



HAVE YOU THOUGHT ABOUT INSURANCE COVERAGE FOR LEGAL ASSISTANCE?

By *Albert Prévost*, lawyer

In your personal life or in business you may become involved in situations that require legal services. The issue may be preventive or a court case.

The costs for legal services can be significant, and it may be to your advantage to have insurance coverage for legal assistance. Some insurance companies offer coverage for legal assistance to help people who may require the services of a lawyer.

It is interesting to note that insurance coverage for legal assistance is available for individuals regarding personal matters, and also for professionals, small businesses and self-employed workers.

Obviously this coverage usually does not cover all legal fees and expenses an insured person may have to pay, but it can reduce the financial burden. However you should be aware that certain types of litigation such as family and criminal law are not covered by insurance for legal assistance.

The cost of this type of insurance is relatively low and therefore advantageous for those who may require the services of a lawyer. If you would like more information on this subject,

please contact the Quebec Bar Association directly at their toll free number (1-866-954-3529). They will be pleased to answer your questions.

PST – QST, A CLAIM LIKE OTHERS

By *Louis Morency*, lawyer

In a judgment last December 18th¹, the Court of Appeal decided that the portion of GST-QST, receivable or collected from a supplier in a bankruptcy, should receive the same treatment as the bankruptcy selling price. In this decision, the court ruled against Revenu Québec which, in spite of the modification of the *Bankruptcy and Insolvency Act* (BIA) in 1992, had continued to claim from the trustee in bankruptcy or secured creditors, sums of money which corresponded to the portion GST-QST on the whole of the account receivable.

The Court, with motives expressed by Honourable judge Hesler, rejected the argument of Revenu Québec regarding existence of a right of property on the tax portion. The Court stated that in accordance with the BIA, (*Bankruptcy and Insolvency Act*), the estate in bankruptcy cannot be the object of a trust in favour of the Crown, with the exception of presumed trusts for source deductions. The Court of Appeal reversed previous court decisions and declared that mortgage security on accounts receivable of the bankrupt debtor are valid against and prior

to claims from Revenu Québec for GST-QST. It is now clear that the trustee or guaranteed creditor who collects the receivables of the bankruptcy does not have to pay a portion of the money which he receives to the tax authorities for GST-QST claims.

¹ *Banque Nationale du Canada vs. Québec (Ministère du Revenu)*, EYB 2007-127782 (C.A.).

WHEN PURCHASING A CONDOMINIUM, WATCH OUT FOR LEGAL HYPOTHECS

By *Pascal Comeau*, lawyer

When a person buys a condominium, construction contracts have often already been awarded and the work has started. In most cases, the general contractor was the owner when the work began, and subcontractors have no obligation to renounce their contracts for legal hypothecs to the new buyers. However if the sub-contractors have not been paid for their work or materials, they retain the rights to publish a legal hypothec.

Therefore if the work has started when you purchase a condo from a general contractor, it is very important to ask for final quit claims from the subcontractors who worked on the project before paying the general contractor.

It would also be wise to ask the executing notary to withhold an amount equal to 20% of the total amount due for the work for a period of at least thirty days from the time the work is completed, in case one or more legal hypothecs are registered. An important fact to remember is that the completion of work means the date on which all work required by the construction specifications is completed. Please note that defects do not delay the work completion date.

A prudent buyer should also purchase title insurance that covers legal hypothecs for construction. This type of protection does not cost a lot and allows you to sleep well.

NEWS FROM OUR FIRM

- ♦ We are pleased to welcome **Mister Etienne-Louis Morin**, who joins our Blainville team as an articling law student.
- ♦ Remember that you can see previous issues on our web site at:
<http://www.pfdlex.com/eng/column/index.html>
- ♦ Would you like us to cover a particular subject in future releases? Please do not hesitate to submit your ideas: info@pfdlex.com



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