

## Insurance and Youthful Sins

By Odette Jobin-Laberge



The recent decision of the Court of Quebec, Small Claims Division, in the case of *Spénard v. Promutuel Bois-Francs, société mutuelle d'assurance générale*,<sup>1</sup> revisited the issue of the right of an insurer to seek the nullity of an insurance policy based on an insured's failure to disclose a prior conviction under the *Young Offenders Act*.

The Plaintiff claimed \$5,100 from his insurer for property stolen from his home between January 24 and January 27, 2003. The policy had been issued on January 13, 2003. The theft had been committed while the insured was in detention from January 24 to 28, 2003 after being arrested on charges of drug possession for the purpose of trafficking, to which he pled guilty on January 28, 2003.

However, it was not the insured's troubles with the law at the time of the theft which were in issue, but rather the events that occurred between 1997 and 1999, while the insured was still a minor. As of January 13, 2003, the date on which he took out the insurance, the insured had already served all the sentences imposed on him for offences committed while a minor.

There was a controversy as to whether the question pertaining to his Youth Court record had been put to the insured, but the Court did not rule on this issue because it came to the conclusion that under section 82.1 of the *Youth Criminal Justice Act* the insured was not required to declare his prior convictions in Youth Justice Court. Section 82.1 reads as follows:

**"Effect of absolute discharge or termination of youth sentence.**

**82. (1) Subject to section 12 (examination as to previous convictions) of the *Canada Evidence Act*, if a young person is found guilty of an offence, and a youth justice court directs under paragraph 42(2)(b) that the young person be discharged absolutely, or the youth sentence, or any disposition made under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, has ceased to have effect, other than an order under section 51**

**(mandatory prohibition order) of this Act or section 20.1 (mandatory prohibition order) of the *Young Offenders Act*, the young person is deemed not to have been found guilty or convicted of the offence (...)."**

**(emphasis added by the Court)**

Section 82 replaces section 36(1) of the *Young Offenders Act*, which read as follows:

**"Effect of absolute discharge or termination of dispositions.**

**36. (1) Subject to section 12 of the *Canada Evidence Act*, where a young person is found guilty of an offence, and**

**(a) a youth court directs under paragraph 20(1)(a) that the young person be discharged absolutely, or**

**(b) all the dispositions made under this Act in respect of the offence have ceased to have effect,**

**the young person shall be deemed not to have been found guilty or convicted of the offence except that (...)."**

**(emphasis added by the Court)**



<sup>1</sup> J.E.2005-1799 (C.Q., Small Claims Division)

In the *Re: Therrien*<sup>2</sup> case, the Supreme Court of Canada had reviewed the issue of the effect of a pardon granted under the *Criminal Records Act* and ruled that the purpose of a pardon is only to put an end to the negative consequences of a conviction and it did not allow Mr. Therrien to answer “no” to a question regarding his prior “troubles with the law”. The Supreme Court proceeded by way of a comparison with a statute that creates a presumption of inexistence and commented more specifically that section 36(1) of the *Young Offenders Act*:

**“(…) expressly provides that the finding of guilt relating to a young offender for whom the court has directed an absolute discharge or for whom all the dispositions and all their terms have ceased to have effect shall be deemed never to have existed.”**

**(emphasis by the Court)**

The word “deemed” is not defined in the *Young Offenders Act*, but article 2847 C.C.Q. respecting legal presumptions gives a specific meaning to this term:

**“2847. A legal presumption is one that is specially attached by law to certain facts; it exempts the person in whose favour it exists from making any other proof.**

**A presumption concerning presumed facts is simple and may be rebutted by proof to the contrary; a presumption concerning deemed facts is absolute and irrebuttable.”**

**(emphasis added by the Court)**

Therefore, the insurer is precluded from adducing evidence against the presumption whereby prior convictions are deemed never to have existed and, as a result, whether the question was put to him or not, the insured was entitled to give a negative answer to the question pertaining to his prior convictions.

## Conclusion

An insurer who discovers after the fact that an insured has had troubles with the law while a minor will be precluded from invoking them or adducing any evidence with respect to them if the conditions under section 82(1) of the *Youth Criminal Justice Act* have been met. Therefore, if an absolute discharge has been granted or, as in the case discussed above, the sentences imposed have been served, this category of criminal convictions is not required to be disclosed and cannot be legally invoked as a ground for *ab initio* nullity.

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<sup>2</sup> [2001], 2 S.C.R. 3.

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