Self-insurance: possible if in accordance with the Insurers Act

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Introduction

There are multiple insurance policies available on the market to protect your property in Quebec. But how well do you know all your options?

In 2016, we addressed peer-to-peer insurance, which is essentially a community of users wanting to insure similar goods and services together.[1]

However, in November 2021, the Superior Court of Québec rendered an interesting decision[2] on self-insurance in the context of insurance offered by two (2) student associations. This form of insurance suggests that the first part of compensation be borne by the insured, who cannot therefore transfer this part of the risk to a third party.

The decision of the Superior Court of Québec

The facts

The Association générale des étudiants hors campus de l'Université du Québec à Trois-Rivières and the Association générale des étudiants de l'Université du Québec à Trois-Rivières (hereinafter, the "**Associations**") have been providing supplemental health and dental insurance to their 14,000 student members since 2014. They refer to this as a self-insurance plan, which is managed through insurer Major Group Inc.

The Autorité des marchés financiers ("**AMF**") applied to the Court for a permanent Order of Injunction to require Major Group Inc. and the Associations to cease their insurance activities. It contended that the Associations were acting as insurers and that they cannot do so without its authorization, as provided for under section 21 of the *Insurers Act* ("**IA**").[3] Under the IA, the AMF's authorization is required to carry on insurer activities, if such activities constitute the operation of an enterprise, regardless of any other activities that may be carried on by the operator. The AMF also claimed that the Associations were not practising self-insurance.

The Associations maintained that they were not acting as insurers but engaged in self-insurance. Furthermore, they argued that section 21 of the IA cannot apply to their activities as they are non-profit organizations and therefore cannot operate a business within the meaning of the act.

The Court's grounds

The Court defined the concept of a self-insurance contract under Quebec law as follows: the insured chooses not to subscribe an insurance contract for all or part of a risk, opting instead to assume the

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financial consequences itself, thereby not transferring the risk to a third party. The Court determined that the Associations were the policy holders, and the student members were the insured. In this sense, it cannot be considered a self-insurance contract since the risk of the student members is transferred to the Associations, which agreed to insure them in exchange for the payment of a premium.

The Court then concluded that the supplemental health and dental insurance offered by the Associations constitutes insurer activities in the course of operating an enterprise, in accordance with section 21 of the IA. Even though the Associations are not-for-profit organizations, they can operate an enterprise. Furthermore, the application of section 21 of the IA does not require an analysis of the nature of the organization as a whole. The agreements between the student associations and Major Group Inc. had a pre-established economic objective, namely, to benefit from the profits that an insurer would normally make. The Associations have been offering this product for almost seven (7) years; it is, therefore, not an episodic or occasional activity.

Conclusion

The Superior Court of Québec granted the AMF's application for a permanent injunction against the Associations. It issued an order to the Associations to cease, within three (3) months of the judgment, all insurance activities under the IA, and to Major Group Inc. to cease acting as a third-party administrator with respect to any self-insurance plan implemented by the Associations.

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Self-insurance can save a policyholder money on an insurance premium by providing protection on the essentials of a claim at a lower cost. However, it must be practised in accordance with the law.

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1. "Peer-to-peer" insurance: a grassroots revolution? (lavery.ca).
2. Association générale des étudiants hors campus de l'Université du Québec à Trois-Rivières (AGÉHCUQTR) c. Autorité des marchés financiers, 2021 QCSC 5090.
3. Insurers Act CQLR c. A-32.1.

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