

Life Insurance and Mental Health

Tom Macmillan
September 2019

Last month, CBC News published an article about an Ontario man, Robert Pugh, whose application for life insurance was denied on the basis that he suffered from generalized anxiety disorder.

The 32 year old advised Sun Life Financial that he took medication and CBD oil for the condition, under the supervision of his doctor, and had received treatment since his late 20s.

What made the story interesting, in part, was the fact that it was published at all. It is accepted practice that life and disability insurance policies differentiate between individuals on the basis of past medical history. If an applicant has a history of diabetes, for example, she can expect to pay more in life insurance premiums.

It comes as no surprise to the public that individuals with certain terminal conditions are denied life insurance altogether.

For some reason, however, the fact that Mr. Pugh's application was denied caught people's attention. It may well be that the uncomfortable feeling aroused by Mr. Pugh's situation has to do with the fact that the increasing public acceptance of mental health issues has come hand-in-hand with the expansion of the concept of human rights into the minutiae of our civil society.

A generation ago, public discussion of 'human rights' was more likely than not to relate to religious persecution, intrusions on liberty, or suffrage.

Fast-forward to 2019, and the 'human rights' cases we hear about in the news often relate to the dismantling of systemic barriers to inclusion within civil society, and very often to the provision of services to individuals.

Seen in this way, the transparent discrimination based on mental health in the context of an application for insurance may strike some as jarring. The story raises interesting questions about how it is that we conceptualize disease, insurance itself, and the extent to which the insurance industry is premised on a fragile tolerance of risk and payment.

Differentiation Permitted

It may initially come as a surprise to some that the Ontario *Human Rights Code* explicitly permits insurers to differentiate on the basis of age, sex, marital status, family status, or disability, when entering into a contract of automobile, life, accident or sickness, or disability insurance. Section 22 of the *Code* specifically sets out this exception for insurers, so long as such differentiation is reasonable and based on bona fide grounds.

The Supreme Court of Canada in 1992 addressed the issue of differentiation amongst insureds in the case of *Zurich Insurance Co. v. Ontario (Human Rights Commission)*. That case was a challenge to the insurer's policy of charging higher premiums for automobile policies insuring men under the age of 25.

The Supreme Court agreed with the Ontario Court of Appeal that an insurer is permitted to discriminate based on age in this context. The Court noted that the *Code* permits such prima facie discrimination, so long as it meets the standard of being reasonable and based on bona fide grounds.

In support of the reasonableness of Zurich's policy, the Court pointed to actuarial evidence which showed that single male drivers aged 25 or younger represented the highest claim frequency, highest loss per car insured, and highest average claim cost of any category of driver.

Interestingly, the Court rejected the suggestion that there exists a reasonable alternative to the insurer's policy of charging increased premiums. It was argued that it would be simple for the insurer to have the category of young male drivers subsumed by the wider pool of insureds, so that the risk and premium burdens would be shared more equitably throughout the pool.

In rejecting this suggestion, the Court indicated the following:

If the premiums of Mr. Bates' class are arbitrarily spread out amongst other classes, the net effect of this change is that drivers in other classes will be forced to subsidize further a group of drivers who already fail to pay premiums sufficient to cover their insurance losses...

What is noteworthy about this passage is that it appears to challenge one of the foundations of the concept of insurance itself. It questions how far it is that we are prepared to share risk.

This question is of paramount importance when considering whether, for example, we wish to set up a system of insurance that prevents differentiation on the basis of a pre-existing diagnosis for generalized anxiety, and whether we are ready and willing to share more widely the risk and premium burden of that group.

Shared Risk

While the Supreme Court refused to entertain the suggestion that the insurance risk posed by young male drivers should be shared more broadly than was the industry standard at the time, the idea of shared risk is the necessary underpinning of the concept of all insurance.

Insurance is shared risk, and our current system of insurance relies on some amount of subsidy from low-risk to high-risk insureds. In the automobile context, this means that low-risk drivers in general subsidize high-risk drivers. In the life and disability insurance context, this means that young and healthy individuals in general subsidize others.

Looking at the hypothetical extremes of a group risk model, on the one hand we have a system with no insurance. In such a world, each individual bears her own risk for disaster, be it in the form of having to pay for damages caused by her negligence, or having to pay the entire cost of some misfortune that befalls her.

At the other end of the spectrum is blanket insurance coverage, borne equally by all and available to all. In this system, there would be no differentiation of premiums; a low-risk individual pays as much as a high-risk individual.

Our current life insurance model lies between poles. Insurers are permitted to differentiate between individuals on the basis of perceived risk. The issue, of course, is to come to terms with how much differentiation we wish to tolerate as a society, as the more widely and aggressively such differentiation is employed, the closer we get on the spectrum to the model where risk is no longer being shared by the group, but is instead borne by each individual.

A purist may ask why it is that any differentiation should be tolerated. If insurance is the spreading of risk across society, is it not more true to the form of insurance that everyone

(or almost everyone) be covered, with the risks and premiums being shared evenly? Would the costs of such a model not be outweighed by the benefit of ensuring that there is appropriate coverage for all potential personal disasters?

The answer to ‘why not’ may lie in the extent to which self-interested individuals are prepared to buy into a system of equally-shared risk. Most people do not give much thought to the extent to which they may be subsidizing other individuals who may be higher risk, but when they do it may be accompanied by a sense of unfairness on the part of low-risk individuals who feel that they disproportionately contribute.

The true value of allowing for differentiation may then be to placate those who feel that they are unfairly over-contributing to the pool of insurance funds. In other words, the answer to, ‘why am I paying so much for insurance which is mostly being used by others?’ can be answered by, ‘you are paying much less than you would were you a higher-risk individual.’

Without some amount of differentiation to quell such grumblings on the part of low-risk contributors, then when premiums are too high there could be a risk of widespread opting out. If a sense of excessive unfairness starts creeping into the system, there is a risk of it crumbling.

This underscores the fragility of a system of insurance that relies on optional participation. While contributors to the insurance pool are prepared to abide by some level of disproportionate payment on the risk that some misfortune may befall them, there is a point at which individuals want some reassurance that they are paying less than higher-risk individuals.

There may be an element of cynicism in this view of our loose loyalty to collectivism, but it is this author’s opinion that self-interest is clearly a part of the policies surrounding insurance funds, and that a degree of differentiation is a tool to ensure acceptance by individuals in a system of shared risk – and shared cost.

More Precise Differentiation, Not Less

So where does that leave individuals like Mr. Pugh, and why was his application rejected outright?

A 2016 study from Cambridge University on mortality rates among people with anxiety disorders revealed that such disorders significantly increased mortality risk. Such

scientific support would likely be enough for Sun Life to justify differentiation under the *Code*, and may well have formed the basis for the insurer's refusal of the application.

Why wasn't Mr. Pugh told that he could purchase coverage at an increased premium? An optimistic view is that our understanding of mental health issues is still in its infancy, and that with further time and study, science will gain a more complex and nuanced understanding of the magnitude of risks involved. Insurers assessing risks and setting premiums may then follow suit.

As there are varying levels of risk with different cancer diagnoses, it appears unlikely that in the future all sufferers of generalized anxiety will continue to be completely denied life insurance.

It is unlikely that there will be an overhaul of the system of differentiation to a more egalitarian model. The more likely outcome is more precise differentiation by insurers on the wings of more understanding of mental health concerns.