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Aller au sommaire du numéro

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Married Women and Life Insurance [1]

By

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With war exploding like firecrackers all over the Pacific the discussion of married women and insurance may appear so trivial as to be irrelevant. No Canadian can doubt that Canada is at war today for the defence of Canada. Wherever the enemy is defeated, even delayed, then we are defending Canada. Canadian soldiers at Hong Kong and the Straits of Dover are just as surely fighting in the defence of our country as they would be on the ramparts of Quebec. This is a fight for the life of civilisation itself and if we lose, civilization goes down for a hundred or a thousand of years. No one anywhere can doubt that this is the risk we run, we in Canada and like-minded decent people everywhere in the world. Our enemies are all-out to crush all of us and everything we believe in, even

[1] Texte d'une conférence prononcée par M. Claxton devant les membres de la Ligue des Droits de la Femme, en décembre 1941.

the right to have beliefs. Canada as a nation, Canadians as individuals, have never been so menaced before. As a nation and individually we must exert every effort in the supreme task of bringing victory. We know that the road will be long and hard but we are confident of our will to stay the course.

Victory will give us opportunity. What more could we ask and expect? We deceive ourselves if we regard it otherwise. Victory is essential; nothing is worth anything without it. Defeat would be death. Victory is the foundation of living. What life we build on it depends on the plan, the skill, the materials, the will, the organization, the leadership we have when victory comes. We must concentrate our energies on winning the war. We must spend whatever we have left over on making the war more worth winning, on improving the conditions of life. We will fight better if we know that in gaining victory we gain security from want and the opportunities for a better life. The enemy will fight with less heart if he sees the order of the New World in contrast with the visible miseries of the Nazi New Order.

Peace will bring problems as great as those of war itself, challenging in their difficulties, challenging in their opportunities. We are going to need trained minds as we never have before. We should improve our systems of education now. It will be too late later. The role of government is going to be larger than it has ever been. We must improve public administration now. The war has brought home the serious state of national health. We can't wait to take steps to improve that. We are going to need a new devotion to Canada; we should nourish everything that fills Canadians with the love of their country. Opportunities should be given to study and discuss the problems which lie ahead. We must take steps *now* to remove all possible causes of inefficiency, insecurity and injustice. All our experience after the last war shows that the

time to improve Canadian life in its every aspect is *now*. The war is no justification for letting bad things grow worse, or for putting off what we can do to improve conditions today. For this reason we are justified in discussing any measure to improve our laws or our business practices, even the position of married women and life insurance.

The position of married women in the Province of Quebec with regard to life insurance had always made difficulties for insurance companies and their legal advisors. This is because the tremendous development in the business of life insurance during the last seventy-five years had been created by public demand and had not fitted comfortably into any system of law. The development in life insurance had taken place almost despite the law. The same was true in other jurisdictions, as well as in the Province of Quebec. In England and France, in the other provinces of Canada, in the United States and elsewhere, similar problems had arisen because of the particular nature of the contract of life insurance. In other places these problems were dealt with by legislation, like the French Act of 13th July, 1930, or the Uniform Life Insurance Act adopted by the other provinces of Canada in the years 1924 and following. These problems have not been dealt with in Quebec.

The position in Quebec has been brought home now to married women and the public by the decision of the Court of Appeal in the *Larocque Case*. Our difficulties in Quebec with reference to this matter arise not so much because of the Quebec Law on either insurance or married women as because the law of Quebec did not deal with this problem at all. What was needed to deal with the matter was not reform of the law. What we needed to do was to pass legislation to provide for matters that were never anticipated at the time when the Code was drafted. The laws relating to

married women and insurance have got themselves into a tangle because of our failure to do anything about them. The situation has come about in this way.

In 1865 the commissioners appointed to draft our Civil Code tackled the subject of insurance. At the time there was little life insurance business in Quebec and there was less insurance law. Nine articles were considered sufficient to deal with life insurance in the Civil Code while seventy-six related to marine insurance. The provisions on life insurance were derived from the laws of England, Scotland and France, as well as from a draft Code for the State of New York. There are sound reasons for not lightly disturbing the long established fundamental laws of Quebec, but such scruples should not weigh so much with us with regard to laws which came to us from outside.

In 1865 our Code had the most up-to-date, scientific and best statement of the law of insurance anywhere in the world. Since then there has been one amendment to the Code on insurance.

In addition to the Code there is the Husbands' and Parents' Life Insurance Act, in the Revised Statutes. This Act has grown out of a statute enacted by the Parliament of Canada in 1865 and derived largely from the laws of New York. In the Quebec Insurance Act there are also a few provisions on life insurance, but in none of these enactments will you find a word which describes the legal position of beneficiaries of life insurance policies, and Article 1029 of the Civil Code was brought into service to deal with that subject. The rights of beneficiaries who happen to be married women are further affected by Articles 1265 and 1301 of the Civil Code. The first of these prohibits gifts between husband and wife during marriage but expressly permits the husband to insure his life in favour of his wife under the

provisions of the Husbands' and Parents' Life Insurance Act. Article 1301 states that a wife cannot bind herself with or for her husband otherwise than as being common as to property.

The law is sometimes curious. The wife cannot give her husband money but she can lend it to him. She can *pay* her husband's debts but she cannot *undertake* to pay them. Speaking of this, a supreme court judge said: "It is desirable that a married women should not pledge her property; but she retains the right of alienating it. The reason for this distinction", he goes on, ". . . which may seem to be a subtle one, is given by Pothier after Ulpian; it is that one obtains a promise more easily from a woman than a donation".

It is a safe assumption that the application of 1265 and 1301 to life insurance was not anticipated when the Code was drafted, because there was no practice which might lead to their application. The business of life insurance was not out of its struggling infancy. To understand the importance of the questions in the Larocque case, we must appreciate the far-reaching and beneficial character of the institution of life insurance and we must remember that it is almost all new.

Today there are four million policies of life insurance in force in Canada. One company has over half a million policies in force in Montreal alone. The total of insurance in force in Canada is over six and one-half billion dollars, much more than the national debt of Canada. Seventy-five years ago life insurance was an unusual contract of doubtful character taken by a few people as a kind of flyer by which they might add to their assets at death if the company remained solvent. Today it has become a system of saving, administered scientifically under strict supervision by the state. The companies are trustees of the funds held by them for the mil-

lions of insured persons. As premiums are paid reserves are accumulated and invested to provide for liabilities under existing contracts. Today life insurance companies have invested more than a billion dollars in Canadian government and municipal bonds. The reserves are liabilities to policy-holders, available to provide funds to meet death claims. They are also an asset which can be advanced to the insured during his lifetime.

For the great bulk of life insurance policies today give protection against the risk of death and at the same time create a fund available to the insured. The right to obtain advances or to cash policies is specifically provided in the policies themselves. In many jurisdictions the companies are required by statute to give the policy-holder the right to borrow on or cash his policy. Certainly any company which did not provide for this would go to the wall in the face of competition from those who did. People regard it as an essential feature of life insurance.

The increasing use of life insurance as a device for accumulating savings useful to meet the needs of life, as well as the hazards of death, is shown by the truly astonishing fact that over 70% of the money paid by life insurance companies in Canada is paid out *in the lifetime of the insured*. During good times the breadwinner accumulates savings by the payment of premiums. The money paid in, invested at compound interest, less the cost of protection, is there to be used when it is needed by the family. It is used for putting a child through school or college, for investment in a new business, for the purchase of a house or to assist in meeting a sudden disaster, and it is available to provide hospital and medical care or to tide over unemployment, and as long as the policy remains in force it is there to protect the family of the insured against the consequences of his death.

Life insurance has become the great instrument of individual social security. It is the product of the system of individual entreprise which has obtained during the last hundred years. It is one measure of our civilization. Canada with twelve millions people has more insurance in force than Germany with her eighty millions. This large development occurred because life insurance met a social need. At least, that is until the law was stated in the Larocque Case.

Before dealing with the Larocque Case itself, let us look for a moment at the position of married women in the Province of Quebec with reference to life insurance.

In the first place there is insurance on the lives of married women. They may insure their lives in favour of their children without the intervention of their husbands and such insurance is exempt from seizure for debt. In one case it was decided that a married woman cannot insure her life in favour of her husband as this would confer a benefit on him during marriage, contrary to the prohibition in article 1265 of the Civil Code. Policies on the lives of married women are usually for a small amount and are primarily designed to meet the expenses of last illness and burial. It is extraordinary how great a percentage of the population look to small life insurance policies as the only source of money to meet the expenses of last illness and burial.

Turning now to the interest of married women in policies on the lives of their husbands, it is obvious that policies must be payable to someone. The husband may make a policy on his life payable to his heirs and legal representatives. In this event the husband retains control of the insurance during his lifetime and on his death it forms part of his estate and is available to meet his debts and for distribution in accordance with his will or to his legal heirs exactly like his other property. The interest of the married women in such insurance

is the same as her interest in any other asset of her husband's estate.

The husband may also name his wife as beneficiary of a policy on his life. If he does this by marriage contract, the policy is dealt with in accordance with the provisions of the marriage contract. If he does this by appropriation in writing during his lifetime or by his will, the policy falls under the provisions of the Husbands' and Parents' Life Insurance Act to which I have referred. This Act was passed to encourage husbands to take insurance for the benefit of their wives or children and the Act exempts such policies from the claims of creditors but in return it restricts the power of the husband or parent to deal with the insurance. If he names his wife as beneficiary he may change the appropiation, but only in favour of a child or children. The Act specifically empowers the husband to borrow on the policy in order to pay the premiums. It expressly permits the husband and wife to join in assigning the policy. The Act does not say anything about obtaining the cash surrender value of a policy or borrowing on it for any purpose other than for paying the premiums, and this gap gave rise to the Larocque Case.

Briefly, the decision in the Court of Appeal in that case held that a loan made to a wife named as beneficiary to a policy of insurance on the life of a husband was invalid as contrary to the provisions of the Code, even though the husband authorized the loan. It should be noted that the husband and the wife were the only two people interested in this insurance. In 1930 they both joined in obtaining an advance from the company. They both endorsed the cheque for the amount of the advance. They got their own money from the company and the reserve standing to the credit of the policy was of course reduced by the amount of the loan. Two further advances were made to pay interest and premiums and the

policy lapsed in 1934 for non-payment of the premiums due that year. The insured took no steps to alter the situation up to his death in 1936. In 1937 his widow, the beneficiary, sued the company for the full amount of the insurance policy, disregarding the cash she had already received. She said the company should not have advanced the money to her. It was wrong, illegal to have paid her. Since it was wrong for the payments to be made, they should not be counted. If this was so, if the money she received seven years before had still been in the company's hand, there would have been enough money to the credit of the policy to keep it in force. The Court of Appeal maintained her action and the company was ordered to pay the amount of the policy (less two loans for premiums) just as if she had never received the advance away back in 1930.

It should be pointed out that the decision was based on the circumstances of the case before the Court, including the procedure followed by the company in that case. Had the circumstances or procedure been different the decision might have been different. The case has been taken to the Supreme Court and it is no part of our task to make any comment on the decision in the Court of Appeal. What we should look at is the practical consequences of the decision particularly as related to married women.

It is not surprising that the first consequence of this case is that insurance companies stopped making loans on policies naming married women as beneficiaries. What this means in hardship in individual cases can only be appreciated if you are in the position of claims manager of an insurance company. I have been shown reports of forty actual cases experienced by one company. I will mention two.

One is a case where the assured's wife, living in a small northern village, has requested an advance payment of $100

in order to lay in a stock of food for herself and her children during this coming winter. The assured is sick. The company wants to make the advance but it cannot do so.

Another case is one where the wife had to go to Toronto for an operation. She afterwards had a relapse and should now return to the hospital for treatment. The husband and the wife request an advance payment of $175 from their accu-
144 mulated savings. Without this money the wife cannot obtain the medical attention she requires. The company is now unable to make the advance payment. I am told that such cases could be repeated thousands of times.

This is the situation today. The insured husband and his beneficiary wife are the only two people interested in the insurance money. Together they want to get some of that money now rather than wait until one of them dies. What they want is really an advance payment when they need it. The company wants to make the payment. It has in fact contracted to make the payment. It can't make the payment now because the beneficiary is the wife of the insured. If the beneficiary of the insurance was anyone other than the wife there would be no obstacle. An advance could be made to his mother or a stranger but not his wife. An advance could be made to the daughter of the insured, if of legal age. Only the wife can't obtain the loan.

It may be urged that the insurance fund has been established for the special protection of the wife and that she should be protected from her husband. I don't know about that. I am a husband and it would not be proper for me to speak about that, at least it would not be modest. Many of you are married women. Do you want that kind of protection, a kind of protection which prevents your getting money when you need it?

There is this to be thought of also. If the family falls into difficulties it is possible that an advance from the insurance will tide them over and set them on their feet again and enable the breadwinner to start earning his livelihood and paying the premiums. Without assistance from the insurance money the breadwinner may be prevented from regaining his health or from gaining a new opportunity. With the husband unable to meet the premiums on the policy, the reserve may be eaten up and the policy lapse for non-payment of the premiums so that the family will neither get an advance during lifetime or payment after death.

I would like to tell you of a case in my own knowledge in all its details because you would find them more moving than anything else I could say about this subject. It is the case of a relatively wealthy man with a large family and numerous dependant relatives and employees. Trying to keep them from want, he carried on in the depression. He used up every asset, every source of credit, every recourse of every kind. He was at the end of his tether, no further means were available to him. Another week would have seen him wiped out with unlimited disaster to a large number of people. He did an unspeakable thing. He gave his wife the full facts about his condition. She said, "What about the insurance made payable to me?" He said he did not want to put that up but she insisted. Was not their marriage a partnership? Wasn't this just the reason they had saved? Wasn't this the time when their savings should be used? What better use could be made of them? They secured an advance from the insurer and the money got them over the difficult time. From that moment the husband did not look back. He carried his family and his business through and in a few years had taken out insurance for ten times the original amount. He made that insur-

ance payable to his wife. That is the way that adventure worked out.

Let us see frankly where we stand. Under the law as declared by the Court of Appeal that man would not have made a cent of this new insurance payable to his wife. No well-advised man today will make insurance payable to his wife and so place his savings made in this way out of the control of both of them until either one or the other of them dies. The decision has not only frozen all savings in the hands of the insurance companies so that the husband or wife interested in obtaining the insurance money can't get it until one of them dies, but it has also stopped husbands from making policies payable to their wives. Instead of giving wives protection and instead of encouraging husbands to insure themselves for the benefit of their wives, the law as declared in this decision, has acted in precisely the opposite direction. Because of this case husbands are not making policies payable to their wives and some of them have changed the beneficiary to the children and have even allowed insurance to lapse in order to avoid tieing up their future savings.

It must be frankly admitted that if the law is changed and husband and wife are allowed to exercise the loan privileges under their policies to touch the funds they have accumulated when they need them rather than wait until one of them dies, there may be a risk that some husband will improperly persuade some wife to allow him to use the insurance money for wrong purposes. If, in order to protect such a one, we must prevent all others from using their savings then the cost of such protection is too high. Hasn't the time come when married women have all the rights and all the obligations, the full position of an adult individual?

This seems to be a case where we might apply the old saying: "Women must have their wills while they live because

they make none when they die". Life is a risk, marriage is a risk. Even by the beneficent means of insurance and by wise laws we can't protect ourselves against all the risks of either life or marriage. What we can do is to face the facts and try to take the wisest course we can. Letting matters stand as they are today will deprive married women of the special protection of having insurance on their husbands' lives made payable to them. We will let matters stand today for only two possible reasons. We may do it because we prefer to drift or we may do it in an endeavour to protect a few married women against their husbands exercising influence over them to obtain money for improper purposes.

On the other hand we can ask to have the law changed so that it continues to encourage husbands to insure their lives in favour of their wives and we can allow them to obtain advances out of their savings accumulated in this way to be used when they need it.

It is not surprising that the Bar of the Province, La Chambre de Commerce, The Junior Chamber of Commerce and other important organizations have passed resolutions requesting that legislation be passed to meet the need. Articles to the same effect have appeared in the Montreal Star, the Montral Gazette, Le Matin, Le Canada, La Patrie, La Presse and The Standard as well as L'Action Catholique. A learned address has been delivered by Laurent Lesage and articles have been written by Louis Morin, K.C., and Paul Carignan, dealing with the subject from the legal point of view. What I have tried to do tonight is to put the matter before you against a background of the business and law of insurance, having in mind the social needs and the practical consequences of the law. After all, however, you as women are the people best qualified to say where your interest lies.