

## But for the Plan (Line of Credit Life Insurance - Unilateral Policy Changes)

Do you ever wonder what it means when your bank or insurance company sends ... **THE LETTER** - the letter that **unilaterally** changes the terms of your policy?

In 1995, our client, Bernice, and her late husband, Roger (not their real names) applied for and received a line of credit at a major Canadian bank. To protect the line of credit, they also took out a life insurance policy that the bank was promoting. The policy, issued by a major Canadian insurance company, would pay the amount of the outstanding line of credit on the date of the death of either of them, to a maximum of \$50,000.00. The couple paid the premiums monthly.

In 2008, Bernice and Roger received THE LETTER, from the bank's insurance services department. It advised of changes to some of the terms of their life insurance. Specifically, the amount payable was changed to an amount equal to the average outstanding amount over the twelve months prior to a claim being made. The letter also stated that if they held a "variable rate loan" with the bank, there would be no change to the insurance coverage. Since they did have a variable rate loan (the line of credit) they assumed that there was no change for them.

Sadly, Roger died suddenly in 2010. On the date of his death, the amount outstanding on the line of credit was \$20,451.53, and Bernice requested that it be paid in full. You can imagine her disappointment when she received a cheque for \$5,100.00, which was the average amount outstanding in the twelve months prior to her husband's death.

Upon receipt of the cheque, and knowing that she had Unifor Legal Services Plan coverage as a surviving spouse, Bernice made an appointment to see a lawyer at our Brampton office, in January, 2011. The lawyer contacted the bank and the insurance company, but neither would make a further payment, so a claim was issued against both the bank and the insurance company, for the balance of the amount outstanding on the line of credit.

The claim was defended on the basis that the couple had received THE LETTER, notifying them that the terms had changed.

The claim was settled prior to trial, for an amount close to balance of the line of credit, on the basis that it was likely we could successfully persuade a trial judge to make a finding that the terms of THE LETTER were ambiguous. The ambiguity would then be decided in favour of the insured, because **judges interpret ambiguously worded clauses against the party who drafts or tenders THE LETTER** (the "*contra proferentum*" rule).

Just prior to Christmas, 2011, Bernice received her settlement cheque.



... Submitted by Kathleen Howes, Staff Lawyer  
Brampton Office