carries out a seizure for a claim for support (or for unpaid alimony, according to one's point of view), (s)he may receive the amount from the pension plan in cash.

Lastly, note that the trustee in bankruptcy has no more rights over the bankrupt's property than the bankrupt himself.[615]

3.13.5 Some exceptions to unseizability

3.13.5.1 Withdrawal and change of beneficiary in an annuity contract in capitalization phase

When a member asks to withdraw part of his group RRSP, deferred profit sharing plan or non-registered plan, the property enters the member's patrimony and therefore becomes subject to seizure. The same applies when a member changes from a preferred beneficiary to become an ordinary beneficiary.

612. *Civil Code of Québec*, CQLR, c. C-1991, art. 426. In *Syndic de R.T.*, 2017 QCCA 362, Guy Gagnon, Dominique Bélanger and Robert M. Mainville (diss.) JJ., the Court of Appeal of Quebec ruled that the RRSP portion attributed to the ex-wife of the bankrupt in the partition of family patrimony, before the latter went bankrupt, escaped the bankruptcy trustee's seizure.
613. See the new *Code of Civil Procedure*, CQLR, c. C-25.01, art. 696, para. 3.
614. Ibid., art. 698.
615. *Lefebvre (Trustee of); Tremblay (Trustee of)*, [2004] 3 S.C.R. 326, para. 37.

EXAMPLE

Aimée named her husband Antoine as the beneficiary of her non-registered savings plan funded with the insurer *Bon Vent inc.* through a group annuity contract.

Aimée went bankrupt. The non-registered savings plan forms part of the property of which the trustee takes possession, but the trustee cannot use it to pay the creditors. Shortly after, Aimée decides to name her sister as her beneficiary. Since her sister does not fall into the category of preferred beneficiaries, the trustee can ask for Aimée's plan to be cashed in for the benefit of the creditors.

Some court decisions state that property that is exempt from seizure can be seized if specific events occur, for example, if the member receives his annuity payments, asks for a withdrawal, or changes beneficiary (to a non-preferred beneficiary).[616] This type of seizure is sometimes referred to as "binding."

3.13.5.2 Rights of the trustee in bankruptcy

In 1996, a Supreme Court decision established the following principle: upon bankruptcy, the trustee takes possession of all the bankrupt's property, even property exempt from seizure under provincial law.[617] However, (s)he cannot sell property that is exempt from seizure to repay the member's creditors, unless (s)he can show that the beneficiary designation was intended to defraud the creditors.[618]

616. *Droit de la famille — 2176*, 1995 CanLII 5419 (QC CA); Droit de la famille — 2153, J.E. 96-1006 (C.S.); Edward *v.* Ellis, B.E. 97BE-72 (C.S.).
617. *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325 (known as the "Ramgotra case").
618. An insolvent debtor cannot benefit from unseizability if the property has become unseizable by virtue of an act performed in fraud of the rights of the debtor's creditors. See: *Syndic de Baker*, 2018 QCCS 5493; *Royal Bank of Canada v. North American Life Insurance Company,* [1996] 1 S.C.R. 325, para. 56; *Biron, Re*, 1999 CanLII 13652 (QC CA); *Frigault (Syndic de)*, 2008 QCCS 4639; *Levasseur v. 9095-9206 Québec inc.*, 2012 QCCA 45; *D.I.M.S. Constructions inc. (Faillite de)*, 2001 CanLII 25183 (C.S.); *Langlois v. Jean*, 2002 CanLII 35234 (QC CS); *Canada (Procureur général) v. Huppé,* 2012 QCCS 1080; *Thibault v. Empire (L'), compagnie d'assurance-vie*, 2012 QCCA 1748; *Leduc (Faillite de) v. Rousseau Leduc*, 1998 CanLII 12146 (QC CS), Pierrette Rayle J.; *Weymouth-Reid (Syndic de)*, 2006 QCCS 3025; *Re Geraci*, 1970 CanLII 494 (ON CA); *Camgoz (Bankrupt), Re*, 1988 CanLII 5002 (SK QB); *2863-1984 Québec inc. (Faillite de)*, 2001 CanLII 25571 (QC CS); *Douyon (Re)*, 1982 CanLII 3056 (QC CS); *Quirion (Faillite), Re*, 2004 CanLII 1001 (QC CS); *Tardif v. Raymond Chabot inc.*, 1998 CanLII 13117 (QC CA); *In* re Giroux; Place Bonaventure *Inc. v.* Giroux, [1993] R.J.Q. 1515 (C.S.); Castonguay *v.* Jacques, J.E. 95-862 (C.S.); *Banque* HSBC Canada *v.* Pranno, B.E. 2001BE-503 (C.S.); *Gestion Segi ltée v. Samson*, 1997 CanLII 8464 (QC CS); *Aubut-Drolet (Syndic de)*, J.E. 95-990 (C.S.).

When the trustee is released from his administration of the bankruptcy, (s)he must return the protected property to the member. The above example is relevant with respect to the rights of the trustee in bankruptcy.[619]

No trustee in bankruptcy (now called an "insolvency trustee") may designate a beneficiary in a life insurance policy or annuity contract belonging to a bankrupt.[620] Moreover, a change of beneficiary made by the policyholder (without the consent of the trustee in bankruptcy), where the latter has not yet been released from his administration, is a disposition of property that may not be set up against the trustee in bankruptcy.[621]

619. *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3, s. 40(1).
620. *Re Pearson*, 1977 CanLII 1308 (ON SC). See also the second paragraph of article 1627 of the *Civil Code of Québec*. It is therefore in the interest of the trustee in bankruptcy to exercise the right to the cash surrender value under the policy, where applicable.
621. *Syndic de Pelletier*, 2023 QCCS 1707. Se also section 2.1 of the *Bankruptcy and Insolvency Act*, RSC (1985), c. B-3 and *Dominion Metal & Refining Works Ltd. v. Perlman Investments Inc.*, 2003 CanLII 861 (QC CS).

3.13.5.3 Federal Crown

The federal Crown (for example, the CRA) can claim that it is not subject to the seizure rules prescribed by provincial law.[622] However, the provincial government must comply with provincial laws governing seizure.

3.13.5.4 Spouse's rights

A married or civil union spouse is entitled to his share of the family patrimony in his spouse's RRSP and pension plans, and, to this end, (s)he can have them seized if the relationship ends.[623]

3.14 Assuris guarantees

Assuris is a not-for-profit organization that protects Canadian policyholders if their life insurance company should fail. It is funded by its members, which are life insurance companies doing business in Canada.

Its role is to protect policyholders by minimizing the loss of benefits and ensuring a quick transfer of their policies to a solvent company, where their protected benefits will continue.

Assuris plays, for life insurance companies, a role similar to the role one the Canada Deposit Insurance Corporation (CDIC) plays for Canadian banks.

~~Assuris's *Supplementary Rules Rrelating to Ccoverage* dated December 10, 2009, replaced the *Supplementary Rules Rrelating to Ccoverage* dated September, 2001.~~

Under these rules, other than the coverage applicable to life, health and accident insurance, Assuris has set up guarantees (or "protection") for annuities in the payment phase, individual variable capital annuity contracts (segregated funds) with a maturity or death benefit guarantee, annuities in the capitalization phase, and pension plans. A summary of these guarantees is provided and explained on the Assuris Web site.[624]

The clients of the insolvent insurance company (or their assigns) obtain the following protection,

622. Sun Life Assurance Company of Canada *v.* Young, [1992] 4 W.W.R. 504. See also: *Marcoux v. Procureur général du Canada*, 2001 FCA 92, Noël, Décary and Létourneau JJA., and *Quebec (Attorney General) v. Canada (Human Resources and Social Development)*, [2011] 3 S.C.R. 635; *London Life Insurance Company v. Canada*, 2014 FCA 106, leave to appeal to the Supreme Court of Canada dismissed on January 29, 2015 (File No. 35961); *M.N.R. v. Anthony*, 1995 CanLII 5595 (NL CA); *Ross v. Canada (Minister of National Revenue)*, Federal Court of Appeal, A-966-96, 1997-12-15; *Pembina on the Red Development Corp. Ltd. v. Triman Industries Ltd.*, 1991 CanLII 2699 (MB CA). See the difference in the wording between subsections 224(1.2) and 225(5) of the *Income Tax Act*.
623. See also *G. v. C.*, 1995 CanLII 10725 (QC CS).
624. Assuris, *How Am I Protected?*.

among others:

- **Annuity in payment phase:**
  Upon transfer, Assuris guarantees that the client will retain up to $2,000 per month, or 85% of the monthly income he was promised, whichever is greater;
- **Individual variable capital annuity contract (segregated funds):**
  Assuris certifies that the maturity and death benefit guarantees included in the insolvent insurer's variable annuity contract (segregated funds) will be honoured in full for the first $100,000 or 90%, whichever is greater; [625]
- **Non-variable capital annuity contract (GIA):**
  Assuris guarantees that the client will retain 100% of the accumulated value up to $100,000, or 90% of the guaranteed promised amounts, whichever is greater.

  In addition, if a life insurance company that is a member of Assuris becomes insolvent, that insurer's annuity contracts are generally transferred to a solvent insurer (through the combined efforts of Assuris and the insolvent insurer's liquidator). Four Canadian insurers have become insolvent since 1990.

625. For example, Jean invested $500,000 in an individual variable insurance contract with a 100% maturity guarantee (e.g., age 100) and a 100% death benefit guarantee,. The value of the $500,000 investment is $300,000 when Jean dies, and the insurer is insolvent at the time of his death. In this case, Jean's designated beneficiary (or, in the absence of a designated bneneficiary, his estate) is entitled to receive $450,000 (90% of $500,000) from the insolvent insuer's and Assuris' assets (Assuris will make up the difference if the insolvent insurer does not have sufficient assets to cover the full amount). If the insolvent insurer has sufficient assets to, for example, pay out $475,000 to the beneficiary or the estate, Assuris does not have to pay anything.

CHAPTER 4

RULES RELATING TO THE ACTIVITIES OF REPRESENTATIVES

Competency component

- Integrate into practice the rules governing the activities of representatives in insurance of persons.

Competency sub-components

- Explain the role of the organizations that protect consumers for insurance of persons;
- Integrate into practice the duties and obligations set out in the *Code of Ethics of the Chambre de la sécurité financière* for representatives in insurance of persons and representatives in group insurance of persons;
- Integrate into practice the obligations and responsibilities of representatives set out in the other legal sources applicable to their practice.

Note: In this Chapter, as in the *Act respecting the distribution of financial products and services*, the word "representative" is used to refer to an insurance representative and the expression "insurance representative" is used to refer to an insurance of persons representative and a group insurance representative.

4

RULES RELATING TO THE ACTIVITIES OF REPRESENTATIVES

Chapter 4 deals first with the consumer protection organizations and the other relevant organizations for insurance of persons, then with the *Act respecting the distribution of financial products and services* (the "Distribution Act") and its regulatory framework. Next, it analyzes the certification procedure, i.e., the conditions of eligibility for obtaining a representative's certificate, and the conditions for reinstating a certificate. The different types of practice and the duties of a representative in the performance of his activities are also discussed.

The provisions relating to the registration procedure and the obligations of firms, independent partnerships and independent representatives; the various rules governing distributions without a representative; and the sale of insurance in deposit institutions are also examined.

The different types of liability applicable to representatives, and the recourses available to consumers when they feel they have been wronged are briefly discussed.

Finally, this Chapter examines the rules of ethics and professional conduct, i.e., the conduct representatives must adopt in their daily practice when dealing with the public, clients, other representatives, firms, and independent partnerships, and the profession.

4.1 Consumer protection organizations for insurance and other relevant organizations for insurance of persons

The following is a list of the organizations studied in this section:

- the *Autorité des marchés financiers* (the Authority or the AMF);
- the *Chambre de la sécurité financière* (CSF);
- Assuris;
- the Canadian Life and Health Insurance Association (CLHIA);
- *Retraite Québec*;
- the Canadian Association of Pension Supervisory Authorities (CAPSA);
- the Canadian Council of Insurance Regulators (CCIR);
- the Canadian Insurance Services Regulatory Organizations (CISRO);

- the Joint Forum of Financial Market Regulators (Joint Forum);
- the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
- the OmbudService for Life & Health Insurance (OLHI);
- the *Commission d'accès à l'information* (CAI); and
- the Canada Revenue Agency (CRA).

Among their goals, they all have one in common: to protect consumers of financial products and services. However, each of them has a specific mission, and different duties, and protective powers or mechanisms.

4.1.1 *Autorité des marchés financiers* (the "Authority" or the "AMF")

4.1.1.1 Mission

The *Autorité des marchés financiers* (the "Authority" or the "AMF") is accountable to the Minister of Finance, and is financed by those working in the financial industry.

The AMF, which was established on February 1, 2004, is the regulatory body that oversees financial industry regulation in Québec.

The AMF therefore administers all the laws governing financial sector regulation in the areas of insurance, securities, deposit institutions (other than banks, which are governed by the federal government), and the distribution of financial products and services in Québec.

4.1.1.2 Functions

The main functions of the AMF under the Distribution Act are the following:

- determine regulations;
- keep and maintain the register of representatives and registrants;
- issue or renew certificates;
- authorize registrations;, cancel or suspend the registration of a firm, independent partnership or independent representative;, or impose conditions or restrictions thereon;
- take action against illegal practice;
- examine complaints;
- act as an insurance information centre;
- set up a professional liability insurance fund;
- inspect firms, independent partnerships and independent representatives; and
- publish a bulletin to inform the industry and the public about its activities.

The Distribution Act divides the industry of insurance representatives and firms into five sectors according to the type of activity; these are further subdivided by the regulations into seven sector classes of specific disciplines. These sectors and sector classes are shown in Table 4.1. However, this Chapter only examines the sectors and sector classes related to insurance of persons (see also Table 4.2).

TABLE 4.1:

Sectors and sector classes under the *Act respecting the distribution of financial products and services*

SECTORS	SECTOR CLASSES
Insurance of persons	▪ Accident and sickness insurance
Group insurance of persons	▪ Group insurance plans ▪ Group annuity plans
Damage insurance	▪ Personal-lines damage insurance ▪ Commercial-lines damage insurance
Claims adjustment	▪ Claims adjustment in personal-lines damage insurance ▪ Claims adjustment in commercial-lines damage insurance
Financial planning	

4.1.2 *Chambre de la sécurité financière* (CSF)

The *Chambre de la sécurité financière* (CSF) is the regulatory body that oversees the discipline and ethics of its members, including insurance of persons representatives and group insurance representatives.[626]

4.1.2.1 Mission

The mission of the CSF is to protect consumers by maintaining discipline among and supervising the training and ethics of its members (s. 312, Distribution Act).

4.1.2.2 Functions

The CSF maintains discipline among its members and establishes rules governing their training and ethics (s. 312, Distribution Act).

626. *Code of ethics of the Chambre de la sécurité financière*, CQLR, c. D-9.2, r. 3, s. 2.

The CSF also performs the following functions (ss. 313, 315 and 317, Distribution Act):

- develops the criteria for obtaining the professional titles of chartered life underwriter (C.L.U.) and registered life underwriter (R.L.U.), and authorizes their use;
- offers services to its members, such as professional development sessions for the insurance of persons and group insurance of persons sectors; and
- offers its members advisory services in quality control and compliance with professional requirements.

An insurance of persons representative may consult, among other references, the “InfoDéonto” section on the CSF Web site.[627]

4.1.2.3 Syndic

The duties of the syndic involve investigating insurance of persons representatives and group insurance representatives who have committed an offence under a provision of the Distribution Act or its regulations. He inquires into matters on his own initiative or on receiving information (ss. 327, 329 and 330, Distribution Act).

The investigator designated by the syndic may have access to any establishment and examine the books, registers, accounts, records, and other relevant documents. He may also verify access rights for any computer system to ensure that only authorized representatives have access to information (ss. 340 and 341, Distribution Act).

Where a syndic has reasonable grounds to believe that an offence has been committed, a complaint is filed before the discipline committee against the insurance of persons representative or the group insurance representative concerned (s. 344, Distribution Act).

4.1.2.4 Discipline committee

A disciplinary committee has been established within the CSF. It is composed of lawyers and representatives. A complaint is heard by three members of the discipline committee, including a lawyer who chairs the hearing. A decision made by the discipline committee may be appealed to the Court of Québec (ss. 352-355, 371 and 379, Distribution Act).

627. See: Chambre de la sécurité financière, *InfoDéonto*, 2024. See also: Vincent Caron, Code de déontologie de la Chambre de la sécurité financière commenté et annoté, Montréal, Wilson & Lafleur, 2019; Vincent Caron, *Loi sur la distribution de produits et services financiers – Commentée et annotée*, Montréal, Éditions Yvon Blais, 2016 (in French only); Sébastien Lanctôt, *Les représentants en assurance : pouvoirs de représentation et obligations*, Markham, LexisNexis, 2007 (in French only); and Vincent Caron, *La déontologie du représentant en assurance de dommages*, Montréal, Éditions Yvon Blais, 2018 (in French only).

4.1.3 Assuris

4.1.3.1 Mission

The mission of Assuris is to provide a certain amount of protection against the loss of coverage in insurance policies in the event a life insurance company defaults (becomes insolvent), when the insurer is a member of Assuris.[628] "Every life insurance company authorized to sell insurance policies in Canada is required, by the federal, provincial and territorial regulators, to become a member of Assuris."[629]

4.1.3.2 Role of Assuris: guarantee fund

Assuris acts as a guarantee fund for life and health insurers and their Canadian insureds. It strives to minimize costs for members and insureds while preserving the life and health insurance industry's reputation of financial stability. Efforts are also made to quickly identify problems, find solutions, and intervene rapidly when necessary.

We have already addressed the coverage provided by Assuris in Chapters 2 and 3.

4.1.4 Canadian Life and Health Insurance Association (CLHIA)

4.1.4.1 Mission

The Canadian Life and Health Insurance Association (CLHIA), which was established in 1894, is a voluntary non-profit association. Its member companies account for 99% of Canada's life and accident and sickness insurance business.

The mission of the CLHIA is to serve its members in areas of common interest, need or concern. In carrying out this mission, the CLHIA ensures that the views and interests of its diverse membership and of the public are equitably addressed.[630]

4.1.4.2 CLHIA Guidelines

> One of the CLHIA's strategic objectives is to foster sound and equitable principles in the conduct of the business of member life and health insurers that carry on business in Canada. CLHIA Guidelines are designed to promote consistent practices and standards for the life and health insurance industry, and to reinforce the best interests of consumers and the industry.[631]

628. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 31.
629. Ibid.
630. For more information, visit the CLHIA website
631. Canadian Life and Health Insurance Association, *CLHIA Guidelines*.

The CLHIA has adopted 18 guidelines that are in effect for its members.[632]

All member companies are expected to comply with the Guidelines, having regard to the company's structure, products and business processes, including distribution channels. They must also incorporate the Guidelines into their ongoing compliance program.

4.1.5 *Retraite Québec*

In Québec, *Retraite Québec* has several roles and mandates. For the purposes of this manual, it is important to know that *Retraite Québec* acts, among other things, somewhat as a regulator for supplemental pension plans, transfer instruments arising under the statute (locked-in retirement accounts [LIRAs], life income fund [LIFs] and life annuity contracts funded by amounts from pension plans), and voluntary retirement savings plans (VRSPs). *Retraite Québec* is also responsible for monitoring their management.[633]

4.1.6 Office of the Superintendent of Financial Institutions (OSFI)

The Office of the Superintendent of Financial Institutions (OSFI) is an independent agency of the Government of Canada, established in 1987, to contribute to the safety and soundness of the Canadian financial system. OSFI supervises and regulates federally registered banks and insurers, trust and loan companies, as well as private pension plans subject to federal oversight[634] (see Chapter 1).

OSFI is not involved with Québec-chartered insurers or with the distribution of financial products and services in the provinces and territories. Moreover, it is not concerned with supplemental pension plans in Québec or in the other provinces. However, it does have jurisdiction over private sector supplemental pension plans in the three Canadian territories, and supplemental pension plans for private sector firms under federal jurisdiction.

4.1.7 Canadian Association of Pension Supervisory Authorities (CAPSA)

The Canadian Association of Pension Supervisory Authorities (CAPSA) is a national interjurisdictional association of pension regulators. Its mission is to facilitate an efficient and effective pension regulatory system in Canada. It develops practical solutions to further the co-ordination and harmonization of pension regulation.[635]

Retraite Québec and OSFI are CAPSA members.

632. *Ibid.* The CLHIA withdrew its *Guideline G19* on the disclosure of advisers' compensation in connection with group products. See: CLHIA, *CLHIA announces withdrawal of Guideline G19*, news release, May 31, 2019.
633. For more information, see: Retraite Québec, *Professional involved In pension plans*.
634. For more information, visit the website of the Office of the Superintendent of Financial Institutions.
635. For more information, visit the CAPSA website.

4.1.8 Canadian Council of Insurance Regulators (CCIR)

The Canadian Council of Insurance Regulators (CCIR) is an interjurisdictional association of insurance regulators.

The mandate of the CCIR is to facilitate and promote an efficient and effective insurance regulatory system in Canada to serve the public interest. Its members work together to develop solutions to common regulatory issues.[636]

In Québec, the AMF and OSFI are CCIR members.

4.1.9 Canadian Insurance Services Regulatory Organizations (CISRO)

The Canadian Insurance Services Regulatory Organizations (CISRO) is an interjurisdictional group of regulating authorities dedicated to developing consistent standards of qualifications and practice for insurance intermediaries dealing in insurance of persons and property. Its goals and objectives include creating a common voice to deal with issues that may be of interest to other financial services regulators, consumers and intermediaries, while increasing its own visibility. Since CISRO's image, profile, and reputation, and its internal and external communications are central to its credibility and effectiveness, it is essential to establish a protocol for disseminating information about its policies and decisions.

CISRO consists of the regulatory authorities for insurance intermediaries from all Canadian jurisdictions. The appropriate authorities from all jurisdictions in Canada are regularly invited and are welcome to participate in CISRO's activities.

The principal responsibility of members of CISRO is to administer the regulatory system applicable to insurance intermediaries under their authority. Although CISRO members cannot enact legislation, they are key advisers to their governments on regulatory issues related to insurance intermediaries.

CISRO accomplishes its mission through meetings, conference calls and ongoing communication among its members, providing opportunities for sharing of information and working together in collaboration in the development of co-ordinated solutions to common regulatory issues.

CISRO's vision is to establish harmonized or mutually recognized qualifications and practice standards for insurance intermediaries to provide appropriate levels of consumer protection throughout Canada.[637]

In Québec, the AMF, the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages* are CISRO members.

636. For more information, visit the CCIR website.
637. For more information, visit the CISRO website.

It should be noted that on September 27, 2018, the CCIR and CISRO jointly published guidance (entitled *Conduct of Insurance Business and Fair Treatment of Customers*) setting out their overall expectations of insurers and intermediaries as to the conduct of insurance business and the fair treatment of customers.[638] This guidance applies to both insurers and intermediaries (insurance representatives and insurance firms).

According to the guidance, fair treatment of customers encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices. Ensuring fair treatment of customers encompasses achieving outcomes such as:

- developing, marketing and selling products in a way that pays due regard to the interests of customers;
- providing customers with accurate, clear, non-misleading and sufficient information before, during and after the point of sale, which to allow them to make informed decisions;
- minimizing the risk of sales that are not appropriate to the customers' needs;
- ensuring that any advice given is of a high quality;
- dealing with customer claims, complaints and disputes in a fair and timely manner; and
- protecting the privacy of customer information.

Although not legally binding, this is important guidance with which every insurance representative should be familiar. In addition, CISRO has recently published other important documents for the insurance industry.[639]

4.1.10 Joint Forum of Financial Market Regulators (Joint Forum)

The Joint Forum of Financial Market Regulators (Joint Forum) was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Securities Administrators (CSA), and the Canadian Association of Pension Supervisory Authorities (CAPSA).

The Joint Forum is a mechanism through which pension, securities and insurance regulators co-ordinate, harmonize and streamline the regulation of financial products and services in Canada. Its goal is continuous improvement of the financial services regulatory system through greater harmonization and co-ordination of regulatory approaches.[640]

In particular, the Joint Forum was the initiator of the Joint Forum *Guidelines for Capital Accumulation Plans* and the *Proposed Framework 81-406 - Point of sale disclosure for mutual funds and segregated funds*.

638. See: CCIR and CISRO, *Guidance – Conduct of Insurance Business and Fair Treatment of Customers*.
639. See: CISRO, *Cybersecurity Readiness*, September 2023; CCIR and CISRO, *Incentive Management Guidance*, November 2022; CISRO, *Principles of Conduct for Insurance Intermediaries*, April 2022; and CISRO, *Questions and Answers: CISRO Principles of Conduct for Insurance Intermediaries*, April 2022.
640. For more information, visit the website of the Joint Forum of Financial Market Regulators.

4.1.11 Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Canada's financial intelligence unit, was created in 2000. It is an independent agency, reporting to the Minister of Finance, who is accountable to Parliament for the activities of the Centre. It was established and operates within the ambit of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations.

FINTRAC's mandate is to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control. It fulfills its mandate through the following activities:

- receiving financial transaction reports in accordance with the PCMLTFA and regulations, and safeguarding personal information under its control;
- ensuring compliance of reporting entities with the PCMLTFA and regulations;
- producing financial intelligence relevant to investigations on money laundering, terrorist activity financing, and threats to the security of Canada;
- researching and analyzing data from a variety of information sources that shed light on trends and patterns in money laundering and terrorist financing;
- maintaining a registry of money services businesses in Canada; and
- enhancing public awareness and understanding of money laundering and terrorist activity financing.[641]

4.1.12 OmbudService for Life & Health Insurance (OLHI)

The OmbudService for Life & Health Insurance (OLHI) is an independent complaint resolution and information service for consumers of Canadian life and health insurance products and services, including life, disability, employee health benefits, travel, and insurance investment products such as annuities and segregated funds.

It was established in 2002 as a not-for-profit corporation, and operated under the name "Canadian Life and Health Insurance OmbudService" until August 17, 2009. OLHI is a member of the Financial Services OmbudsNetwork (FSON), a Canada-wide dispute resolution service supported by Canada's financial services regulators and financial services firms.

The mission of the OLHI is to provide Canadian consumers with free, prompt and impartial assistance with inquiries and complaints pertaining to Canadian life and health insurance products and services.[642]

641. For more information, visit the FINTRAC website.
642. For more information, visit the website of the OmbudService for Life & Health Insurance.

4.1.13 *Commission d'accès à l'information du Québec* (CAI)

The mission of the *Commission d'accès à l'information du Québec* is to foster and monitor access to documents held by public bodies and the protection of personal information in the public and private sectors, and to rule on applications for review or for the examination of disagreements submitted to it.

The Commission exercises the functions and powers set forth in its 1982 constituting act, the *Act respecting access to documents held by public bodies and the protection of personal information* (the "Access Act"). It is primarily responsible for the application of the Access Act and the *Act respecting the protection of personal information in the private sector* ("APPIPS"). To allow the Commission to carry out the mandates entrusted to it, the *Access Act* has established two divisions within the Commission: an oversight division and an adjudicative division.

Within the scope of its oversight functions, the Commission ensures compliance with the rights and obligations set out in the Access Act and the APPIPS, namely investigations, inspections and requests from individuals or bodies asking to receive communication of personal information for study, research or statistical purposes, without the consent of the persons concerned.[643]

Outside Québec[644] (except British Columbia and Alberta), the organization with a mandate equivalent to that of the CAI is the Office of the Privacy Commissioner of Canada. This organization provides a Q&A document on its Web site entitled *PIPEDA*.[645]

4.1.14 Canada Revenue Agency (CRA)

The Canada Revenue Agency (CRA) administers tax laws for the Government of Canada and for the provinces and territories, as well as various social and economic benefit and incentive programs delivered through the tax system. In Québec, *Revenu Québec* and the CRA have jurisdiction over tax matters. However, it is the CRA that handles the registration of tax-assisted plans.

RRSPs, RRIFs, supplemental pension plans (or registered pension plans [RPPs]), PRPPs, DPSPs, TFSAs, RESPs of issuers (banks, financial services co-operatives, trust companies, insurers, pension funds, etc.) and other registered tax-assisted plans must be registered with the CRA,[646] even those from Québec.

The CRA is an associate member of CAPSA.

---

643. For more information, visit the website of the Commission d'accès à l'information du Québec.
644. The *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, is a piece of federal legislation applicable to the private sector in all Canadian provinces and territories, except Québec, British Columbia and Alberta. As mentioned earlier, the applicable legislation in Québec is the *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1, whereas in British Columbia and Alberta it is the *Personal Information Protection Act*, SBC 2003, c. 63, and the *Personal Information Protection Act*, SA 2003, c. P-6.5, respectively.
645. Visit the website of the Office of the Privacy Commissioner of Canada. See also the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA).
646. For more information, see: Government of Canada, *Taxes – Tax information for individuals, businesses, charities, and trusts*, 2024-05-07; Government of Canada, *Savings and pension plan administration*; and Canada Revenue Agency, *Forms and publications - CRA*, 2024-03-13.

4.2 Various financial products on the market, their regulators and the persons authorized to distribute them

It is useful to differentiate financial products according to their issuers and distributors. The following brief summary is designed to help insurance representatives understand the products likely to compete with or complement insurance or annuity products. The following are the principal financial products on the market:

- deposits of money;
- insurance and annuity contracts;
- securities;
- mutual funds; and
- scholarship plans.

4.2.1 Deposits of money

A deposit of money is defined as the "unpaid balance, including interest thereon, of funds received by a deposit institution or a bank in the normal course of receiving cash deposits from the public for investment, account transaction and safe-keeping purposes, where the obligation of the deposit institution or bank to repay is evidenced by a credit to the depositor's account, by a deposit certificate, or by any other document issued by the deposit institution or bank."[647] The definition includes guaranteed investment certificates (GICs).

In Québec, banks, financial services co-operatives (credit unions) and trust companies can receive deposits.[648] They are exempt from the application of sections 11 to 236.1 of the *Securities Act*,[649] which means, among other things, that they do not need to issue a prospectus generally required by the AMF for distribution to the public.

Banks are governed by the *Bank Act,*[650] *and federally chartered trust companies by the Trust and Loan Companies Act*. Financial services co-operatives (credit unions or *caisses populaires*) are governed by the *Act respecting financial services cooperatives,*[651] *and Québec chartered trust*

647. *Regulation respecting the application of the Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2, r. 1, s. 1. See also section 3, paragraph 9, of the *Securities Act,* CQLR, c. V-1.1. It should be noted that the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2 replaced the *Deposit Insurance Act*, CQLR, c. A-26 on July 18, 2018. Sections 2280 to 2311 of the *Civil Code of Québec* (contract of deposit) do not apply to bank deposits (*Syndic de Montréal c'est électrique*, 2020 QCCA 1609). Thus, sums of money paid into a bank (or caisse populaire) account do not constitute a deposit within the meaning of the Civil Code, but a loan to the bank (*In Re Hil-A-Don Limited: Bank of Montreal* v. *Kwiat*, [1975] C.A. 157, 158).
648. Insurers can also be authorized to receive deposits of money by the AMF, but only in Québec, pursuant to section 28 of the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2.
649. *Securities Act*, CQLR, c. V-1.1, s. 3, para. 9.
650. *Bank Act*, S.C. 1991, c. 46.
651. *Act respecting financial services cooperatives*, CQLR, c. C-67.3.

companies are governed by the *Trust Companies and Savings Companies Act*.[652]

Pursuant to R*egulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*,[653] no licence is required to distribute deposits. Therefore, employees of banks and financial services co-operatives are not required to be licensed in order to sell deposits to clients or advise them about deposits.[654] Moreover, the Distribution Act provides that a firm may, through an insurance representative, collect deposits for a deposit institution.[655]

Banks and federally chartered trust companies are regulated by OSFI, while financial services co-operatives and Québec-chartered trust companies are regulated by the AMF.

Note that since December 8, 2022, the Act respecting remittance of deposits of money to account co-holders who are spouses or former spouses[656] has made it easier for co-holders of demand deposit accounts who are spouses and ex-spouses to access their share of the balance in the event of the death of one of them.

4.2.2 Insurance and annuity contracts

Insurance contracts are discussed in Chapter 2 and annuity contracts in Chapter 3.

In Québec, a person must hold a certificate issued by the AMF in the insurance of persons sector in order to distribute individual life insurance contracts. In the case of group insurance contracts, the person must hold a certificate from the AMF in the group insurance of persons sector or in the "group insurance plans" sector class.[657] As regards individual accident and sickness insurance contracts, the person must hold a certificate from the AMF in the insurance of persons sector or in the "accident and sickness insurance" sector class.

652. *Trust Companies and Savings Companies Act*, CQLR, c. S-29.02.
653. *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, CQLR, c. V-1.1 r. 10. See also sections 2.34 and 2.41 of *Regulation 45-106 respecting Prospectus Exemptions*, CQLR, c. V-1.1, r. 21.
654. Pursuant to section 24 of the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2, no institution may solicit or receive deposits of money from the public unless it is a registered institution. Similarly, pursuant to section 23 of the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2, no individual may solicit deposits of money from the public. However, pursuant to section 4 of the *Regulation respecting the application of the Deposit Insurance Act*, CQLR, c. I-13.2.2, r. 1, a deposit is deemed to be made at the place where the funds are received by the depositary, but where the funds are remitted to a branch or agent of the depositary, the deposit is deemed to be made at the place where such branch or agent received the funds.
655. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 95.
656. Act respecting remittance of deposits of money to account co-holders who are spouses or former spouses, CQLR, c.R-20.2.
657. However, an actuary who is a Fellow of the Canadian Institute of Actuaries does not need to hold a certificate for group insurance of persons representatives when, as part of his activities, he offers group insurance of persons products or group annuities (*Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 4, para. 2).

With respect to annuities, in order to distribute individual annuity contracts, the person must hold a certificate from the AMF in the insurance of persons sector. In the case of group annuity contracts, the person must hold a certificate from the AMF in the group insurance of persons sector or in the "group annuity plans" sector class.

A financial security advisor (the insurance representative holding a certificate in insurance of persons, and therefore in individual insurance of persons) can advise a participant in a group insurance plan or a participant in a group annuity plan and provide an analysis of the participant's needs.[658] A representative in group insurance of persons (whether ~~an adviser~~ a group insurance and group annuity plans~~n~~ advisoe~~r~~ ~~in group insurance and annuities~~, a~~n~~ ~~adviser in~~ group insurance, or an plans ~~adviser~~ advisor ~~in group insurance~~ or a~~n~~ group annuity plans ~~adviser~~ advisor~~in group annuity plans~~) ~~cannot~~ may not advise or analyze the needs of a participant~~s~~.[659] An insurance representative holding a certificate issued by the AMF cannot~~may not~~ offer an insurance product to a non-resident of Québec, even if the non-resident signs the insurance proposal in Québec.[660]

In Québec, only insurers holding a licence from the AMF in the "life insurance" class can issue (individual or group) life insurance policies and (individual or group) life annuity contracts. Only insurers holding a licence from the AMF in the "accident and sickness insurance" class can issue (individual or group) accident and sickness policies. This applies to both Québec-chartered insurers and federally chartered insurers, as well as insurers with a charter from another province or insurers with a foreign charter.

As for deposits, annuity contracts are exempt from the application of sections 11 to 236.1 of the *Securities Act*.[661]

4.2.3 Securities

In Québec, securities are governed by the *Securities Act* [662] and the regulations thereunder,[663] the *Derivatives Act*[664] and the regulations thereunder, [665] and the *Act respecting the transfer of securities and the establishment of security entitlements*.[666]

658. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 3, para. 2 However, the one who, on behalf of an employer, a union, a professional order or an association or a professional syndicate constituted under the *Professional Syndicates Act*, CQLR, c. S-40, makes an employee of that employer or a member of that union, professional order or association or professional syndicate adhere to the group insurance of persons or group annuities contract does not need a certificate of insurance of persons representative to do this (*Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 3 para. 3).
659. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 4. However, a representative in group insurance of persons may provide information to the members of a group. See also: *Voluntary Retirement Savings Plans Act*, CQLR, c. R-17.0.1, ss. 42 to 44.
660. *Autorité des marchés financiers v. Agence d'assurance Groupe financier mondial du Canada inc.*, 2023 QCTMF 50, paras. 114, 115 and 134 to 136.
661. *Securities Act*, CQLR, c. V-1.1, s. 3, para. 13.
662. *Securities Act*, CQLR, c. V-1.1.
663. See: Autorité des marchés financiers, *Securities*.
664. *Derivatives Act*, CQLR, c. I-14.01.
665. See Autorité des marchés financiers, *Derivatives Regulation*.
666. *Act respecting the transfer of securities and the establishment of security entitlements*, CQLR, c. T-11.002.

Investment dealer representatives can distribute any security to the public (shares of publicly-traded companies, mutual funds, scholarship plans, etc.).[667] The definition of securities is very broad.

The AMF regulates reporting issuers (entities that distribute securities to the public) and the securities of reporting issuers that can be distributed in Québec. The Canadian Investment Regulatory Organization (CIRO),[668] a self-regulatory organization (SRO) recognized by the AMF, oversees and disciplines investment dealer representatives and investment dealers (more commonly referred to as “securities dealers” or “securities brokers”).

However, certain securities (such as mutual funds and scholarship plans) may be distributed by other persons.

4.2.4 Mutual funds

Mutual funds are one of the two types of investment funds[669] referred to in the *Securities Act*. More specifically, a mutual fund is “an issuer whose primary purpose is to invest money provided by its security holders, and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer.”[670] This value is often referred to as the unit value or net asset value. Mutual funds generally buy the shares or bonds of a number of companies and pool them in accordance with the mutual fund’s investment policy.

In Québec, mutual funds can only be distributed by mutual fund dealer representatives[671] and investment dealer representatives.[672] Mutual fund dealer representatives act on behalf of mutual fund dealers. Investment dealer representatives act on behalf of investment dealers.

667. *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, CQLR, c. V-1.1, r. 10, paras. 2.1(1)(a), 2.1(2)(a), 7.1(1)(a) and 7.1(2)(a). However, it is possible for a person to purchase securities through a securities dealer, directly on the website of the securities dealer, without the advice of a representative. This is possible when the investment dealer has been exempted by the AMF from the obligation to provide advice. This is referred to as “discount brokerage.”
668. The Canadian Investment Regulatory Organization (CIRO) is the new name (since June 1, 2023) of the organization resulting from the merger of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) as of January 1, 2023. From January 1, 2023 to May 31, 2023, this organization was known as the "New SRO", until a new name could be found.
669. Section 5 of the *Securities Act* defines an “investment fund” as follows: a mutual fund or a non-redeemable investment fund. Section 5 of this act defines a “non-redeemable investment fund” as follows: an issuer whose primary purpose is to invest money provided by its security holders, that does not invest for the purpose of exercising or seeking to exercise control of an issuer or of being actively involved in the management of any issuer in which it invests and that is not a mutual fund. Only investment representatives are entitled to distribute non-redeemable investment funds.
670. Ibid., CQLR, c. V-1.1, s. 5.
671. *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, CQLR, c. V-1.1, r. 10, ss. 7.1(1)(b), 7.1(2)(b), 3.5 and 1.1.
672. Ibid., ss. 7.1(1)(a), 7.1(2)(a), 1.1 and 3.15(1).

The AMF regulates mutual funds in Québec. The *Chambre de la sécurité financière* ensures the discipline and supervision of mutual fund dealer representatives, while, in Québec, the AMF ensures the discipline and supervision of mutual fund dealers.

Investment fund managers, who manage the day-to-day activities of mutual funds, must be registered with the AMF as investment fund managers.[673]

An entity registered as an adviser (portfolio manager) can act as an adviser in respect of any security.[674] This entity acts through individuals registered as advising representatives.[675]

Mutual fund dealer representatives, investment dealer representatives, and advising representatives cannot distribute insurance of persons contracts (life insurance, and accident and sickness insurance) or annuity contracts, unless they also hold the required insurance licence.[676]

4.2.5 Scholarship plans

Scholarship plans are not defined by statute or regulation.[677] They are securities issued as units by reporting issuers, without being investment funds,[678] and are registered with the CRA as registered education savings plans (RESPs).[679]

673. Ibid., ss. 7.3, 2.3 and 3.14.
674. Ibid., ss. 7.2(1)(a) and 7.2(2)(a).
675. Ibid., ss. 2.1(1)(b), 2.1(2)(b), 7.2(1)(a), 7.2(2)(a), 1.1 and 3.11.
676. To learn about the similarities and differences between segregated funds and mutual funds, see *Chambre de la sécurité financière* (Isabelle Nadia Tremblay), *Semblables mais différents : Fonds distincts et fonds commun de placement*, Training No. 39775 CSF20180507, Montréal, *Chambre de la sécurité financière*, 2018; Kathleen C. Young, "Mutual Fund and Segregated Fund Flowthrough Tax Rules: Resolving the Inconsistencies," (2004) 52, No. 3, *Canadian Tax Journal* 884; Canadian Securities Administrators and Canadian Council of Insurance Regulators, *A Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds*, May 7, 1999; Philip Friedland, *Segregated Funds vs. Mutual Funds, Selected Legal and Tax Aspects*, Second Annual Innovative Uses of Insurance Conference, Toronto, February 25 and 26, 1999.
677. However, a description of scholarship plans can be found in *Regulation 41-101 respecting General Prospectus Requirements*, CQLR, c. V-1.1, r. 14, in Form 41-101F3, p. 262, Item 5.2 of Part B.
678. *Regulation 41-101 respecting General Prospectus Requirements*, CQLR, c. V-1.1, r. 14.
679. It should be noted that RESPs can also exist as mutual funds or annuity contracts. However, in such case, they are not scholarship plans. See also: Stéphanie Grammond, "*Les bourses d'études à l'examen*," in *La Presse,* September 8, 2007. RESPs would be seizable: *Droit de la famille — 17455*, 2017 QCCA 384, Mark Schrager J., paras. 13 to 15; *Padulo v. TD Canada*, 2017 QCCQ 1129 (Small Claims), Jeffrey Edwards J.; *MacKinnon v. Deloitte & Touche Inc.*, 2007 SKQB 39; J.P. Sarra, G.B. Morawetz and L.W. Houlden, *The 2016 Annotated Bankruptcy and Insolvency Act*, Toronto, Thomson Reuters, 2016, p. 440; *Payne (Trustee of)*, 2001 ABQB 894 (CanLII). However, in *McConnell v. McConnell*, 2015 ONSC 2243 (CanLII), the Court ruled that the funds contributed to the RESP were held in trust for the child. The Québec Education Savings Incentive (QESI) is a tax measure that was established to encourage Québec families to save for the post-secondary education of their children and grandchildren, beginning in their infancy. Introduced on February 21, 2007, the incentive is a refundable tax credit that is paid directly into an RESP opened with any RESP provider that offers the QESI. *Revenu Québec* maintains a List of RESP providers.

In Québec, scholarship plans can only be distributed by scholarship plan dealer representatives[680] and by investment dealer representatives.[681] Scholarship plan dealer representatives act on behalf of scholarship plan dealers.[682] Investment dealer representatives act on behalf of investment dealers.

The AMF regulates scholarship plans in Québec. The *Chambre de la sécurité financière* ensures the discipline and supervision of scholarship plan dealer representatives, while, in Québec, the AMF ensures the discipline and supervision of scholarship plan dealers.

4.2.6 Real estate brokerage and hypothecary loan (mortgage) brokerage

The *Real Estate Brokerage Act*[683] *applies to any person or partnership that, for others and in return for remuneration, engages in a brokerage transaction relating to:*

(1) the purchase or sale of immovable property, a promise to purchase or sell immovable property, or the purchase or sale of such a promise;

(2) the lease of immovable property, when the person or partnership acting as an intermediary carries on an enterprise in that field;

(3) the exchange of immovable property;

(4) a loan secured by an immovable hypothec (mortgage); or

(5) the purchase or sale of an enterprise, a promise to purchase or sell an enterprise, or the purchase or sale of such a promise, under a single contract, if the enterprise's property, according to its market value, consists mainly of immovable property.[684]

Subject to certain exceptions, only natural persons (i.e., individuals) who hold a real estate broker's licence from the *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ) can engage in real estate brokerage transactions.[685]

Furthermore, effective May 1, 2020, mortgage brokers are representatives within the meaning of the Distribution Act, and are now subject to regulation and supervision by the AMF, not the OACIQ. In addition, also effective May 1, 2020, the practices and rules relating to remuneration, commis-sion

680. *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, CQLR, c. V-1.1, r. 10, ss. 7.1(1)(b), 7.1(2)(b), 3.5 and 1.1.
681. Ibid., ss. 2.1(1)(a), 2.1(2)(a), 7.1(1)(c), 7.1(2)(c), 3.7 and 1.1.
682. Ibid., ss. 7.1(1)(c), 7.1(2)(c) and 1.1. See also the website of the RESP Dealers Association of Canada.
683. *Real Estate Brokerage Act*, CQLR, c. C-73.2.
684. *Ibid.*, s. 1.
685. *Ibid.*, s. 4.

Sharing, and client referrals, and the obligations specified by the AMF apply to mortgage brokerage.[686]

Mortgage and real estate agencies that have indicated to the OACIQ that they will continue their mortgage brokerage activities after April 30, 2020, automatically became a registered firms in the mortgage brokerage discipline on May 1, 2020. A mortgage broker acting on behalf of an agency that has reported to the OACIQ the termination of its mortgage brokerage activities after April 30, 2020 must choose a mode of practice in order to be authorized to practice mortgage brokerage as of May 1, 2020.

Real estate brokers act on their own behalf or on behalf of a real estate agency.[687] Mortgage brokers act on their own behalf or on behalf of a mortgage agency.[688]

Real estate brokers and agencies and mortgage brokers and agencies may share their commission with a firm, an independent representative or an independent partnership within the meaning of the *Act respecting the distribution of financial products and services*, or with a dealer or adviser governed by the *Securities Act* or the *Derivatives Act*.[689]

The OACIQ oversees and disciplines real estate and mortgage brokers and real estate and mortgage agencies.[690] A commission may be shared, for example, when an independent representative refers a client to a real estate broker or, for a hypothecary (mortgage) loan, to a mortgage broker. However, this representative cannot engage in activities reserved for real estate brokers.

A table setting out the types of legal persons, the titles used by natural persons (i.e., individuals), the number of representatives, and the products they are authorized to distribute is presented in Appendix A.

The AMF also published a table entitled “Financial products and services distribution oversight in Québec – Roles and responsibilities.” It is presented in Appendix B.

4.3 Obligations of persons involved in the distribution of financial products and services

We will now examine the legislative and regulatory rules concerning the obligations of persons involved in the distribution of financial products and services.

686. See: Autorité des marchés financiers, *Avis relatif à la distribution de produits d’assurance par les courtiers en prêts hypothécaires* , December 9, 2005 (available in French only).
687. *Real Estate Brokerage Act*, CQLR, c. C-73.2, ss. 11, 13 and 14.
688. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, ss. 11.1 and 11.2.
689. *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*, CQLR, c. C-73.2, r. 1, s. 37.
690. *Real Estate Brokerage Act*, CQLR, c. C-73.2, ss. 31 to 53. Discipline is handled through the syndic of the Organisme d’autoréglementation du courtage immobilier du Québec (OACIQ) and the syndic decision review committee: *Regulation respecting disciplinary proceedings of the Organisme d’autoréglementation du courtage immobilier du Québec*, CQLR, c. C-73.2, r. 6.

4.3.1 Certification of representatives

Definition and role of insurance of persons representatives

The Distribution Act provides that an insurance of persons representative is a natural person who, acting as an independent representative or acting for a firm or an independent partnership, offers individual insurance of persons products or individual annuities from one or more insurers. He also acts as an adviser in the field of individual insurance of persons (s. 3, Distribution Act). He is also authorized to secure the adhesion of a person to a group insurance or group annuity contract, which includes analyzing and advising on investment needs with respect to annuity contracts, for example.

Definition and role of group insurance representatives

The Distribution Act provides that a group insurance representative is a natural person who, acting as an independent representative or acting for a firm or an independent partnership, offers group insurance of persons products or group annuities from one or more insurers. He also acts as an adviser in the field of group insurance of persons (s. 4, Distribution Act). Important: wWhen the law refers to a group insurance representative, this includes group annuities.

4.3.1.1 Eligibility requirements for the issuance of a representative's certificate

Under section 12 of the Distribution Act, no person may act as or purport to be a representative without holding the appropriate certificate (s. 12, Distribution Act). The AMF issues certificates to persons who satisfy the following conditions:

1. hold the minimum qualifications;
2. pass the examinations required by the AMF;
3. complete a 12-week probationary period;
4. complete and submit an application for a certificate (within 30 days following the end of the probationary period);
5. pay the required fees;
6. comply with all the other requirements and rules pertaining to the issuance of the certificate (e.g.,not be the subject of disciplinary sanctions and have paid all fines imposed under certain laws) (ss. 13 and 55-–62, *Regulation respecting the issuance and renewal of representatives' certificates*).

4.3.1.2 Exemptions

There are also exemptions from the eligibility conditions when a person wishes to return to his career after a certain period of time. The following exemptions are available:

- minimum qualifications (ss. 17 and 18, *Regulation respecting the issuance and renewal of representatives' certificates*);
- certain examinations (ss. 21-–23, *Regulation respecting the issuance and renewal of representatives' certificates*); and
- probationary period (ss. 41-–43, *Regulation respecting the issuance and renewal of representatives' certificates*).

These exemptions depend on a number of circumstances and on the length of time the person had stopped practicing. For example, the conditions will be less onerous if the length of time in question was less than one year.

Renewal of a certificate

A representative must renew his certificate before it expires. He may also do so within 30 days following its expiry, but in such case, he must demonstrate that he was unable to take action sooner (s. 64, *Regulation respecting the issuance and renewal of representatives' certificates*). To renew his certificate, a representative must meet several conditions set forth in the *Regulation respecting the issuance and renewal of representatives' certificates.* For example, he must satisfy certain compulsory professional development requirements (s. 63 *Regulation respecting the issuance and renewal of representatives' certificates*).

4.3.1.3 Choice of type of practice

Merely holding a certificate from the AMF is not enough to carry on business as a representative. The representative must also choose how he will carry on business, that is, whether he will work:

1. for a firm, in which case he will be a representative attached to (or acting on behalf of) one or more firms;
2. for an independent partnership; or
3. as an independent representative.

These three ways to carry on business represent three types of registrants (firm, independent partnership, or independent representative). A representative may have incorporated his own firm, in which case it must be registered as a firm to which he is attached.

A representative who chooses a way to carry on business must make the same choice for all the sectors indicated on his certificate (for example:, insurance of persons, group insurance) (s. 14, Distribution Act).

The decision of an insurance representative as to the way to carry on business is often a taxation decision (company [(firm], partnership [independent partnership] or sole proprietorship [independent representative]).

4.3.1.4 Qualification rules

Persons who apply for a licence to carry on activities in life insurance or accident and sickness insurance must have passed the examination of the Life Licence Qualification Program (LLQP). There are two types of programs:

- the full LLQP; and
- the LLQP in accident and sickness insurance.

The full LLQP combines training in life insurance and accident and sickness insurance. The accident and sickness LLQP deals only with accident and sickness insurance. An accident and sickness insurance representative does not have the right to advise on or sell other types of insurance, unless he obtains the required full licence.

In addition to having passed the LLQP examinations, an applicant must submit an application to the appropriate licensing body. The application must be approved before a licence is issued. Obviously, an applicant cannot engage in life insurance activities if he does not have a current and valid licence.

A representative who has completed all LLQP exams may eventually obtain a full licence from the AMF allowing him to distribute the following products:

- life insurance;
- sickness insurance;
- disability insurance;
- group life insurance;
- group disability insurance;
- insurance-based investment products, including group or individual annuities and segregated funds.

The list is not exhaustive, because the licence allows representatives to advise on and sell a large number of life and accident and sickness insurance products. Insurers may innovate and create new products which are then offered to individuals or groups (e.g., group registered retirement savings plans).

4.3.1.5 Obligations of representatives

General provisions

Representatives are bound to act with honesty and loyalty in their dealings with clients. They must act with competence and professional integrity and comply with the Distribution Act and its regulations; they must also respect the provisions of the *Code of ethics of the Chambre de la sécurité financière*. They pursue their activities by being attached to one or more firms, by being a partner or employee of only one independent partnership, or as an independent representative.

Representatives acting for several firms must disclose the name of the firm for which they are acting to the client with whom they are transacting business (s. 14, Distribution Act).

A representative must fulfill the following obligations, among others:

- the obligation not to perform occupations that are incompatible with the pursuit of activities as a representative. The Distribution Act considers certain occupations (or, in some cases, merely performing the activities of an occupation) to be incompatible with the activities of a representative. A representative may not carry on such activities, even incidentally. The following is a list of the occupations (or, in some cases, the activities associated with that occupation) that are incompatible with the activities of a representative (subs. 202[1], Distribution Act; s. 2, *Regulation respecting the pursuit of activities as a representative*):
  - performing the duties of a judge;
  - performing the duties of a police officer;
  - performing the duties of a minister of religion;
  - 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;
  - 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).
- the obligation, when pursuing activities as a representative, not to take part directly or indirectly in a contest or a promotion providing benefits (including privileges and gifts), as an incentive to promote or sell a product that does not meet the specific needs of his clients (s. 5, *Regulation respecting the pursuit of activities as a representative*). This is designed to ensure that a representative does not recommend a specific product for the purpose of deriving a personal benefit. A contest to sell specific products is deemed to influence the advice given by a

representative.[691] 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. A representative can accept non-pecuniary benefits of low value if they are not likely to influence his work. However, such benefits, if offered every day, can have an influence.[692]

- the obligation to "inquire into their clients' situation" in order to assess their needs, appropriately advise them and, if they can, offer them a product that meets their needs (s. 27, Distribution Act).
- the obligation to respect the territorial restrictions of his certificate. An insurance representative's certificate issued by the AMF authorizes the representative to distribute insurance products and advise clients only in Québec. Thus, an insurance representative cannot cross the Québec border to give advice or offer insurance products to a person in Ontario, even if the person is a Québec resident. The insurance representative must have his client sign the insurance application in Québec. In theory, an Ontario client can come to Québec to sign an insurance application, but this practice is not recommended. An insurance representative should refer a client residing outside Québec to an insurance representative licensed in the client's jurisdiction. Moreover, an insurance representative can obtain an insurance representative's licence in several Canadian jurisdictions at the same time.[693]
- the obligation to demonstrate availability and diligence in the pursuit of his activities (subs. 4 [1] *Regulation respecting the pursuit of activities as a representative*). Ultimately, a representative may work part-time in another field if he has a small number of clients, provided he remains available to them. A representative who has a second occupation should inform the AMF. According to the AMF, the second occupation should be declared when the representative applies for the issuance or renewal of a certificate, or when the representative's situation changes. If the representative works for a call centre, he must be available for each client. All the call centre's representatives, as a group, must provide an appropriate service.

  Continuity of service to clients is another important concept. On May 23, 2013, the AMF published a *Notice relating to obligations of representatives and insurers with respect to service offered to clients under insurance of persons contracts – Orphan clients*.[694] Its purpose is to specify the obligations of representatives and insurers. The AMF states, among other things, that when the relationship between a client and a representative ends, regardless of the reason (e.g., retirement):

  - for as long as a policy is in force, it must be assigned to a qualified representative (duly certified) to ensure service to the client;.
  - representatives have obligations with respect to the continuity of the service to be provided to clients. Certified representatives must demonstrate diligence and availability with respect to their clients. In

691. *Regulation respecting firms, independent representatives and independent partnerships*, CQLR, c. D-9.2, r. 2, s. 11.1.
692. See AMF notice *Avis relatif à l'application du Règlement sur l'exercice des activités des représentants* (available in French only), dated July 25, 2013.
693. Canadian Council of Insurance Regulators, *Agent & Broker Applications*, 2024.
694 Autorité des marchés financiers, *Notice relating to obligations of representatives and insurers with respect to service offered to clients under insurance of persons contracts – Orphan clients*, May 23, 2013.

addition, they must promptly carry out any mandate given to them. Therefore, a representative who no longer meets his obligations pertaining to the follow-up on a policy he sold must ensure that another certified representative assumes these obligations and, more particularly, provides service to the client.

The Notice also specifies the type of commission a former representative can continue to receive.

As for the obligation of diligence, it must be adapted to the type of product sold; certain more complex products, such as those that offer investment options, require specific follow-up to ensure the overall product is still appropriate for the client.

- The obligation to deposit amounts received in a separate account (subs. 4 (2), *Regulation respecting the pursuit of activities as a representative*). A separate account must be an account opened at a financial institution. It must only contain the amounts received by the representative on behalf of another person (such as a client) in the pursuit of his activities.[695]

4.3.1.6 Client representation and solicitation: general

Upon first meeting a client, a representative must give the client a document (usually a business card) that indicates the following (subs. 202 (3), Distribution Act; s. 10, *Regulation respecting the pursuit of activities as a representative*):

- his name, principal address, and e-mail address;
- the titles under the Distribution Act that he is authorized to use in respect of the firm or independent partnership or as an independent representative, as the case may be (see the following section); and
- the name of the firm or independent partnership on whose behalf he pursues his activities or the words “independent representative.” Moreover, a representative who places a risk with an insurer with which he has a business relationship must disclose that relationship.[696]

This document, or any other written representation (including on social media), may also contain other information, provided such information is not likely to cause confusion, is related to the pursuit of his activities, and is not incompatible with those activities, including the following:

- his education and qualifications and the related titles;
- his years of experience in each sector in which he pursues activities;
- the description of the products and services he offers.

695. *Autorité des marchés financiers*, *Avis relatif à la gestion des comptes séparés en application de la Loi sur la distribution de produits et services financiers* (available in French only), January 13, 2012.
696. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 26.

Where a representative works remotely, that is, he does not meet a client personally (but by phone, for example), he must disclose his name, the name of the firm he represents or the fact that he is an independent representative, and his titles. At the client's request, when first sending documents to the client, he must give the client his business card or another document containing all the required information (s. 12, *Regulation respecting the pursuit of activities as a representative*).

Finally, before offering an insurance product, the representative must disclose to the client the name of the insurers whose products he is authorized to offer.[697] Where he is acting for a firm that is an insurer or that is bound by an exclusive contract with a single insurer, he must disclose that fact to the client.[698]

Written representations and marketing

In his written representations (such as advertising), a representative must comply with the preceding rules. He may use statistics to support his claims, provided the source is clearly indicated (s. 13, *Regulation respecting the pursuit of activities as a representative*). A representative must refrain at all times from engaging in any client solicitation or representation that may cause confusion or that:[699]

- states his income or financial performance;
- appears to promise results that he is not reasonably able to obtain; or
- uses a visual image or phrase, such as a trademark, slogan or symbol, that is likely to cause confusion.

To this end, the *Guide respecting Rules for business cards and other representations* published by the AMF is a very useful resource.[700]

Authorized titles

The *Regulation respecting the issuance and renewal of representatives' certificates* indicates the titles and abbreviations authorized for each sector and sector class.

Table 4.2 shows the authorized titles of representatives working in the sectors referred to in the Distribution Act (ss. 1 to 12, *Regulation respecting the issuance and renewal of representatives' certificates*).

697. Ibid., s. 31.
698. Ibid., s. 32.
699. *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, s. 14.
700. *Autorité des marchés financiers*, *Guide – Rules for business cards and other representations*, 2013.

As regards the title of financial planner, only a person holding a financial planner's certificate issued by the AMF can use this title.[701] Moreover, no one may use a similar title or purport to offer financial planning services without holding a financial planner's certificate issued by the AMF.[702] A financial planner must also comply with the obligations imposed by section 8 (prepare a written mandate dated and signed by the financial planner and give it to the client) and section 9 (prepare a written financial planning report and forward it to his client) of the *Regulation respecting the pursuit of activities as a representative.*

However, the financial planner may not distribute insurance products nor may he provide advice related to a specific insurance product unless he holds the required insurance representative licence from the AMF.

TABLE 4.2:

Titles representatives may use under the Distribution Act

SECTORS (BOLD) AND SECTOR CLASSES	TITLES
Insurance of persons – 1a	Financial security adviser
Accident and sickness insurance – 1b	Accident and sickness insurance representative
Group insurance of persons – 2a	Group insurance and group annuity plans adviser
Group insurance plans – 2b	Group insurance plans adviser
Group annuity plans – 2c	Group annuity plans adviser
Financial planning	Financial planner (Fin. Pl.)
Damage insurance	Damage insurance agent or damage insurance broker, as the case may be
Personal-lines damage insurance	Personal-lines damage insurance agent or broker
Commercial-lines damage insurance	Commercial-lines damage insurance agent or broker
Claims adjustment	Claims adjuster
Claims adjustment in personal-lines damage insurance	Claims adjuster in personal-lines damage insurance
Claims adjustment in commercial-lines damage insurance	Claims adjuster in commercial-lines damage insurance

701. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, ss. 1, 11, 56 and 57.
702. Ibid. See also: *Regulation respecting titles similar to the title of financial planner*, CQLR, c. D-9.2, r. 20. To obtain the title of financial planner, a person must obtain a financial planning diploma issued by the Institute of Financial Planning (formerly the Institut québécois de planification financière (IQPF)). For more information, visit the web-site of the Institute.

Professional liability insurance[703]

A representative who works on behalf of a firm (attached to a firm) without being an employee must be covered by professional liability insurance. The same applies to independent representatives.

Tied sales/sales made under pressure

A representative may not engage in tied selling, that is, subject to the making of a contract to the requirement that the client make another insurance contract.[704] Moreover, no representative may exert pressure on a client or use fraudulent tactics to induce a client to purchase a financial product or service (s. 18, Distribution Act).

4.3.2 Registration

We will now examine the issues involved with the registration of a firm, an independent partnership, or an independent representative with the AMF, as well as the related obligations.

4.3.2.1 Registration of a firm

Constitution

A firm is a legal entity set up as a corporation, also referred to as a company. It is a legal person (as opposed to a natural person, i.e., an individual). In order to register as a firm, the corporation must have an establishment in Québec (s. 72, Distribution Act).

Activities

A firm pursues its activities through at least one certified representative who is attached to it. A firm may be a single-sector firm (e.g., only insurance of persons) or a multi-sector firm.

Distribution network

A firm may do business with:

- representatives who are attached only to it;
- representatives who are attached to it and to other firms at the same time through a distribution agreement;
- independent representatives;
- independent partnerships; and
- other firms.

703. See the *Regulation respecting titles similar to the title of financial planner*, CQLR, c. D-9.2, r. 20.
704. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 18.

In such case, the independent representatives, independent partnerships or other firms are entities that work on their own behalf, but have access to products through the firm, which acts towards them as a wholesaler or general agent.

The concept of general agent is important in practice, even if the *Act respecting the distribution of financial products and services* makes no mention of general agents. In order to allow the distribution of their insurance of persons and annuity products, most insurers require insurance representatives to have signed an agreement with a general agent who usually handles the selection and supervision of the insurance representatives. In summary, while general agents are always firms, not every insurance firm has distribution agreements or satisfies the standards imposed by insurers to act as general agents.

Commission sharing

Pursuant to section 100 of the Distribution Act, a firm may share a commission it receives only with another registrant[705], i.e., another firm, an independent partnership or an independent representative. It may also share its commission with a broker or agency governed by the *Real Estate Brokerage Act*,[706] a securities dealer or adviser governed by the *Derivatives Act*[707] *or the Securities Act*,[708] a deposit institution, an insurer, or a federation within the meaning of the *Act respecting financial services cooperatives*.[709]

Titles

According to the sectors in which it is registered, a firm may present itself using the following titles (s. 11, *Regulation respecting the registration of firms, representatives and independent partnerships*):

- firm in the insurance of persons;
- firm in the group insurance of persons;
- firm in financial planning;
- firm in damage insurance; or
- firm in claims adjustment.

However, if the firm is registered in at least two sectors (multi-sector firm), it may use the title of “financial services firm” (s. 13, *Regulation respecting the registration of firms, representatives and independent partnerships*).

Other titles may also be used if the firm meets the criteria of sections 14.2, 14.4 and 14.6 of the *Regulation respecting the registration of firms, representatives and independent partnerships*:

---

705. See: Autorité des marchés financiers, *Sharing of commissions*; Autorité des marchés financiers, *Sharing of commissions – Rules*; and Autorité des marchés financiers, *Payment of remuneration – Representatives and Registrants*.
706. *Real Estate Brokerage Act*, CQLR, c. C-73.2.
707. *Derivatives Act*, CQLR, c. I-14.01.
708. *Securities Act*, CQLR, c. V-1.1.
709. *Act respecting financial services cooperatives*, CQLR, c. C-67.3.

- firm in the brokerage of insurance of persons;
- firm in the brokerage of group insurance of persons; or
- firm in the brokerage of financial services.

Franchising

A firm that wishes to act as franchiser must send the AMF a list of the firms to which it intends to give a franchise as well as their registration numbers. It must also advise the AMF of its trademarks, graphic symbols, logos and names that it will allow its franchisees to use. The franchiser must also send the AMF an amended list if it grants another franchise or if a firm ceases to operate as a franchisee (s. 224, Distribution Act; ss. 30 to 32, *Regulation respecting firms, independent representatives and independent partnerships*).

Franchising is more frequent with damage insurance brokerage than it is with insurance of persons brokerage.

4.3.2.2 Registration of an independent partnership

An independent partnership is made up of representatives acting through a general partnership. A general partnership differs from a corporation (or company) discussed in the section on “firms.” The representatives of an independent partnership must carry on their activities as employees or partners of the general partnership. All the partners must be representatives. An independent partnership is not a group of independent representatives (ss. 14 and 128, Distribution Act).

Activities

An independent partnership may be a single-sector partnership or a multi-sector partnership.

Distribution network

An independent partnership may do business with:

- representatives who are partners;
- representatives who are employees;
- independent representatives;
- other independent partnerships; and
- firms.

Independent representatives, other independent partnerships, and firms work on their own behalf, but have access to products offered through the independent partnership, which acts towards them as a wholesaler or general agent.

Commission sharing

An independent partnership may share its commissions only with an independent representative, another independent partnership, a firm that is not a deposit institution, or a broker or agency governed by the *Real Estate Brokerage Act* (s. 143, Distribution Act).

Titles

According to the sectors in respect of which it is registered, an independent partnership may present itself using the following titles (s. 12, *Regulation respecting the registration of firms, representatives and independent partnerships*):

- ~~i~~independent~~I~~ndependent partnership in the insurance of persons;
- ~~i~~independent~~I~~ndependent partnership in the group insurance of persons;
- ~~i~~independent~~I~~ndependent partnership in damage insurance;
- ~~i~~independent~~I~~ndependent partnership in claims adjustment; or
- ~~i~~independent~~I~~ndependent partnership in financial planning.

However, if the independent partnership is registered in at least two sectors, it may use the title of "independent partnership in financial services" (s. 14, *Regulation respecting the registration of firms, representatives and independent partnerships*).

Note that very few registrants have chosen to establish themselves as an independent partnerships.

4.3.2.3 Registration of an independent representative

Constitution

An independent representative is a natural person (i.e., an individual) who is certified and registered with the AMF. He constitutes a sole proprietorship and may therefore use other trade names to pursue activities.

An independent representative carries on business without being attached to a firm or to an independent partnership as a partner or an employee (s. 128, Distribution Act).

Activities

An independent representative acts as a representative in all sectors mentioned on his certificate.

Distribution network

An independent representative may do business with:

- firms;
- independent partnerships.

In this case, such firms or independent partnerships are wholesalers or general agents.

An independent representative may hire trainees, but not representatives.

Commission sharing

An independent representative may share his commissions only with another independent representative, an independent partnership, a firm that is not a deposit institution, or a broker or an agency governed by the *Real Estate Brokerage Act* (s. 143, Distribution Act).

Titles

An independent representative uses the titles of the sectors or sector classes mentioned on his certificate.

4.3.2.4 Registration conditions for firms and independent partnerships

To register as a firm or independent partnership, a legal person or partnership must apply in writing to the AMF and designate a person to act as a correspondent with the AMF.[710]

Required forms and documents

A firm or independent partnership must also send the AMF the forms, documents and declarations required for registration as well as the name of the officer or partner in charge. If the officer in charge of the firm[711] is not a certified representative, he must have the necessary competence to perform such duties. He must provide the AMF with a description and confirmation of his competence (ss. 1, 2 [13] and 6, *Regulation respecting the registration of firms, representatives and independent partnerships*).

The same person can fill the positions of correspondent and officer (or partner in the case of a partnership) in charge.

4.3.2.5 Registration conditions for independent representatives

An independent representative who registers as such must also hold a certificate issued by the AMF. To register, he must apply in writing, indicating the address of his establishment in Québec. He must send the AMF the forms, documents and declarations required for registration, and act as the person in charge and correspondent with the AMF. He has the same obligations as the officer

710. See: *Regulation respecting the registration of firms, representatives and independent partnerships*, CQLR c. D-9.2, r. 15, s. 1, 2, para. 7 and 14, 5 and 6, para. 5 and 8.

711 See: Autorité des marchés financiers (Isabelle N. Tremblay), *Guide for Responsible Officers*, 2nd ed., 2024. See also: Autorité des marchés financiers, Responsible officer and independent representative – Responsible officer and *Regulation respecting the registration of firms, representatives and independent partnerships*, CQLR c. D-9.2, r. 15; Autorité des marchés financiers, *Governance and Compliance Guide under the Act respecting the distribution of financial products and services*, 3rd ed., June 2021.

or partner in charge, in particular with respect to the keeping of client files, books and records, and the handling of complaints (ss. 3 and 4, *Regulation respecting the registration of firms, representatives and independent partnerships*).

4.3.2.6 Common registration conditions

Whenever the AMF refuses to register a firm, independent partnership or independent representative, it must notify the applicant in writing, specifying the reasons for the refusal (s. 7, *Regulation respecting the registration of firms, representatives and independent partnerships*).

Registration validity period

Registration is valid until the firm, independent partnership or independent representative is struck off the AMF's roll. To maintain its registration, the firm, independent partnership or independent representative must send annually, within 45 days of a request by the AMF, the declarations and documents required by section 10 of the *Regulation respecting the registration of firms, representatives and independent partnerships* (ss. 78 and 132, Distribution Act; ss. 7, 8 and 10, *Regulation respecting the registration of firms, representatives and independent partnerships*).

4.3.2.7 Obligations of registrants

In carrying on business, a firm, independent partnership and independent representative must comply with certain obligations prescribed by the Distribution Act and the *Regulation respecting firms, independent representatives and independent partnerships*.

General obligations of firms and independent partnerships

The Distribution Act sets out a general obligation for firms and independent partnerships to act with honesty, loyalty, care and competence (ss. 84 and 146). Firms and independent partnerships must ensure that their representatives act in accordance with the Distribution Act and its regulations. Firms must oversee the activities of their representatives, since under the Distribution Act, they are responsible for any injury caused to a client due to the fault of one of their representatives in the performance of his functions (ss. 80, 85 and 137, Distribution Act).

Furthermore, a firm wishing to terminate its association with one of its representatives, an independent representative, or an independent partnership for reasons relating to his or its activities must promptly inform the AMF of those reasons in writing. A firm that informs the AMF of such reasons will not be held civilly liable in respect of those activities. That is why firms must be careful when selecting their business and distribution networks (ss. 104 and 105, Distribution Act).[712]

712. See CLHIA *Guideline G8 ("Screening Agents for Suitability and Reporting Unsuitable Agents")* and CLHIA *Guideline G18 ("Insurer-MGA Relationships")*.

EXAMPLE

The financial services firm *Assuretout inc.* notices that Louis, its representative, has not given the insurer the premium paid by an insured, as prescribed by section 102 of the Distribution Act. Asked about it by Maryse, the officer in charge of the firm, Louis admits that he used the money to pay off some personal debts. He also admits that he stole money from the firm's petty cash from time to time. Under these circumstances, Maryse terminates her association with Louis and informs the AMF of the situation, stating that Louis's conduct was the reason for her decision.

To register, a firm must show that it has professional liability insurance covering its faults and those of its employees. Every representative attached to a firm without being an employee must also be covered by insurance (s. 76, Distribution Act).

A firm will only be allowed to register on certain conditions, including whether the directors or officers show, in the opinion of the AMF, the required honesty, competence and solvency (s. 79, Distribution Act).

A representative who acts alone and has a corporation must attach himself to his own firm in order to carry on business, and must be able to comply with the requirements imposed on an officer, as he is deemed to have the necessary competence to act as such.

The AMF may refuse registration for a given sector, or impose restrictions or conditions for registration (s. 78, Distribution Act), where:

- the applicant's registration has previously been cancelled;
- the registration of a director or an officer of the applicant has previously been cancelled; or
- a partner in an independent partnership, or a director or officer of a firm, has previously had his registration cancelled.

An insurance representative can be attached to (act on behalf of) one or more firms (without necessarily being an owner of one or more of these firms). However, an insurance representative cannot be both attached to a firm and registered as an independent representative with the AMF.

General obligations of independent representatives

An independent representative has the same obligations as firms and independent partnerships with respect to the keeping of records and files, the keeping of a separate account, and the terms and conditions of registration, among other things. He answers directly to the AMF with respect to maintaining his registration as an independent representative. Moreover, he answers for his actions before the discipline committee of the *Chambre de la sécurité financière* with respect to the ethical aspects of his practice. He may therefore be sanctioned both by the disciplinary

committee for a breach of professional ethics and by the AMF for the same action. An independent

representative may not be bound by an exclusive contract to a single insurer.

Lastly, the AMF may refuse to register an applicant as an independent representative, or impose restrictions or conditions for registration, if the applicant's registration for that sector has previously been cancelled (s. 132, Distribution Act).

4.3.3 Advertising, representations and client solicitation

4.3.3.1 Mandatory information

Firms, independent partnerships and independent representatives must, in all advertising, representations or client solicitation, use their names or, where applicable, the other names they use in Québec in the pursuit of their activities. They must also use the title under which they carry on business. They may not use a trademark, slogan, symbol or any other thing that is likely to cause confusion or purport that their actions performed in the pursuit of their activities are approved or recognized by the AMF. Thus, they may not falsely, by any means whatsoever, claim that a particular service or product is recognized by a particular organization, or appear to promise results that they are unable to provide. The financial products sold and the financial services rendered by firms, independent partnerships or independent representatives must comply with their representations and advertising. False, misleading or deceptive representations are prohibited (subs. 223 [6] and [7],) Distribution Act; ss. 1 to 5, *Regulation respecting firms, independent representatives and independent partnerships*).

It should also be noted that, pursuant to the *Regulation respecting information to be provided to consumers*, insurance representatives who claim fees from their clients must so inform the client in writing before or at the time services are rendered. When claiming fees, the insurance representative must specifically disclose the fees claimed and the fact that they are receiving a commission or sharing a commission (and, in such case, the name of the person with whom they are sharing the commission). Pursuant to the same regulation, they must, when so requested by the client, disclose the name of insurers whose products they are authorized to offer.

Activities not governed by the Distribution Act

Where, in respect of an activity not governed by the Distribution Act (such as a contest), a firm or independent partnership, through a representative, engages in advertising or client solicitation for the purpose of selling a financial product or providing a financial service, it must indicate its title and the fact that it distributes financial products and services (s. 11, *Regulation respecting firms, independent representatives and independent partnerships*).

4.3.3.2 Written representation

A written representation (such as a sales or advertising brochure) must describe the service or product without emphasizing its advantages to the detriment of its disadvantages (s. 8, *Regulation respecting firms, independent representatives and independent partnerships*).

4.3.3.3 Approval

The advertisement of a financial product must be approved in advance by the person who markets it (e.g., the insurer) (s. 10, *Regulation respecting firms, independent representatives and independent partnerships*).

4.3.3.4 Statistics

The use of statistics is allowed in advertising and written representations provided their source is clearly identified. In advertising, the financial products, services or methods of competitors may not be criticized (ss. 6 and 9, *Regulation respecting firms, independent representatives and independent partnerships*).

4.3.4 Keeping of books, registers and records

All independent partnerships, firms and independent representatives must keep the following up to date in an establishment in Québec (ss. 88 and 139, Distribution Act):

- accounting books and registers necessary to record transactions carried out in connection with their activities (s. 1, *Regulation respecting the keeping and preservation of books and registers*);
- a register of the separate account in which the sums received on behalf of others are deposited (s. 1, *Regulation respecting the keeping and preservation of books and registers*);
- client records (ss. 17 to 21, *Regulation respecting firms, independent representatives and independent partnerships*);
- a commissions register which contains information on the sharing of commissions (ss. 22 and 23, *Regulation respecting firms, independent representatives and independent partnerships*);
- a complaints register (s. 26, *Regulation respecting firms, independent representatives and independent partnerships*);

- a register of the incentives they introduce for representatives that includes a description of the terms and conditions of each incentive introduced (its duration, related benefits, applicable products or services, a description of the group of representatives concerned, and the names of the winners, if any). Incentives do not include pay programs, but they include contests, sales clinics and promotional items (s. 28.1, *Regulation respecting firms, independent representatives and independent partnerships*).[713]

4.3.4.1 General

4.3.4.2 Use of computers

Computers, or any other data processing method, may be used to keep books, registers and records, provided that reasonable steps are taken to prevent the loss, destruction or falsification of information. Moreover, a firm, independent partnership or independent representative must be able to provide the information contained in each client record within a reasonable time, and in a precise form that is comprehensible to any person authorized under the Distribution Act to audit the records. To the extent permitted by the Distribution Act, such books and records may be consolidated in one document or file, provided that all required information is recorded in that document and that the client records prescribed by the *Regulation respecting firms, independent representatives and independent partnerships* can be separated from it (s. 89, Distribution Act; s. 3, *Regulation respecting the keeping and preservation of books and registers*; ss. 13 to 16, *Regulation respecting firms, independent representatives and independent partnerships*).

4.3.4.3 Retention period for books and records

All firms, independent representatives and independent partnerships must preserve the books and records prescribed by the *Regulation respecting the keeping and preservation of books and registers* (s. 13) for five years as of their closing.

Client records and the supporting documents used to prepare them must be preserved for at least five years from the last of the following events (ss. 15 and 16, *Regulation respecting the keeping and preservation of books and registers*):

- the final closing of the client record;
- the date the last service was rendered to the client;
- the expiry without renewal, or the replacement of the last product sold to the client, as the case may be.

713. See AMF notice *Avis relatif à l'application du Règlement sur l'exercice des activités des représentants, R.R.Q., c. 9.2, r. 10 (Loi sur la distribution de produits et services financiers)* (available in French only), published on July 25, 2013 (Section III – Les mesures incitatives – article 5).

The information regarding the separate account contained in the accounting books and registers must also be retained for at least five years after the last registration (s. 14, *Regulation respecting the keeping and preservation of books and registers*).

Subject to the provisions of other acts or regulations, sales, service or accounting transactions dating back more than five years may be removed from such books and registers.

In addition, in accordance with the *Tax Administration Act*, any business or person who operates a business must hold books and records that contain the information enabling one to establish any amount that must be deducted, withheld, withdrawn, or paid to comply with tax legislation.[714]

4.3.4.4 Destruction of accounting books and registers and client records: personal information

The destruction of accounting books and registers containing personal information and the destruction of client records must be done in a manner which keeps the information confidential (ss. 13 and 18, *Regulation respecting the keeping and preservation of books and registers*).[715]

Rules respecting the protection of personal information

There are also specific rules relating to the protection of personal information, in particular with respect to the keeping of client records, and access to records and the information contained in them. Personal information is information that allows a natural person (i.e., an individual) to be identified (e.g., his name and address, which may be an electronic address).[716]

4.3.4.5 Client records

Firms, independent representatives and independent partnerships must keep client records for each of their clients. They may keep the information in a file in various locations on the condition that the information is recorded with the firm or the independent partnership, and that every client record can be provided within a reasonable time and in a precise form that is comprehensible to any person authorized under the Distribution Act to audit such records. When there is an inspection or inquiry following a complaint, client records must be accessible to the AMF inspector (s. 109, Distribution Act; ss. 12 and 15, *Regulation respecting firms, independent representatives and independent partnerships*).

714. *Tad Administration Act*, CQLR, c. A-6.002, art. 34. Every person required to keep registers shall preserve them, together with any (paper or electronic) supporting document that supports the information contained therein, for six years after the last year to which they relate (s. 35.1). In practice, to simplify the calculation of this period, firms keep these documents for at least seven (7) years after the end of their useful life.
715. See also *Act to establish a legal framework for information technology*, CQLR, c. C-1.1 ss. 6, para. 2, and 20. See also *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1, s. 10.
716. *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1, s. 2.

Client records: mandatory content for the insurance of persons and group insurance of persons sectors

In the insurance of persons and group insurance of persons sectors, a client record must include the following information for each client (s. 17, *Regulation respecting firms, independent representatives and independent partnerships*):

- the client's name;
- the client's address, telephone and fax numbers, and e-mail address, if any;
- where the client is a natural person (i.e., an individual), his date of birth where such information has been obtained by the insurance representative;
- the amount, object and nature of the product sold or service rendered, as the case may be;
- the policy number, contract issue dates, and the date of signature of the application or request for services, as the case may be;
- the name of the insurance representative involved in the transaction, and the method of remuneration for each product sold or service rendered to the client;
- the method and date of payment of the products sold or services rendered;
- a copy, in any medium, of the needs analysis; and
- a copy of the form completed at the time of replacement of an insurance policy, where applicable.

In the group insurance of persons sector, a client record must contain the following information, in addition to the information mentioned above:

- the name of the holder of the group insurance policy;
- the name of the policyholder's contact person;
- the calls for tenders and the bids submitted; and
- a copy of the mandate and the written report of the representative's recommendations to the policyholder (s. 20, *Regulation respecting firms, independent representatives and independent partnerships*).

The record may also contain any other information collected from the client, and documents relating to the products sold or services rendered to him.

4.3.4.6 Register for separate account

A separate account is a distinct account opened with a financial institution. The firm, independent representative or independent partnership must deposit in it all amounts received or collected on behalf of others (subs. 10[1],) *Regulation respecting the registration of firms, representatives and independent partnerships*). The firm, independent partnership or independent representative must complete and send to the AMF a declaration relating to the opening of a separate account.

Separate account: mandatory content

The register relating to the separate account must contain the following information (s. 7, *Regulation respecting the keeping and preservation of books and registers*):

- the client's name;
- the number of the insurance contract, or any other contract in respect of which the representative has received an amount, as the case may be;
- the amount and object of the transaction; and
- in the case of a separate account kept by a firm or an independent partnership, the name of the representative involved in the transaction, when he may be identified.

4.3.4.7 Commissions register

Firms, independent partnerships and independent representatives must keep a register of commissions received.[717] Payment of a shared commission must not be made in cash and must be promptly entered in the commissions register (ss. 22, 24 and 25, *Regulation respecting firms, independent representatives and independent partnerships*).

The commissions register kept by a firm, independent representative or independent partnership must contain the following information (s. 22, *Regulation respecting firms, independent representatives and independent partnerships*):

- the contract number or client name, as the case may be;
- the name of the client, the insurer, or any other person who has paid a commission to the firm, independent representative or independent partnership; and
- the statement pertaining to each commission or other remuneration received by the firm, independent representative or independent partnership.

If the statement contains the information indicated in the first two items above, the filing of the statement in the commissions register is sufficient.

Where commissions are shared, the register must contain the following information (s. 23, *Regulation respecting firms, independent representatives and independent partnerships*):

- the name and business address of each person sharing the commission and the sectors, if applicable, for which they are registered with the AMF;
- the names of the parties to the transaction and the object and date of the transaction; and
- the percentage of the commission or the fixed amount resulting therefrom, and the manner in which the commission is allocated between the persons sharing it.

717. See: Autorité des marchés financiers, *Payment of remuneration – Representatives and Registrants*.

See the preceding sections (sections 4.3.2.1, 4.3.2.2 and 4.3.2.3), which indicate with whom a commission can be shared.[718]

4.3.5 Complaint examination

Firms, independent partnerships and independent representatives must have a complaint examination and dispute resolution policy and must maintain a complaints register. A standard policy is available on the AMF Web site[719] for use by firms, independent partnerships and independent representatives as a basis for their own policies.

Firms must provide equitable resolution of complaints filed with them.[720] The new provisions in sections 103 to 103.4 of the *Act respecting the distribution of financial products and services* add requirements relating to fair treatment.

The framework applicable to the processing of complaints from consumers of financial products and services will change as of July 1, 2025, the date on which the *Regulation respecting complaint processing and dispute resolution in the financial sector*.721 From this date, complaints from consumers of financial products and services must also be processed in accordance with the rules and practices specified in this regulation.

4.3.5.1 Definition of “complaint”

According to the AMF Web site, a complaint is the expression of one of the following three elements that persists after having been considered and examined by a person with the authority to make a decision:

- a reproach against a firm, independent partnership or independent representative;
- the identification of potential or real harm a consumer has suffered or may suffer;
- a request for remedial action.

A complaint is generally expressed in writing by letter, e-mail or fax, or in any other form that allows it to be kept on file. If a consumer lodges his complaint by phone or in person and the complaint is

718. Autorité des marchés financiers, *Sharing of commissions*; Autorité des marchés financiers, *Sharing of commissions – Rules*; and Autorité des marchés financiers, *Payment of remuneration – Representatives and Registrants*.
719. Autorité des marchés financiers, *Your complaint examination obligations*.
720. In September 2018, Canadian insurance regulators published their expectations for the fair treatment of customers in a guideline prepared by the CCIR and CISRO entitled *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*.

721 *Regulation respecting complaint processing and dispute resolution in the financial sector*, M.O., 2024-01. See also: Autorités des marchés financiers, *Complaint examination*.

handled and examined by the person responsible for examining complaints who is designated as such in the policy of the firm, independent partnership or independent representative, it must be documented so that it can be kept on file.

It should be noted that an initial expression of dissatisfaction by a consumer, whether written or not, is not a complaint when such dissatisfaction is dealt with in the normal course of business of the firm, independent partnership or independent representative.

4.3.5.2 Complaint procedure

A consumer who believes he has been harmed may use the complaint examination and dispute resolution procedure set up by the firm, independent partnership or independent representative. To do so, the consumer must submit a complaint in writing. Within 10 days after a complaint is registered in the complaints register that it maintains, the firm must send the complainant a notice stating the complaint registration date; it must also state the complainant's right to have his complaint file examined by the AMF or the federation. The AMF Web site provides a sample acknowledgement of receipt.[722]

A consumer who is dissatisfied with the settlement offered may ask the firm, independent partnership or independent representative to send a copy of his file to the AMF, which will examine the complaint and possibly offer the parties mediation.

4.3.5.3 Complaints report[723]

Once a year, firms, independent partnerships and independent representatives must declare to the AMF the complaints they have received from consumers of financial products and services. The following information must be provided for each complaint:

- the complaint reference number assigned by the firm, independent partnership or independent representative;
- the business sector (type of industry);
- the complaint categories (reasons for the complaint);
- the date the file was opened;
- the date the file was closed;
- the postal code (at least the first three characters);
- how the complaint was resolved (outcome of the complaint);
- whether the complaint will result in legal proceedings (if known);
- whether the complaint will have a broad impact or systemic application;
- whether the subject of the complaint is covered by the policies and procedures of the firm, independent partnership or independent representative; and
- whether or not the complaint was transferred to the AMF.

722. *Autorité des marchés financiers*. *Example: Acknowledgment of receipt – Including notice.*
723. See the *Notice relating to the redesigned complaint reporting process*, published by the AMF in its Bulletin dated November 3, 2022, pp. 38 and 39.

4.3.6 Protection of personal information: application of the *Act respecting the protection of personal information in the private sector*

The Distribution Act contains certain provisions relating to the confidentiality of personal information, its control and use. However, it is important to remember that confidentiality matters fall primarily under the *Act respecting the protection of personal information in the private sector*,[724] which establishes core principles, such as the need for clearly expressed consent for the collection, use and communication of personal information to third parties. You must therefore refer to the *Act respecting the protection of personal information in the private sector* when the Distribution Act does not answer questions that may arise. Furthermore, the information must be collected only from the person concerned, i.e., the client/insured, unless he consents to collection from third persons. The information must be up to date and accurate at the time the representative uses it.

Nonetheless, the Distribution Act sets out certain rules with respect to the keeping of client records and access to them, and the information they contain.

4.3.6.1 Keeping of client records: rules respecting the collection of personal information

A representative who acts on behalf of a firm or independent partnership must, when collecting personal information, transmit it to that firm or independent partnership. If he is acting on behalf of several firms, he must transmit the information to the relevant firm. Unless he has obtained the client's consent, he may only disclose the information to a person authorized by law, including a body responsible for preventing crime and statutory offences, an AMF inspector, or the syndic of the *Chambre de la sécurité financière* if, in such a case, a complaint has been made against another representative (s. 23, Distribution Act).

4.3.6.2 Rules respecting access to client records by representatives

Firms and independent partnerships must ensure that their representatives only have access to the information necessary for the performance of their duties (ss. 89, 91, 92, and s. 146, para. 2, Distribution Act).

4.3.6.3 Obligation to obtain consent

When a firm wishes to give a representative access to information for purposes other than those for which it was collected, it must obtain the client's specific consent allowing the use of personal information about him.[725] Generally, at the outset, the representative obtains the client's consent to advise him on his overall financial situation.

724. *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1.
725. *Regulation respecting information to be provided to consumers*, CQLR, c. D-9.2, r. 18, s. 4.

4.3.6.4 Medical or lifestyle-related information: specific rules

Specific rules apply to the collection and use of medical and lifestyle-related information, regardless of whether such information is collected at the time an insurance product is purchased or when a claim form is submitted. In these cases, the insurer must record the information on a separate form (ss. 25 and 33, Distribution Act).

When an insurance product is purchased, an insurance representative acting for a firm offering both credit and insurance (but which is not an insurer) must forward the form containing information of a medical or lifestyle-related nature only to the insurer concerned, notwithstanding section 23 of the Distribution Act, which provides that the information must be disclosed to the firm. The representative may not keep a copy of the form, and may not disclose any information contained in the form to any other person (s. 35, Distribution Act).

4.3.6.5 Rules regarding claims

When an insured files a claim containing personal information of a medical or lifestyle-related nature with a firm that offers both credit and insurance, rather than with the insurer, his insurance representative cannot disclose to any other person the information that was brought to his attention, even if the client has given his authorization. The insurance representative must send the claim only to the insurer, and may not keep a copy of the claim. (ss. 36 and 37, Distribution Act).

4.3.7 Professional liability insurance

4.3.7.1 Mandatory coverage

To cover his professional liability arising from faults, errors, negligence or omissions, an independent representative must have professional liability insurance with coverage of not less than $500,000 per claim and, for each 12-month period (subs. 29(1), *Regulation respecting firms, independent representatives and independent partnerships;* subs. 17(1), *Regulation respecting the pursuit of activities as a representative*):

- $1,000,000 for an independent representative and a representative acting on behalf of a firm without being its employee by it;
- $1,000,000 for a firm or an independent partnership with three or fewer insurance representatives acting on its behalf; and
- $2,000,000 for a firm or an independent partnership with more than three representatives acting on its behalf.

It should be noted that pursuant to *Souscripteurs du Lloyd's* v. *Alimentation Denis & Mario Guillemette inc.*,[726] this insurance also covers gross faults committed by an insurance representative. However, professional liability insurance does not cover fraud or misappropriation. Nonetheless, in cases of fraud or misappropriation, consumers can file a claim for compensation with the *Fonds d'indemnisation des services financiers* (financial services compensation fund) administered by the AMF.[727]

4.3.7.2 Deductible

If a contract has a deductible, it may not exceed (s. 29[2]), *Regulation respecting firms, independent representatives and independent partnerships*; (s. 17[2]), *Regulation respecting the pursuit of activities as a representative*):

- $10,000 for an independent representative and a representative acting on behalf of a firm without being employed by it;
- $10,000 for a firm or independent partnership with three or fewer insurance representatives on its behalf; or
- $25,000 for a firm or independent partnership having more than three representatives acting on its behalf.

In all cases, the insurance must cover the professional liability of the representative, the firm and its employees, the independent representative, or the partners and representatives of the independent partnership arising from faults, errors, negligence, or omissions committed in pursuing their activities, or those committed by their mandataries, employees or trainees, regardless of whether or not such persons are still so engaged on the date of the claim.[728]

If a representative, a firm, an independent representative, or the partners and representatives employed by an independent partnership cease their activities (struck from the membership rolls, retired, deceased, suspended, or undergoing a change of career), the professional liability insurance contract must be maintained beyond the insurance period indicated in the contract for a further term of five years from the date the activities were ceased.[729]

The insurer must advise the AMF of its intention not to renew the professional liability insurance contract of one of its clients, or to cancel the contract 30 days prior to the date of non-renewal or cancellation. It must also advise the AMF upon receiving a notice of non-renewal or cancellation of

726. *Souscripteurs du Lloyd's v. Alimentation Denis & Mario Guillemette inc.,* 2012 QCCA 1376, jj. Morin, Dutil et Bich, paras. 97, 98 and 101, leave to appeal to the Supreme Court dismissed, April 4, 2013, No. 35011. See also: *Larrivée c. Murphy*, 2014 QCCA 305. jj. Pelletier, Morissette et Léger; *Audet* c. *Transamerica Life Canada*, 2012 QCCA 1746, jj. Dalphond, Doyon et Léger. See also sections 2414 and 2464 C.c.Q. and section 196 the Act respecting the *distribution of financial products and services*. Section 29 of the *Regulation respecting firms, independent representatives and independent partnerships* was amended to the same effect on June 1, 2023.
727. *Act respecting the distribution of financial products and services,* CQLR, c. D-9.2, s. 258. See: Autorité des marchés financiers, *Compensation fund*.
728. *Regulation respecting firms, independent representatives and independent partnerships*, CQLR, c. D-9.2, r. 2, subpara. 29(3)(c).
729. Ibid., subpara. 29(3)(d).

an insurance contract, and upon receiving any claim, whether or not the insurer decides to honour the claim.

Professional liability insurance protects representatives, firms, independent representatives, or partners and representatives employed by an independent partnership against a claim made by a client or beneficiary when there is any fault, error, negligence or omission committed in pursuing their activities, regardless of whether or not such persons are still so engaged on the date of the claim. A fault, an error, negligence, or an omission may consist in the commission of an unnecessary act, or the failure to perform an essential act, that could have monetary consequences or that could result in the loss of a right for the client or beneficiary. When a client or beneficiary exercises a recourse against a representative at fault, the representative must notify his professional liability insurer of the action taken against him. Under the professional liability insurance policy, the insurer protects the interests of the person who benefits from the coverage (the insurance representative), and defends him before the courts when the act is covered by the policy.

4.3.8 Distribution without a certified representative (DWR) and products and services offered via the Internet

The Distribution Act provides that certain insurance products may be offered on behalf of an insurer through distributors who are not certified by the AMF as representatives. The distributor is a person who, in pursuing professional activities in a field other than insurance, offers, as an accessory, an insurance product that relates to goods sold by the person or secures a client's adhesion in respect of such an insurance product (s. 408, Distribution Act).

Effective June 13, 2019, since the entry into force of the *Insurers Act* and the amendments to the Distribution Act, insurers (who must also be registered as insurance firms to do this) and insurance firms can offer insurance products via the Internet (insurance products offered without the intermediary of a natural person).[730]

To oversee DWR and the offer of insurance via the Internet without the intermediary of a natural person, the Minister of Finance approved the *Regulation respecting Alternative Distribution Methods*, established by the AMF, which came into force on June 13, 2019. The AMF also published a *Notice relating to the application of the Regulation respecting alternative distribution methods* on May 15, 2019 (which applies to both DWR and the offer of insurance via the Internet), in addition to publishing explanations on its Web site regarding the offer of insurance via the Internet.[731]

730. *Insurers Act*, CQLR, c. A-32.1, ss. 59 to 64, 67 and 68. See also new section 86.0.1 of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2. See also: Autorité des marchés financiers, *Products and services offered via the Internet – Digital transaction space*; and Autorité des marchés financiers, *Explanation regarding the Regulation respecting Alternative Distribution Methods*.
731. See: Autorité des marchés financiers, *Notice relating to the application of the Regulation respecting Alternative Distribution Methods*, May 15, 2019.

It is important to note that an insurance of persons representative who interacts with a client (at the client's request) while an insurance product is being purchased on line through a transactional site must provide his services in accordance with his professional obligations, even though, in theory, the client can purchase the insurance product in question without an insurance representative's involvement, pursuant to the *Regulation respecting Alternative Distribution Methods*.[732]

It should be noted that insurance products offered by distributors through the DWR regime can also be distributed by a distributor via the Internet. In such case, since the distributor is not an insurance firm, the rules applicable to insurers and insurance firms regarding insurance products offered via the Internet do not apply to distributors.

Although the offer of insurance via the Internet will not be discussed further in this manual, DWR will be examined in slightly more detail below.

4.3.8.1 Insurance products relating to goods

Mortgage life insurance is an example of an insurance product relating to goods offered by a distributor. Banks and credit unions (which, here, act as the distributors) offer life insurance in connection with their mortgage loans (the goods in question being the mortgage loans).[733]

Another example is the distribution of life or disability insurance at the time an automobile or a leisure vehicle is purchased or leased through a dealer[734] (distributor).

A distributor may also offer other types of insurance related to a product, such as: disability insurance, mortgage debtor employment insurance, credit card and debit card insurance, travel insurance, and vehicle rental life insurance, if the rental period is less than four months (ss. 424 and 426, Distribution Act).

732. *Chambre de l'assurance de dommages v. Siv*, 2021 CanLII 34842 (QC CDCHAD).
733. In a notice entitled *Avis relatif à la distribution de produits d'assurance par les courtiers en prêts hypothécaires, (art. 408 et suivants de la Loi sur la distribution de produits et services financiers)* (available in French only), dated December 9, 2005, the AMF stated that a mortgage broker could not act as the distributor under sections 408 et seq. of the *Act respecting the distribution of financial products and services*. However, a mortgage broker can refer clients to an insurance firm and receive a share of the insurance firm's commission pursuant to section 100 of the *Act respecting the distribution of financial products and services*. In this regard, see the AMF notice entitled *Avis relatif à l'indication de clients en application de la Loi sur la distribution de produits et services financiers* (available in French only), dated October 8, 2010.
734. On June 21, 2018, the AMF published a *Notice regarding the offering of insurance products by automobile and recreational and leisure vehicle dealers*.

4.3.8.2 Summary (formerly distribution guide)

The *Regulation respecting Alternative Distribution Methods*, which came into force on June 13, 2019, sets out the obligations applicable to an insurer that offers insurance products through distributors.[735]

The insurer must ensure that the distributor provides the client with a fact sheet and a summary. The content of the fact sheet is prescribed by the AMF. It covers the topics specific to the context of the sale. The summary, prepared by the insurer, must include the information prescribed by the Regulation. The AMF has published a Summary Drafting Guide to help insurers communicate this information clearly and effectively.

The requirement to provide these documents replaces the requirement to provide a distribution guide, as previously stipulated by the Distribution Act. Insurers whose distributors were using a distribution guide prior to June 13, 2019 may continue to use it during the year following the coming into force of the Regulation. The AMF published two summary drafting guides.[736]

4.3.9 Sale of insurance in deposit institutions

Under the Distribution Act, the following financial institutions that maintain an establishment in Québec can register as a firms and, therefore, can theoretically offer insurance in their branches through the representatives attached to them (s. 72, Distribution Act):

- banks governed by the *Bank Act*;
- provincial trust companies;
- trust and loan companies (federal); and
- financial services co-operatives (credit unions).

735. This regulation replaces the *Regulation respecting distribution without a representative* (c. D-9.2, r. 8).
736. See: *Autorité des marchés financiers*, *Summary Drafting Guide – For clear, effective communication*, 2019, and *Autorité des marchés financiers*, *Summary Drafting Guide, Volume 2 – Graphic design for clear, effective communication*, 2021.

4.3.9.1 Legislative jurisdiction

Banks fall under federal jurisdiction, and their incorporation acts only allow them to carry out insurance transactions that are accessory to a loan or mortgage and to offer travel insurance.[737] Therefore, banks may not distribute insurance products through a representative.[738]

4.3.9.2 Distribution rules in deposit institutions

Only a representative attached to a firm can work in a deposit institution. An insurance representative cannot be assigned to current over-the-counter deposit and withdrawal transactions, or credit operations. However, he can however (ss. 29 and 129, Distribution Act):

- make credit referrals;
- provide credit advice (client's financial situation and needs); and
- grant credit for the purchase of an insurance product or for an investment.

4.4 Liability of representatives in connection with their mandate

In this section, we will look at all the rules relating to the liability of representatives in connection with their mandate. We will begin by analyzing the characteristics of the mandate. People unfamiliar with the law would undoubtedly like to know with certainty whether a representative is the mandatary of the insurer or the client. In reality, there is no single answer, because it depends on the circumstances. Consequently, the concept of mandate will be analyzed from a more practical perspective for the insurance of persons and group insurance sectors.

4.4.1 Mandate

The word "mandate" refers to a type of special contract governed by the rules set out in articles 2130, C.C.Q. Simply put, a mandate is a contract by which a person - —called the mandator - — confers on another person - —called the mandatary - —the power to represent him in the performance of a juridical act (legal transaction).

Mandate is therefore a legal fiction contractually binding the mandator to a third party with whom he has not dealt directly.

737. *Bank Act*, S.C. 1991, c. 46, ss. 416 and 418.1. See also the *Insurance Business (Banks and Bank Holding Companies) Regulations*, SOR/92-330, section on "authorized type of insurance." See also the *Mortgage Insurance Disclosure (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Canadian Societies) Regulations*, SOR/2010-69, and the *Mortgage Insurance Business (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Canadian Societies) Regulations*, SOR/2010-68.
738. *Bank Act*, S.C. 1991, c. 46, subs. 416(2). See also *Insurance Business (Banks and Bank Holding Companies) Regulations*, SOR/92-330, ss. 6, 7. 7.1, 8, 8.1, 9 and 10.

Special or general nature of mandate

A mandate can be special or general. The mandator determines the scope of the mandate he wishes to give.

The mandate contract is said to be special if the power of representation is given for a specific act, such as to sell a house. On the other hand, a contract of mandate is general if the power of representation is given for a series of actions.

EXAMPLE 1

Special mandate

Lisa gives Anne the mandate to look after her house while she is on vacation in Florida.

EXAMPLE 2

General mandate

Julie and Antoine run a bike manufacturing company. To break into the foreign market, they set up in Provence for one year. They give their daughter Isabelle a mandate to represent them here, in their absence, in both business and personal matters.

Nature of mandates

A mandate is a contract for the representation of the mandator (the individual who gives the mandate). However, for such a contract to be entered into, the mandatary must accept the power given by the mandator to represent him. In his role, the insurance representative sometimes acts as mandatary of the insurer (he delivers the policy), or of the firm to which he is attached, as the case may be, and of the client as well, with respect to certain acts. In the practice of his profession, the insurance representative may also deal with his clients' mandataries, including mandataries in the anticipation of incapacity. Therefore, it is important for a representative to understand the concept of mandates. Sometimes, the document establishing a mandate is called a power of attorney.

Gratuitous or onerous mandate

A mandatary may act with or without payment. A mandate with payment is called a mandate by onerous title. An insurance representative is usually remunerated for the services he renders, either through a salary, commission, performance bonus or other payment.

Obligations of the mandatary towards the mandator

The mandatary has obligations towards the mandator. He is bound to fulfill the mandate he has been given and to act in good faith, with prudence and diligence, within the limits of the contract. He must also inform the mandator of his progress in the performance of the mandate. He must act in the “best interests” of the mandator and avoid placing himself in a situation of conflict of interest (art. 2138, C.C.Q.).

Obligations of the mandator towards the mandatary

The mandator also has obligations towards the mandatary, the most important of which is to co-operate with him and facilitate the performance of the mandate.

Obligations towards third parties

The mandatary is not personally liable towards the third party, as he is only representing the mandator.

However, if the mandatary exceeds the powers given to him, by acting beyond the agreed-upon scope of the mandate, he will be personally liable towards the third party, unless the mandator has ratified these acts. The mandator is liable towards the third party for all acts performed by the mandatary within the scope of his mandate.

4.4.1.1 Real mandate

According to article 2132, C.C.Q., acceptance of a mandate may be express or tacit. Acceptance is express when the mandatary clearly expresses his intention to act for the mandator. It is tacit when it may be inferred, often from the acts carried out. How the mandatary acts therefore allows the mandator to assume that his offer was accepted. This is the case where the person designated as mandatary begins to act on behalf of the mandator, even if he says nothing about it to the mandator.

4.4.1.2 Apparent mandate

Under other circumstances, a mandate may only be apparent. There is an apparent mandate when no contract binds the alleged mandator to the alleged mandatary, but the facts suggest to third parties that there is a mandate. This specific case requires that the third party be protected; he must not suffer harm as a result of the apparent mandate. Thus, even if the mandatary acts without any real power, the mandator may have obligations towards the third party as if the mandatary had actually had the power to represent him.

However, in order to bind the mandator, the apparent contract must have certain characteristics (art. 2163, C.C.Q.).

Characteristics of an apparent mandate

There is an apparent mandate only if the mandatary has acted without the authority to represent the mandator.

Firstly, the third party must have acted in good faith. Remember that good faith is always presumed.

Secondly, the third party must have had reasonable grounds to believe that there was a mandate.

Finally, the mandator must have allowed the third party to believe that a person was his mandatary and, in circumstances in which the error was foreseeable, he must have failed to take appropriate measures to prevent it (art. 2163, C.C.Q.).

Even if the mandate was never entered into, if there is an apparent mandate, it nonetheless has effects: the mandator is bound towards the third party.

The presumption of an apparent mandate is not taken lightly. Indications consistent with such a mandate must suggest that it exists. However, it should be noted that the client, for example, does not have to verify the extent of the powers of a representative who gives him his business card.

The client often does not know what limits are in the representation contract. The client cannot know that the representative in insurance of persons does not have the power to bind the insurer for all types of products. An insured who may have been misled must be protected.

In the case of an apparent mandate, it is possible that a contract has in fact been entered into between the insurer and the client, even if the representative has accepted a risk exceeding the powers set out in his representation contract.[739] Note that the rules of apparent mandate apply if the client is in good faith. Of course, the insurer has a recourse against the representative.

The following are three examples in which a client is led to believe there is a mandate:

EXAMPLE 1

Lucas took out life insurance on the life of his son, Max. A few years later, he wants to increase the coverage, so he meets with Jean, the insurance of persons representative who had him take out the life insurance eight years earlier. Jean gives Lucas a document printed on the letterhead of the insurer that issued the life insurance policy for Max. It contains all the conditions relating to the increase in coverage under the policy. In this situation, the client has every reason to believe that the representative is still acting on behalf of the same insurer, and that he therefore has a real, or at the very least, an apparent mandate. Nothing suggests that such a mandate has been withdrawn.

739. Only if the mandator has ratified the mandatary's acts that exceed the limits of his mandate (art. 2160 C.C.Q.).

EXAMPLE 2

To renew the master group insurance policy for the employees of the confectionery company *Les sucreries de l'Est inc.*, Marc, who is in charge of human resources and benefits, meets with the group insurance plan adviser who has been doing business with the insurance company *Assuretout inc,* for three years. The adviser gives Marc a mandate and a document on the insurer's letterhead containing all the conditions for the renewal of the group insurance master policy for the company. In this situation, the policyholder (the employer) has every reason to believe that the group insurance representative is still acting on behalf of the same insurer, and that he therefore has a real mandate or, at the very least, an apparent mandate. Nothing suggests that such a mandate has been withdrawn.

EXAMPLE 3

At the time he renews his insurance policy, the client has every reason to believe that the insurance representative is still acting on behalf of the same insurer, and that he therefore has a real, or at the very least, an apparent mandate. Sometimes, there is nothing to suggest that such a mandate has been withdrawn.

4.4.1.3 Representation contract

Role of the representation or distribution contract

The relationship between the insurer and the insurance representative is generally set out in a document called a "distribution contract" (also referred to as a "representation contract"). Other terms may also be used to refer to the same type of contract. Usually, the insurer has a contract with a firm (which may be a general agent) and a contract with the independent representatives. The firm will also have a contract with the representatives acting on its behalf.

In general, the distribution contract sets out the extent of the powers given to the insurance representative. It sets out the responsibilities of the insurer, the firm and the representative towards the client. In this regard, the insurance representative may be the mandatary of the insurer or the client (the policyholder in group insurance). Under a representation contract, the insurance representative may be authorized to bind the insurer for specific acts or classes of insurance, up to certain predetermined amounts.

The distribution contract sets out the limits of the authority given by the insurer and, thus, the power of representation. The insurance representative may not exceed these limits. The insurer generally has no obligation towards the client, the policyholder or the member if the insurance representative exceeds the bounds of the authority conferred by the insurer.

Consequently, when an insurance representative exceeds the limits of the distribution contract, he is personally liable. He must therefore notify his liability insurer. As previously mentioned, it is not always easy to know whether a representative is the mandatary of the insurer or the client. The answer varies depending on the circumstances.

4.4.2 Insurance of persons representative: mandatary

An insurance of persons representative, whether or not he represents an insurer exclusively, will be required at some point to act as mandatary of the insurer and as mandatary for the client.

4.4.2.1 Insurance of persons representative: mandatary of the insurer

In general, an insurance of persons representative who offers products on behalf of a single insurer acts as mandatary of that insurer.

A representative who acts on behalf of several insurers is the mandatary of one of them when he carries out acts on behalf of that insurer. Such acts may be one of those described below.

When ascertaining the client's identity

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[740] is important. Its purpose is to detect individuals and companies involved in criminal activities, and to deter money laundering.

Insurance representatives are part of the process, because permanent and universal life insurance products as well as non-registered annuity contracts can be used as a means to create, accumulate and transfer wealth.

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("the Act") introduces mechanisms to ensure that the right person or entity is dealt with, to identify individuals and entities taking part in criminal activities, and to discourage money laundering.

An insurance of persons representative has specific obligations under the Act and its regulations in order to help combat money laundering and terrorist financing in Canada.

The representative is required to verify the identity of any person or entity (hereinafter "the client" or "the beneficiary") for whom an information record is kept regarding the sale of an immediate or deferred annuity or a life insurance policy:

- for which the client may pay $10,000 or more over the duration of the annuity or policy;
- for which a beneficiary may receive $10,000 or more over the duration of the annuity or policy.

740. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c.17.

FINTRAC defines “beneficiary” as the individual or entity that will benefit from a transaction or to which the final remittance is made.[741] This very broad definition covers any annuity payment or surrender transaction, in addition to death benefit payments.

The representative must therefore, on the one hand, verify the client’s identity in connection with the sale, if the client may pay $10,000 or more over the duration of the annuity or policy. On the other hand, he must verify the identity of the beneficiary indicated in the information record before the first payment is made to the beneficiary, if that beneficiary may receive $10,000 or more over the duration of the annuity or policy.

In all cases, the identity must be verified within 30 days of the creation of the information record, regardless of the means of payment. The representative must at all times record the required information in the client’s file.[742]

Moreover, an identity need not be verified again if:

- the identity of an individual has already been verified, or the existence of an entity has already been confirmed using a method permitted by the Act and its regulations (permitted methods are discussed later);
- the required documents are kept on file; and
- no doubt remains as to the information obtained.

Specific exceptions apply to the identity verification obligation. For example, an insurance of persons representative is not required to verify the identity of a person or confirm the existence of an entity at the time of purchase of a registered individual or group annuity contract (RRSP, RRIF, LIRA, LIF, DPSP, RPP, TFSA, etc.), exempt life insurance contract,[743] and accident and sickness insurance contract without a cash surrender value.

However, in some circumstances, an identity verification may nevertheless be required by the insurer for exempt plans or products. Where applicable, an identity verification allows the insurer to confirm the client’s age or comply with its obligations under the *Foreign Account Tax Compliance Act* (FATCA)[744] and the *Common Reporting Standard*[745] (Parts XVIII and XIX of the federal *Income Tax Act*), two international initiatives aimed at countering tax evasion by citizens or residents of other countries with accounts in Canada, and vice versa.

741. See: FINTRAC, *Guidance glossary*.
742. *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, subss. 62(2) and 19(1).
743. *Income Tax Regulations*, C.R.C., c. 945, s. 306.
744. On February 5, 2014, Canada and the United States signed an intergovernmental agreement (IGA) under the *Canada-United States Convention with Respect to Taxes on Income and on Capital* for the purpose of enhancing the exchange of tax information and integrating FATCA provisions into the Canadian legislative framework.
745. See: Canada Revenue Agency, *Guidance on the Common Reporting Standard – Part XIX of the Income Tax Act*, April 5, 2024.

For non-exempt insurance and annuity contracts, the insurance of persons representative is required to verify the client's or beneficiary's identity using one of the methods permitted by the Act and its regulations. The representative must do so for each policyholder or owner, including any co-policyholders, and for each beneficiary.

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the representative is required to properly verify the client's identity.

Methods to verify the identity of persons and entities:[746]

FINTRAC describes five (5) methods to verify the identity of a person or an entity.[747] The approach depends on the type of client or beneficiary (individual, corporation, or other entity) and the context (in the client's or beneficiary's presence or absence):[748]

1) Government-issued photo identification method

- The identification document must show the individual's name and contain the individual's photo;
- The document must be valid, current and original;
- The document must contain a unique identification number;
- The name and photo on the document must match the name and appearance of the person being verified.

Some examples include a Canadian passport, a permanent resident card, a Secure Certificate of Indian Status, a driver's licence, and provincial or territorial identification cards.

In Québec, an insurance representative cannot ask to see a person's health insurance card, but can accept it if that person presents it for identification purposes. In Ontario, Manitoba, Nova Scotia or Prince Edward Island, such use is prohibited.

A social insurance card may not be used to verify identity, and a social insurance number (S.I.N.) may not be used in a report made to FINTRAC.[749] A S.I.N. is used for tax purposes only, and is required to that end in some types of insurance of persons contracts.

When verifying someone's identity based on a piece of photo identification, a representative must obtain and record the following information:

- the name on the photo identification;

746. See: FINTRAC, *Methods to verify the identity of persons and entities*, 2023-02-22.
747. *Ibid*.
748. FINTRAC does not recognize identification through a video conference or any other type of virtual application (for example, Skype). It is not enough to only view a person and their government-issued photo identification document through a video conference or another type of virtual application.
749. Office of the Privacy Commissioner, *Best Practices for the use of Social Insurance Numbers in the private sector*, July 2014. See also: Office of the Privacy Commissioner, *Protecting your Social Insurance Number*, July 2017.

- the type of photo identification used;
- the photo identification reference number;
- the place the photo identification was issued; and
- the expiry date of the photo identification.

2) Credit file method

A credit file is used as an identification method to verify the identity of a person who is not physically present. This method requires that consent first be obtained from the client or beneficiary before consulting the information contained in the credit file.

A specific independent identification product is then used to search the databases of a Canadian credit bureau (for example, Equifax Canada or TransUnion Canada). It is important to note that Canadian credit bureaus offer independent identification products that can be used to consult a credit file for identity verification purposes without affecting a person's credit score.

To use the credit file identification method, the search has to be performed at the same time as the identity verification. A credit file cannot be used if it was obtained at an earlier date, or if a copy was provided by the person to whom the file applies.

The search results must meet the following criteria:

- the client's or beneficiary's credit file must have at least three years of history, and must contain valid and current information;
- the name, address, and date of birth in the credit file must be the same as those provided by the client or beneficiary;
- the credit file must be Canadian, as foreign credit files are not accepted; and

The information in the credit file must be derived from more than one source, i.e., from more than one tradeline. The copy of the search results from Canadian credit bureau databases must be kept in the client file (the report produced by the Canadian credit bureau) and must contain the following:

- the source of the credit file (for example, the name and logo of the credit bureau);
- the name of the person whose identity is being verified;
- the credit file reference number; and
- the date the credit file was consulted.

Where a Canadian credit bureau cannot authenticate even just one item of information on the client or beneficiary (for example, if the first name, last name, date of birth, or address does not match), or if the credit file is not Canadian, has less than three (3) years of history, or is derived from a single source (a single tradeline), the credit file method alone cannot be used.

At this point, another method must be used to verify the client's or beneficiary's identity.

3) Dual-process method

The dual-process identification method is used to verify the identity of a person that is not physically present. It requires performing two actions, consulting two independent credit transactions, or referring to two reliable and distinct sources to verify a client's or beneficiary's identity.

On the one hand, a specific independent identification product can be used to search the databases of a Canadian credit bureau (for example, Equifax Canada or TransUnion Canada), as the aggregator, to compile information from two independent credit transactions dating back at least six months. The client's or beneficiary's consent must have been obtained first.

These two credit transactions must have been carried out by the client or beneficiary with two independent and distinct business sources and must have two of the following three matches:

- the client's or beneficiary's name and address;
- the client's or beneficiary's name and date of birth; and/or
- the name and existence of a financial account in the client's or beneficiary's name with a financial institution.

Where a Canadian credit bureau cannot make two of the three matches mentioned above using two independent credit transactions dating back at least six (6) months, another solution must then be used to verify the client's or beneficiary's identity. Various combinations are possible. Below are two examples:

- an analysis of the search results from Canadian credit bureau databases yields a first match from among the ones mentioned above (for example, the Canadian credit bureau matched and confirmed the name and date of birth of the client or beneficiary), and the verification of a document from a reliable source yields a second match (for example, a statement issued by a Canadian federal government agency confirms the name and address of the client or beneficiary); or
- an analysis of the search results reveals that the Canadian credit bureau was unable to obtain any of the three matches mentioned above, in which case the representative must refer to information from two reliable and distinct sources, such as:
  - a statement issued by a Canadian federal government agency to confirm the person's name and address (first match); and
  - a deposit account statement confirming the person's name and the fact that he holds a deposit account in a financial entity (second match).

The information obtained must be valid and current and must be derived from different reliable sources.[750] Examples include statements, letters, certificates, forms, and other admissible and reliable information sources.[751]

750. Social media is not a reliable source of information for the purpose of verifying a person's identity. Moreover, the source cannot be the person whose identity is being verified or the person or entity verifying the identity.
751. Examples of reliable information sources for the dual-process method are provided on the FINTRAC web page entitled *Methods to verify the identity of persons and entities*, 2023-02-22, in Annex 5.

In all cases, the information provided by the client (first and last name, address and date of birth) must be the same as those obtained from the Canadian credit bureau, or derived from reliable and distinct sources. The following details must be recorded:

- the name of the person whose identity is being verified;
- the date the information was consulted;
- the names of the two different sources used in verifying the person's identity;
- the type of information used (for example:, a utility account statement, a bank statement, or a marriage certificate);
- the number associated with the information (for example, the account number or reference number); and
- the account number associated with each tradeline for information aggregated by a Canadian credit bureau.

4) Affiliate or member method

The identity of a person or an entity can be verified by confirming that one of the following entities has previously performed such a verification:

- an affiliate that is one of the following reporting entities (REs): bank, foreign bank, co-operative credit society, savings and credit union, *caisse populaire*, life company, foreign life company, trust company, loan company, or a person or entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity;
- an affiliate carrying out outside of Canada activities similar to those listed above;
- a financial entity subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and member of the financial services co-operative or credit union central of the insurance of persons representative carrying out the verification.

The name, address, and date of birth in the records of the affiliate or the member financial entity must match the information provided by the person whose identity is being verified. For a corporation or other entity, the records of the affiliate or member financial entity must state that an admissible document was used and retained to confirm its existence, and that its name, its address, and the names of its directors were verified and recorded.

The affiliate or member financial entity must have previously verified:

- the identity of the person using the government-issued photo identification method, credit file method or dual-process method described earlier; or
- the identity of the corporation or other entity using the confirmation of existence method. This method is discussed in detail later.

If the affiliate or member financial entity verified the person's or entity's identity prior to June 1, 2021, it must have done so pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* using the methods in place at the time of the verification.

When an affiliate or a member financial entity has previously verified a person's identity, the following information must be recorded:

- the name of the person or entity whose identity was verified;
- the date the identity was verified;
- the name of the affiliate or member financial entity that verified the person's or entity's identity;
- the method used to verify the person's or entity's identity; and
- the information and/or documents recorded by the affiliate or member financial entity according to the method used (including the date the identity was verified by the affiliate or member financial entity).

5) Reliance method

A person's or entity's identity can be verified by relying on the measures already taken by:

- another RE from among the following: bank, foreign bank, co-operative credit society, savings and credit union, *caisse populaire*, life company, foreign life company, trust company, loan company, or a person or entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity; or
- an entity that is affiliated with the insurance of persons representative or with another RE and carries out activities outside of Canada that are similar to those listed above (i.e., an affiliated foreign entity).

When another RE or an affiliated foreign entity has previously verified a person's or entity's identity, the information recorded and the documents required must be promptly obtained from the other RE or affiliated foreign entity. This information and documents must be valid and current, and must match those provided by the person or entity whose identity is being verified.

The other RE or affiliated foreign entity must have previously verified:

- the identity of the person using the government-issued photo identification method, credit file method or dual-process method described earlier; or
- the identity of the corporation or other entity using the confirmation of existence method. This method is discussed in detail later.

If the other RE or affiliated foreign entity verified the person's or entity's identity prior to June 1, 2021, it must have done so pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* using the methods in place at the time of the verification.

In addition, the other RE or affiliated foreign entity must have had a written agreement or arrangement that requires all of the information it had referred to in order to verify the person's identity to be provided as soon as feasible upon request.

Using a mandatary to verify the identity of a person

The insurance of persons representative can use a mandatary acting on his behalf to verify the identity of a person. A written agreement must previously have been reached with the mandatary to this effect.

The representative remains responsible for the identity verification under the Act and its regulations, even though this task is entrusted to the mandatary.

Any mandatary who verifies a person's identity on behalf of a representative must:

- use the government-issued photo identification method, credit file method or dual-process method described earlier;
- satisfy the current requirements for each of these methods; and
- record the required information.

If the mandatary verified the person's identity prior to June 1, 2021, he must have done so pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* using the methods in place at the time of the verification. The information obtained must meet the criteria for verifying the person's identity.

Verifying the identity of a corporation or other entity

To verify the identity of a corporation, an insurance of persons representative must consult one of the following documents:

- a certificate of incorporation;
- a record that the corporation has to file annually under provincial securities legislation; or
- the most recent version of any other record that confirms the corporation's existence and contains its name and address and the names of its directors, suwwch as a certificate of active corporate status, the corporation's annual report signed by an audit firm, or a letter or notice of assessment for the corporation from a municipal, provincial, territorial or federal government.

The record used must be authentic, valid and current.

The insurance of persons representative must obtain the corporation's name and address, and the names of its directors. To do this, a search may be performed in a provincial database (such as that of the *Registraire des entreprises du Québec*) or federal database (such as the Corporations Canada database). The insurance of persons representative can also obtain this type of information by subscribing to an on-line corporation search and registration service.

To verify the identity of an entity other than a corporation, the insurance of persons representative may use:

- a partnership agreement;
- articles of association; or
- the most recent version of any other similar record that confirms its existence and contains its name and address.

To verify the identity of a trust, the insurance of persons representative may use the deed of trust or, in the case of a testamentary trust, the will.

To verify the identity of a succession, the insurance of persons representative may use a copy of the death certificate, and the last will and testament of the deceased person.

The record used must be authentic, valid and current.

If the insurance of persons representative consults a paper or an electronic record, he must keep that record or a copy of it.

If the insurance of persons representative consults the electronic version of a record from a database accessible to the public, he must keep a record that includes the corporation's or other entity's registration number, the type of record consulted, and the source of the electronic version of the record.[752]

Signing authority resolution – Corporations

When the client or beneficiary is a corporation, the insurance of persons representative must obtain a signing authority resolution clearly designating the individuals duly authorized to act and sign on behalf of the corporation.

This record derives from the corporation's official registers and must be signed by all Board of Directors members entitled to vote on this resolution.

Examples of documents to be used as a resolution include the certificate of incumbency, meeting minutes and the corporation's by-laws.

A corporation is a legal entity separate from its shareholders. It may be incorporated under provincial or federal legislation and usually has a permanent existence, until its dissolution. Its aim is to operate an enterprise for the purpose of generating profit that will be distributed, as applicable, among its shareholders.

752. The FINTRAC web page entitled *Methods to verify the identity of persons and entities* (under point 6) also describes two other methods to verify the identity of a corporation or other entity.

Information on the ownership, control and structure of entities

The insurance of persons representative must obtain information describing the ownership, control and structure of entities:

- **corporation:** the names of all its directors and the names and addresses of all its beneficial owners;.
- **trust:** the names and addresses of all trustees, known beneficiaries and known settlors of the trust;.
- **widely held or publicly traded trust:** the names and addresses of all trustees and the names and addresses of all beneficial owners;.
- **succession:** the names and addresses of all liquidators or individuals who have control over the succession;.
- **other entity:** the names and addresses of the beneficial owners.

The insurance of persons representative must also take reasonable measures to confirm the accuracy of the information obtained, and must keep the records in which the required information appears when that information is first obtained and in the course of conducting ongoing monitoring of business relationships.

Verification of beneficial owners[753]

The insurance of persons representative must obtain the required information on beneficial owners pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

Beneficial owners are the individuals who directly or indirectly own or control 25% or more of a corporation or an entity other than a corporation.

In the case of a corporation, the beneficial owners are often its shareholders.

In the case of a trust, they are the trustees, the known beneficiaries, and the settlors of the trust.

In the case of a widely held or publicly traded trust, they are all of its trustees as well as all persons who directly or indirectly hold or control 25% or more of its units.

In the case of a succession, they are its liquidators.

Beneficial owners cannot be other corporations, trusts or other entities. They must be the individuals who are the owners or controllers of the entity.

It is necessary to search through all the possible layers of information of the chain of control of the corporation or other entity in order to determine the beneficial owners. It is important to consider and review the names found in the corporate, government or legal documents consulted in order to make certain that they match the names of the individuals who have actual ultimate control of the corporation or other entity.

753. See: FINTRAC, *Beneficial ownership requirements*, March 2021.

The insurance of persons representative must also take reasonable measures to confirm the accuracy of the beneficial ownership information when that information is first obtained and in the course of conducting ongoing monitoring[754] of business relationships.[755]

Third party determination requirements

A third party is the person or entity that instructs another person or entity to conduct an activity or financial transaction on their behalf. As such, the third party is the instructing party as to the handling of the money or the performance of the transaction or activity in particular, and is also understood to be the "on behalf of" party.

The insurance of persons representative must take reasonable measures to determine whether a third party is involved when a transaction or activity is carried out. This verification is carried out in order to identify a person or an entity that takes part in criminal activities relating to money laundering and terrorist activity financing and that has another person or entity carry out a financial transaction in its place.

Reasonable measures for third party determination include asking the client if they are acting at the instruction of another person or entity, or asking whether another person or entity will be instructing on the account. The reasonable measures the insurance of persons representative takes to make a third party determination must be documented in his compliance program's policies and procedures.

The insurance of persons representative must take reasonable measures to make a third party determination when he is required to:

- report a large cash transaction or keep a large cash transaction record;[756]
- report a large virtual currency transaction or keep a large virtual currency (VC) transaction record;[757]
- keep an information record.[758]

With regard to this last point, the reasonable measures for third party determination must be taken when the information record is created. However, some circumstances may subsequently arise, requiring another third party determination. This occurs, for example, when a mandate in anticipation of incapacity becomes enforceable, or when a new person or entity provides instructions regarding the annuity or life insurance policy.

754. See: FINTRAC, *Ongoing monitoring requirements*, February 2021.
755. See: FINTRAC, *Business relationship requirements*, February 2021.
756. See: FINTRAC, *Reporting large cash transactions to FINTRAC*.
757. See: FINTRAC, *Reporting large virtual currency transactions to FINTRAC*.
758. See: FINTRAC, *Record keeping requirements for life insurance companies, brokers and agents*, March 2021.

If the insurance of persons representative determines that a third party is involved, he must take reasonable measures to obtain the following information on the third party:

- if the third party is a person: their name, address, telephone number (not required if the third party determination is made for a large cash transaction or large VC transaction), date of birth, and occupation or, in the case of a sole proprietor, the nature of their principal business;
- if the third party is a corporation or other entity: its name, address, telephone number (not required if the third party determination is made for a large cash transaction or large VC transaction), the nature of its principal business, its registration or incorporation number, and the jurisdiction of issue of that number;
- the relationship between the third party and the following person or entity, as applicable:
  - the person who conducts the large cash transaction;
  - the person who conducts the large VC transaction;
  - the person or entity on whom the information record is kept on.

Regarding this last point, the relationship between the person or entity and the third party can be, for example, that of an accountant, a broker, a customer, an employee, a friend or a relative.

A third party determination should also be made when the person or entity making an annuity or life insurance policy payment is not the person or entity on whom the information record is kept. The purpose of this verification is to identify ploys aimed at concealing, or making it difficult to trace, the origin of sums derived from criminal activity.

There is an exception to third party determination whereby an insurance of persons representative does **not** need to make a third party determination when he keeps an information record on a beneficiary in connection with the sale of a life insurance policy under which he is to remit an amount of $10,000 or more to the beneficiary over the duration of the policy, regardless of the means of payment.

Politically exposed person (PEP) and head of international organization (HIO) determination

PEPs and HIOs are entrusted with a prominent position that typically comes with extensive access to considerable resources and the opportunity to influence decisions.

The access, influence and control that PEPs and HIOs have can make them vulnerable to corruption and the potential targets of criminals who could exploit their status and use them, knowingly or unknowingly, to carry out money laundering or terrorist activity financing offences. The family members and close associates of PEPs and HIOs are potential targets as well, because they can more easily avoid detection.

References to PEPs include both foreign and domestic PEPs.

A foreign PEP is a person[759] who holds or has held one of the following offices or positions in or on behalf of a foreign state:

- head of state, or head of government;
- member of the executive council of government, or member of a legislature;
- deputy minister or equivalent rank;
- ambassador, or attaché or counsellor of an ambassador;
- military officer with a rank of general or above;
- president of a state-owned company or a state-owned bank;
- head of a government agency;
- judge of a supreme court, constitutional court, or other court of last resort; or
- leader or president of a political party represented in a legislature.

These persons are foreign PEPs regardless of citizenship, residence status or birthplace. Foreign PEP status is permanent.

A domestic PEP is a person[760] who currently holds, or has held within the last five years, one of the following offices or positions in or on behalf of the Canadian federal government, a Canadian provincial (or territorial) government, or a Canadian municipal government:

- Governor General, lieutenant governor or head of government;
- member of the Senate or House of Commons, or member of a legislature;
- deputy minister or equivalent rank;
- ambassador, or attaché or counsellor of an ambassador;
- military officer with a rank of general or above;
- president of a corporation that is wholly owned directly by Her Majesty in right of Canada or a province;
- head of a government agency;
- judge of an appellate court in a province, the Federal Court of Appeal, or the Supreme Court of Canada;
- leader or president of a political party represented in a legislature; or
- mayor of a city, town, village, or rural (county) or metropolitan municipality, regardless of population size.

A person ceases to be a domestic PEP five years after leaving office.

759. Includes certain family members and close associates of a foreign PEP.
760. Includes certain family members and close associates of a domestic PEP.

A HIO is a person [761] who currently holds, or has held within the last five years, one of the following offices or positions:

- head of an international organization established by the governments of states; or
- head of an institution established by an international organization.

When we refer to the "head of an international organization, or the head of an institution established by an international organization," we are referring to the primary person who leads that organization, for example, a president or CEO.

There is no requirement for an institution established by an international organization to operate internationally; it is possible for it to operate only domestically or in one jurisdiction.

A person ceases to be a HIO five years after leaving office.

If a person is a PEP or a HIO, certain members of their family must also be considered PEPs or HIOs under the Act and its regulations. These family members are:

- their spouse or common-law partner;
- their biological or adoptive child or children;
- their mother(s) or father(s);
- the mother(s) or father(s) of their spouse or common-law partner (mother-in-law or father-in-law); and
- a child (children) of their mother or father (sibling).

A close associate can be an individual who is closely connected to a PEP or HIO for personal or business reasons. Some examples of a close association for personal or business reasons include, but are not limited to, a person who is:

- a business partners with, or who beneficially owns or controls, directly or indirectly, a business with, a PEP or HIO;
- in a romantic relationship with a PEP or HIO;
- involved in financial transactions with a PEP or HIO;
- a prominent member of the same political party or union as a PEP or HIO;
- serving as a member of the same board as a PEP or HIO;
- closely carrying out charitable works with a PEP or HIO; or
- the owner of a joint insurance policy with a PEP or HIO.

761. Includes certain family members and close associates of a HIO.

The insurance of persons representative must take reasonable measures to determine whether a person is a PEP, HIO, or family member or close associate of a PEP or HIO with respect to the following transactions:

- receipt of a lump-sum payment in the amount of $100,000 or more in funds, or an amount of VC equivalent to $100,000 or more, in respect of an immediate or deferred annuity or a life insurance policy; and
- remittance of an amount of $100,000 or more in funds, or an amount of VC equivalent to $100,000 or more, to a beneficiary over the duration of an immediate or deferred annuity or of a life insurance policy.

Some exceptions are described on the FINTRAC Web site.[762]

When the representative determines that a person is a foreign PEP, or a family member or close associate of a foreign PEP, he must consider that there to be is a high risk of a money laundering (ML) or terrorist activity financing (TF) offence being committed. Specific obligations apply to keeping records, establishing the source of the funds or VC used for the transaction, establishing the source of the foreign PEP's personal wealth, and having the transaction reviewed by a member of senior management.

When the representative determines that a person is a domestic PEP or HIO or a family member or close associate of a domestic PEP or HIO, he must finish the risk assessment[763] to determine whether a high risk of an ML or TF offence being committed exists. If the risk level is considered high, specific obligations apply to keeping records, establishing the source of the funds or VC used for the transaction, establishing the source of the domestic PEP's or HIO's personal wealth and having the transaction reviewed by a member of senior management.

A member of senior management is a person who has:

- the authority to make management decisions about transactions or accounts, and is accountable for them;
- awareness of the ML or TF risks to which the representative is exposed; and
- awareness and understanding of the representative's obligations related to PEPs, HIOs and their family members and close associates.

If the insurance of persons representative is a sole proprietor with no employees, agents or other persons authorized to act on his behalf, he is considered to be the senior manager.

The insurance of persons representative must keep a record of:

- the office or position and the name of the organization or institution of the PEP or HIO;

762. See: FINTRAC, *Politically exposed persons and heads of international organizations guidance for life insurance companies, brokers and agents*, section 2, May 2021. See also *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, ss. 67.2, 56.1 and 62(2).
763. See: FINTRAC, *Risk assessment guidance*, 2021-01-04.

- the date of the determination;
- the source of the funds or VC used for a lump-sum payment, or received from the annuitant of an immediate or deferred annuity or the holder of a life insurance policy, if known;
- the source of the person's wealth, if known;
- the name of the member of senior management who reviewed the transaction; and
- the date of that review.

The representative can also include a record describing the nature of the relationship between a family member or close associate and the PEP or HIO, as applicable.

Verifying the identity of a corporation or other entity

Obligation to report suspicious transactions to FINTRAC[764]

A suspicious transaction is a transaction or attempted transaction giving reasonable grounds to suspect that it is related to an ML or TF offence, whether or not it has been completed.

In general, a transaction could be related to an ML or TF offence if it (or a series of transactions) raises questions or causes doubt, concern or mistrust.

There is no threshold or minimum amount for reporting a suspicious transaction.

In addition to identifying suspicious transactions, the insurance of persons representative must also acknowledge the presence of ML or TF indicators.

ML or TF indicators are potential warning signs likely to trigger suspicions or indicate that something is unusual in the absence of a reasonable explanation. These signs generally stem from one or more facts, behaviours, models, or other contextual aspects that reveal irregularities in transactions.

A single indicator, in and of itself, might not be or appear suspicious, whereas in a given context, one or more indicators could arouse suspicion or cause unease. Below are a few examples:

- the client refuses to produce the required personal identification documents, wants to establish his identity through means other than his personal identification document, or inordinately delays in presenting his corporate documents;
- the client is accompanied and watched, secretive, nervous, or overjustifies himself;
- the client displays uncommon curiosity about internal controls, or unusual knowledge about legislation regarding suspicious transaction reporting;
- the client deposits large third-party cheques;
- the client shows more interest in the cancellation than in the long-term benefits of the product;

764. See: FINTRAC, *Reporting suspicious transactions to FINTRAC*, April 2020.

- the transaction is unnecessarily complex for its stated purpose;
- the transaction seems to be inconsistent with the client's apparent financial situation or usual pattern of activities; or
- the client gives a post office box address rather than the street address of a residence.[765]

The representative must have the means to detect, analyze, document and report suspicious transactions and attempted suspicious transactions. This includes:

- documenting the completed analysis and its result, including the evaluation of the facts and context surrounding the suspicious transaction, as well as the explanation of the link between this evaluation and the ML and TF indicators observed, and the grounds for suspicion noted;
- taking reasonable measures to verify the client's or beneficiary's identity, if not already done;
- submitting the suspicious transaction report to FINTRAC as soon as practicable after having taken the measures described above to establish that reasonable grounds exist to suspect that the transaction or attempted transaction is linked to the commission of an ML or TF offence. The report must include:
  - a description of the facts, the context, the ML and TF indicators observed, and the grounds for suspicion noted, as well as, where applicable, the suspected criminal offence related to ML or TF;
  - the reason the transaction or attempted transaction is linked to an ML or TF offence;
  - details of the completed analysis and its findings, in particular, supporting the link between the ML and TF indicators observed, the grounds for suspicion noted, and the findings of the analysis.

Suspicious transaction reports are confidential. In addition, the insurance of persons representative must not disclose to the client or beneficiary that an analysis has been completed regarding a suspicious transaction or that a report has been made to FINTRAC.

Failure to fulfill the obligation to report suspicious transactions may lead to financial administrative penalties and serious criminal sanctions.

The representative is protected from legal proceedings when submitting a suspicious transaction report to FINTRAC in good faith.

Obligation to report terrorist property to FINTRAC

In Canada, section 83.01 of the *Criminal Code* defines "terrorist activity" as an act committed "in whole or in part for a political, religious or ideological purpose, objective or cause" with the intention of intimidating the public "with regard to its security, including its economic security, or compelling a person, a government, or a domestic or an international organization to do or to refrain from doing any act."

765. See: FINTRAC, *Money laundering and terrorist financing indicators—Life insurance companies, brokers and agents*, January 2019.

"Property" is defined as anything owned or controlled by a person or entity, whether tangible or intangible. This includes:

- real and personal property, as well as deeds and instruments that give a title or right to property or to receive money or goods; and
- any property that has been converted or exchanged, or acquired from any conversion or exchange.

Examples of property include cash, monetary instruments (for example, cheques), bank accounts, prepaid payment products, securities, jewellery, precious metals or precious stones, real estate, and insurance policies.

Pursuant to subsection 83.01(1) of the *Criminal Code*, a terrorist group is defined as:

- an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity;
- a listed entity;[766] or
- an association or group of such entities.

The insurance of persons representative must fulfill the obligations under the *Criminal Code* and the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* for reporting terrorist property to FINTRAC.

On the one hand, the representative must have implemented documented measures and processes to check the list of his clients and identify any clients who appear on the official lists disseminated by Canadian oversight bodies.

On the other hand, when the representative knows that property in his possession or available to him belongs to a terrorist or terrorist group, or is available to them, he must report it to FINTRAC as soon as possible. He must also submit a report to the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS).

At the same time, if FINTRAC determines that there are reasonable grounds to suspect that the information represents a threat to Canada's security, he can also forward the information to CSIS.

Terrorist property reports differ from other reports submitted to FINTRAC, because a transaction or attempted transaction need not have been completed for the representative to submit a report. It is the mere existence of property (such as a bank account) owned or controlled by or on behalf of a terrorist group or listed person that prompts the obligation to submit a report to FINTRAC.

766. See the Public Safety Canada web page entitled *Listed Terrorist Entities*.

Terrorist property reports are confidential. In addition, the insurance of persons representative must not disclose to the client or beneficiary that an analysis has been completed regarding such property or that a report has been made to FINTRAC.

Failure to fulfill the obligation to report terrorist property may lead to financial administrative penalties and serious criminal sanctions.

The representative is protected from legal proceedings when submitting a terrorist property report to FINTRAC in good faith.

It is important to note that the obligation to submit a terrorist property report does not exclude the obligation to submit a suspicious transaction report to FINTRAC if a transaction was completed or attempted and the representative has reasonable grounds to suspect that it is linked to the commission or attempted commission of an ML or TF offence.[767]

Obligation to report large cash transactions to FINTRAC[768]

It should be noted that insurers rarely accept cash payments.

However, the insurance of persons representative must submit a large cash transaction report to FINTRAC if he receives:

- an amount of $10,000 or more in cash in the course of a single transaction; or
- two or more amounts that total $10,000 or more within a consecutive 24-hour window made by or on behalf of the same individual or entity.

He must submit the large cash transaction report to FINTRAC within 15 calendar days after the transaction.

He does not have to make a large cash transaction report to FINTRAC if the cash is received from:

- a financial entity (bank, credit union, *caisse populaire*, etc.); or
- a public body or its agent (government department or ministry, hospital authority, etc.).

For more information on this topic, see *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.[769]

767. Additional information is available on the FINTRAC web page entitled *Reporting terrorist property to FINTRAC*, under section 5.
768. See *Guideline 7A: Submitting Large Cash Transaction Reports to FINTRAC Electronically* and *Guideline 7B: Submitting Large Cash Transaction Reports to FINTRAC by Paper*.
769. See: FINTRAC, *Reporting large cash transaction to FINTRAC*.

Obligation to report large virtual currency (VC) transactions to FINTRAC[770]

It is important to note that insurers rarely accept payments or transactions in VC.

However, the insurance of persons representative must submit a large VC transaction report to FINTRAC if he receives:

- an amount in VC equivalent to $10,000 or more in a single transaction; or
- two or more amounts in VC that total $10,000 or more within a consecutive 24-hour window and the transactions were conducted by the same person or entity, or were conducted on behalf of the same person or entity, or are for the same beneficiary.

The representative must submit a large VC transaction report to FINTRAC within five working days after the day he receives the amount.

For more information on this topic, see the FINTRAC guideline on reporting large VC transactions.[771]

When information about the product is provided

When providing information about a product, insurers rely to a great extent on representatives to distribute their products and inform the public. The insurer's duty or obligation to inform is the cornerstone of a representative's responsibility. According to the Distribution Act,[772] a representative must describe the proposed products to the client in relation to the needs identified during the needs analysis, and specify the nature of the coverage offered. He must clearly indicate to the client any particular exclusion of coverage, and provide the client with an explanation.[773]

He must also provide a disclosure document about the products.[774] Where an insurance of persons representative sells an individual insurance of persons product or an individual annuity to a client, the representative must give the client, no later than on the date the policy is delivered, a legible document (in plain language) indicating the following:

- whether the insurance costs payable under the contract are guaranteed and, where applicable, for how long, and whether such amounts may fluctuate;
- whether the return on the amounts invested through the insurance product is guaranteed or not;
- whether the face amount of the insurance is guaranteed or may fluctuate;
- any specific exclusions contained in the contract;
- if a surrender fee or a penalty is payable if the contract is surrendered.

770. See: FINTRAC, *Reporting large virtual currency transactions to FINTRAC*.
771. *Ibid*.
772. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, s. 28.
773. *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, s. 16.
774. Ibid.

This document, which is usually prepared by the insurer, can be an explanatory brochure about the product or an illustration.

As regards individual variable insurance contracts (IVICs), pursuant to the AMF *Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds*, *the Regulation respecting information to be provided to consumers*[775] and CLHIA *Guideline G2 (Individual Variable Insurance Contracts Relating to Segregated Funds)*, the insurance representative must give the client the following documents:

- the application form (proposal);
- the annuity contract;
- the information folder;
- the key facts; and
- a fund facts summary.

When the proposal is drawn up

An insurer must always be meticulous when drawing up an insurance proposal. It needs this document to make an informed decision as to whether or not to insure the risk related to the health or age of the insured. An insurance of persons representative must ask the questions exactly as they are drafted in the insurance proposal and refrain from interpreting them. He must provide the insurer with all the information given by the insured, even, if some of it seems unnecessary. The decision is up to the insurer, as it is the only one able to determine the importance to be given to the information provided.

When an immediate or conditional cover note is given

For certain life insurance products, an immediate or conditional cover note takes effect when the proposal is signed if certain conditions are met. The cover note will be in effect for a period which varies from one insurer to another. When this document is given, the insurance of persons representative must follow the insurer's instructions, because he is effectively binding the insurer. Generally, the insurer will authorize the insurance of persons representative to give a cover note only to those persons who, according to their answers to the questions asked, appear to be in good health. An insurance of persons representative does not have the authority to change the terms of a cover note.

Upon payment of a sum of money

Section 102 of the Distribution Act states that any insurance premium paid to a firm or to one of its representatives for the account of an insurer is deemed to have been paid directly to the insurer. It also states that the obligations of an insurer who pays sums of money to a firm for the account of a client or the beneficiary of a client are discharged only when the client or beneficiary receives the money. The effect of section 102 is that, for this administrative act, the insurance of persons

775. *Regulation respecting information to be provided to consumers,* CQLR, c. D-9.2, r. 18, ss. 4.14 to 4.20.

representative is acting as mandatary of the insurer.

This has significant practical consequences. The client will be released from the payment owed to the insurer upon delivery of the amounts owed to the firm or to one of its representatives.

When the policy is delivered

When the insurance policy is delivered, the insurance of persons representative must check whether the insured is still in good health. If he notices significant changes in the client's insurability since the proposal was signed, he must not give him the policy. Instead, he must notify the insurer and wait for instructions. If, under such circumstances, the insurance of persons representative was to give the policy to the client, the client would have reason to assume that the insurance came into effect. However, the representative would be liable towards the insurer.

4.4.2.2 Insurance of persons representative: mandatary of the client

The previous section described the situations in which an insurance of persons representative acts as mandatary of the insurer. However, in certain circumstances, the insurance of persons representative acts as mandatary of the client. This may occur in the following situations.

When the needs of the client are analyzed

On June 27, 2019, the AMF published a *Notice regarding information collection and insurance advice*.[776] This is a very important five-page notice that every insurance representative should read carefully. With the amendments to section 27 of the Distribution Act, an insurance representative is no longer required to personally gather the information that is necessary to assess a client's insurance needs (art. 27, Distribution Act). This requirement prevented him in the past from asking another person (such as a non-certified assistant) to gather the information for him. Representatives who decide to mandate non-certified persons to collect client information must be aware of the related risks.

However, since the insurance representative "must inquire into [his client's] situation" (s. 27, Distribution Act) and this obligation comprises two components, that is, to (1) gather factual information on the client's situation, and (2) consult and analyze this information, even though the insurance representative can in a way delegate the first component, he cannot entrust the second component to a non-registrant. The representative must accomplish the task associated with this component himself.

Furthermore, the insurance representative also has an obligation to advise his client (s. 27, Distribution Act: "appropriately advise"). This obligation requires him to first inquire into his client's situation in order to determine and analyze that client's needs (so that he can guide the client's choices) and be able to provide the necessary information and explanations on the products he distributes. The result of this obligation is that the insurance representative must offer his client a suitable product. Otherwise, the representative must inform him that of all the products that he is

776. See: Autorité des marchés, *Notice regarding information collection and insurance advice*, June 27, 2019.

authorized to offer, none meet the client's needs. It is up to the representative to demonstrate that he has complied with all of these key steps.[777]

If, once his analysis is completed, an insurance of persons representative finds that the client does not need insurance, he must refrain from proposing insurance to him. To do otherwise would constitute an infringement of the *Code of ethics of the Chambre de la sécurité financière*. In a similar fashion to the obligations of a mandatary under the C.C.Q. (art. 2138), the *Code of ethics of the Chambre de la sécurité financière* requires that an insurance of persons representative subordinate his personal interests to those of the client and avoid any conflict of interest (ss. 18 and 19).

The offer of insurance products is an act reserved for insurance representatives who hold a certificate issued by the AMF (which must be that required for the sale of the said insurance product). However, advice is not a reserved act.[778]

Therefore, before completing an insurance proposal or offering an insurance of persons product containing an investment component (such as universal life insurance), including an individual variable insurance contract (segregated funds), the insurance of persons representative must analyze the needs of the purchaser or those of the insured. Such obligation of analyzing the needs of the client is required from all insurance representatives for all types of insurance products.[779]

Consequently, depending on the product, the insurance of persons representative must analyze with the client purchasing the policy, in particular, the policies or contracts in effect held by such purchaser (or by the insured, if he is not the purchaser), as the case may be;, the features thereof;, the name of the issuing insurers; the purchaser's investment objectives, risk tolerance and financial knowledge;, and all other necessary elements such as the income, financial situation, number of dependants, and personal and family obligations of the purchaser.

In addition, it is important to note that the obligation to analyze the client's needs and the obligation to provide the client with the necessary information and explanations regarding products continue notably with respect to annuity contracts (segregated funds) and universal life insurance policy contracts (thereby comprising an investment component). The insurance representative therefore can never perform a transaction without first being instructed by his client to do so. For example, an insurance representative who transfers Series B funds to Series A funds in the client's account, without having been instructed to do so by the latter, could be fined and/or reprimanded or have his certificate either suspended or revoked, depending on the circumstances.[780] It is therefore in the insurance representative's best interest to fully document his client file and obtain instructions from his client in writing regarding any transaction or operation.

---

777. See: Autorité des marchés financiers, *Notice regarding information collection and insurance advice*, June 27, 2019, p. 3.
778. *Ibid*.
779. See AMF notice *Avis relatif à l'application du Règlement sur l'exercice des activités des représentants, R.R.Q. c.9.2, r. 10 (Loi sur la distribution de produits et services financiers)* (available in French only), dated July 25, 2013, particularly Section IV entitled "*L'analyse de besoins – article 6*."
780. *Chambre de la sécurité financière v. Brisson*, 2019 QCCDCSF 42, Mtre. Marco Gaggino, Diane Bertrand, member, and B Gilles Lacroix, member.

For annuity contracts relating to segregated funds, the insurance of persons representative must comply, where applicable, with the AMF notice entitled *Avis de l'Autorité des marchés financiers concernant les prêts à effet de levier lors de l'achat de titres d'organismes de placement collectif et de fonds distincts*.[781] The insurance of persons representative must be prudent when recommending this strategy, because it carries risks for the client. A number of disciplinary files before the *Chambre de la sécurité financière* and client complaints to the AMF relate to recommendations to use this strategy by insurance representatives.

Moreover, the insurance of persons representative must record the information gathered for such analysis in a dated document, and provide a copy thereof to the purchaser no later than on the date the policy is delivered (s. 6, Regulation Rrespecting the Ppursuit of Aactivities as a Rrepresentative). According to the AMF, the representative must not merely send the document; he must ensure that the client has received it.

In the decision in *London Life Insurance Company v. Long*,[782] the Court of Appeal of Québec concluded that the insurer was not liable for a fault committed by the insurance representative (poor management of investments) with respect to his client, and the insurance representative's client[783] could not invoke the theory of an apparent mandate against the insurer.

When insurance is purchased

If, after analyzing the client's insurance needs, the insurance of persons representative concludes that they are not being adequately met, he may recommend that the client purchase insurance. He must always propose the product that best meets those needs (s. 27, Distribution Act). From a legal point of view, if the client agrees with this suggestion, it means he is giving the insurance of persons representative the mandate to find the best insurance policy for his situation based on the products he distributes.

781. *Avis de l'Autorité des marchés financiers concernant les prêts à effet de levier lors de l'achat de titres d'organismes de placement collectif et de fonds distincts* (available in French only), October 9, 2009. See: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/0-avis-amf/2009/2009oct09-avis-effetlevier-fr.pdf. See also: Autorité des marchés financiers, *Caution - Leveraging - Before investing, investigate!*.
782. *London Life Insurance Company v. Long*, 2016 QCCA 1434.
783. The insurance representative was acting on behalf of his own firm and had entered into an exclusive distribution agreement with the insurer. The insurance representative was neither an employee of the insurer nor an employee of a subsidiary of the insurer.

When there is a discrepancy between the proposal and the policy

From time to time, an insurer prepares a policy for an insured, but with terms that are different from those mentioned in the proposal, usually after an evaluation of the insured's medical information. In such case, the insurance of persons representative must indicate to the client where the discrepancy lies in order to comply with the mandate given to him by the client.

When a claim is filed with the insurer

When the representative helps the policyholder, the policyholder's assigns or the beneficiaries with a claim filed with the insurer, he acts as the client's mandatary.

EXAMPLE

Lucia would like to purchase life insurance with a double indemnity in the event of accidental death. She meets with Pierre, an insurance of persons representative. After having analyzed her needs, he determines that she needs $1,000,000 of coverage. Lucia gives Pierre the mandate to find her an insurance policy with the desired features. However, the insurer *ABC inc*. draws up a $1,000,000 insurance policy on the life of Lucia, but without the double indemnity in the event of accidental death. To comply with his mandate, Pierre must point out to Lucia that the policy does not offer a double indemnity in the case of accidental death. The mandate given by Lucia could not be fulfilled given *ABC inc*.'s refusal to fully accept the proposal.

4.4.2.3 Policy replacement

A representative must replace a policy only if the client's interests justify it, and must be able to provide the justification.[784] Where the purchase of an insurance of persons contract (which therefore covers both life insurance contracts and accident and sickness insurance contracts) is likely to result in cancellation, termination (annulment), or reduction of benefits of an existing individual insurance contract, the insurance of persons representative must complete, prior to or at the same time as the insurance application, the notice of replacement form prescribed by the AMF.[785] This requirement also applies when an insurance of persons representative secures the adhesion of a person to a group insurance contract and this is likely to result in the cancellation, termination (annulment), or reduction of benefits of an individual insurance contract.[786] However, this does not apply to the replacement of an individual annuity, including an endowment contract.[787]

784. *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, s. 20.
785. Ibid., s. 18.
786. Ibid., s. 18, para. 2. See also**:** AMF, *Cancelling a life or health insurance contract – An important decision*. See also Chambre de la sécurité financière, InfoDéonto, *Replacement Notice.*
787. Ibid., para. 3. Lastly, see Sun Life, *Policy replacements*.

Of course, the representative must explain the content of the form by comparing the contracts and describing the advantages or disadvantages of the replacement.

In 2013, the form prescribed by the AMF changed significantly. The new version (available on the AMF Web site) must be used as of October 22, 2014. The form may be filled out electronically.[788] The representative must sign it and remit a copy to the client; he must also keep in his file proof that the form was remitted to the client. Moreover, he must send the original of the duly completed form to the head office of the insurer that issued a contract likely to be cancelled (i.e., the former insurer) within five working days of the signing of the insurance application. He must send it by any means providing proof of the date it was sent. The representative must also send a copy of the form, within the same time period, to the insurer with whom he intends to place the new contract (the new insurer).[789] The form must be completed even if the contract is to be replaced with a contract from the same insurer.

4.4.3 Representative in group insurance of persons

4.4.3.1 Group insurance representative: mandatary of the insurer

A group insurance representative may be the mandatary of the insurer. This may occur in any one of the following situations.

When the premium is paid to a group insurance representative

As with individual insurance of persons, section 102 of the Distribution Act states that any insurance premium paid to a firm or to one of its representatives for the account of an insurer is deemed to have been paid directly to the insurer. It also states that the obligations of an insurer who pays sums of money to a firm for the account of a member or the beneficiary of a member are discharged only when the member or beneficiary receives the money. The effect of section 102 of the Distribution Act is that, for purposes of this administrative act, the group insurance representative is acting as mandatary of the insurer.

This has significant practical consequences. The policyholder will be released from the payment required by the insurer upon delivery of the amounts owed to the representative.

---

788. See AMF notice *Avis relatif à l'application du Règlement sur l'exercice des activités des représentants, R.R.Q. c.9.2, r. 10 (Loi sur la distribution de produits et services financiers)* (available in French only). See the form prepared by the Autorité des marchés financiers entitled *Notice of Replacement of Insurance of Persons Contract*. See also: Autorité des marchés financiers, *Cancelling a life or health insurance contract – An Important decision*. See also: Autorité des marchés financiers, *Procedure for the replacement of insurance contracts – Insurance of persons contracts including serious or critical illness*.
789. *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, s. 22.

At the time of presentation, by the insurer, of the terms for renewing the master policy

Within a reasonable period of time prior to the renewal of the master policy, the policyholder under the group insurance contract (the employer or association) must be informed of the renewal terms. To ensure that the policyholder is well aware of the terms, the insurer usually mandates the group insurance representative to explain them to the policyholder. The information is very often technical. Under these circumstances, given the mandate entrusted to him by the insurer, the group insurance representative is considered to be the insurer's mandatary.

When varied information is provided

As discussed in the section on individual insurance of persons, insurers rely to a great extent on their mandataries to distribute their products and inform the public. The insurer's duty or obligation to inform is the cornerstone of a representative's responsibility.

As with individual insurance of persons, when a group insurance representative commits an error in the performance of his mandate, the firm or independent partnership to which he is attached must bear the consequences of the error committed towards third parties. If a group insurance representative, as the insurer's mandatary, commits a fault within the limits of the mandate, the insurer may also be liable towards third parties and may therefore be sued for the fault of the group insurance representative. The insurer may in turn sue the representative who is not its employee. In such case, the representative will use his professional liability insurance. The insurer may also attempt to escape liability by proving that it could not reasonably have prevented the fault.[790]

In principle, the insurer is not liable if its mandatary exceeds his authority, unless it has ratified the mandatary's actions or unless there is an apparent mandate.

4.4.3.2 Group insurance representative: mandatary of the policyholder

A group insurance representative who is not employed by the insurer is almost always the mandatary of the policyholder (other than the situations mentioned above, where he is the insurer's mandatary) from the beginning of his relationship with the client. A group insurance representative who offers products directly to a client must give the client a document called a "mandate."[791] Note that this requirement does not apply to an employee who holds an insurance representative licence of a registered insurer when the employer itself does business with an insurance representative other than the employee of the insurer. This mandate allows him to, among other things, examine the file, negotiate the terms of the master policy and, subsequently, its renewal, as well as monitor the setup and administration of the master policy.

The mandate must also authorize any insurer to give the necessary information to the client's (policyholder's) insurance representative.

790. *Civil Code of Québec*, CQLR, c. C-1991, art. 2164.
791. *Regulation respecting the pursuit of activities as a representative*, CQLR, c. D-9.2, r. 10, s. 8.1.

The mandate must specify the following:

- the identification of the policyholder and the person designated as the policyholder's contact person;
- the nature and scope of the mandate specifying, as a minimum, the following:
  - the needs analysis;
  - in the case of calls for tenders pertaining to one or more insurance products, a comparison of guarantees, including costs and any differences noted; and
  - where an insurance contract is renewed, the description of the existing plan and an analysis of group experience.

The mandate cannot oblige the policyholder to purchase a financial product or service.

The mandate must be dated and signed by the representative. The representative must always give a copy of the mandate to the policyholder or the person designated as his contact person.[792]

It should be noted that a group insurance representative must give a written report of his recommendations to the person designated as the policyholder's contact person (s. 9.1, *Regulation respecting the pursuit of activities as a representative*).

When selecting the insurer and coverage

The duty to advise requires that the group insurance representative objectively present objectively all information that is relevant to the policyholder's situation. A group insurance representative must, when rendering services or offering products in that capacity, give a written report of his recommendations to the person designated as the policyholder's contact person.[793] He must also tell the contact person which submission is best suited to the group (association or company), at the best possible cost given the coverage and services offered.

When negotiating the terms of the master policy

When negotiating the terms of the master policy and its renewal, the group insurance representative's obligation is to advise. The scope of this obligation is very broad. After analyzing the client's insurance needs, he must inform him of the group coverage and the group insurance or annuity services that best suit the situation of the group (company or association). The duty to advise requires that the client's interests take priority over those of the group insurance representative and the insurer.

Once the client's needs have been determined, the group insurance representative negotiates with the insurer regarding the premium rate or fees for each type of coverage or service. Certain factors affect the premium rate, including the nature and scope of the risk covered as well as the administrative aspects taken on by the policyholder, the insurer, or a third-party administrator or third-party manager (who, at times, may be a representative or a firm). The more responsibility the

792. Ibid.
793. Ibid., s. 9.1.

policyholder has for managing the master policy, the less the insurer has to do in this regard, and it may reduce the amount of the premium as a result. Given the mandate written and signed by the client, the group insurance representative is the mandatary of the client, who becomes the policyholder when the master policy takes effect.

When the group insurance policy is delivered

When the group insurance policy is given to the policyholder, the group insurance representative must act to preserve his client's interests. He must first ensure that the insurance policy complies with the proposal. He must then take the appropriate precautions to explain the particular clauses to the policyholder. This is inherent in his duty to inform, which involves communicating the relevant facts to his client.

When setting up the group insurance plan: membership or waiver of membership and information session

In this situation, given the significant number of employees liable to subscribe to the master policy, depending on the size of the company, the group insurance representative may help the policyholder to get the entire group to fill out the group insurance or group annuity membership forms as well as the waiver of membership forms for those who do not wish to be covered by the group insurance. Refusal is possible when the master policy allows employees to decide whether or not to subscribe to the insurance, except, in general, for prescription drug insurance. In this case, the group insurance representative acts as a mandatary of the policyholder when he explains the coverage offered under the master policy or when he asks for proof of insurability (e.g., obtaining proof, for prescription drug insurance, that the member is in fact covered by his spouse's master policy). The group insurance representative's role of explaining the optional coverage in the master policy is important, as it allows the member to make an informed decision. The policyholder may also ask for the group insurance representative's help in holding an information session with the employees or group members. In certain cases, though, the insurer offers this service.

However, the group insurance representative is not authorized to provide advice to members. That role belongs to the financial security adviser.[794]

We can see from the foregoing that, when a group insurance representative helps a member fill out the membership or waiver form, or when he explains the conditions related to the coverage offered by the insurer, he becomes the mandatary of the policyholder. For group annuities, he may provide explanations on the choice of investments offered under the insurer's group annuity policy (guaranteed funds / segregated funds), but the group insurance representative cannot provide the member with advice on the choice of investments.

---

794. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, ss. 3 and 4. Also, persons who, on behalf of an employer, a union, a professional order or an association or professional syndicate constituted under the *Professional Syndicates Act* (c. S-40), secure the adhesion of an employee of that employer or of a member of that union, professional order, association or professional syndicate in respect of a group contract in insurance of persons or a group annuity contract can secure the adhesion of a member to a group insurance contract and provide that member with information, but cannot provide advice to this member (for example, the employer's human resources employee who secures the adhesion of a new employee hired by the employer (group insurance policyholder)).

Management of the master policy

A group insurance representative may be considered the mandatary of the policyholder with respect to the management of the master policy. Sometimes, the representative is referred to as a "third-party manager" or "third-party administrator." As the policyholder, the employer is given certain duties under the law[795] and by the insurer with respect to the management of the master policy. As a result of these various management duties, the group insurance representative may be asked to give the policyholder explanations or simply inform the policyholder about the various documents required by the insurer, such as when an employee is laid off.

The group insurance representative's assistance and co-operation may be sought with respect to the following:

- compliance by the policyholder with its obligations under the contract and the law;
- the manner in which to keep members' files up to date as well as the information required for calculating the premium;
- the manner in which to deal with members' claims; and
- the notices to the insurer with respect to any changes liable to affect the status of an employee, including a salary increase or decrease, the arrival of new employees eligible for insurance, retirement, the beginning of a disability period, layoffs and dismissals.

Given that the policyholder makes the requests, the group insurance representative's role to help and provide technical assistance could result in him being considered the policyholder's mandatary.

When negotiating renewal terms for the master policy

When negotiating the renewal terms of the master policy with the insurer, the group insurance representative acts as a mandatary of the policyholder. At times, he obtains a mandate from the policyholder to obtain bids from other insurers. The group insurance representative looks after the interests of the policyholder. He reviews with him the types of coverage provided by the master policy to determine whether they still meet his needs. He negotiates the premium rate, when required, by informing the insurer that the group's experience is good, for example. This means, among other things, that the average age of the group is low and there are few claims. The group insurance representative's role at this stage of the process confirms that he is the mandatary of the policyholder.

795. *Regulation under the Act respecting insurance*, CQLR, c. A-32.1, r. 1, s. 61.

4.4.3.3 Group insurance representative: mandatary of the member

Given that the member has a very limited role, he rarely communicates with the group insurance representative. His dealings with the group insurance representative are generally limited to group meetings and, most of the time, it is highly likely that there will not be an individual meeting between the representative and the member. Consequently, the representative almost never acts as the mandatary of the member vis-à-vis the insurer. Moreover, the insurance representative is not authorized to provide advice to members. This role belongs to the financial security adviser.[796]

4.5 Liability of representatives and the rights of consumers

A representative may be liable in various ways. This section deals with the following:

- the civil and professional liability of representatives;
- the ethical and disciplinary liability of representatives;
- the penal liability of representatives; and
- the criminal liability of representatives.

4.5.1 Civil and professional liability of representatives

4.5.1.1 General conditions of civil liability

The purpose of an action in civil (or professional) liability is to obtain damages (financial compensation) for the injury suffered.

For an action in civil (or professional) liability to succeed, three elements must be proven:

- fault;
- damage (also referred to as an injury); and
- the causal link between the fault and the damage.

4.5.1.2 Fault

Definition of "fault"

In Québec, there are two civil liability regimes:

- extra-contractual liability; and
- contractual liability.

796. *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, ss. 3 and 4.

In extra-contractual liability, fault is a breach of the rules of conduct that a prudent and diligent person would follow in similar circumstances; it does not stem from the terms of a contract. In contractual liability, fault arises when a person fails to perform his contractual obligations or performs them improperly. The C.C.Q. bases extra-contractual liability on the notion concept of fault and contractual liability on the obligation to comply with undertakings made in a contract.

Types of fault: simple, intentional, gross

There are three types of faults:

- simple fault;
- voluntary or intentional fault, that is, a fault committed with the intent to harm another; and
- gross fault.

Any fault, regardless of the type, leads to civil liability.

Fault may result from a person's act, negligence, carelessness, recklessness or incompetence, or from a person's failure to comply with an obligation imposed by law (such as the C.C.Q. or the Distribution Act [or a regulation made thereunder]) or by contract.

4.5.1.3 Injury

Definition of "bodily injury"

Bodily injury is any physical harm suffered by the victim.

Definition of "material injury"

Material injury is harm caused to the property of the victim.

Definition of "moral injury"

Moral injury is any pain, suffering or inconvenience suffered by the victim, such as the loss of enjoyment of life or damage to one's reputation, as a result of insults or defamatory words or writings.[797]

Under article 1607, C.C.Q., the victim of an injury is entitled to damages to compensate and repair the harm he has suffered or the profit of which he has been deprived (art. 1611, C.C.Q.).

797. Jean-Pierre Archambault and Marc-André Roy. *Initiation au droit des affaires*, 2nd ed., Laval, Éditions Études vivantes, 1995, pp. 170 and 171.

Definition of "exemplary (or punitive) damages"

These are damages awarded following any unlawful interference with any right or freedom recognized by the *Charter of human rights and freedoms* (CQLR, c. C-12, s. 49), or pursuant to another law expressly granting the victim the right to seek exemplary or punitive damages. They are not intended to compensate the victim, but are meant as a deterrent to prevent a repeat of such misconduct.

4.5.1.4 Causal link

In order for liability to arise, there must be a direct link, referred to as the "causal link," between the fault and the harm or injury suffered.

Burden of proof

It is up to the victim of the injury to prove that the harm he suffered is the immediate and direct result of the debtor's fault. The fault may result from a breach of a contractual obligation or conduct inconsistent with that of a reasonable person.

4.5.1.5 Principal (employer)

With respect to the civil liability of the principal, i.e., the employer, article 1463, C.C.Q. states as follows: "[t]he principal is bound to make reparation for injury caused by the fault of his subordinates in the performance of their duties; nevertheless, he retains his remedies against them."

Thus, in addition to suing the representative who committed the fault, the victim can sue the representative's employer, if necessary (financial institution, firm or independent partnership).

For the employer to be liable, the fault of his employee must occur in the performance of his duties. Otherwise, the employer will not be liable for reparation. It should be noted that the employer retains his rights against the employee at fault.

4.5.1.6 Civil action

A person who believes that a representative has committed a fault personally, as a mandatary or as the agent or servant of an employer, and who has suffered harm as a result of the fault, may take an action according to the rules prescribed by the *Code of Civil Procedure*.[798]

The recourse must be instituted in Superior Court if the damages claimed are equal to or greater than $85,000;, in the Court of Québec, Civil Division, if the damages claimed are greater than $15,000, but less than $85,000; and in the Court of Québec (Small Claims Division) if the damages claimed are $15,000 or less.

798. New *Code of Civil Procedure*, CQLR, c. C-25.01.

4.5.1.7 Parties

A client who wishes to be compensated for the harm suffered due to the fault of a representative must institute his action against the representative, personally, or as mandatary, or against the representative's employer, where applicable (or both). This is referred to as a civil action. Its goal is to obtain compensation for the harm suffered.

When the fault, error or negligence was committed in connection with the activities of the representative, his insurer (or the firm's insurer, as the case may be) will be called upon to intervene in the action as a guarantor, given the professional liability insurance coverage of the representative (or the firm, as the case may be).

Liability insurance: representatives who act for a firm without being an employee

It is primarily to protect the public, but also to protect representatives themselves from possible professional liability claims, that the Distribution Act requires representatives to carry professional liability insurance (ss. 83 and 196, Distribution Act; s. 17, *Regulation respecting the pursuit of activities as a representative*).

The liability to be covered is the fault, error, negligence or omission committed by a representative in the performance of his activities on behalf of a firm. It is important to note that, under the Distribution Act, all firms must ensure that representatives who act for them without being employees are covered by liability insurance.

Firms, independent representatives and independent partnerships

The professional liability of firms, independent representatives and independent partnerships results from any fault, error, negligence or omission committed in the pursuit of their activities or those committed by their employees, including representatives and trainees (except claims adjusters), whether or not they are still so engaged hired on the date the claim is made. Coverage for such liability must be maintained for five years as of the date they cease pursuing their activities (ss. 83, 136 and 196, Distribution Act). Firms, independent representatives and independent partnerships must have professional liability insurance to protect themselves against possible lawsuits (s. 29, *Regulation respecting firms, independent representatives and independent partnerships*).

4.5.2 Ethical and disciplinary liability

An ethical breach stems from non-compliance with the obligations imposed by the *Code of ethics of the Chambre de la sécurité financière*. If a representative breaches his obligations, he becomes liable, and a complaint may be filed against him with the discipline committee of the *Chambre de la sécurité financière*. The provisions of the Professional Code[799] relating to the filing and hearing of a complaint, and to the decisions and penalties arising from the complaint, apply to a hearing before the discipline committee of the *Chambre de la sécurité financière* (s. 376, Distribution Act).

799. *Professional Code*, CQLR, c. C-26.

Unlike an action in civil liability, an action for a breach of ethics does not lead to financial compensation. Its purpose is to protect the public, particularly by levying fines or removing the representative's right to pursue his activities.

4.5.2.1 Disciplinary action

The section dealing with the *Chambre de la sécurité financière* (CSF), above, described the mission and duties of the syndic and the discipline committee of the *Chambre de la sécurité financière*.

4.5.2.2 Syndic: information provided by a client

A representative who has breached a provision of the Distribution Act or its regulations may be reported to the syndic. A client who believes that an offence has been committed may report it to the syndic, who will conduct an inquiry into the matter (s. 329, Distribution Act). The syndic may have access to the establishment in question and examine all books, registers, accounts, records, and other relevant documents (s. 340, Distribution Act).

4.5.2.3 Discipline committee

Once the inquiry is complete, if the syndic has reason to believe that an offence has been committed, he files a complaint before the disciplinary committee against the representative in question. The committee, which is made up of three members, one of whom is a lawyer, hears the complaint. Any decision made by the discipline committee of the *Chambre de la sécurité financière* concerning a representative may be appealed to the Court of Québec, Civil Division (ss. 344, 355 and 379, Distribution Act).

4.5.2.4 Parties

A disciplinary action against a representative is instituted by the syndic of the *Chambre de la sécurité financière*. However, the client remains the most important witness as he is the one claiming to be the victim of an offence committed by the representative.

4.5.3 Penal liability

4.5.3.1 Definition of "penal law"

Before discussing penal liability, we must define the concept of penal law. The purpose of penal law is to punish conduct that is harmful to all of society by prescribing penalties in the event of non-compliance with a person's obligations relating to life in society (contrary to public order and the general well-being). The provinces have the power to determine new penal offences. For example, Québec legislates in insurance matters as regards the issuance of certificates to

representatives. Thus, as a complement to the exercise of the power to issue certificates, the legislator has defined offences for failure to comply with the provisions of the Distribution Act and its regulations. Criminal liability will be discussed later.

4.5.3.2 Basic elements: offence and sentence

The basic elements of penal law are the offence and the sentence, or sanction.

4.5.3.3 Definition of “offence”

An offence is a conduct prohibited by statute (or applicable regulation) that must be punished, either because it is unacceptable to society or because it is dangerous to the life and safety of other individuals.

Types of offences

There are three types of offences: offences set out in a statute or regulation, called “statutory offences,” offences punishable on summary conviction (summary offences), and indictable offences.

In this section, we will discuss statutory offences. The two other types of offences, namely summary offences and indictable offences, which are set out in the *Criminal Code*,[800] will be discussed in the following section on criminal liability.

4.5.3.4 Description of the offence

An offence in a statute must be described specifically so that everyone knows exactly what conduct is prohibited by the provision setting out the offence. A person cannot be prosecuted for a criminal or penal matter unless, according to law, the act in question constitutes an offence.

4.5.3.5 Definition of “sanction”

The sanction for an offence is generally a fine and in certain rare occurrences the sanction may be imprisonment. The penalty must be proportional to the severity of the offence. The circumstances of the offence and the elements specific to each accused must be taken into consideration. A repeat offender therefore risks receiving a harsher punishment than a person who commits a first offence.

Penal liability arises when a person commits an offence and is found guilty. He is responsible for his actions and is thereby liable.

800. *Criminal Code*, R.S.C., 1985, c. C-46.

4.5.3.6 Penal provisions of the Distribution Act

The offences with respect to which an insurer, a representative, a firm, or an independent partnership may be found guilty are set out in sections 461 to 483 of the Distribution Act. The following are some of those offences: illegal practice as a representative, illegal sharing of commissions, and hindering an inspection.

4.5.3.7 Sanctions

Sanctions are set out in sections 485 to 490 of the Distribution Act. They are fines of $2,000 to $150,000 for a natural person, and $3,000 to $200,000 for a legal person. For certain offences, the fine may go up to $1,000,000. An insurer found guilty of an offence can be fined up to $200,000.

4.5.3.8 Penal proceedings

For offences set out in the penal provisions of the Distribution Act, the AMF will institute proceedings against the person who committed the offence before the Court of Québec, Criminal and Penal Division. If the action is well-founded, the person found guilty of the offence will have to pay the prescribed fine.

4.5.3.9 Parties

In this type of action, the parties are the AMF and the person who committed the offence. The client who is the victim of the offence is not involved in this action; he only acts as a witness (s. 492, Distribution Act).

4.5.4 Criminal liability

Before discussing criminal liability, we must understand the concept of “criminal law.”

4.5.4.1 Definition of “criminal law”

Criminal law is based on the *Criminal Code*, which generally applies to offences such as murder, sexual assault, theft and fraud. The *Criminal Code* applies to all Canadians aged 12 or over. Only Parliament has the power to determine criminal offences, i.e., offences affecting the fundamental values of society. The Government of Québec does not have these powers.

4.5.4.2 Elements of criminal law: offence and sentence

Like penal law, the offence and the sanction (or sentence) are the basic elements of criminal law.

4.5.4.3 Definition of "criminal liability"

A person is criminally liable when he commits and is found guilty of a serious offence, such as murder, theft, fraud or embezzlement. He is responsible for his actions and is thereby liable. A representative may therefore be found guilty of theft, fraud or embezzlement by a court under the *Criminal Code*.[801]

4.5.4.4 Criminal proceedings

A criminal proceeding is a proceeding instituted due to the commission of an offence under the *Criminal Code*. A client who believes he is the victim of theft, fraud or embezzlement must file a complaint with the police, which conducts an investigation and gathers evidence. Once its investigation is complete, the police submits the matter to the Crown prosecutor, who determines whether there is enough evidence to charge the person who committed the offence.

In criminal proceedings, the sanction is generally imprisonment, a fine, or confiscation.[802]

4.5.4.5 Court of Québec, Criminal and Penal Division, or Superior Court

Theft and fraud are the most common offences. If the value of the subject-matter of the theft or fraud is not more than $5,000, it is a summary offence that is heard before the Court of Québec, Criminal and Penal Division.[803]

If the value of the subject-matter of the theft or fraud is more than $5,000, it is an indictable offence. The accused can choose between three types of trials:[804]

801. *Criminal Code*, R.S.C., 1985, c. C-46., ss. 322, 330, 331, 334 and 380.
802. *Criminal Code*, R.S.C., 1985, c. C-46, ss. 718.3, 734 and 743. See also: *R. v. Lavallée*, 2015 QCCQ 3731; *R. v. Lavallée*, 2016 QCCA 1655 (CanLII); *R. v. Sauriol*, 2012 QCCQ 7766 (financial planner); *R. v. Dupuis*, 2015 QCCQ 485 (mortgage broker); *R. v. Wilson*, 2009 QCCQ 2229; *R. v. Joseph*, 2011 QCCQ 1599; *R. v. Cantin*, 1999 CanLII 10272 (QC CQ) (investment adviser); *R. v. Thiboutot*, 2012 QCCQ 880; *R. v. St-Martin*, 2013 QCCQ 6422; *R. v. Charbonneau*, 2007 QCCQ 10244; *R. v. Honickman*, 2015 ONCJ 770; *R. v. Millward*, 2000 ABPC 46; *R. v. Millward*, 2000 ABCA 308; *R. v. Ellis*, 2007 ABQB 722; *R. v. Saucier*, 2018 ONSC 7266; *R. v. Saucier*, 2019 ONSC 3611; *R. v. Banks*, 2010 ONCJ 339; *R. v. Wilson Stevens*, 2008 NLTD 89; *R. v. Dennis*, 2003 BCSC 2017; *R. v. Hoy*, 1998 CanLII 6024 (BC CA); *R. v. Jamal*, 2006 BCPC 542; *R. v. Reeve*, 2018 ONSC 3744; *R. v. Chan*, 2012 ABPC 272; *R. v. Scribnock*, 2017 CanLII 13988 (ON SC); *R v. Kaminsky*, 2015 SKPC 39; *R. v. Headley*, 2018 ONSC 5818; *R. v. Link*, 2013 SKQB 138; *R. v. Davidson*, 2011 ABPC 130; *R. v. Maudsley*, 2007 BCPC 104; *R. v. Waddell*, 2005 CanLII 25 (MB PC); *R. v. Dizon*, 2018 BCPC 328. See also: Anne-Marie Boisvert, Hélène Dumont and Alexandre Stylios, "*En marge de l'affaire Lacroix-Norbourg : les enjeux substantifs et punitifs suscités par le double aspect, réglementaire et criminel, de certains comportements frauduleux dans le domaine des valeurs mobilières*," 2009 50 *C. de D*. Nos. 3–4, September–December 2009; La rédaction, "*Un ex-conseiller en sécurité financière accusé au criminel*," *Conseiller,* February 23, 2017; Christine Bouthillier, "*Un représentant accusé d'avoir soutiré 10,5 M$ à un assureur*," *Conseiller,* December 15, 2016.
803. *Criminal Code*, R.S.C., 1985, c. C-46, ss. 334(b)(ii), 380(1)(b)(ii) and 553(a).
804. Ibid., subss. 555(2) and 536(2).

- trial by a judge and a jury made up of 12 citizens, in Superior Court, preceded by a preliminary inquiry;
- trial by a judge without a jury, preceded by a preliminary inquiry before the Court of Québec, Criminal and Penal Division; or
- trial by a single judge of the Court of Québec, Criminal and Penal Division, without a jury and without a preliminary inquiry.

The Superior Court has jurisdiction in criminal matters in the case of a trial by jury.

4.5.4.6 Parties

In the case of a criminal offence, the plaintiff is the Crown prosecutor, not the victim of the offence. It is not the victim who institutes proceedings against the accused, but he is an important witness because he is claiming to be the victim of the criminal offence.

Proceedings initiated by indictment (indictable offence) or by summary conviction (summary offence) do not financially compensate the victim for the harm suffered, as is the case with an action before the civil courts. However, exceptionally, the court may make a restitution order.[805] This measure orders that the offender pay the victim a sum of money to make restitution for the losses suffered as a result of the offence. The assessment of the harm will take into account the convicted person's ability to pay.

Table 4.3 summarizes these concepts.

TABLE 4.3:

Liability regimes and existing recourse

LIABILITY REGIMES	EXISTING RECOURSE
Civil and professional liability	Action against the perpetrator of the harm to compensate the victim
Ethical and disciplinary liability	Complaint by the syndic to the discipline committee of the *Chambre de la sécurité financière*
Penal liability	Penal proceedings by the AMF (fines)
Criminal liability	Criminal proceedings seeking a prison sentence or a fine. If found guilty, the accused will have a criminal record.

805. *Criminal Code*, R.S.C., 1985, c. C-46, s. 738.

4.6 Ethics and professional conduct of representatives

In this section, we will examine the provisions respecting the ethics and professional conduct of representatives. We will begin by looking at professional ethics, and then move on to the *Code of ethics of the Chambre de la sécurité financière*.

4.6.1 Professional ethics

Definition of "ethics"

In general, "ethics" refers to moral principles. The concept of "professional ethics," however, refers to all rules of conduct relating to a professional activity. In this sense, "ethics" is synonymous with "professional conduct."

Rules applicable to the activities of representatives

The duties of a representative are very diverse. Sometimes, he acts as the mandatary of the insured. In other circumstances, he acts as the mandatary of the insurer. However, all these roles have a common denominator. A representative must always act with diligence, prudence, honesty, loyalty, competence and professionalism. This obligation is found in the chapter on mandate in the C.C.Q. (art. 2138). Section 16 of the Distribution Act also states that representatives must act with competence and professional integrity.

4.6.2 Professional conduct of representatives

Definition of "professional conduct"

The concept of "professional conduct" refers to all the duties and obligations a representative has towards the public, his clients, and insurers in the practice of his profession.

4.6.2.1 General provisions

Purpose of a code of ethics

The *Code of ethics of the Chambre de la sécurité financière* (CECSF) was enacted by the *Chambre de la sécurité financière*. The general purpose of a code of ethics is to promote the protection of the public, and the practice of honest and competent activities by a professional.

The *Code of ethics of the Chambre de la sécurité financière* applies to all insurance of persons representatives, group insurance and annuities representatives, and financial planners, regardless of the sector classes in which they pursue their activities (s. 2, CECSF).

All representatives must ensure that their employees and mandataries comply with the provisions of the Distribution Act and its regulations (s. 3, CECSF).

4.6.2.2 Duties and obligations of representatives

Duties and obligations towards the public

A representative must promote improvement of the quality and availability of the services that he offers to the public (s. 4, CECSF). He must also promote measures to provide education and information in the field in which he practises (s. 5, CECSF). His conduct must be characterized by dignity, discretion, objectivity and moderation (s. 6, CECSF). A representative must therefore refrain from practising in conditions or in a state liable to compromise the quality of his services (s. 7, CECSF). He must also refrain from persistently or repeatedly urging a person to use his professional services or purchase a product (s. 8, CECSF).

Duties and obligations towards clients

In the practice of his profession, a representative must take into account the limits of his knowledge and the means available to him. Accordingly, he must not undertake or continue a mandate for which he is not sufficiently prepared without obtaining the necessary assistance (s. 9, CECSF).

A representative must not make any misrepresentations as to his level of competence or the quality of his services, or those of his firm or his independent partnership (s. 10, CECSF). He must act towards his clients with integrity and in a conscientious manner, giving them all the information that may be necessary or useful in order to advise them properly (s. 12, CECSF).

An insurance of persons representative must refrain from giving inaccurate or incomplete information. He must provide his clients with the explanations they need to understand and evaluate the products or services that he is proposing or that he provides to them (ss. 13 to 14, CECSF).

An insurance of persons representative must always remain independent and avoid any situation of conflict of interest. He must subordinate his personal interests to those of his client. Accordingly, he may not, among other things (ss. 18 and 19, CECSF):

- advise a client to invest in a legal person, partnership or property in which he has, directly or indirectly, an interest;
- conduct any transaction or enter into any agreement or contract whatsoever with a client who, manifestly, is unable to manage his affairs, unless the decisions to conduct these transactions or enter into these agreements or contracts are made by persons who may legally decide in lieu of this client; or
- conduct any transaction or enter into any agreement or contract whatsoever in the capacity of insurance of persons representative with respect to a client for whom he acts as a dative tutor, curator or adviser to a person of full age within the meaning of the *Civil Code of Québec*. This could also refer to a person for whom he is the mandatary pursuant to a power of attorney, or a mandate given in anticipation of incapacity signed by the client, depending on the circumstances.

A representative must not pay or undertake to pay to a person who is not a representative any remuneration, compensation (fees) or other advantage, except where permitted by the Distribution Act (s. 22, CECSF).

Confidential information that a representative obtains from a client must only be used for the purposes for which it was obtained, unless the representative is relieved of that obligation by a provision of law or by order of a competent court. He must not use that information to the detriment of his client or to obtain an advantage for himself.

Finally, a representative must not dissuade his client or any potential client from consulting another representative or another person of his choosing. He must promptly give to his client the books and documents belonging to the client, even if the client owes him sums of money (ss. 28 to 29, CECSF).

Duties and obligations towards other representatives, firms, independent partnerships, insurers and financial institutions

A representative must not, directly or indirectly, make comments of any kind that are false, inaccurate or incomplete about another representative, a firm, an independent partnership, an insurer, a financial institution or one of their representatives, products or services (s. 30, CECSF). He must use fair methods of competition and solicitation (s. 31, CECSF). Accordingly, he must not denigrate, belittle or discredit another representative, a firm, an independent partnership, an insurer or a financial institution (s. 32, CECSF).

An insurance representative must not fail to pay an insurer, upon request or within the prescribed time, the sums of money that he has collected on its behalf (s. 33, CECSF).

Duties and obligations towards the profession

A representative must not practice dishonestly or negligently (s. 35, CECSF).

A representative must not pay a person to act in the capacity of representative if that person does not hold a certificate (s. 37, CECSF). Conversely, he must not accept payment from a person who does not hold a certificate and who acts or attempts to act as a representative (s. 38, CECSF). A representative also must not receive payment from a person other than the person who retained his services (s. 39, CECSF). When he receives a commission, he may only share it within the limits permitted by the Distribution Act (s. 40, CECSF). Moreover, he must not pay or promise to pay compensation for his services to be retained (s. 41, CECSF).

In his dealings with the *Chambre de la sécurité financière*, a representative must, without delay, reply in full and courteously to any letter from the syndic or an assistant of the syndic of the *Chambre de la sécurité financière* , or a member of their staff acting in their capacity (s. 42, CECSF). In particular, he must attend any meeting they ask him to attend (s. 43, CECSF). Furthermore, he must not interfere with their work or that of the AMF, the *Chambre de la sécurité financière* or the discipline committee of the *Chambre de la sécurité financière* (s. 44, CECSF).

A representative who is informed that an inquiry is being conducted concerning him or who is the subject of a disciplinary complaint under section 132 of the *Professional Code*[806] must not contact the person who requested the inquiry (s. 46, CECSF).

806. *Professional Code*, CQLR, c. C-26.

CONCLUSION

As seen in this module, insurance representatives are subject to various professional and ethical obligations imposed by legislation, contracts, codes of ethics and the like. Ethics and compliance with the rules of professional practice are fundamental concepts for insurance representatives, and are essential for the fulfilment of the common objective of insurance regulators to promote professional excellence for the ultimate benefit of the public. Public confidence in the insurance industry and all its representatives depends on maintaining high standards of ethics. Representatives may be subject to severe financial sanctions or have their licences revoked if they fail to comply with the rules and principles to which they are subject.

APPENDIX A

TABLE OF LEGAL PERSONS[807]

LEGAL PERSONS	NUMBER	TITLES OF THE NATURAL PERSON (I.E., INDIVIDUAL)	NUMBER	PRODUCTS THAT MAY BE OFFERED BY THE NATURAL PERSON
Firm in the insurance of persons		Financial security adviser	13,373	Individual life insurance, individual accident and sickness insurance, individual annuity contracts (segregated funds, guaranteed interest accounts [GIAs])
	5,413	Accident and sickness insurance representative	471	Individual accident and sickness insurance
Firm in the group insurance of persons	2,019	Group insurance and group annuity plans adviser	2,426	Group life insurance, group accident and sickness insurance, group annuity contracts (segregated funds, GIAs)
Firm in group insurance plans	-	Group insurance plans adviser	785	Group life insurance, group accident and sickness insurance
Firm in group annuity plans	-	Group annuity plans adviser	169	Group annuity contracts (segregated funds, GIAs)
Firm in financial planning	1,051	Financial planner (Fin. Pl.)	4,571	Cannot distribute any products.

807. Data as of February 14, 2022. Furthermore, it is important to note that a natural person and a legal person can hold a licence from the AMF in a number of sectors and/or sector classes.

LEGAL PERSONS	NUMBER	TITLES OF THE NATURAL PERSON (I.E., INDIVIDUAL)	NUMBER	PRODUCTS THAT MAY BE OFFERED BY THE NATURAL PERSON
Firm and agency in damage insurance		Damage insurance agent or broker	5,007	May offer personal-lines and commercial-lines damage insurance products.
		Personal-lines damage insurance agent or broker	6,557	May only offer products and advisory services pertaining to: 1. the property and civil liability of a domestic nature for a natural person or an independent worker at his residence; 2. residential buildings containing not more than six dwellings.
	934	Commercial-lines damage insurance agent or broker	841	May only offer products and advisory services pertaining to damage insurance for commercial businesses, including in respect of independent workers.
Firm in claims adjustment		Claims adjuster	2,251	Is authorized to act in the field of claims adjustment (personal and commercial lines).
		Claims adjuster in personal-lines damage insurance	853	Is only authorized to act in the field of claims adjustment pertaining to: 1. the property and civil liability of a domestic nature for a natural person or an independent worker at his residence; 2. residential buildings containing not more than six dwellings.
	169	Claims adjuster in commercial-lines damage insurance	62	Is only authorized to act in the field of claims adjustment for commercial businesses, including in respect of independent workers.
Adviser (portfolio manager)	454			

LEGAL PERSONS	NUMBER	TITLES OF THE NATURAL PERSON (I.E. INDIVIDUAL)	NUMBER	PRODUCTS THAT MAY BE OFFERED BY THE NATURAL PERSON
Investment dealer	147	Investment dealer representative	13,004	Can sell all types of securities, including mutual funds
Mutual fund dealer	69	Mutual fund dealer representative	21,301	Mutual funds
Scholarship plan dealer	9	Scholarship plan dealer representative	337	Scholarship plans
Exempt market dealer	455	Exempt market dealer representative	2,050	▪ Products exempt from the obligation to prepare a prospectus (e.g., products sold through an offering memorandum) ▪ Products sold to accredited investors
Restricted dealer	11	Restricted dealer representative	16	According to the terms, conditions, restrictions or requirements applied to his registration
Mortgage brokerage firm	539	Mortgage broker	2,036	Hypothecary (mortgage) brokerage

APPENDIX B

FINANCIAL PRODUCTS AND SERVICES DISTRIBUTION OVERSIGHT IN QUÉBEC – ROLES AND RESPONSIBILITIES

Autorité des marchés financiers

The Autorité des marchés financiers (AMF) is the body mandated by the Québec government to:

REGULATE THE FINANCIAL SECTOR

- Ensures compliance with the laws governing the sector and the regulations made by it
- Issues rights to practise and oversees the activities of representatives and firms in insurance, mortgage brokerage, financial planning and certain areas of the securities sector
- Oversees the minimum qualifications training of mortgage brokers and ChAD and CSF members
- Oversees the compulsory professional development of mortgage brokers
- Imposes administrative sanctions and files penal charges
- Supervises, oversees and inspects self-regulatory organizations (SROs)

PPROTECT CONSUMERS OF FINANCIAL PRODUCTS AND SERVICES

- Answers general questions from the public through its Information Centre
- Offers educational tools and unbiased, objective information
- Examines complaints filed against AMF-registered representatives and firms
- Offers a service for conciliation and mediation between a consumer and any AMF-registered firm
- Compensates victims of fraud up to $200,000 per claim (subject to certain conditions)

Chambre de l'assurance de dommages (ChAD) and Chambre de la sécurité financière (CSF)

- Oversee the compulsory professional development and ethical conduct of their members and enforce discipline among them

  Specifically, they:
  - ensure that members, other than financial planners, fulfill their professional development obligations
  - support members with respect to their ethical obligations
  - investigate complaints regarding professional conduct and file formal complaints, if necessary, with the disciplinary committees
- The disciplinary committee hears complaints filed against members and can impose fines, special training courses or a striking off the roll

CHAD MEMBERS ARE:

- Damage insurance agents
- Damage insurance brokers
- Claims adjusters

CSF MEMBERS ARE:

- Representatives in:
  - insurance of persons
  - group insurance
  - mutual funds
  - scholarship plans
- Financial planners

Investment Industry Regulatory Organization of Canada (IIROC)

- Sets and enforces rules related to the proficiency, business and financial conduct of investment dealers and their representatives
- Monitors the trading activity of investment dealers and their representatives
- Oversees the continuing education of investment dealer representatives
- Sets and enforces market integrity rules and monitors trading activity

Institut québécois de planification financière (IQPF)

- Issues the financial planner diploma
- Oversees financial planner professional development on behalf of the AMF

AUTORITÉ DES MARCHÉS FINANCIERS

BIBLIOGRAPHY

LEGISLATION CITED

International treaties

Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital

Common Reporting Standard

Canadian agreements

Entente de 2016 sur les régimes de retraite relevant de plus d'une autorité gouvernementale, 1er juillet 2016, Colombie-Britannique, Nouvelle-Écosse, Ontario, Québec et Saskatchewan

2016 Agreement Respecting Multi-Jurisdictional Pension Plans, July 1, 2016, British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan

Pre-eminent legislation

Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.).

Constitution Act, 1982, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982.

Canadian Charter of Rights and Freedoms, part 1, *Constitution Act, 1982*, ([Schedule B to the Canada Act 1982, 1982, c. 11 [(U.K.])

Charter of Human Rights and Freedoms, CQLR, c. C-12

Federal legislation and regulation

Loi de l'impôt sur le revenu, L.R.C., 1985, c. 1 (5e suppl.)

Income Tax Act (R.S.C., 1985, c. 1 [5th Supp.])

Règlement de l'impôt sur le revenu, C.R.C., c. 945

Income Tax Regulations (C.R.C., c. 945)

Loi sur le divorce, L.R.C., 1985, c. 3 (2e suppl)

Divorce Act (R.S.C., 1985, c. 3 [2nd Supp.])

Pension Benefits Standards Act, 1985, R.S.C., 1985, c. 32 (2nd Supp)

Pension Benefits Standards Regulations, 1985, SOR/87-19

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Bankruptcy and Insolvency General Rules, C.R.C., c. 368

Canada Health Act, R.S.C., 1985, c. C-6

Canada Pension Plan, R.S.C., 1985, c. C-8

Criminal Code, R.S.C., 1985, c. C-46

Canadian Human Rights Act, R.S.C., 1985, c. H-6

Canada Labour Code, R.S.C., 1985, c. L-2

Old Age Security Act, R.S.C., 1985, c. O-9

Department of Veterans Affairs Act, R.S.C., 1985, c. V-1

Veterans Health Care Regulations, SOR/90-594

Canadian Bill of Rights, S.C., 1960, c. 44

Trust and Loan Companies Act, S.C., 1991, c. 45

Bank Act, S.C., 1991, c. 46

Insurance Business (Banks and Bank Holding Companies) Regulations, SOR/92-330

Mortgage Insurance Business (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Canadian Societies) Regulations, SOR/2010-68

Mortgage Insurance Disclosure (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Canadian Societies) Regulations, SOR/2010-69

Insurance Companies Act, S.C., 1991, c. 47

Mortgage Insurance Disclosure (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Canadian Societies) Regulations, SOR/2010-69

Children's Special Allowances Act, S.C., 1992, c. 48, Sch.

Telecommunications Act, S.C., 1993, c. 38

Employment Insurance Act, S.C., 1996, c. 23

Employment Insurance Regulations, SOR/96-332

Personal Information Protection and Electronic Documents Act, S.C., 2000, c 5

Organizations in the Province of Québec Exemption Order, SOR/2003-374

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C., 2000, c. 17

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184

Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, SOR/2001-317

Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations, SOR/2007-292

Civil Marriage Act, S.C., 2005, c. 33

An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act, and the Telecommunications Act (S.C., 2010, c. 23)

Pooled Registered Pension Plans Act, S.C., 2012, c. 16

Pooled Registered Pension Plans Regulations, SOR/2012-294

Genetic Non-Discrimination Act (S.C., 2017, c. 3)

Quebec legislation and regulation

Act respecting Access to documents held by public bodies and the Protection of personal information, CQLR, c A-2.1

Act respecting industrial accidents and occupational diseases, CQLR, c. A-3.001

Financial Administration Act, CQLR, c. A-6.001

Regulation respecting savings products, CQLR, c. A-6.001, r. 9

Tax Administration Act, CQLR, c. A-6.002

Individual and Family Assistance Act, CQLR, c. A-13.1.1

Act respecting financial assistance for education expenses, CQLR, c. A-13.3

Act respecting family assistance allowances, CQLR, c. A-17 (repealed and replaced)

Automobile Insurance Act, CQLR, c. A-25

Deposit Insurance Act, CQLR, c. A-26 (repealed and replaced)

Hospital Insurance Act, CQLR, c. A-28

Health Insurance Act, CQLR, c. A-29

Regulation respecting the application of the Health Insurance Act, CQLR, c. A-29, r. 5

Act respecting prescription drug insurance, CQLR, c. A-29.01

Act respecting parental insurance, CQLR, c. A-29.011

Act respecting insurance, CQLR, c. A-32 (repealed and replaced)

Insurers Act, CQLR, c. A-32.1

Regulation under the Act respecting insurance, CQLR, c. A-32.1, r. 1

Act respecting the Barreau du Québec, CQLR, c. B-1

Unclaimed Property Act, CQLR, c. B-5.1

Regulation respecting the application of the Unclaimed Property Act, CQLR, c. B-5.1, r. 1

Act to establish a legal framework for information technology, CQLR, c. C-1.1

Act to promote good citizenship, CQLR, c. C-20

Civil Code of Lower Canada, S. Prov. C., 1865 (29 Vict.), c. 41 (repealed and replaced)

Civil Code of Québec, CQLR, c. C.C.Q.-1991

Code of Civil Procedure, CQLR, c. C-25.01

Order 2020-4251 under article 27 of the *Code of Civil Procedure* on March 15, 2020

Communiqué de la juge en chef du Québec et de la ministre de la Justice du 13 juillet 2020 (available in French only)

Code of Civil Procedure, CQLR, c. C-25 (repealed and replaced)

Professional Code, CQLR, c. C-26

Act respecting financial services cooperatives, CQLR, c. C-67.3

Real Estate Brokerage Act, CQLR, c. C-73.2

Regulation respecting brokerage requirements, professional conduct of brokers and advertising, CQLR, c. C-73.2, r. 1

Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec, CQLR, c. C-73.2, r. 6

Act respecting the distribution of financial products and services, CQLR, c. D-9.2

Regulation respecting firms, independent representatives and independent partnerships, CQLR, c. D-9.2, r. 2

Code of Ethics of the Chambre de la sécurité financière, CQLR, c. D-9.2, r. 3

Regulation respecting the issuance and renewal of representatives' certificates, CQLR, c. D-9.2, r. 7

Regulation respecting distribution without a representative, CQLR, c. D-9.2, r. 8 (repealed and replaced)

Regulation respecting fees and contributions payable, CQLR, c. D-9.2, r. 9

Regulation respecting the pursuit of activities as a representative, CQLR, c. D-9.2, r. 10

Regulation respecting the compulsory professional development of mortgage brokers, CQLR, c. D-9.2, r. 12.1

Regulation respecting Alternative Distribution Methods, CQLR, c. D-9.2, r. 16.1

Regulation respecting information to be provided to consumers, CQLR, c. D-9.2, r. 18

Regulation respecting the keeping and preservation of books and registers, CQLR, c D-9.2, r. 19

Regulation respecting titles similar to the title of financial planner, CQLR, c. D-9.2, r. 20

Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi, CQLR, c. F-3.1.2

Act to establish the Fonds de solidarité des travailleurs du Québec, CQLR, c. F-3.2.1

Taxation Act, CQLR, c. I-3

Regulation respecting the Taxation Act, CQLR, c. I-3, r. 1

Crime Victims Compensation Act, CQLR, c. I-6

Deposit Institutions and Deposit Protection Act, CQLR, c. I-13.2.2

Regulation respecting the application of the Deposit Institutions and Deposit Protection Act, CQLR, c. I-13.2.2, r. 1, Derivatives Act, CQLR, c. I-14.01

Winding-up Act, CQLR, c. L-4

Act respecting labour standards, CQLR, c. N-1.1

Notaries Act, CQLR, c. N-3

Act respecting family benefits, CQLR, c. P-19.1

Act respecting the protection of personal information in the private sector, CQLR, c. P-39.1

Consumer Protection Act, CQLR, c. P-40.1

Regulation respecting the application of the Consumer Protection Act, CQLR, c. P-40.1, r. 3

Act respecting the legal publicity of enterprises, CQLR, c. P-44.1

Act respecting the Québec Pension Plan, CQLR, c. R-9

Act respecting the Government and Public Employees Retirement Plan, CQLR, c. R-10

Supplemental Pension Plans Act, CQLR, c. R-15.1

Regulation respecting supplemental pension plans, CQLR, c. R-15.1, r. 6

Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act, CQLR, c. R-15.1, r. 7

Voluntary Retirement Savings Plans Act, CQLR, c. R-17.0.1

Regulation respecting voluntary retirement savings plans, CQLR, c. R-17.0.1, r. 3

Act respecting health services and social services, CQLR, c S-4.2

Act respecting the Société d'habitation du Québec, CQLR, c. S-8

Trust Companies and Savings Companies Act, CQLR, c. S-29.02

Professional Syndicates Act, CQLR, c. S-40

Act respecting the transfer of securities and the establishment of security entitlements, CQLR, c. T-11.002

Securities Act, CQLR, c. V-1.1

Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (V-1.1, r. 10)

Regulation 41-101 respecting General Prospectus Requirements (V-1.1, r. 14)

Regulation 45-106 respecting Prospectus Exemptions (V-1.1, r. 21)

An Act to amend the Civil Code, in particular to make civil actions for sexual aggression, violence suffered during childhood and spousal violence imprescriptible, S.Q., 1989, c. 55

An Act instituting civil unions and establishing new rules of filiation, S.Q., 2002, c. 6

An Act to amend the Act respecting insurance and the Act respecting trust companies and savings companies, S.Q., 2005, c. 51

An Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans, S.Q., 2006, c. 42

An Act to establish the new Code of Civil Procedure, S.Q., 2014, c. 1

An Act to enhance the Québec Pension Plan and to amend various retirement-related legislative provisions, S.Q., 2018, c. 2

An Act to improve the performance of the Société de l'assurance automobile du Québec, to better regulate the digital economy as regards e-commerce, remunerated passenger transportation and tourist accommodation and to amend various legislative provisions, S.Q., 2018, c. 18 (Bill 50)

An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions, S.Q., 2018, c. 23

An Act to amend the Civil Code, the Code of Civil Procedure, the Public Curator Act and various provisions as regards the protection of persons, S.Q., 2020, c. 11

Insurance Act, CQLR, 1964, c. 295 (repealed and replaced in force until 19 October 19, 1976)

Husbands and parents life insurance Act, CQLR, 1964, c. 296 (repealed)

CASES CITED

169912 Canada inc. v. Compagnie d'assurance-vie Transamerica du Canada, 2005 CanLII 8590 (QC SC)

1858-0894 Québec inc. v. La Compagnie d'assurance Standard Life, 1999 CanLII 13734 (QC CA)

2849-7378 Québec Inc. v. Le Groupe Commerce, 2002 CanLII 41638 (QC CS), confirmé par *2849-7378 Québec inc. c. Groupe Commerce (Le), compagnie d'assurances*, 2004 CanLII 72970 (QC CA)

2863-1984 Québec inc. (Faillite de), 2001 CanLII 25571 (QC SC)

2958-2951 Québec inc. v. Assurance-vie Desjardins inc., 1999 CanLII 11159 (QC CS)

2966-2814 Québec inc. v. Groupe Commerce (Le), compagnie d'assurances, J.E. 95-2149 (S.C.)

A. v. P., (1997) R.L. 124 (C.S.)

Agence du revenu du Québec v. SSQ Évolution – Gestion invalidité et vie, 2019 QCCQ 4748 (CanLII), j. Chantal Sirois

Agropur, coopérative agro-alimentaire et Syndicat des salariées et salariés de la fromagerie (CSD) Robert Janelle, D.T.E. 2001T-120 (T.A.), Me Robert Choquette, arbitre

Airmac systèmes Ltée v. Cie d'assurance Continentale du Canada, (1990) R.R.A. 200 S.C.), règlement hors cour en appel (C.A., 1996-02-27), 500-09-000036-905

AREQ (CSQ) (Association des retraitées et retraités de l'éducation et des autres services publics du Québec) v. Régie de l'assurance maladie du Québec, 2011 QCCS 1088, j. Benoît Moulin

Association pour la protection des automobilistes inc. v. Toyota Canada inc., 2008 QCCA 761

Association québécoise des Directeurs et directrices d'établissement d'enseignement retraités v. Procureur général du Québec (Conseil du Trésor), 2022 QCCS 228 (CanLII), j. Bernard Synnott

Association québécoise des pharmaciens propriétaires v. Régie de l'assurance maladie du Québec, 2021 QCCA 699

Assurance-vie Desjardins v. Éthier (Succession de), 1997 CanLII 10463 (QC CA)

Assurance-vie Desjardins Laurentienne inc. v. Poirier-Wilson, 2003 CanLII 32938 (QC CA)

Aubut-Drolet (Syndic de), J.E. 95-990 (S.C.)

Audet v. Industrielle-Alliance (L'), Compagnie d'assurance sur la vie, [1990] R.R.A. 500 (S.C.)

Audet v. Transamerica Life Canada, 2012 QCCA 1746, jj. Dalphond, Doyon et Léger

Audet et Commission de la construction du Québec, 2012 QCCRT 505 (CanLII), Kim Legault, juge administratif

Axa Assurances inc. v. Délicatesse Nourcy inc., 2002 CanLII 63606 (QC CA)

Bacon v. Desjardins Sécurité financière, compagnie d'assurance-vie, 2005 CanLII 536 (QC CQ)

Balthazar v. New York Life Insurance Company, J.E. 87-2 (S.C.)

Banque canadienne de l'Ouest v. Alberta, [2007] 2 R.C.S. 3

Canadian Western Bank v. Alberta, [2007] 2 SCR 3

Banque de Nouvelle-Écosse v. Thibault, [2004] 1 R.C.S. 758

Bank of Nova Scotia v. Thibault, [2004] 1 SCR 758

Banque HSBC Canada v. Pranno, B.E. 2001BE-503 (S.C.)

Banque Nationale du Canada v. Sciascia-Trapani, 2002 CanLII 39948 (C.A.)

Banque Royale du Canada c. Nord Américaine, compagnie d'assurance-vie, [1996] 1 R.C.S. 325 (connue sous le nom de l'affaire *Ramgotra*)

Royal Bank of Canada v. North American Life Assurance Co., [1996] 1 SCR 325 (known as the Ramgotra case)

Barry Callebault Canada inc. et Syndicat des salariées et salariés de Barry Callebault Canada inc., usine de St-Hyacinthe (grief collectif), D.T.E. 2010T-801 (T.A.), M^e^ Serge Brault, arbitre

Bastien v. Crown, compagnie d'assurance-vie, 1998 CanLII 11551 (QC SC)

Beauchamps v. Dubé, J.E. 92-1162 (C.S.)

Beauchesne v. Québec (Sous-ministre du Revenu), 2008 QCCQ 10365

Bélanger v. Bélanger (Succession de), 2009 QCCS 6159

Bélanger v. Great West, compagnie d'assurance-vie, 1999 CanLII 11254 (QC SC)

Béliveau St-Jacques v. Fédération des employées et employés des services publics inc., [1996] 2 SCR 345

Bernier v. Groupe Pages jaunes cie, 2010 QCCS 1241

Bernier v. Mutual Life Assurance Co. of Canada, [1973] C.A. 892

Biron, Re, 1999 CanLII 13652 (QC CA)

Biscuits Leclerc ltée v. Compagnie d'assurance-vie Transamerica occidental, 1997 CanLII 9146 (QC SC), confirmed by *Biscuits Leclerc ltée c. Compagnie d'assurance-vie Transamerica occidental,* 2000 CanLII 6574 (QC CA)

Biscuits Leclerc ltée v. Transamerica occidental, compagnie d'assurance-vie, 2000 CanLII 6574 (QC CA)

Blais v. Union commerciale du Canada, compagnie d'assurance-vie, 2001 CanLII 19219 (QC CA)

Blanchard v. Lapointe, 2000 CanLII 9534 (QC CA)

Bohl v. Great-West Life Assurance Company, 1973 CanLII 921 (SK CA)

Boisvert (Syndic de), J.E. 98-42 (S.C.)

Bolduc v. Decelles, 1996 CanLII 4344 (QC CQ)

Boucher, Leblanc, Amirault Inc. v. Atlas Trucking Co., J.E. 78-124 (Prov. Ct.)

Boudreault v. Laforest, 2013 QCCS 4575

Bouffard v. Assurance-vie Desjardins inc., 1997 CanLII 8561 (QC SC)

Boulianne v. SSQ Mutuelle d'assurance groupe, 1997 CanLII 9348 (QC SC), j. Pierre A. Dalphond

Bourcier v. Citadelle (La), compagnie d'assurances générales, 2007 QCCA 1145 (CanLII)

Bourgoin v. Clarica, 2002 CanLII 8722 (QC CQ, Small Claims Div.), j. Lina Bond

Bouthillette v. Industrielle Alliance (L'), compagnie d'assurances sur la vie, [1996] R.R.A. 414 (S.C.)

Brossard v. Journal La Presse ltée, 2006 QCCS 3887, appeal dismissed on other grounds by *De Montigny (Succession de) v. Brossard (Succession de)*, 2008 QCCA 573, motion for leave to appeal to the Supreme Court of Canada dismissed 2008-09-25, file 32658

Brule v. Plummer, [1979] 2 S.C.R. 343

C. v. S., 1997 CanLII 17105 (QC SC)

Caisse populaire de Maniwaki v. Giroux, [1993] 1 S.C.R. 282

Caisse populaire des Deux Rives v. Société mutuelle d'assurance contre l'incendie de la Vallée du Richelieu, [1990] 2 S.C.R. 995

Caisse populaire Duberger v. Beaulé, [1981] C.P. 232, j. Gill Fortier

Camgoz (Bankrupt), Re, 1988 CanLII 5002 (SK QB)

Canada (Procureur général) v. Huppé, 2012 QCCS 1080

Canada Life Ins. v. Poulin, (1934) 57 B.R. 78

Canadian Indemnity Co. v. Canadian Johns-Manville Co., [1990] 2 S.C.R. 549

Cantin v. Industrielle Alliance (L'), compagnie d'assurance sur la vie, 2005 CanLII 17091 (QC CS)

Cardinal v. Sun Life du Canada, compagnie d'assurance-vie, 1999 CanLII 13240 (QC CA)

Caron v. Industrielle-Alliance, compagnie d'assurance-vie, 2008 QCCS 1520

Castonguay v. Jacques, J.E. 95-862 (C.S.)

C.G. v. T.G., 2001 CanLII 20666 (QC CA)

Chablis Textiles inc. (Trustee of) v. London Life Insurance Co., [1996] 1 S.C.R. 160

Chambre de la sécurité financière v. Brisson, 2019 QCCDCSF 42, M[e] Marco Gaggino, Diane Bertrand, member and B. Gilles Lacroix, member

Chambre de l'assurance de dommages v. Siv, 2021 CanLII 34842 (QC CDCHAD)

Chaoulli v. Québec (Attorney General), [2005] 1 S.C.R. 791

Charbonneau (Succession de) v. Gauthier, 2005 CanLII 43246 (QC SC)

Chevrier v. Union canadienne, compagnie d'assurance, 1998 CanLII 13182 (QC CA)

Citadelle Assurance v. Beaulé, 1987 CanLII 824 (QC CA)

Clément v. Clément, 2001 CanLII 18308 (QC CQ)

Commission des droits de la personne et des droits de la jeunesse du Québec v. Montréal (City), [2000] 1 S.C.R. 665

Commission des droits de la personne et des droits de la jeunesse du Québec v. Communauté urbaine de Montréal, [2004] 1 S.C.R. 789

Commission des droits de la personne et des droits de la jeunesse v. Industrielle Alliance, assurances auto et habitation inc., 2013 QCTDP 7, j. Michèle Pauzé, Me Claudine Ouellette and Me Jean-François Boulais, assesseurs

Commission des droits de la personne (Succession de Poirier) v. Bradette Gauthier, 2010 QCTDP 10

Compagnie d'assurance-vie Eaton v. Roy, 1996 CanLII 5894 (QC CA)

Compagnie d'assurance-vie Manufacturers (Financière Manu-Vie) v. Massouh, 2010 QCCS 2060, j. Bernard Godbout

Compagnie d'assurance-vie RBC (Unum Life Insurance Company of America) v. Gagnon, 2012 QCCA 1150

Compagnie d'assurance-vie Transamerica du Canada v. Nourcy, 1999 CanLII 13769 (QC CA), motion for leave to appeal to the Supreme Court of Canada dismissed on March 23, file No. 27 335

Compagnie d'assurance-vie Transamerica du Canada v. Toutant, 1999 CanLII 10961 (QC CS)

Continental Assurance Cy. v. Dame Dion, (1959) B.R. 777

Coopérative funéraire de la Mauricie v. Gendron, 2003 CanLII 32374 (QC CQ)

Corporation Jetsgo (Syndic de), 2010 QCCA 1286

Côté v. Compagnie mutuelle d'assurance-vie du Québec, 1995 CanLII 5046 (QC CA)

Côté v. L'Excellence, compagnie d'assurance vie, 2006 QCCQ 1236, j. Charles-G. Grenier

Coulombe v. Bradette, 2018 QCCQ 7073, j. Geneviève Cotnam

Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand, [1996] 3 S.C.R. 211

Curley v. MacDonald, 2000 CanLII 22836 (ON SC)

D.(M.) v. De.(F.), 2003 CanLII 770 (QC SC), j. Jean-Jacques Crôteau

Daoust-Jean v. Laurentienne-vie (La), compagnie d'assurances inc., J.E. 92-1210 (S.C.)

Dawn-Reed v. Reed, J.E. 94-1646 (S.C.)

De Montigny (Succession de) v. Brossard (Succession de), 2008 QCCA 573, motion for leave to appeal to the Supreme Court of Canada dismissed on 2008-09-25, file 32658

Desjardins Sécurité financière, compagnie d'assurance-vie v. Deslauriers, 2012 QCCA 328

Desjardins Sécurité Financière, compagnie d'assurance-vie v. Émond, 2017 SCC 19, March 31, 2017, jj. Rosalie Silberman Abella, Michael J. Moldaver, Andromache Karakatsanis, Richard Wagner, Clément Gascon, Suzanne Côté and Russell Brown

Desjardins sécurité financière, compagnie d'assurance-vie v. Tétreault, 2009 QCCA 2183

D.I.M.S. Constructions inc. (Faillite de), 2001 CanLII 25183 (S.C.)

Dorion v. Larochelle, 2008 QCCS 4077

Dorion v. Surprenant, 2005 CanLII 41467 (QC SC)

Douyon (Re), 1982 CanLII 3056 (QC SC)

Droit de la famille – 06671, 2006 QCCS 6961

Droit de la famille – 1398, [1991] R.D.F. 215 (S.C.)

Droit de la famille – 141259, 2014 QCCS 2471, j. Nicole-M. Gibeau

Droit de la famille – 142, [1984] C.S. 1223, j. John Gomery

Droit de la famille – 152833, 2015 QCCS 5304

Droit de la famille – 17336, 2017 QCCA 281

Droit de la famille – 17455, 2017 QCCA 384, j. Mark Schrager

Droit de la famille – 181540, 2018 QCCS 3040 (CanLII))

Droit de la famille – 18409, 2018 QCCS 796

Droit de la famille – 19530, 2019 QCCS 1148

Droit de la famille – 1963, J.E. 94-594 (S.C.)

Droit de la famille – 19982, 2019 QCCA 930

Droit de la famille – 1994, [1994] R.D.F. 388 (S.C.)

Droit de la famille – 20281, 2020 QCCS 677, j. Christian J. Brossard

Droit de la famille – 2141, [1995] R.D.F. 131 (S.C.)

Droit de la famille – 2153, J.E. 96-1006 (S.C.)

Droit de la famille – 2176, 1995 CanLII 5419 (QC CA)

Droit de la famille – 21919, 2021 QCCA 872, jj. Marcotte, Gagné et Fournier

Droit de la famille – 2588, 1996 CanLII 4432 (QC SC)

Droit de la famille – 3056, 1998 CanLII 12980 (QC CA), jj. Deschamps, Robert and Biron (*ad hoc*)

Dubé v. Shawinigan (Ville de), 2004 CanLII 14512 (QC CQ)

Dubreuil v. Lavigne Ltée, [1989] R.R.A. 451 (C.Q.)

Dufour v. Agence du revenu du Québec, 2017 QCCA 1409

Dunn v. La Mutuelle d'Omaha cie d'assurance, [1979] C.S. 967

Durand v. Drolet, 1993 CanLII 4058 (QC CA)

Économie (L'), mutuelle d'assurance v. *Roy*, J.E. 85-343 (C.A.)

Émond v. Desjardins Sécurité financière, 2014 QCCQ 2565 (CanLII), j. Céline Gervais, confirmed by *Desjardins Sécurité financière, compagnie d'assurance-vie c. Émond*, 2016 QCCA 161, Saint-Pierre, Vauclair et Mainville, confirmed by *Desjardins Sécurité Financière, compagnie d'assurance-vie v. Émond*, 2017 SCC 19, jj. Rosalie Silberman Abella, Michael J. Moldaver, Andromache Karakatsanis, Richard Wagner, Clément Gascon, Suzanne Côté and Russell Brown

Edward v. Ellis, B.E. 97BE-72 (S.C.)

Excelsior (L'), Compagnie d'assurance-vie v. S.S.Q. Mutuelle d'assurance-groupe, 1993 CanLII 3889 (QC CA)

F. (L.) v. *M. (S.)*, C.S. Saint-François, June 19, 1991, No. 450-04-000504-893, j. Boily

Falduto v. Compagnie d'assurance-vie Federated du Canada, 2008 QCCA 438

Flibotte v. Industrielle (L'), compagnie d'assurances, 1991 CanLII 3750 (QC CA)

Fortier v. Sun Life du Canada, compagnie d'assurance-vie, 2010 QCCS 4923

Fouquette v. Doyon, 2017 QCCS 1848

Fournier v. Pelletier, 2020 QCCS 1629

Frigault (Syndic de), 2008 QCCS 4639

G. v. C., 1995 CanLII 10725 (QC SC)

G. v. G., 1998 CanLII 19145 (QC SC)

G. (L.-M.) (Succession de), 2003 CanLII 74709 (QC SC), j. Jean Bouchard

Gagné v. Aetna, Cie d'assurance-vie du Canada, 1999 CanLII 4317 (QC CQ)

Gagné v. New York Life Ins. Co., (1934) 57 B.R. 60

Gagnon v. Constellation-vie (La), J.E. 88-379 (S.C.)

Gamache v. Sun Life du Canada, 2013 QCCS 321

Gauthier (Succession) v. Assurance vie Banque Nationale, 2005 CanLII 717 (QC CQ)

Gauthier v. Commission scolaire Marguerite-Bourgeoys, 2007 QCCA 1433 (CanLII)

Gauthier v. Nautilus Plus inc., PV 98 14 62, February 12, 2002, M. Laporte, J. Stoddard, C. Constant

Gélinas v. Simard (Succession de), 2002 CanLII 26506 (QC CS), j. Gratien Duchesne, appeal dismissed by *Gélinas v. Simard (Succession)*, 2003 CanLII 75109 (QC CA)

Gélinas v. Simard (Succession), 2003 CanLII 75109 (QC CA)

Geoffroy v. Westbury Canadienne, compagnie d'assurance-vie, 2000 CanLII 18942 (QC SC)

Germain v. Desjardins Sécurité financière, 2010 QCCQ 1190 (Small Claims Div.)

Gestion AVD Verville inc. v. Great West, compagnie d'assurance-vie, 2013 QCCS 4336

Gestion Segi ltée v. Samson, 1997 CanLII 8464 (QC SC)

Giguère v. Mutuelle vie des fonctionnaires du Québec, 1995 CanLII 4658 (QC CA)

G.P. v. M.L., 2003 CanLII 72008 (QC CA), jj. Proulx, Thibault et Rochette

Graillon v. Agence du revenu du Québec, 2016 QCCQ 430, j. Jean Faullem

Gravel (Succession de) v. Compagnie d'assurance du Canada sur la vie, 2007 QCCS 5796

Gray v. Kerslake, [1958] S.C.R. 3

Hardy v. Industrielle-Alliance (L'), compagnie d'assurance sur la vie, 2002 CanLII 512 (QC CS)

Harvey-Côté v. National Life Assurance Co. of Canada, 1991 CanLII 3145 (QC CA)

Higgins v. The Queen, 2013 TCC 194 (CanLII)

Huet v. Citadelle, Cie d'assurance-vie, [1987] R.R.A. 743 (S.C.)

Impériale (L') Cie d'assurance-vie v. Roy (Succession de), 1990 CanLII 2695 (QC CA)

In re Giroux ; Place Bonaventure Inc. v. Giroux, [1993] R.J.Q. 1515 (S.C.)

Industrielle Alliance (L'), compagnie d'assurance sur la vie v. Blais, 2008 QCCA 258

Industrielle-Alliance (L'), compagnie d'assurance sur la vie v. C.C., 2003 CanLII 72058 (QC CA)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 464 v. Taylor-Read Enterprises Inc., 1980 CanLII 535 (BC SC)

Italchain v. J.A. Madill, 1982 CanLII 2747 (QC SC)

J.G. v. C.D., 2008 QCCQ 3201, j. Lina Bond

J.S.H. v. B.B.F., 2001 CanLII 25570 (QC SC), j. Marie-Christine Laberge

Jean-Paul v. Desjardins Sécurité financière, compagnie d'assurance-vie, 2018 QCCQ 5812 (Small Claims Div.)

Jobin-Blouin v. La Mutuelle du Canada, Cie d'assurance sur la vie, J.E. 85-1056 (S.C.)

Johnston v. Great West Life, 2013 QCCS 1404

Julien v. Zurich du Canada, Cie d'assurance-vie, [1984] C.S. 6

Kerslake v. Gray, [1957] S.C.R. 516

King (Succession de), 2006 QCCQ 11568

Kissoondial v. Prudential Insurance Co. of America, 1987 CanLII 4121 (ON CA)

Kowalewski et Commission de la construction du Québec, 2012 QCCRT 335 (CanLII), Me Sophie Mireault, administrative judge

Labranche v. Hébert, J.E. 95-1900 (S.C.), j. Léo Daigle

Lachapelle v. Croix Bleue (La) (Mutuelle-vie du Québec), 1996 CanLII 6246 (QC CA)

Laflamme v. Acier Bouchard inc., 2004 CanLII 15682 (QC CQ)

Lamarche v. Olé Widholm, 2002 CanLII 37315 (C.A.)

Lamirande v. Industrielle Alliance, assurances et services financiers inc., 2016 QCCQ 6975 (Small Claims Div.), j. Richard Landry

Landry v. St-Maurice (La), compagnie d'assurances, [1995] R.R.A. 1221 (C.Q.)

Landry-Chicoine v. Assurance-Vie Desjardins, 1990 CanLII 2945 (QC CA)

Langlois v. Jean, 2002 CanLII 35234 (QC SC)

Larrivée v. Murphy, 2014 QCCA 305, jj. Pelletier, Morissette and Léger

Latulippe v. Leduc, 2009 QCCQ 6822, j. Chantal Sirois

Laurendeau v. Mutuelle du Canada (La), Cie d'assurance, [1989] R.R.A. 447 (S.C.)

Laurentienne-vie (La), compagnie d'assurances inc. v. Empire (L'), compagnie d'assurance-vie, 2000 CanLII 9001 (QC CA)

Lavoie v. Compagnie d'assurance-vie de Montréal, 1989 CanLII 590 (QC CA)

Lavoie v. Industrielle Alliance, assurances et services financiers inc., 2014 QCCS 6316, j. Alicia Soldevila

Lavoie v. S.S.Q. Vie, 2003 CanLII 33200 (QC SC)

L.C. v. M.B., 2000 CanLII 3967 (QC CA)

Leduc (Faillite de) v. Rousseau Leduc, 1998 CanLII 12146 (QC SC), j. Pierrette Rayle

Lefebvre (Trustee of), Tremblay (Trustee of), 2004 SCC 63

Lefort v. Desjardins Sécurité financière, 2007 QCCQ 10192, j. Raoul P. Barbe

Légaré v. Industrielle Alliance (L'), assurances et services financiers inc., 2007 QCCA 1840

Lehoux v. Union-vie (L'), compagnie mutuelle d'assurances, 2003 CanLII 12967 (QC SC)

Lemay v. Assurance-vie Desjardins, 1988 CanLII 352 (QC CA)

Les Coopérants, Société mutuelle d'assurance vie (In re) : Firstcliff Development inc. v. Raymond, Chabot, Fafard, Gagnon inc., 1993 CanLII 4036 (QC CA)

Levasseur v. 9095-9206 Québec inc., 2012 QCCA 45

London Life, Compagnie d'assurance-vie v. Canada, 2014 CAF 106, motion for leave to appeal to the Supreme Court of Canada dismissed, January 29, 2015 (file No. 35961)

London Life Insurance Company v. Long, 2016 QCCA 1434

Lussier v. Assurance-vie Banque Nationale, compagnie d'assurance-vie, 2013 QCCS 234

M.(P.) v. L.(K.), 2003 CanLII 2546 (QC SC), j. Nicole Bénard

M. (R.) v. M. (L.), 2000 CanLII 18630 (QC SC)

MacKinnon v. Deloitte & Touche Inc., 2007 SKQB 39

Maltais v. Québec (Sous-ministre du Revenu), 2014 QCCQ 1548

Manufacturers Life Insurance Company v. Métropolitaine, compagnie d'assurance-vie, 2003 CanLII 12192 (QC CA)

Marcoux v. L'Alternative, 2003 CanLII 10835 (QC CQ)

Marcoux v. Lemaire-Laporte, 2017 QCCQ 10039 (Small Claims Div.), j. Chantal Gosselin

Marcoux v. Canada (Procureur général), 2001 CAF 92, jj. Noël, Décary et Létourneau

Martel v. Excellence (L'), compagnie d'assurance-vie, 2003 CanLII 34274 (QC CQ)

Massy v. Compagnie d'assurance American Life, 1991 CanLII 3510 (QC CA)

M.B. v. Financière Manuvie, 2016 QCCA 498

McConnell v. McConnell, 2015 ONSC 2243 (CanLII)

McDuff v. Industrielle Alliance (L'), assurances et services financiers inc., 2009 QCCS 530

McGuerrin-Houle v. *Cie d'assurance Combined d'Amérique (La)*, [1986] R.R.A. 701 (Québec Prov. Ct.)

M.D. v. Desjardins Sécurité financière, compagnie d'assurance-vie, 2011 QCCQ 10314 (Small Claims Div.)

Memmi v. Compagnie d'assurance générale Héritage, 1997 CanLII 9366 (QC SC), j. Diane Marcelin, requête en rétractation de jugement rejetée, July 11, 1997

Métropolitaine, compagnie d'assurance-vie v. Manufacturers Life Insurance Company, 1997 CanLII 8095 (QC CS), confirmed by *Manufacturers Life Insurance Company v. Métropolitaine, compagnie d'assurance-vie*, 2003 CanLII 12192 (QC CA)

M.L. v. Desjardins Sécurité financière, 2010 QCCA 586

M.N.R. v. Anthony, 1995 CanLII 5595 (NL CA)

Morin v. Nault, 2001 CanLII 25046 (QC CS), pp. 40 à 43, j. Clément Trudel, settlement out of Court in appeal, C.A.M., No. 500-09-010818-011, 2005-06-09

Morrison Estate (Re), 2015 ABQB 769

Murphy v. Newhouse, 2019 QCCQ 7034 (Small Claims Div.), j. Jacques Paquet

N. (L.) v. N. (P.), C.S. Québec, 4 juin, 1992, № 200-12-043249-904, j. Philippon

Obodzinsky (Succession de Obodzinsky) v. Caisse Desjardins du Centre-Est de Montréal, 2019 QCCQ 3506, j. Mark Shamie

Ouellet v. Industrielle (L'), compagnie d'assurance sur la vie, 1993 CanLII 3597 (QC CA)

Padulo v. TD Canada, 2017 QCCQ 1129 (Small Claims Div.), j. Jeffrey Edwards

Parenteau v. Personnelle (La), compagnie d'assurances du Canada, B.E. 99BE-618 (C.Q.)

Patel v. Transamerica Life Insurance Company of Canada, 2004 QCCA 76326

Payne (Trustee of), 2001 ABQB 894 (CanLII)

*Pelletier v. Sun Life du Cana*da, [1983] C.A. 1

Perron-Malenfant v. Malenfant (Trustee of), [1999] 3 S.C.R. 375

Pembina on the Red Development Corp. Ltd. v. Triman Industries Ltd., 1991 CanLII 2699 (MB CA)

Petit (Succession de) v. St-Pierre, 2009 QCCA 1129

Phillipp v. Sun Life du Canada, compagnie d'assurance-vie, 2007 QCCS 555

Piché v. Arontec inc., 2008 QCCA 744

Piché v. Arontec inc., 2006 QCCS 2721, appel rejeté par *Piché c. Arontec inc.*, 2008 QCCA 744

Piro et Commission de la construction du Québec, 2017 QCTAT 5778, Yves Lemieux, administrative judge

Plante v. Métropolitaine (La), Compagnie d'assurance-vie, J.E. 91-423 (C.S.)

Pommet v. Mailloux, 1996 CanLII 4684 (QC CS), j. Armand Carrier

Ponoka-Calmar Oils Ltd. v. Earl F. Wakefield Co., [1959] UKPC 20

Poulin v. Serge Morency et Associés inc., [1999] 3 S.C.R. 351

Poulin-Doyon v. Aeterna-Vie, [1986] R.R.A. 499 (C.S.)

Praderes v. Les Immeubles de la Montagne Ste-Catherine (1974) inc., PV 97 17 29, 4 avril 2001, M. Laporte, E.R. Luticone, D. Boissinot

Procureur général du Québec v. Santilli, 1997 CanLII 10774 (QC CA)

Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center), [2015] 2 S.C.R. 789

Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron, 2018 SCC 3

Québec (Attorney General) v. A, [2013] 1 S.C.R. 61, jj. McLachlin, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis

Québec (Attorney General) v. Canada (Human Resources and Social Development, [2011] 3 S.C.R. 635

Québec (Sous-ministre du Revenu) v. Fercal inc., 2006 QCCA 68

Quirion (Faillite), Re, 2004 CanLII 1001 (QC CS)

R. v. Cantin, 1999 CanLII 10272 (QC CQ)

R. v. Charbonneau, 2007 QCCQ 10244

R. v. Dupuis, 2015 QCCQ 485

R. v. Joseph, 2011 QCCQ 1599

R. v. Lavallée, 2015 QCCQ 3731

R. v. Lavallée, 2016 QCCA 1655 (CanLII)

R. v. Sauriol, 2012 QCCQ 7766

R. v. St-Martin, 2013 QCCQ 6422

R. v. Thiboutot, 2012 QCCQ 880

R. v. Wilson, 2009 QCCQ 2229

R. v. Banks, 2010 ONCJ 339

R. v. Chan, 2012 ABPC 272

R. v. Davidson, 2011 ABPC 130

R. v. Dennis, 2003 BCSC 2017

R. v. Dizon, 2018 BCPC 328

R. v. Ellis, 2007 ABQB 722

R. v. Headley, 2018 ONSC 5818

R. v. Honickman, 2015 ONCJ 770

R. v. Hoy, 1998 CanLII 6024 (BC CA)

R. v. Jamal, 2006 BCPC 542

R. v. Kaminsky, 2015 SKPC 39

R. v. Link, 2013 SKQB 138

R. v. Maudsley, 2007 BCPC 104

R. v. Millward, 2000 ABCA 308

R. v. Millward, 2000 ABPC 46

R. v. Reeve, 2018 ONSC 3744

R. v. Saucier, 2018 ONSC 7266

R. v. Saucier, 2019 ONSC 3611

R. v. Scribnock, 2017 CanLII 13988 (ON SC)

R. v. Waddell, 2005 CanLII 4925 (MB PC)

R. v. Wilson Stevens, 2008 NLTD 89

R.P. v. Régie des rentes du Québec, 2008 QCTAQ 041251, M^{e} Odette Lacroix, administrative judge

Re Geraci, 1970 CanLII 494 (ON CA)

Real's Truck Stop Ltd. v. Financière Manuvie, 2018 QCCQ 2580 (Small Claims Div.), j. Marie Michelle Lavigne

Régime de sécurité sociale, Syndicat des débardeurs, section locale 375 v. Berthelet, 2000 CanLII CanLII 18640 (QC CS), j. Carol Cohen

Regroupement des Comités Logement et Association de locataires du Québec v. Corporation des propriétaires immobiliers du Québec, rapport d'enquête, [1995] C.A.I. 370 (C.A.I.)

Reference re Genetic Non-Discrimination Act, 2020 SCC 17

Reference re Same-Sex Marriage, [2004] 3 S.C.R. 698

Robert v. *Industrielle (L'), compagnie d'assurance sur la vie*, J.E. 96-2169 (C.S.)

Robillard v. Société canadienne des postes, 2017 QCCS 2707, j. Donald Bisson

Robitaille v. Dion, [1979] 1 S.C.R. 359

Robitaille v. Madill, [1990] 1 S.C.R. 985

Rocheleau v. Union-vie, compagnie mutuelle d'assurance, 1999 CanLII 11266 (QC CS)

Rongionne v. Mutuelle des fonctionnaires du Québec, [1989] R.R.A. 673 (C.S.), appeal dismissed by *Rongionne v. Mutuelle des fonctionnaires du Québec,* 1995 CanLII 5480 (QC CA)

Rongionne v. Mutuelle des fonctionnaires du Québec, 1995 CanLII 5480 (QC CA)

Ross v. Canada (Minister of National Revenue), Federal Court of Appeal, A-966-96, 1997-12-15

Rousse v. Beaulieu, 2000 CanLII 18413 (QC CS), j. Carole Julien, appeal dismissed on motionl, C.A.M., No. 500-09-010425-007, February 5, 2001

Roy v. Capitale (La), assurances et gestion du patrimoine inc. (Capitale [(La]), assurances de personnes inc.), 2012 QCCS 4464

R.W. v. Industrielle Alliance, 2011 QCCS 3314

S.A. v. Compagnie d'assurance-vie RBC, 2009 QCCS 3280

Shallow v. Colonia Life Insurance Co., J.E. 95-1734 (C.S.)

Shaw, ès qualités « Tutrice » v. Sénéchal, 1998 CanLII 12048 (QC CS), j. Jean-Jacques Crôteau

Shoiry v. London Lancashire Guarantee et Acc. Cy., (1949) C.S. 315

Simard v. Beaulieu, 2002 CanLII 19944 (QC CS), j. Jacques Babin

Slater v. Klassen Estate, 2000 CanLII 21113 (MB QB)

Smith v. Desjardins, 2005 QCCA 1046

Smith v. La Survivance, cie mutuelle d'assurance-vie, [1995] R.R.A. 676 (C.S.)

SMRQ v. Bromage, [1986] R.R.A. 664 (C.S.)

Smurfit-Stone inc. v. Goudreault, 2005 QCCA 948

Sogedent Assurances inc. v. Régie de l'assurance maladie du Québec, 2006 QCCS 3970, j. Michel A. Caron

Solidarité (La), compagnie d'assurance sur la vie v. Poulin, 1999 CanLII 19881 (QC CA)

Souscripteurs du Lloyd's v. Alimentation Denis & Mario Guillemette inc., 2012 QCCA 1376, jj. Morin, Dutil et Bich, motion for leave to appeal to the Supreme Court of Canada dismissed, April 4, 2013, file No. 35011

SSQ Mutuelle d'assurance groupe v. Larrivée, 2000 CanLII 10180 (QC CA)

SSQ, Société d'assurance inc. v. Froidebise, 2014 QCCS 205

SSQ, Société d'assurance-vie inc. v. Renaud, 2015 QCCS 566

SSQ, Société d'assurance-vie inc. v. Richard, 2005 CanLII 45362 (QC CS), j. Bernard Godbout

SSQ, Société d'assurance-vie inc. v. Rouillard, 2005 CanLII 46512 (QC CS)

SSQ, Société d'assurance-vie inc. v. Thouin, 2005 CanLII 137 (QC CQ)

Strong v. Marshall Estate, 2009 NSCA 25

Sun Life Assurance Company of Canada v. Young, [1992] 4 W.W.R. 504

Syndic de Baker, 2018 QCCS 5493, j. Christine Baudouin

Syndic de Les Coopérants v. Curadeau, [1993] R.R.A. 716 (C.S.)

Syndic de R.T., 2017 QCCA 362, jj. Guy Gagnon, Dominique Bélanger and Robert M. Mainville (diss.)

Syndicat des employées et employés professionnels-les et de bureau, section locale 57 v. Caisse populaire Saint-Stanislas de Montréal, [1999] R.J.D.T. 350 (T.A.)

Syndicat des salariés de Lactantia (CSD) et Aliments Parmalat inc. (grief syndical), 2005 CanLII 92591 (QC SAT), M^e^ Denis Tremblay, arbitrator

Taillon v. Desjardins Sécurité financière, compagnie d'assurance-vie, 2007 QCCS 1510

Taraby v. Smith (Succession de), 2008 QCCS 1591

Tardif v. Raymond Chabot inc., 1998 CanLII 13117 (QC CA)

Tardif v. Succession Dubé, 2017 QCCA 1005 (CanLII)

Tassé v. Canada-Vie, 2000 CanLII 18646 (QC CS)

Taylor v. Agence du revenu du Québec, 2014 QCCQ 5042 (Small Claims Div.)

T.D. v. R.N., 2008 QCCA 1968, jj. Chamberland, Thibault et Giroux

Therreault v. Therreault (Succession de), J.E. 87-231 (C.S.)

Thibault v. Empire (L'), compagnie d'assurance-vie, 2012 QCCA 1748

Trachy v. BMO Nesbitt Burns inc., 2019 QCCS 213

Transamerica Life Insurance Co. of Canada v. Patel, 2002 CanLII 434 (QC CS), confirmé par *Patel v. Transamerica Life Insurance Company of Canada*, 2008 QCCA 258

Tremblay v. Clarica, compagnie d'assurance sur la vie, 2000 CanLII 18863 (QC CS)

General Trust of Canada v. Artisans Coopvie, Société Coopérative d'assurance-vie, [1990] 2 S.C.R. 1185

Turgeon v. Atlas Assurance Company Limited et Fortin, [1969] R.C.S. 286

Ubaldini v. Rio Canada Management Inc., 2012 QCCS 4323

Union du Canada, assurance-vie v. Dépanneur Centre-ville (1980) Ltée, 1987 CanLII 1142 (QC CA)

Union-Vie (L'), compagnie mutuelle d'assurances v. Laflamme, 2005 QCCA 394

Union-Vie (L'), compagnie mutuelle d'assurances v. Landry, 2005 QCCA 1036

V.P. v. Compagnie d'assurance-vie Manufacturers, 2020 QCCS 838

V.Z. v. T.C., 2003 CanLII 22476, appel accueilli par *Z. (V.) c. C. (T.)*, 2004 CanLII 76402 (QC CA)

Vallée v. Assurance-vie Desjardins, 2001 CanLII 39972 (QC CA)

Wagner v. I.N.G., Le groupe Commerce, compagnie d'assurances, 2001 CanLII 24422 (QC CQ)

Weymouth-Reid (Syndic de), 2006 QCCS 3025

Winnipeg School Division No. 1 v. Craton, [1985] 2 S.C.R. 150

Z. (V.) v. C. (T.), 2004 CanLII 76402 (QC CA)

Zawada v. Zawada (Succession de), 2002 CanLII 63627 (QC CS)

DOCTRINE CITED

General works

ARCHAMBAULT Jean-Pierre and Marc-André ROY. *Initiation au droit des affaires,* 2nd ed., Laval, Éditions Études vivantes, 1995, 278 pp.

AUTORITÉ DES MARCHÉS FINANCIERS. An *Act respecting the distribution of financial products and services*, its regulations and codes of ethics, May, 2014 edition, A-100, 257 pp.

AUTORITÉ DES MARCHÉS FINANCIERS. *Introduction to Insurance Law*, 2nd edition, 2014, A-110, 347 pp.

AUTORITÉ DES MARCHÉS FINANCIERS. *Applying Legal and Legislative Concepts Pertaining to Accident or Health Insurance*, 2nd edition, 2002, A-102, 210 pp.

AUTORITÉ DES MARCHÉS FINANCIERS. *Legal Concepts and Legislation Pertaining to Group Insurance of Persons and Annuity Plans*, 2nd edition, 2007, A-103, 428 pp.

Michel BEAUCHAMP and Cindy GILBERT., *Tutelle, curatelle et mandat de protection*, Cowansville, Les Éditions Yvon Blais, 2014.

Jean-Guy BERGERON., *Les contrats d'assurance : lignes et entre-lignes*, tome 2, Sherbrooke, Les Éditions SEM inc., 1992.

Jean-Guy BERGERON and Nathaly RAYNEAULT., *Précis de droit des assurances*, Sherbrooke, Les Éditions Revue de droit Université de Sherbrooke, 1996.

Christian BRUNELLE and Mélanie SAMSON., « L'objet, la nature et l'interprétation des Chartes des droits», dans École du Barreau du Québec, *Droit public et administratif,* Collection de droit 2021-2022, vol. 8, Montréal, Éditions Yvon Blais, 2021.

CANADIAN SECURITIES ADMINISTRATORS and CANADIAN COUNCIL OF INSURANCE REGULATORS., *A Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds,* May 7, mai 1999.

Vincent CARON., *Code de déontologie de la Chambre de la sécurité financière commenté et annoté*, Montréal, Wilson & Lafleur, 2019.

Geneviève COTNAM., « De l'exécution du contrat d'assurance en assurance de personnes (art. 2435-2444, C.c.Q.), in Sébastien LANCTÔT and Paul A. MELANÇON (dir.), *Commentaires sur le droit des assurances et textes législatifs et réglementaires »*, 3rd ed., Montréal, LexisNexis, 2017.

Madeleine CANTIN CUMYN et Michelle CUMYN., *L'administration du bien d'autrui*, 2e éd., Montréal, Éditions Yvon Blais, 2014, 610 pp.

CANTIN CUMYN, Madeleine and Michelle CUMYN. *L'administration du bien d'autrui*, 2nd ed., Montréal, Éditions Yvon Blais, 2014, 610 pp.

COLLECTIF., *Le Petit Larousse illustré*, Paris, Larousse, 2004, 1, 822 pp.

Édith DELEURY and Dominique GOUBAU., *Le droit des personnes physiques,* 5th ed., Cowansville, Éditions Yvon Blais, 2014.

Pierre DESCHAMPS., «Les conditions générales de la responsabilité civile du fait personnel», dans École du Barreau du Québec, *Responsabilité,* Collection de droit 2021-2022, vol. 5, Montréal, Éditions Yvon Blais, 2021.

Céline GERVAIS. *La prescription*, Cowansville, Thomson Reuters, 2009.

GILBERT, Michel. *L'assurance collective en milieu de travail*, 2nd ed., Cowansville, Les Éditions Yvon Blais, 2006, 500 pp.

Odette JOBIN-LABERGE andet Luc PLAMONDON., « Les assurances et les rentes », in *La réforme du Code civil : Obligations, contrats nommés*, Québec, Les Presses de l'Université Laval, 1993.

Jean-François LAMOUREUX., « Le droit des assurances », École du Barreau du Québec, *Contrats, sûretés, publicité des droits et droit international privé,* Collection de droit 2021-2022, vol. 7, Montréal, Éditions Yvon Blais, 2021, p. 93.

LLUELLES, Didier. *Précis des assurances terrestres,* 6th ed., Montréal, Les Éditions Thémis, 2017, 540 pp.

David NORWOOD and John P. WEIR., *Norwood on Life Insurance Law in Canada*, 3rd ed., Toronto, Carswell, 2002.

Louis PAYETTE., *Les sûretés réelles dans le Code civil du Québec*, 5th ed., Montréal, Les Éditions Yvon Blais, 2015.

Louise POUDRIER-LEBEL., *Droit des assurances de personnes*, Québec, Les Presses de l'Université Laval, 2000.

SECRÉTARIAT DU CONSEIL DU TRÉSOR., *Loi concernant le cadre juridique des technologies de l'information annotée.*

François-Xavier SIMARD Jr. and Gabrielle De K. MARCEAU., *Le droit des assurances terrestres depuis 1976 (art. 2468 à 2605, C.C.B.-C.)*, Montréal, Wilson & Lafleur Ltée, 1988.

Maurice TANCELIN and Danielle SHELTON., *Des institutions – Branches et sources du droit*, Montréal, Adage, 1989.

Isabelle Nadia TREMBLAY., *L'assurance de personnes au Québec*, Brossard, Les Publications CCH/FM Inc., 1989 (looseleaf edition).

Isabelle Nadia TREMBLAY., « Bénéficiaires et titulaires subrogés », dans Collectif, *JurisClasseur Québec – Contrats nommés II*, Montréal, LexisNexis Canada, looseleaf edition.

VILLERS, Marie-Éva De. *Multidictionnaire de la langue française,* Montréal, Québec Amérique, 2006, 1,542 pp.

Periodical articles

Anne-Marie BOISVERT, Hélène DUMONT and Alexandre STYLIOS., « En marge de l'affaire Lacroix-Norbourg : les enjeux substantifs et punitifs suscités par le double aspect, réglementaire et criminel, de certains comportements frauduleux dans le domaine des valeurs mobilières », (2009) 50 *C. de D*. № 3-4, septembre-décembre, 2009.

Pascal FRÉCHETTE., « La qualification des contrats : aspects pratiques », (2010) 51(2) *C. de D*. 375.

Philip FRIEDLAND., « Segregated Funds vs. Mutual Funds, Selected Legal and Tax Aspects », *Second Annual Innovative Uses of Insurance Conference*, Toronto, February 25, and 1999.

Édith LAMBERT., « Commentaires sur l'article 2880, C.c.Q. », in *Commentaires sur le Code civil du Québec (DCQ)*, EYB2013DCQ1480, December, 2013.

André LAPORTE., « Les différents régimes d'indemnisation à la suite d'un accident automobile », in Barreau du Québec – Service de la formation continue, *Développements récents en matière d'accidents d'automobiles*, 2006, vol. 257, Cowansville, Les Éditions Yvon Blais inc., 2006, p. 119.

Luc PLAMONDON., « L'erreur sur l'âge en assurance de personnes », (2006) 40 *R.J.T*. 509.

Isabelle Nadia TREMBLAY., *Semblables mais différents : Fonds distincts et fonds communs de placement*, Formation № 39775 CSF20180507, Montréal, Chambre de la sécurité financière, 2018.

Kathleen C. YOUNG., « Mutual Fund and Segregated Fund Flowtrough Tax Rules : Resolving the Inconsistencies », (2004) 52, No. 3. *Canadian Tax Journal* 884.

Newspapers and magazines

Christine BOUTHILLIER., « Un représentant accusé d'avoir soutiré 10,5 M$ à un assureur », *Conseiller,* December 15, 2016.

Stéphanie GRAMMOND., « Les bourses d'études à l'examen », *La Presse,* September 8, 2007.

La rédaction., « Un ex-conseiller en sécurité financière accusé au criminel », *Conseiller,* February 23, 2017.

OTHER PUBLICATIONS

TREASURY BOARD OF CANADA SECRETARIAT

Important Information for Public Service Health Care Plan (PSHCP) Members Residing in Québec, May, 1997.

CANADA REVENUE AGENCY

Registered Retirement Savings Plans 72-22R9, June 17, 1996.

Information Circular 77-1R4 Deferred Profit Sharing Plans, December 30, 1992.

Information Circular 78-18R6, March 6, 2002.

Information Circular IC77-1R5 Deferred Profit Sharing Plans.

Retirement compensation arrangements.

RC240 Designation of an Exempt Contribution - - Tax-Free Savings Account (TFSA).

Pension Adjustment Guide.

Employers' Guide: Taxable Benefits and Allowances.

CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION (CLHIA)

Guideline G2 (Individual Variable Insurance Contracts Relating tTo Segregated Funds).

Guideline G4 (Coordination of Benefits - - Group Health and Dental).

Guideline G7 (Creditor's Group Insurance).

Guideline G8 (Advisor Suitability: Screening, Monitoring and Reporting).

Guideline G10 (10-Day Insurance Contract Rescission Right).

Guideline G12 (Capital Accumulation Plans).

Guideline G15 (Guaranteed Withdrawal Benefit [GWB] Illustrations).

Guideline G18 (Insurer-MGA Relationships).

AUTORITÉ DES MARCHÉS FINANCIERS

Guidelines

Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds, January, 2011.

Notices

Notice relating to the regulatory framework applicable to mortgage brokerage, April 9, 2020.

Notice of publication relating to the application of the Regulation respecting damage insurance brokerage, November 28, 2019.

Notice regarding information collection and insurance advice, June 27, 2019.

Notice relating to the application of the Regulation respecting Alternative Distribution Methods, May 15, 2019.

Avis relatif à l'application du Règlement sur l'exercice des activités des représentants, R.R.Q., c. 9.2, r. 10 (Loi sur la distribution de produits et services financiers), 25 juillet, 2013 (available in French only).

Notice relating to obligations of representatives and insurers with respect to service offered to clients under insurance of persons contracts – Orphan clients, May 23, 2013.

Avis relatif à la gestion des comptes séparés en application de la Loi sur la distribution de produits et services financiers, 13 janvier, 2012 (available in French only).

Avis relatif à l'indication de clients en application de la Loi sur la distribution de produits et services financiers, 8 octobre, 2010 (available in French only).

Avis de l'Autorité des marchés financiers concernant les prêts à effet de levier lors d'achat de titres d'organismes de placement collectif et de fonds distincts, 9 octobre, 2009 (available in French only).

Avis relatif aux pénalités administratives imposées en cas de défaut de déclarer les plaintes, 28 mars, 2008 (available in French only).

Guidance intended for independent representatives and firms with only one representative – all sectors, May, 2007.

Avis relatif à la distribution de produits d'assurance par les courtiers en prêts hypothécaires (art. 408 et suivants de la Loi sur la distribution de produits et services financiers.), 9 décembre, 2005 (available in French only).

Web pages

Cancelling a life or health insurance contractAn important decision.

Professional liability insurance.

Separate account.

Responsible officer and independent representative.

Distribution without a representative (DWR).

Compensation fund.

Segregated Funds - - 8 questions answered.

Business relationships.

Application of the United Nations Resolution to Suppress Terrorism.

Products and services offered via the InternetDigital transaction space.

Payment of remuneration - - Representatives and Registrants.

Sharing of commissions - - Rules.

Financial planning.

Procédure de remplacement d'un contrat d'assurance – Assurance de personnes incluant l'assurance pour la survenance de maladie grave.

Protection des données et renseignements personnels (available in French only).

Complaint examination.

Other publications

Market structures oversight framework.

Representations Guide.

Registrant Governance and Compliance Guide, 3rd Edition, 2021.

Practical guide for protecting vulnerable clients, July, 2019.

Quick reference – Detecting financial mistreatment.

Managing Conflict of Interest Risk in Relation to Incentives, July, 2017.

Incentive Management Guideline, November, 2021.

Example : Acknowledgement of receipt Including notice.

Notice of Replacement of Insurance of Persons Contract.

Reminder of certain obligations that certified representatives and firms have when offering insurance prodicts in partnership with automobile and recreational and leisure vehicle dealers in Québec, 2021.

Your complaint examination obligations.

FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA (FINTRAC)

Reporting terrorist property to FINTRAC.

Reporting large virtual currency transactions to FINTRAC.

Reporting suspicious transactions to FINTRAC.

Politically exposed persons and heads of international organizations guidance for life insurance companies, brokers and agents.

Risk assessment guidance.

Record keeping requirements for life insurance companies, brokers and agents.

Beneficial ownership requirements.

Ongoing monitoring requirements.

Business relationship requirements.

Guidance glossary.

Money laundering and terrorist financing indicators – Life insurance companies, brokers and agents.

Guideline 6A (replaced).

Guideline 7A: Submitting Large Cash Transaction Reports to FINTRAC Electronically.

Guideline 7B: Submitting Large Cash Transaction Reports to FINTRAC by Paper.

All FINTRAC guidance.

CANADIAN COUNCIL OF INSURANCE REGULATORS (CCIR)

Guidance: Conduct of Insurance Business and Fair Treatment of Customers, September, 2018.

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Contest And Promotions.

Get to know your client.

Products.

Notice Replacement.

Recommendations.

Conflict of Interest Management.

Professional Liability Insurance.

Compensation.

MERCER

Sondage mondial Mercer 2002 sur les régimes à cotisations déterminées – les meilleures stratégies pour les régimes CD au Canada, décembre, 2002.

CISRO

Guidance: Conduct of Insurance Business and Fair Treatment of Customers.

CISRO Principles of Conduct for Insurance Intermediaries.

Questions and Answers: CISRO Principles of Conduct for Insurance Intermediaries.

RETRAITE QUÉBEC

RRS le régime de retraite simplifié ; un régime de retraite sur mesure pour les PME, 27 pp.

Le remboursement de votre CRI ou de votre FRV.

Plan stratégique 2012-2016.

Your rôle, powers and responsibilities.

Newsletter number 23 (May, 2008).

Simplified Pension Plan.

SSQ, SOCIÉTÉ D'ASSURANCE-VIE INC.

2022 Bulletin on Social Legislation.