



Do I have to declare my criminal record?

You purchase car insurance. Are you obliged to disclose your criminal record to the insurance company?

THE FACTS

A man buys a car for \$20,000 in 1992. A few years later, he purchases an insurance contract covering his vehicle and is never asked if he has a criminal record. In the contract, he is only asked to state if any judgments were issued against him in the past three years under the Highway Code and the Criminal Code in his capacity as the driver of an automobile. The insurance contract is signed and is effective as of September 16, 1998. Less than one month later, his car catches fire and is completely destroyed due to a mechanical problem. The man then claims \$25,000 from his insurance company. The company considers the circumstances suspicious and decides to conduct an investigation. It discovers that its client has a criminal record for theft and for receiving stolen goods. Consequently, the insurance company refuses to indemnify him on the grounds that the insurance contract is void for misrepresentation. According to the insurance company, the man should have disclosed his criminal record. And, in any event, according to the appraiser, the car was worth only \$7,000 at the time of the loss.

The judge of first instance held that the man had an obligation to inform his insurance company of his criminal record even if he had never specifically been asked if he had one. The Court refused the man's claim. The man appealed the decision.

THE ISSUE IN DISPUTE

Is the insurance company obliged to indemnify the person for the loss of his car?

In his judgment, Justice Jacques attempted to determine what indemnity in lieu of notice would be reasonable in the circumstances. He based his reasoning on various criteria. Firstly, because the company had sustained major financial losses, it was entitled to terminate the employee's job, but it was still obliged to pay.

THE JUDGMENT

The Appeal Court judge allowed the appeal from the judgement dismissing his action claiming an indemnity under his insurance policy. The insurance company had to pay \$7,000 to the man for the loss of his car.

THE REASONS

On appeal, the judge found that the man had acted reasonably. He had never been in trouble for driving offences. All the answers he gave when he applied for insurance were true. Also, the fact that he had not disclosed his criminal record cannot be interpreted as withholding information. It was entirely reasonable for him not to disclose his record given the actual wording of the questions and the nature of his past condemnations. Furthermore, claiming \$25,000 for a car worth only \$7,000 at the time of the loss does not necessarily mean that a person is trying to defraud his insurance company. The judge decided that the insurance policy was not null and void and ordered the insurer to pay the man an indemnity of \$7,000.

References

Bergeron v. Lloyd's Non-Marine Underwriters (February 8, 2005),
500-22-037830-992 (Montréal, J.E. 2005-430. (C.A.)
Civil Code of Québec, S.Q. 1991, c. 64, art.2409.

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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