

Ageism and the Insurance Industry

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In the 1960's, Geriatrician Robert Butler coined the phrase “ageism”. It was used in the context of the prevailing social practice of stereotyping older people and the aging process in a negative manner. It reflected existing societal attitudes towards the elderly, which portrayed them often in disparaging terms or identified them as unflattering stereotypes. As time progressed, ageism was viewed more in a legal context having regard to policy or practices, which were considered prejudicial or discriminatory in nature.

Today, ageism is defined more specifically as discrimination on the basis of a person's age.

In a time of increased diversity and a desire to promote inclusivity within Canada, ageism is seen as one of the newest challenges facing society. Much of the world is caught up in the **#MeToo** movement, which focuses on sexual harassment in the workplace. But in addition, there is a growing awareness and strong sentiment being expressed also about age discrimination in the workplace environment.

But there are other areas where ageism is not often mentioned but in reality exists to the financial

detriment to the “retiree” or “senior citizen”. This prompted one observer to remark,

“Ageism is the most tolerated form of social prejudice in Canada and there is no greater safe haven for this kind of prejudice than in the insurance industry.”

In my opinion, one of the last bastions, where **age discrimination** continues to be accepted and tolerated is in the area of private sector insurance and in particular, private health insurance and more specifically, **Travel Medical Insurance**.

Let me explain.

Age Discrimination and the Charter of Rights

Canada’s provisions prohibiting age discrimination are grounded in the Charter of Rights and Freedoms (“Charter”), which applies to all jurisdictions and governmental entities. Section 15(1) of the Charter contains an equality clause, which provides as follows:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.”

The Federal government and all Provinces and Territories have anti-discriminatory measures or

human rights legislation which lists “age” as an enumerated and protected category.

Of greater interest is the extent to which age discrimination is **permitted by law in Canada**. Four provinces — British Columbia, Saskatchewan, Ontario and Newfoundland — maintain an age cap of 65 in their human rights legislation and so different standards may be applied to the elderly in these jurisdictions.

Furthermore, statutory provisions in some jurisdictions exist which specifically permit the use of “age” to legally discriminate in relation to the issuance of insurance contracts. As an example, Ontario’s Human Rights Code (R.S.O. 1990, c. H.19, s. 22) states the following:

“The right ... to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap.”

The Alberta Human Rights Act prohibits discrimination in relation to “goods and services” that are customarily available to the public because of “race, religious beliefs, color, gender, gender identity, gender expression, physical disability, mental disability, **age**, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or any other person or class of persons.”

Violations of the Human Rights Act in Alberta can give rise to a complaint and legal redress in the form of sanctions, penalties and mandatory compliance orders by the government appointed tribunal- The Alberta Human Rights Commission.

Age Discrimination and Insurance Underwriting

The vast majority of Canadian legal precedents dealing with “insurance” and allegations of human rights violations or discrimination as it relates to “age” are concerned with government-sponsored insurance programs such as health insurance and unemployment insurance.

In Ontario, published guidelines for underwriting automobile insurance have been adopted to offer guidance in dealing with the any purported discrimination based on the enumerated classes protected from discrimination, including “age”. One of

the standards or guidelines governing insurance companies in underwriting automobile insurance is that the rules or guidelines must not be contrary to “public policy”.

Although it may be difficult to define with precision “public policy”, it is not difficult to imagine that underwriting and pricing an insurance product based upon guidelines, standards, criteria or measurements that offend the Provincial Human Rights legislation or the Charter of Rights and Freedoms, is strictly speaking, one that should be “contrary to public policy”. For example, underwriting rules based on race, religious belief, color, nationality or ethnicity of the applicant or individuals seeking to be insured under a private sector insurance policy would be clearly contrary to this legislation.

By the same token, you would expect the same to be true with respect to underwriting criteria based solely on age.

Setting a Limit on Age Discrimination

A set of legal precedents has produced the result that **allows** most auto insurers to price discriminate on the basis of “age”. The landmark Canadian case on this point is Zurich Insurance Co. v. Ontario (Human Rights Commission) (1992) 16 C.H.R.R. 3D/255 (S.C.C.). In that ruling, the Supreme Court of Canada found the actuarial and statistical data showing young male drivers to be

involved in proportionately more serious accidents than other drivers made charging these drivers higher premiums as a “sound and accepted insurance practice”.

That actuarial evidence consisted of a statistical correlation between age, sex and marital status and insurance losses, which showed that single, young male drivers are involved in more accidents than other drivers.

The Court accepted that the practice of underwriting automobile insurance taking into account the age of the driver as a reasonable practice and that it was adopted by the industry as a sound business practice and not intended for the purpose of subverting or defeating a right intended to be protected under Human Rights legislation.

The Court in adopting a “reasonableness” test ruled that despite an apparent discretionary practice, it was deemed “reasonable and bona fides” and therefore not contrary to public policy. The Court also considered that it was a reasonable exception to an otherwise discriminatory practice as there appeared to be no practical alternative in assessing the risk and pricing this kind of product offering.

In other words, charging premiums based on credible actuarial evidence, which established a clear nexus or correlation between age and the risk of loss was

acceptable, in the absence of some other practical alternative in effectively assessing that risk.

Notwithstanding this ruling, the Court concluded that this form of discriminatory behaviour could not continue indefinitely and encouraged the industry to find an alternative to the practice. The Court clearly stated that the insurance industry should be actively working to develop non-discriminatory criteria for assessing this kind of risk.

To date, the industry has not developed a classification system for automobile insurance that eliminates age discrimination. Because of this lack of progress in the years following the Zurich decision, the Ontario Human Rights Commission noted that the existing age-based classification system **may** no longer meet the test of a sound and accepted insurance practice.

Implications for Other Forms of Insurance

The Court's application of the “reasonableness” test reveals the its deference to established tradition within the insurance industry. Insurance companies endeavoured to argue that the tradition of pricing other forms of insurance products based upon age as the being the primary criteria were well established and accepted in the industry. Tradition has never been accepted as an applicable defense in other forms of human rights violations. Discriminatory attitudes and behaviours would never change, if the prevailing

response to any challenge, “that’s always the way we did it” was considered acceptable.

In conclusion, any existing underwriting practice in the insurance industry, which uses age strictly as the qualifying criteria, absent credible actuarial evidence which clearly establishes a nexus or correlation between this factor and the risk of loss sought to be addressed, may not meet the “reasonable and bona fides” test as established by the Supreme Court of Canada.

This brings me to the matter of Travel Medical Insurance.

The Prevalence of Ageism in Travel Medical Insurance

In an earlier article entitled, “**Travel Medical Insurance and the “Pre-existing Condition” Enigma and the Canadian Visitor to the United States**”, I reviewed the importance of medical travel insurance for the frequent traveler to the U.S. (and elsewhere outside of Canada). I also discussed the limitations of the coverage should you have or develop a “pre-existing condition” or otherwise, have a significant change in your health. With this in mind, it is not uncommon for the Canadian Snowbird, who can spend up to 183 continuous days or 6 months in the United States, to have some form of Travel Medical Insurance (TMI) to supplement health

care coverage available in their home province under the Canada Health Act.

There are two basic types of supplemental or extended health care coverage available in Canada, which will typically have either as an option (insurance rider) or as an imbedded feature of the coverage, a TMI component. These are:

- a) Employee benefit plans, and
- b) Individual health insurance plans.

A subset of the Employee benefit plan, which is sometimes referred to as a “group policy” is a “conversion health insurance policy or plan”.

The individual health insurance plans are sometimes referred to as “personal health insurance” or “family health insurance”.

Both of these types of plans can be either an underwritten policy also known as a standard health plan or a guaranteed issue policy or guaranteed health plan, with each having their own nuances.

An underwritten policy or standard health insurance plan, whether an employee benefit plan or as an individual health insurance plan, is subject to and is based upon the completion of a detailed medical questionnaire, upon which the insurance company will assess or determine the risk and decide whether or not to issue the policy. Assessing the risk is the essence of “underwriting” an insurance policy, regardless of the

type of insurance being requested, whether it is life, home or auto insurance. In each case, there are certain “risk” factors, which must be taken into account in determining whether the insurance policy will be issued in first instance and then, what annual premium will be charged for the coverage. Take for example, auto insurance. There are many risk factors to consider including the age of the driver, the driver’s abstract or record, prior accidents or claims, the type or make and model of the vehicle and its value. All of these factors are taken into account in “pricing” the product, before the policy of auto insurance is issued.

In another article, entitled, “**Forgive Me-I Just Had a Senior’s Moment**”, I coined the phrase “successful aging” as being the ultimate goal of all retirees. It is that point in time after leaving the workplace, when the retirement role has been successfully mastered and the retiree finds himself in a comfortable, content and rewarding routine, which is both satisfying and relaxing. When and how you reach this “contentment” phase in retirement, however, is a matter of some debate.(See also my article, “**The Emotional Phases of Retirement: From a Canadian Perspective**”)

Successful aging has many positive attributes not the least of which is the feeling of contentment. The annual trek down south for many Canadians is a rewarding experience, which adds to that feeling. Having adequate travel medical insurance in place relieves some of the “angst” associated with this sojourn. The cost of TMI

however, can be expensive and can grow exponentially depending on many factors not the least of which is significant changes in general health and regrettably, successful aging.

In some cases, changing eligibility requirements, the reduction of the coverage period and the increased cost of both primary coverage or supplementary or “top-up” coverage simply becomes cost prohibitive, so much so, that many have to reassess their annual vacation plans and in some extreme cases, are forced to sell their winter home, much sooner than originally contemplated.

It may be of interest to those who enjoy successful aging to understand the nuances of TMI and the risk assessment involved in pricing this form of insurance and impact of ageism and other related factors have for the frequent traveler in obtaining this essential insurance product in Canada.

TMI-Base Duration Period

In my earlier article, I identified the fact that my wife is a retired teacher in Alberta and that we were fortunate to be eligible for extended personal health care coverage under the Alberta Retired Teachers’ Association(ARTA) employment benefit plan, which includes as an embedded feature annual Travel Medical Insurance as part of the monthly premium.

By any standard, based upon my research, the ARTA plan is the “Cadillac” among employee benefit plans and

in particular, the TMI component. It would be instructive to look at the coverage offered by ARTA as a basis of comparison in order to have a better understanding of how age and other factors impacts TMI.

ARTA has an automatic 92 day base travel duration period (“Base Duration Period”) for any single trip or excursion, which is part of the monthly premium or assessment under the Total Health or Ultimate Health options that are available.

Once accepted into the plan, there is no annual eligibility requirements or medical reassessments and more importantly, no cost adjustment in order to continue the coverage, irrespective of any change in medical condition, **except at certain age levels.**

Under the ARTA, additional supplementary travel insurance beyond the Base Duration Period may be purchased in 15-day increments or units. This practice is often referred to as a “top-up” of the TMI coverage.

The Base Duration Period for TMI in the private insurance industry varies from insurer to insurer and can range from 30 to 90 days.

The “Snowbird” All-nighter

In planning your trip abroad or down south, it is very important to assess your individual requirements or need for TMI taking into the length of the intended trip. Determining the Base Duration Period which is being

offered by your insurance provider and depending on the length of the stay, whether or not there is a need for additional coverage or a “top-up” coverage is critically important for several reasons.

Firstly, some insurance companies **do not** offer any “top-up” or supplementary Travel Medical Insurance coverage beyond the Base Duration Period.

Secondly, some insurers **will not** allow the purchase of supplementary travel insurance or “top-up” coverage, while outside of Canada.

Finally, the cost of “top-up” coverage and the underlying underwriting process and criteria used can be arbitrary, confusing and ultimately, in some cases, cost prohibitive. For example, one insurer in addition to age, simply prices the supplementary coverage based arbitrarily on the “number” of medical prescriptions taken regularly, without inquiry as to the type or reason for taking the medication. In some cases, taking too many prescription medications simply disqualifies you from coverage altogether.

In another case, a fellow Snowbird wished to extend his time down south for an extra couple of weeks, only to discover that his insurer did not offer the coverage. When enquiring of other insurance providers, he was dismayed to find out, that he could not obtain coverage while down south as many of the other insurance providers prohibited an application for coverage, if the applicant was not physically present in Canada.

These limitations and the overall cost of supplementary travel medical insurance (which is predicated primarily on the basis of age) have given rise to a new phrase that I have developed.

Irrespective of the specific Base Duration Period, most policies provide that the period can be reset for a further time period by simply returning to Canada for as little as a day. Some “Snowbirds”, particularly those with a 30 base duration period, will fly home to Canada and return the next day in order to reset the clock on their TMI. It is reported that some don’t even leave the airport, which prompted me to describe the practice as a “Snowbird All-nighter”.

This often from an economical and practical standpoint is more advantageous than trying to obtain supplementary travel coverage from the insurance provider.

The “Snowbird All-nighter” has as yet not caught the attention of the insurance industry and the question, which might need to be addressed, is whether or not such practice could put in jeopardy the insurance coverage, should a claim be made for medical coverage after the return trip.

As far as I am aware, there is no mandatory stipulation or prescribed time period that you must remain or be in Canada in order to reset the clock on the Base Duration Period.

It may be prudent to make a discreet inquiry in this regard when choosing your insurance provider. Also, ask about “top-up” coverage and the underlying underwriting criteria or conditions relating to eligibility for this form of coverage.

Finally, it should be noted that due to the right of subrogation and the coordination of benefits between the insurance company administering the TMI and the Provincial Health care programs, the return visit to Canada **must** be to your home province.

Incremental Cost of TMI Based On Age Levels

Most private insurance providers segment their cost structure both for TMI primary coverage and “top-up” coverage based upon certain age levels, typically 60, 65, 70, 75 and 80. Some cancel and preclude any form of coverage beyond 80 years altogether. Others reduce their Base Duration Period under their policy from 60 or 90 days to a minimum 30 days, simply once their insured reaches the age of 75.

All of which begs the question.

Is this insurance industry practice of using “age” as the qualifying criteria for TMI, supported by credible actuarial evidence and therefore, in keeping with established legal precedent of the highest order, a practice which is “reasonable and bona fides”?

Or is it clearly a tradition which continues unabated and which in reality amounts to another violation of human rights legislation in Canada?

I will let you be the Judge on this one!

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