

Clairmont | Insurance rule stings victims of domestic violence

In industry lingo, they're called "innocent co-insureds."

In reality, they are often victims of domestic violence, revictimized by insurance companies.

Canadian women are being told their insurance will not cover the criminal and intentional fires set by abusive partners because both their names appear on the policies.

Though legal and domestic violence experts call for changes to the insurance industry that will give abuse victims a chance to rebuild their lives, the few attempts made to address the issue are mired in politics and paperwork.

"It's unconscionable for an insurance company not to recognize the plight of a woman in those circumstances," says psychologist Dr. Peter Jaffe, director of the [Centre for Research and Education on Violence Against Women and Children](#).

These women did nothing wrong. They did not start the fires or conspire with the fire starters. In some cases the women had already gone to police and the courts to try to protect themselves. And in some cases the women — and their children — narrowly escaped grave injuries by fleeing the home.

Women like Jennifer Robinson. The mom from Lowbanks, near Dunnville, grabbed her three children and fled her home to safety, only to have her house set on fire moments later. Her estranged husband faces charges of arson, assault causing bodily harm, threatening death and firearms offences.

The house is gutted. Jennifer and the children, aged 8, 7 and 2, lost all their belongings.

Yet [RSA Canada](#) says it likely won't pay her claim because her husband's name appears on the insurance policy alongside her own.

Anna Cipkar barely survived her ordeal.

In 2004 in Windsor, Anna was choked by her husband, Mihal Cipkar. He was charged and a restraining order was placed on him. Anna says she phoned RBC Insurance to have Mihal's name removed from the homeowner's policy, but the company said it could not do so without Mihal's consent.

Mihal returned to the home a week later. He doused the cars with gasoline and set them on fire. He splashed gas on the house and torched it.

Anna and her daughters, aged nine and five, jumped from a second-storey window. Anna injured her hands catching her girls.

“I was fortunate just to be alive,” she says.

Mihal suffered fatal burns.

RBC Insurance refused to pay for the house and one car. It paid for the other car because it was in Anna’s name only.

After six years of battling RBC, Anna got a small out-of-court settlement from the company.

“Peanuts,” she says. “They use the fine print. They will find a way not to pay you. They don’t look at the circumstances.”

The payout didn’t stem from a desire to help a victim. Rather, Anna’s lawyer, Alf Kwinter, launched an ingenious case against RBC. With Jaffe’s help, Kwinter argued that had Mihal lived, he would have been found not criminally responsible for the arson.

“The criminal exclusion in an insurance policy can have no application when a person is insane,” Kwinter argued.

RBC argued that since Mihal clearly started the fire deliberately and he was named on the policy, the damage would not be covered.

The Ontario Superior Court ordered a trial. Before that could happen, RBC settled with Anna, for a confidential amount. “There has never been a full judicial hearing on this,” Kwinter says.

Anna, in effect, won. But not because she was the innocent co-insured.

“I don’t believe they paid it out of the goodness of their heart,” Kwinter says. “The insurance industry needs to be a little more compassionate. This calls out for change because it’s so terribly unfair.”

Domestic violence is about power, Jaffe says. The victim has no power and the insurance industry is doing nothing to empower her after the abuse so she can move forward.

“This is an abused spouse who’s doing everything she can to protect herself and her children,” Jaffe says. Besides Anna’s and Jennifer’s cases, he knows of at least one other similar case in Ontario. “The insurance company refused to meet their obligations because of the technicality of the policy. These are exceptional circumstances.”

What a standard policy like this suggests is one co-insured should prevent another co-insured from doing this sort of damage.

In a violent home, that is a dangerous onus to place on a victim, says Erik Knutsen, a law professor at Queen's University.

"It's putting the burden on the absolutely wrong person," he says.

Under the standard "broad spectrum" coverage of an insurance policy, anyone living in the home is covered and anyone covered can violate the policy making it null and void. Even a child.

"The practical solution is to change these exclusions," he says.

British Columbia has passed legislation that enables the insurance industry to amend its regulations in order to protect innocent co-accuseds. The problem is, this process began six years ago and has stalled, according to Knutsen.

Alberta is stalled, too. Ontario hasn't even tried to address the innocent co-insured problem.

The State of Washington deals with domestic abuse by prohibiting insurance companies from denying otherwise valid claims on the basis that the loss was caused by an act of domestic violence by an insured party.

The Insurance Bureau of Canada says it supports the B.C. legislation "and we would continue to support it if and when it would be introduced in Ontario."

"There's no commercial incentive to do this," Knutsen says. "Courts want to sort this out on bloodless words out of a dictionary when this should be about real blood and doing the right thing in the face of domestic violence."

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