

# Newsletter



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## The insured's obligation to declare all relevant circumstances: what if the information relates to a third party?

*In the recent matter of Fortier v. SSQ, Société d'assurances générales inc., 2018 QCCS 1495, the Superior Court analyzed the provisions of the Civil Code of Quebec (hereinafter "C.C.Q.") pertaining to the Insured's obligation to disclose all relevant circumstances for the assessment of risk, when said circumstances relate to the criminal record of a third party residing with the Insured.*

The Insured instituted proceedings against his insurer for the loss suffered from a fire in his residence, on January 8, 2015. The insurer refused to indemnify the Insured since the latter did not disclose the criminal record of his ex-wife who was residing with him since October 2011.

In his reasons for judgment, the Honourable Pierre C. Bellavance revisited the test to be applied when the insurer asks to have the insurance contract with the Insured declared null. The court must first determine whether the circumstances known to the Insured and not declared are likely to materially influence a reasonable insurer in its decision to accept the risk or not, as stated under article 2408 C.C.Q. If so, the court must then verify whether the In-

Insured acted as a normally provident Insured would have, pursuant to article 2409 C.C.Q.

As to the first question, four witnesses testified in support of the insurer's argument that the infractions committed by the Insured's ex-wife, namely theft, fraud and production of drugs, are directly related to the risks taken into consideration by an insurer.

However, the insurer admitted not having asked any questions at the time the policy was underwritten in March 2011 and afterwards, regarding other people who may be living under the Insured's roof and their criminal record. In addition, the annual renewal forms did not contain any question concerning other



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members of the household, let alone their criminal record.

Considering these decisive facts, the Court was unable to conclude that the presence of the Insured's ex-wife in the household, despite her heavy criminal record, was information likely to materially influence a reasonable insurer. According to the Court, the actions taken by the insurer, at the time the policy was underwritten and afterwards, revealed that the presence of other residents and their criminal record was not important in the assessment of risk. Therefore, the Insured could not be compelled to disclose this information as a material change during the term of the insurance contract. The Court concluded that the insurer had failed to demonstrate that the criminal record of a resident must bear the same weight as the record of the Insured himself, since the resident, not being the owner of the property, has no pecuniary interest in triggering a claim.

Despite a negative answer to the first question, the Court still examined whether the Insured had acted as "a normally provident insured", as stated under article 2409 C.C.Q.

The judge reiterated that the insurer's conduct gave no hint to the Insured that the litigious information was important for the assessment of the risk. Therefore, the Insured had no way of knowing that he had to disclose such information. The Court added that the Insured's obligation to disclose new facts while the contract was in force only pertained to circumstances resulting from his own actions. Since the criminal record of the Insured's ex-spouse did not result in any way from the actions taken by the Insured, the latter had no obligation to disclose the fact that his ex-spouse was now living with him.

Taking into account the limited knowledge of the Insured in the insurance sector, his level of education and occupation, the Court could not come to the conclusion that he had acted differently than a normally provident Insured, nor that he had attempted to mislead his insurer.

A notice of appeal was produced on February 26, 2018. It will be interesting to verify whether the Court of Appeal will maintain the conclusions of the judgment in Superior Court.

