

“SECTION 547s”

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The Court of Appeal of Québec recently focused upon section 547 of the *Act respecting the distribution of financial products and services (Act)*¹. In insurance-speak, a “section 547” is a person who **is not the holder of a certificate** as a damage insurance representative according to the provisions of the act, but who is nonetheless authorized under this section to exercise certain activities otherwise reserved for a representative.

The facts

Following a series of ethics investigations, the syndic charged three brokers with breaches of their Code of Ethics, deeming it appropriate to bring the matter before the Discipline Committee of the Chambre de l'assurance de dommages (ChAD). It is important to know that the brokers in question were charged with leaving an insured person without insurance protection for several months, without notifying this person of the situation, and failing to provide a client with the insurance guarantees it required.

In the cases at hand, the brokers in question all used the same line of defence, namely that they were not liable for the breaches detected, since the acts, charges or absence of acts involved a “section 547”. In their opinion, they thus were not ethically liable. This line of defence raises two arguments. The first is based on the *alter ego* theory, or the idea that the disciplinary fault must be personal and peculiar to its author. One cannot be found guilty of an act carried out by a third party, although one can be found

guilty of an act carried out by one's *alter ego*, i.e. the person to whom one has delegated the professional act required by the client and who is not legally authorized to carry out the said professional act. The other argument pleaded directly arises from the fact that the “section 547” has, according to the provisions of the Act, the right to carry out the professional act and must take responsibility for the fault he has committed or the omission he was unable to prevent.

The Discipline Committee of the ChAD and the Court of Appeal of Québec accepted the main lines of defence argued by the brokers, which induced the syndic to submit these cases to the Court of Appeal of Québec. In point of fact, a “section 547” is not a damage insurance representative and the syndic has no authority over a person who is not a certified representative. Such lower court decisions would hinder public protection since they would have the effect that professional acts under the damage insurance representatives' Code of Ethics (Code)² would not be brought to the attention of the Discipline Committee by the syndic, since they would have been committed by persons authorized to carry them out, though not subject to the Code.

Decision of the Court of Appeal

With respect to these points, the Court of Appeal of Québec reversed the conclusions reached by the Discipline Committee and agreed with the syndic. The following should be noted:

1. The ethical liability of a damage insurance representative is personal and arises from the delegation of authority for acts and duties conferred upon him by the Act and by his Code. If the representative allows his employee to carry out an act or perform a duty imposed upon him by the Act, the employee is considered to be his *alter ego* and the representative will be directly liable for the breaches committed by the employee. The liability is the representative's, not the third party's.
2. The Court of Appeal has clearly

indicated that wrongful acts carried out by “section 547s” do not lead to any ethical liability. It is equally clear that, when he allowed persons to be recognized as “section 547s” and therefore authorized to carry out acts which would otherwise be carried out by a damage insurance representative, the legislator meant that representatives who retained the services of these “section 547s” were liable for them for any breaches, omissions or faults they might commit. According to the Court of Appeal, the very protection of the public is at stake, since the act carried out by the “section 547” is done so within the framework of an employer/employee relationship, the employer being the damage insurance representative and the employee, the “section 547”. The latter cannot legally practise on his own, i.e. without a representative above him who is duly authorized to act and therefore liable to the public.

An unequivocal message

You are thus liable for your employees and your “section 547s”, and **YOU** are accountable to the syndic of the ChAD for their actions. By acting diligently and reasonably and by taking the necessary means to ensure that your “section 547s” do not commit any breaches, you will avoid being reprimanded by the Discipline Committee.

¹ R.S.Q., c. D-9.2

² R.S.Q., c. D-9.2, r. 1.03