

## Death of an Insured While Committing a Crime and the Right of an Innocent Beneficiary to the Insurance Indemnity

By Julie-Anne Brien



On March 8, 2002, the Supreme Court of Canada ruled in the matters of *Goulet v. Transamerica Life Insurance Co. of Canada*<sup>1</sup> and *Oldfield v. Transamerica Life Insurance Co. of Canada*<sup>2</sup>, both of which dealt with the right of an innocent beneficiary of a life insurance policy to claim the proceeds of insurance following the accidental death of the insured during the commission of a crime.

In both of these decisions, the Supreme Court of Canada held that an insurer cannot set up against the beneficiary the principle of public order pursuant to which “no one may profit from his or her own crime”, a principle which could have been set up against the insured. In order to prevent the beneficiary from claiming the indemnity, the insurance contract must contain a clause expressly providing that the insurer will not be required to pay the proceeds of the insurance if the insured dies while committing a criminal act.

### The Facts

In *Oldfield*, the Supreme Court of Canada upheld the judgment rendered by the Ontario Court of Appeal which had ruled that Mrs. Oldfield was entitled to the proceeds of the life insurance policy taken out by her ex-husband on his own life. Indeed, at the time of their separation, Mrs. Oldfield and her husband had agreed that he would maintain sufficient life insurance to guarantee the support payments for his ex-wife and his two children. Mrs. Oldfield had been designated as beneficiary until the children reached the age of 18. On April 27, 1996, Mr. Oldfield died from a heart attack brought on by the rupture of one of the thirty cocaine-filled condoms he was carrying in his stomach. Mrs. Oldfield claimed the proceeds of the

life insurance policy and the insurer refused to pay, arguing that the claim was barred by on the basis that a person cannot insure against his or her own criminal act.

In *Goulet*, Mrs. Goulet was the designated beneficiary under the life insurance policy taken out by her husband, Roger Arbic. On January 22, 1994, Mr. Arbic was fatally injured when a bomb he was attempting to plant in a car parked at Dorval Airport exploded. Mrs. Goulet therefore claimed the indemnity provided for in the insurance policy and Transamerica refused to pay, also relying on the principle of public order

pursuant to which “no one may profit from his or her own crime”. The Supreme Court of Canada upheld the decision of the Quebec Court of Appeal and ordered the insurer to pay the insurance indemnity.

### The Issues in Dispute

Both appeals essentially raised three issues, namely:

1. Had there been an intentional fault of the insured which could not constitute an insurable risk?
2. Is there a rule of public order rendering a life insurance contract unenforceable where the insured dies accidentally as a result of his or her own crime, regardless of who the beneficiary is?
3. If so, is the rule inapplicable because the insurance policy was obtained pursuant to a bona fide contract for value?

### Intentional Fault

In *Goulet*, the appellant raised a fundamental principle of insurance law that an insurer never insures the intentional fault of the insured. The Supreme Court agreed that article 2563 C.C.L.C. (2464 C.C.Q.) applies in the context of life insurance, even though the rule is found in the chapter on damage insurance. This article stipulates that notwithstanding any agreement to the contrary, the insurer is never liable to compensate for injury resulting from the insured’s intentional fault. Indeed, this is a general principle which derives from the nature of an insurance contract.

<sup>1</sup> *Goulet v. Transamerica Life Insurance Co. of Canada*, S.C.C., 27939, March 8, 2002.

<sup>2</sup> *Oldfield v. Transamerica Life Insurance Co. of Canada*, S.C.C., 28163, March 8, 2002.

Julie-Anne Brien has been a member of the Quebec Bar since 1999 and specializes in Life and Disability Insurance Law



However, the Supreme Court set aside this argument because the act committed in the case in question was not an intentional act within the meaning of the Civil Code. Notwithstanding the fact that the insured had been in the process of committing a serious indictable offence at the time of his death, he had not intended to cause his own death, which was accidental. Consequently, since the policy did not contain a clause specifically excluding death of the insured while he was committing a crime, the insurance contract remained in force.

### The Public Order Exception

In each of the appeals, the appellant Transamerica argued that the exception of public order operated as a bar to the claim of each beneficiary. The Supreme Court confirmed that Quebec insurance law includes the principle of public order pursuant to which “no one may profit from his or her own crime”. Indeed, the courts of Quebec applied this principle before the 1976 insurance law reform and there is nothing in the new provisions to suggest that the legislature intended to preclude it.

However, this rule of public order is intended to prevent the insured or the person entitled to receive the insurance indemnity from profiting from his or her own crime. One may not set up against an innocent beneficiary causes of nullity or forfeiture that are purely personal to the insured (article 2453 C.C.Q.). It is therefore consistent with the principles of justice that innocent beneficiaries not be disentitled to insurance proceeds merely because an insured accidentally dies while committing a criminal act. Denying coverage would

punish an innocent beneficiary who is in the position of a third party in relation to the insured.

The Supreme Court did, however, raise the distinction between the estate of a criminal and an innocent beneficiary. It is established at common law that the public order exception applies to the estate of a criminal. However, in both of these appeals, the beneficiaries were innocent and did not claim as heirs to the estate, but as ordinary beneficiaries pursuant to their own interests under the insurance contract.

### The Clause Excluding Criminal Acts

The Supreme Court stated that insurers generally seek the shelter of rules of public order because they have failed to specifically provide for the contingency that gives rise to the dispute. In both of these cases, neither insurance policy provided for a situation in which the insured died while committing a crime. The Supreme Court emphasized that if the said policies had expressly excluded this risk, there would have been no need to resort to the rule of public order. Such a clause could have been set up against the innocent beneficiary.

Consequently, insurers must remember the decisive role of exclusion clauses in insurance policies and expressly provide that the insurer will not be required to pay the indemnity if the insured dies while committing a criminal act.

### Conclusion

These two Supreme Court decisions are a reminder to insurers of the importance of exclusion clauses in insurance contracts. Insurers must pay particular attention when drafting such clauses, based upon their objectives and the risks they wish to exclude.

Indeed, if the insurance policy contains such an exclusion clause, a problem will often arise as to the causal link between the criminal act and the subsequent death. It is therefore essential to draft an exclusion clause which avoids any debate on this issue.

Julie-Anne Brien

**You can contact any of the following members of the Life and Disability Insurance Law Group in relation with this bulletin.**

#### at our Montréal office

Jean Bélanger  
Julie-Anne Brien  
Marie-Claude Cantin  
Daniel Alain Dagenais  
Guy Lemay  
Jean Saint-Onge  
Johanne L. Rémillard  
Evelyne Verrier  
Richard Wagner

#### at our Québec City office

Martin J. Edwards  
Claude M. Jarry

#### at our Ottawa office

Patricia Lawson  
Alexandra LeBlanc

#### Montréal

Suite 4000  
1 Place Ville Marie  
Montréal, Québec  
H3B 4M4

Telephone:  
(514) 871-1522  
Fax:  
(514) 871-8977

#### Québec City

Suite 500  
925 chemin Saint-Louis  
Québec, Québec  
G1S 1C1

Telephone:  
(418) 688-5000  
Fax:  
(418) 688-3458

#### Laval

Suite 500  
3080 boul. Le Carrefour  
Laval, Québec  
H7T 2R5

Telephone:  
(450) 978-8100  
Fax:  
(450) 978-8111

#### Ottawa

Suite 1810  
360, Albert Street  
Ottawa, Ontario  
K1R 7X7

Telephone:  
(613) 594-4936  
Fax:  
(613) 594-8783

#### Web Site

[www.laverydebilly.com](http://www.laverydebilly.com)

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