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An Update on the Work of the Insurance Ombudsman Bureau Of the United Kingdom

Eric A. Pearce

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Article abstract

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An Update on the Work of the Insurance Ombudsman Bureau Of the United Kingdom

by

Eric A. Pearce, F.C.I.I.

*Dans notre numéro d'octobre 1984, notre collaborateur a expliqué la fonction de l'*Insurance Ombudsman *en Angleterre, c'est-à-dire le défenseur impartial de l'assuré auprès des assureurs qui ont adhéré à l'organisme. Il signale que le nombre de ceux-ci va en augmentant, puisqu'il est passé de 44 en 1981 à 163 en 1985. C'est ainsi que, cette année-là, le Bureau aurait obtenu 143 révisions et maintenu la décision de l'assureur dans 486 autres cas ; ce qui montre l'utilité du poste et le justifie.*

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In the October 1984 edition of "*Assurances*", the functions of the Insurance Ombudsman were explained and since that time, two further Annual Reports have been issued, which are masterpieces of interest and clarity.

That there was and still is a need for the services of an Ombudsman seems evident. The membership was no more than 44 companies in 1981, and it has increased to 163 members in 1985. During the same period, the number of enquiries has increased from 444 in 1981 to 3,054 in 1985. In addition, in the latter year, there were 1,674 enquiries from policyholders in non-member insurance companies with which, naturally, the Bureau is not authorized to advise.

In these recent reports, the Ombudsman draws attention to general problems. There are some which are all too familiar and some which insurance men may consider worthy of their attention.

In the matter of *ex-gratia* payments, it is urged that the fact that it is *ex-gratia* – outside the strict terms of the policy – should be made quite clear. Further, if an acceptance form is submitted for signature, it also should state that the payment is ex-gratia. Otherwise, the insured is likely to believe that a similar claim would be paid as of

right, or that the company is quibbling about nothing to obtain some small advantage.

The problems arising from change of risk are familiar to insurers, although a policyholder may not always understand his duty in this respect. The opinion of the Ombudsman is that there is a considerable difference between the change caused by events over which the policyholder has no control and the change made by the policyholder. In the first instance, the opinion given is that the insurer should carry the risk until renewal, whereas in the second case the
 insurer should be told before the change is made, so that he can decide what action to take.

Insurers are urged to keep new business proposals under constant review and to avoid any undue delay. It is explained that there will certainly be a deep sense of injustice on the part of the proposer, if a claim occurs before the insurance is in fact concluded. The company, apparently, does not have any actionable duty of care to anyone who is at the stage of negotiating for a contract. The duty is moral, not legal.

The duty of disclosure of material facts on the part of the proposer is dealt with at some length and is obviously a frequent source of disagreement between the parties when a claim occurs. Many proposers believe that having answered the questions on the proposal form fully and accurately, the duty in this respect is completed. No thougth is given to what insurance men might term moral hazard.

A case is mentioned where a policyholder had recent criminal convictions, but did not inform the company at the time of making the proposal. When the question was raised by the assessor dealing with a claim, the answer was freely given and the policyholder simply did not believe that such information was in any way relevant. Indeed, there may be many members of the general public who would agree with this claimant and go further, taking the view that if the company has wished to know this or other details, questions would have been included in the proposal form.

The Ombudsman urges proposers in general to give the greatest attention to the accuracy and completeness of their answers to questions on proposal forms, and whilst this to insurance men is an in-

junction as old as insurance itself, obviously the problem still remains as a major source of disappointment and disagreement when a claim occurs. It seems that even today, in some instances, the proposal form is completed with the best of intentions by an agent, friend or other adviser and then signed by the proposer with no more than a cursory glance. Even in some cases signed by someone other than the proposer.

Of recent times, many insurers have issued policies for various classes of insurance in what is termed *clear English.* This has, very largely, been at the urging of newspapers. Possibly journalists may more readily understand what their readers wish to read than the facts of policy drafting. It is evident that the Ombudsman is in favour of the traditional wording – perhaps because such wording uses words and phrases with well-defined meanings. Be that as it may, he urges the underwriter who is drafting a new wording to submit it to the legal department to have the meaning of words checked, and then to the claims manager to find out what he thinks it means. The suggestion is that the difference of views may be as great as looking through opposite ends of a telescope.

It seems that in the matter of policyholders' complaints, little has changed since the Bureau first started its work. The Ombudsman's experience is that there are three main sources – advertisement, lack of concern and poor communication. The latter providing the greatest number of complaints.

There is a tendency in most industries for ordinary words to acquire a special meaning amongst those working in the industry. Insurance is no exception. Insurers may not appreciate that the public at large do not understand such special meanings. Too often the policyholder or proposer applies to such words or phrases the general common meaning so that there is misunderstanding between persons discussing the business in the greatest goodwill. Even worse, the policyholder may use language in a way which persuades the insurer that the former does understand the special meaning involved, and this may lead to even more serious results.

One example will suffice. A policyholder enquired whether his possessions were "covered everywhere against all possible loss, destruction and damage" whereas the insurer meant "covered for normal household risks inside the house".

Following his experience, the Ombudsman implores those in our industry who deal directly with the public to bear in mind the ever present possibility of being misunderstood, and to change their own habits of thought and expression to guard against this.

There are in the reports some cautionary tales of which the following are two examples.

A. Attention is drawn to a ruling in a case which came before the courts, when a judge decided that if a person deliberately imports
468 goods without declaring them to customs officers and without paying duty on them, those goods are in effect uninsurable. It seems that the offence is not in the importation of the goods without payment of duty, but in the fact that they were not declared. In these days of frequent international air travel, many people habitually buy goods abroad and one recognizes how easy it sometimes is to forget to make the necessary declaration of such goods upon the return. Some travellers may ask themselves just how effective their insurances would be if the judge's ruling were enforced by the insurers.

B. The other example refers to the mortice deadlock clause, now frequently imposed by insurers, and by which the policyholder is required to apply the lock when the premises are unoccupied, however short the period. Many householders find this condition an irritation in practice and after a short time fail to comply with it. Naturally, when the claim occurs, the householder is likely to be upset that the insurer should reject the claim because of non-compliance with the condition. The Ombudsman emphasizes that if a condition is imposed, it must be complied with and urges householders to do so. He coins the delightful phrase : turning the key in the deadlock keeps the policy switched on.

It is interesting to see, in operation, the impartiality of the Bureau, for it assuredly is not a consumer protection organization. This is shown by the fact that of the cases completed during 1985, the decisions of the insurers were revised in only 143 cases, whereas their decisions were confirmed in 486 cases.

It must be a considerable source of satisfaction to the Ombudsman and his staff to know that among the member insurance companies are a number from overseas, or of overseas capitalization, in-

cluding at least five Canadian groups operating in the United Kingdom.

Dictionnaire de droit privé, par le Centre de recherche en droit privé et comparé du Québec. Université McGill, 3647, rue Peel, Montréal

Sous le titre *Avertissement*, on indique que le *Dictionnaire de droit privé* comprendra environ dix mille termes. La version, arrêtée au 17 juin 1985, contient plus de deux mille acceptions tirées, notamment, des généralités du droit, du droit des obligations et du droit des biens. Voici comment l'on présente ce nouvel ouvrage en précisant, dans l'avant-propos : « Le recours à des ouvrages étrangers comporte des risques certains. D'abord, même dans les domaines où le droit civil du Québec partage avec le droit français l'héritage de la tradition civiliste, le système juridique québécois présente souvent des particularités suffisamment importantes pour que la simple transposition ne soit pas toujours possible.

« Ensuite, certaines matières en droit québécois sont presque complètement autonomes par rapport au droit français (que l'on songe, par exemple, aux droits des compagnies) ; il en est de même dans le domaine du droit privé d'origine fédérale à l'égard du droit anglo-américain ; ainsi le droit bancaire, le droit cambiaire, le droit de la faillite, le droit fédéral des sociétés. Est donc souvent source de confusion et d'erreur la consultation de dictionnaires étrangers qui sont susceptibles de véhiculer le sens d'un terme dans le cadre d'un régime juridique différent de celui qui prévaut au Québec ». Comme on le constate, il y a là une initiative extrêmenent intéressante qui met à la disposition des intéressés des précisions qui font de cet ouvrage un bon instrument de travail. Nous le signalons à nos lecteurs qui, dans l'exercice de leurs fonctions, veulent employer le mot juste, en lui donnant non seulement le sens que lui accorde la pratique française ou étrangère, mais celle que lui reconnaît l'usage canadien.

Il faut comprendre, en effet, que si le droit privé a un vocabulaire au Canada français, il n'est pas nécessairement celui qu'on emploie en pays étrangers, qui s'inspire de moeurs ou de cutumes semblables ou différentes dans leur expression.

J. D.