

But for the Plan

(Mortgage Insurance Claim: Pre-Existing Illness, but Application Not Fraudulent)

When Mr. and Ms. Davidson (not their real names) took out a mortgage with one of the major Canadian banks, back in 1997, they also bought mortgage insurance, with a coverage limit of \$100,000. Mr. Davidson's health was good at that time.

In 2006, when they renewed the mortgage and increased it, with the same bank, he told the loans officer that he had been suffering recently, from an illness, and that it had been in remission for awhile. The loans officer told him to wait for six months, and if it was still in remission, he could apply for insurance then. Mr. Davidson accepted this advice and waited for six months, then applied for the mortgage insurance, and was accepted. The insurance limit was now \$170,000.

Mr. Davidson remained symptom-free from 2006 until the disease reappeared in April, 2011. Sadly, he did not recover again from the illness, and passed away in 2014.

After a review, the insurance company paid Mrs. Davidson \$100,000.00 (being the limit on the original insurance) but denied coverage for the remaining \$70,000.00. That is when Mrs. Davidson came to see Kathleen Howes at the Unifor Legal Services Staff Office in Brampton.

Kathleen learned that when Mr. Davidson filled out his application for the increased insurance in 2006, he did not reveal on the form that he suffered from any illness or had recently seen a doctor about any illness within the past 24 months. This was not the case, since he had in fact seen a doctor about his disease, which was in remission.

The insurance company took the position that had Mr. Davidson revealed that he had seen a doctor, or had any abnormal test results in the two years prior to his application in 2006, he would have been considered uninsurable and his application would have been denied.

Kathleen wrote to the insurance company, and pointed out that according to section 184 (2) of the Insurance Act, if an insurance contract has been in effect for two years, and if there was no fraud involved, the contract of insurance is still valid, notwithstanding the failure to disclose the illness. She argued that clearly there was no fraud involved, since Mr. Davidson had discussed his illness with the loans officer and took her advice to wait six months, and then apply if symptom free at that time.

The Insurance company paid the remaining \$70,000.00, plus interest. But for the Plan, a widow may have been deprived of insurance proceeds to which she was entitled.