

# BRIEFING NOTE

## **A Tale of Two Languages: A Cautionary Note for Insurers who Underwrite their Policies in English and in French**

### **I. Introduction**

The case of *Chiasson v. Intact Insurance Co*, 2020 NBCA 37, is a good reminder for insurers and their underwriters to maintain consistent policy wordings and coverage terms between different language versions of their policies.

In *Chiasson*, the New Brunswick Court of Appeal considered insurance coverage under a “Homeowners Broad Form” policy issued in New Brunswick by Intact Insurance Company (“Intact”) to Hector and Anna Chiasson (the “Policy”). Jean-François Chiasson, the son of Hector and Anne Chiasson, resided with his parents and was an insured under the Policy which was in effect at all material times.

In short, the underwriting on the French version of the Policy provided a broader scope of coverage than the English version of the Policy for claims arising from bodily injury or property damage. The Court applied the broader language version of the Policy in making a duty to defend determination for a claim advanced against Jean-François.

### **II. Background**

Jean-François was involved in an altercation at an establishment known as the “Beach Club” in Pointe-Calumet, Quebec, which resulted in injuries to a third party. The police did not lay any criminal charges in the matter.

The injured third party commenced an action in the Quebec Superior Court against the Chiassons. Intact agreed to defend Hector and Anna, the parents, but refused to defend Jean-François on the basis that the action pleaded allegations of assault and intention to inflict bodily harm which, according to Intact, were exuded from coverage under the Policy and thus the duty to defend did not arise in respect of Jean-François.

Jean-François and his parents applied for an order that Intact defend Jean-François. The application judge held that Intact had no duty to defend Jean-François and the application was dismissed.

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### III. Legal Analysis

At the appeal, the Court considered the analysis under three headings: duty to defend, coverage, and exclusion.

Under the duty to defend analysis, the first step was to determine if there was a possibility that the claim advanced against Jean-François was covered by the Policy. As per *Nichols v. American Home Assurance Co.*, [1990] 1 S.C.R. 801, [1990] S.C.J. No. 33 (QL), to the extent the language used in the pleading against the insured may cause ambiguity, the widest latitude should be given to the allegations in determining whether they raise a claim covered by a policy.

Under the coverage analysis, the Court stated that the threshold to establish coverage is low and any ambiguity in the policy must be resolved in favor of the insured: *Opron Maritimes Construction Ltd. v. Canadian Indemnity Company* (1986), 73 N.B.R. (2d) 389, [1986] N.B.J. No. 111 (C.A.) (QL), leave to appeal to S.C.C. refused, [1987] S.C.C.A. No. 65 (QL). Moreover, where the policy of insurance in question is written in both official languages, as required by s. 20.1(1) of the *Insurance Act*, R.S.N.B. c. I-12, any inconsistency between the two versions of the policy must be resolved in favour of the insured.

There were significant inconsistencies between the two versions of the Policy. In the English version, the statement of coverage was for accidental injuries caused to someone or their property. In the French version of the Policy, property damage was not mentioned and there was nothing that limited the coverage to only accidental injuries. When the Court resolved the inconsistencies in the favor of the insured, it found that the Policy provided personal liability protections to the insured if sued for bodily injury or property damages, but Intact was only to be responsible for the defence costs and compensatory damages if the injury or damage was unintended. The Court found that unless the Policy went on to exclude intentional acts, provided the injury itself was not intended, a claim for injuries from assault or battery would be covered according to an interpretation of the French version of the Policy.

Under the exclusion analysis, once again the Court interpreted the ambiguity in the two language versions of the Policy against Intact. In the English version, claims which arose from bodily injury or property damage caused by an intentional act, a criminal act or a criminal failure to act, were excluded from coverage. However, in the French version, intentional acts were included and were not excluded from coverage unless they were criminal. As noted, Jean-François was not charged with a criminal offence.

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When the Court considered the allegations advanced against Jean-François, there was a possibility that the claim advanced was covered by the Policy. The Court therefore determined that Intact had a duty to defend Jean-François.

#### IV. Conclusion

The principle that ambiguity in a policy will be resolved in the favor of the insured has been affirmed time and time again by courts across this country. The case of *Chiasson* highlights the need for consistency in policies when they are issued by the same insurer in multiple languages.

As per the finding in *Chiasson*, substantive differences between the English and French versions of a policy will very likely be considered an ambiguity which will be resolved in favor of the insured. If one language version of a policy is broader than the other language version, as occurred on the facts above, then the court will look to whichever version of the policy contains the broadest coverage terms, or the least prohibitive exclusionary clause, to find insurance coverage for a particular event.

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