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Article abstract

M. Georges Lafrance a défini avec précision les relations de l'assureur et de l'agent d'assurances dans une conférence prononcée récemment devant cette association qui répond au nom assez inattendu de Blue Goose et qui réunit le gratin et les couches moyennes de l'assurance à Montréal. M. Lafrance a en particulier expliqué le mandat qui échoit à l'agent. C'est cette partie de sa conférence que nous présentons ici comme un document officiel à conserver.

The duty of the insurance agent as I see it

by

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M. Georges Lafrance a défini avec précision les relations de l'assureur et de l'agent d'assurances dans une conférence prononcée récemment devant cette association qui répond au nom assez inattendu de Blue Goose et qui réunit le gratin et les couches moyennes de l'assurance à Montréal. M. Lafrance a en particulier expliqué le mandat qui échoit à l'agent. C'est cette partie de sa conférence que nous présentons ici comme un document officiel à conserver.

The best way in which to approach this subject is to first of all try and appraise the relationship the agent occupies to the public at large. In my view he holds a very responsible position. In the first place insurance companies, like all other incorporated bodies, can carry on business only by means of officials to whom certain functions are delegated by the act of incorporation. These officials are nevertheless only the agents of the company, however plenary their powers may be, and when they exceed their powers the company will not be bound by their acts, except in circumstances, *and this is very important*, which entitle a person dealing with them to assume that they possess authority to commit such acts, and thereby give ground for claiming relief by estoppel. In addition to these officials, the company employs agents with more or less ex-

tensive powers, and it is with respect to the extent of the powers of such agents that difficulty very often arises.

It can be said at once that the insurance agent is generally assumed by the public at large to be the representative of the company appointing him, and that he has the necessary powers to bind the company and to make it responsible for whatever acts he commits. There are many legal pronouncements more clearly defining the powers and duties of an agent in specified instances in the records of Canadian jurisprudence, but as a general statement it may be taken as indubitable that the agent stands in the place of the company.

As I see it this constitutes the necessity of selecting agents with a great deal of care, for imposing adequate degrees of competency upon the agent, and for enforcing a more or less strict supervision over the appointment of agents by the governing authorities.

It must be recollected, and borne in mind that the business of insurance is a technical one, that it is not, in its more intimate aspects, expected to be a familiar one to the "man in the street", and therefore that, very largely, the responsibility of properly and adequately insuring the public against the hazards for which they require coverage, lies primarily on the insurance agent, who is presumed, even if he does not do so, to possess an intimate and more or less expert knowledge of the possibilities that lie within his offerings to the public, as well as the limitations to which the public, under the coverages, are exposed. The measure of protection available to the public mainly lies in the hands of the competency or otherwise of the insurance agent.

The doctrine of the civil law which prevails in Quebec on this subject is defined in certain articles of the Civil Code. Here the contract of agency is called a mandate, the principal

(the company) is called the mandator, and the agent the mandatory. Some of the articles regarding this matter may be stated to be as follows;

> Mandate is a contract by which a person, called the mandator, commits a lawful business to the management of another called the mandatory, who by his acceptance obliges himself to perform it. The acceptance may be implied from the acts of the mandatory, and in some cases from his silence.
>
> The mandate may be either special, for a particular business, or general, for all the affairs of the mandator.

Under the Civil Code we therefore find the same division of agents into general and special as we find under English jurisprudence. Another article appears to limit the powers of the mandatory; It says;

> The mandatory can do nothing beyond the authority given or implied by the mandate. He may do all acts which are incidental to such authority and necessary for the execution of the mandate.

But this is qualified and, as I see it, widened by another article which reads;

> Powers granted to persons of a certain profession or calling to do anything in the ordinary course of the business they follow, need not be specified; *they are inferred from the nature of such profession or calling.*

The responsibility of the mandatory (the agent) seems to be fixed by still another article which reads;

> The mandatory is obliged to execute the mandate which he has accepted, and he is liable to damages resulting from the non-execution of it while his authority continues,

and again;

> The mandatory is bound to exercise, in the execution of the mandate, reasonable skill and all the care of a prudent administrator.

The general principles which govern the relation between principal and agent in other transactions are applicable to insurance contracts. The difficulty in applying these general principles arises from the employment of agents whose duties and powers differ so widely in their scope. It is not always easy to determine whether under the facts of a particular case, the agent's authority is general or special. Cameron in his "Law of Fire Insurance In Canada" therefore concludes that it is necessary in the first place to differentiate the insurance agents into classes, which he does as follows;

1. Officials at the Head Office of the Company.
2. General Agents. This term is usually, and more properly, applied to the Canadian representatives of foreign companies.
3. Local General Agents. In addition to the general agents properly so called, there are general agents who superintend the company's business for large districts, sometimes an entire province being under their control, at other times a city, and adjoining territory. Such agents, although special in that their powers are limited by instructions of a special nature as between themselves and their principals, yet have so general an authority in regard to the insurance business entrusted to them that with respect to persons dealing with them in ignorance of such special limitations, they are treated as general agents.
4. Local agents. Local agents may be defined as representatives of the company having authority to solicit applications for insurance and to bind the

company for short term contracts of insurance extending usually over 30 to 40 days, and being entrusted by the company for the purpose with forms of application and printed interim receipts or contracts. These interim receipts have the name of the manager or general agent stamped or lithographed thereon. They recite the application for insurance and declare that, pending the acceptance or refusal of the proposal, the property is held insured by the company for a prescribed period.

5. Sub-agents. A sub-agent is an agent to secure applications for the company and forward them to his principal, the company's agent.
6. Broker. A broker, properly speaking, is a mere negotiator between the party wanting insurance and the company. He never acts in his own name, but in the name of those who employ him.

A Broker is thus defined in the Civil Code.

A broker is one who exercises the trade and calling of negotiating between parties the business of buying or selling or any other lawful transactions. He may be the mandatory of both parties and bind both by his acts in the business for which he is engaged by them.

So far as Officials are concerned it is obvious that they cannot bind the company to a contract beyond its corporate powers, yet as a company can only transact business through its directors and officers at head office, the powers of these officials are only limited by the powers of the company itself.

So far as General agents are concerned there is on record a definition given by Justice Gwynne in Campbell vs National Insurance Co. (an American case) which has been accepted and adopted by Canadian Courts in many instances. He says — "The general agents of a foreign company doing business

in this country must, I think, for the purpose of receiving premiums, be regarded in the same light as the company themselves, and we must I think hold that payment made to such agents is the same as if made at the head office abroad, and that the knowledge and information brought home to the general agents at the head office in this country must be regarded in the same light as if it was possessed by and brought home to the head office in the foreign country".

From this is it evident that the general agent of a foreign company must be regarded as standing in the company's place, and that his acts, similarly to those of the officials of the company per se, are equally binding and responsible.

In the case of Local General Agents there does not seem to be much which will determine the extent to which the company will be bound by his acts, but American decisions would seem to indicate that his authority is commensurate with that of the company up to the time of the loss. In the case of the Ottawa Agricultural Ins. Co. vs. Sheridan, (5. Can S. C. R. 157. Henry J.) it was stated in defining the difference between local agents and local general agents;

> "Local agents are considered to occupy a more subordinate position, and their powers more limited (than local general agents). To bind a company for all the acts of local agents often of little experience, in every hamlet or village, would be widely different from binding them for the acts and dealings of a general agent selected on account of his special business knowledge. The latter often act under powers of attorney and issue policies without consulting the head office, and in other cases policies are issued to them in blank fully executed by officers of the company and requiring only to be filled up and countersigned. In the latter cases, also, policies are issued

without consulting the head office. In such cases the agent is virtually the company".

It is obvious therefore that General Agents and Local general agents particularly, as apart from officials of the company, are looked upon in large degree, as the company itself and that their acts are those of the company within its corporate powers. It becomes obvious that these appointments carry with them great responsibilities. They hold themselves out to the public as agents, but in reality they are the company itself, and anything they do which disadvantages the public through their operations, must of necessity fall on the shoulders of the company ultimately. The necessity for careful choice of persons to fill such positions becomes immediately apparent. It might be assumed that because the acts of such appointees fall primarily on the shoulders of the company employing them that the matter rests there, and is no-one else's business. As I see it however there is responsibility to the public involved that must be given consideration, for it is possible that the public may be allowed to fall between what the agent conceives his powers to be and what the company, from a standpoint of self interest, interprets them to be. Legal recourse to exactly determine the exact relationship is at the best a costly thing, and as it would probably have to be instituted by the member of the public interested, it imposes on him a burden that is to a very great extent avoidable by proper regulations governing the appointment and powers of such classes of agents. Such regulation does not necessarily imply circumscription of their powers, or of the freedom of the various parties to negotiate, but it does imply that the rights and privileges, the safety and security of the public shall be adequately guarded.

It is however in regard to what are termed local and sub-agents that competence, and supervision become important.

It is the custom of companies in Canada to employ agents throughout the country who have authority to solicit applications for insurance and to bind the company for a short term contract usually extending over thirty or sixty days. For this purpose the agent is furnished with certain printed forms, having blanks which are required to be filled in. These forms generally consist of the application, the interim receipt, often endorsement forms, and in the case of mutual companies, a premium note.

For the most part these agents are drawn from all sorts of occupations, and very often combine the business of insurance agent with that of real estate agent or some other occupation. They are often also located in remote localities where contact with the head office of the company in this country is a matter of some time and often difficulty. It follows that they must, on the whole, act on their own responsibilities to a very great extent. Further, they hold themselves out to be the representatives of the company in their particular locality, and the mere fact that they have power to accept, and bind, even if only for thirty days, their company on the risk, places them, in the eyes of their customers, in the position of the company itself. There is no general restriction as to the amounts they may bind the company for, and while in the agreement between them and the company their duties are more or less definitely delineated, the fact remains that these powers given under the agency agreement, are seldom if ever made matters of public knowledge. Hence in the absence of any information, published or otherwise, to the contrary, the public naturally assume that acceptance by the agent is acceptance by the company, whether it be of risk, or premium, and that the verbal undertakings of the agent are carried into effect immediately, for and on behalf of the company. The

importance of the local agent may be gathered from the general proposition at law which reads somewhat as follows:

> The Company is liable notwithstanding material representations in the application, if the answers to enquiries are incorrectly made by the applicant upon the advice, representations or promises of the agent soliciting the insurance and entrusted with the interim receipt unless
>
> (1) the application clearly warns the assured that if the agent takes part in the preparation of the application he shall for that purpose be deemed solely the agent of the applicant and not of the company, or
>
> (2) that the answers to the enquiries are untrue to the knowledge of the agent and the assured.

Bearing in mind what I have said about the status of the agent in the eyes of the public, the far reaching implications of this general proposition at law are easily discernible. Most of the differences that find their way to the Courts in which the agent is implicated, arise from the contention of the company that the agent acted as the agent of the insured and not of the company, and from the contention that answers to questions in the application were untrue on the part of the applicant, who in turn generally retorts that the agent was well aware of the true facts. There is plenty of jurisprudence to corroborate this statement.

If this short review of the nature of the agency is considered it will easily be seen that there are many reasons why agencies should be selected with care, why any applicant for agent's license should be closely scrutinised not only as to responsibility, but also as to his knowledge of the business, for it follows that incompetence on his part may not only work hardship, and cause litigation, but result in actual and preventable loss to both the public and the company.