



## **CLHIA Views on the Ontario Private Member's Bill 162**

The Canadian Life and Health Insurance Association (CLHIA) is a voluntary association with member companies which account for 99 per cent of Canada's life and health insurance business. The life and health insurance industry is a significant economic and social contributor in Ontario. The industry employs nearly 70,000 Ontarians, with 27,600 managerial and administrative staff and 40,900 agents, working from offices and agencies located throughout the province. In addition, the industry protects approximately 11 million Ontarians and makes close to \$40 billion a year in benefit payments to residents in Ontario. Overall, Canada's life insurers operate in more than 20 countries with invested assets of \$855 billion supporting their foreign operations. Three Canadian life companies rank among the 15 largest life insurers in the world, of which, two reside within the province of Ontario.

Life settlements, also known as trafficking in life insurance policies, involve the disposition by the insured of all rights under a life insurance policy to a third party in exchange for a cash payment, usually substantially discounted below the face value of the policy. In Canada, only four provinces do not explicitly prohibit trafficking in life insurance policies (Saskatchewan, Quebec, Nova Scotia and New Brunswick). Currently, all other provinces, including Ontario, strictly prohibit trafficking in life insurance policies.

Bill 162, *an Act to amend the Insurance Act to Authorize Life Settlements*, seeks to amend section 115 of the Ontario *Insurance Act* to provide for an exception to the current rule which prohibits any person, other than an insurer or its duly authorized agent, from trafficking or trading in life insurance policies. The Bill seeks to provide an exception to this prohibition for a life insurance policy if the purchase is from the original policyholder and the policy has been held for at least 36 months. The Bill also provides for a 10-day cooling-off period, during which time the agreement for the sale of a life insurance policy may be cancelled.

The life and health insurance industry does not support the proposed amendments under Bill 162 or providing for any exceptions to the prohibition under section 115, as to do so would open up a largely vulnerable population (senior policyholders) to potential financial exploitation. Prior to making any changes, we would strongly encourage policymakers to carefully examine the real harm to permitting trafficking outlined below and to engage in meaningful consultation with all stakeholders on this very serious issue.



## **Limited Market in Canada for Life Settlements**

Supporters argue life settlements will satisfy a demand by consumers who no longer have a need for their policies by providing them with an alternative to letting their policies lapse. In fact, the potential market and demand for life settlements in Canada is extremely limited as few individuals will meet the criteria life settlement companies set, as many have the wrong type of coverage, are too healthy or too young.

While proponents argue 80-90% of life insurance policies lapse with no cash value, that figure is skewed significantly by term insurance, a type of coverage which was never intended to be permanent, and would therefore not be included in the life settlement market. Based on information received from member companies, we understand the lapse rates for long-held, permanent insurance policies are extremely small. As a result, the potential market and demand for life settlements in Canada is extremely limited.

## **Availability of Advanced Death Benefits**

The Bill's sponsor brought forward the Bill to give individuals the option of selling their life insurance policies so they can access their money to help cover their living expenses as they age. It has also been argued that selling life insurance policies can help individuals pay for their immediate health care needs.

Many policyholders in Canada already have access to their life insurance benefits while alive. These practices were first introduced in 1988 by a leading life insurer that undertook a compassionate initiative that became known at the time as "accelerated living benefits for the terminally ill". Other insurers quickly followed this example. As a result, most life insurance companies will allow terminally ill insureds to receive, during their lifetime, a portion of the death benefit of their life insurance contracts. Indeed, Canadian insurers are international leaders in this area as this initiative has been copied widely around the world.

While some life insurance policies have a specific accelerated death benefit option, in many instances these advanced death benefits are not addressed under insurance contracts or applicable legislation. Rather, they remain voluntary, compassionate undertakings of life insurers.



In either case, the insurance company will pay the policyholder a percentage of the policy's face value, minus any outstanding policy loans, if the insured person becomes terminally ill and has need to access some of the face value of the policy. The balance of the face value of the policy is still payable to the named beneficiary on the death of the insured person. Unlike life settlements, advanced death benefits do not involve transferring ownership of the policy, and the associated death benefit, for a discount on the face value of the policy. The value of the policy is received by the insured and ultimately their beneficiaries.

In addition, typically insurance payments are received on a tax free basis, as opposed to a life settlement, which is a taxable disposition resulting in the loss of a tax advantage to the original owner.

### **Potential for Fraud and Abuses**

There is a very real and significant risk for fraud and abuses of consumers with life settlements. In the U.S., where the market for life settlements has been active for several years, there is a track record of fraud and abuses that has proven to be an intrinsic part of the settlements industry.

Currently, in the U.S., the life settlement industry almost exclusively promotes its services to seniors, regardless of health. Life settlements are marketed as a way for seniors who no longer feel they need their life insurance to access the "value" of their policy on a secondary market. However, individuals do not have the expertise to know if they are getting a "fair deal" and are often vulnerable to parting with a valuable asset without fully understanding the consequences.

The U.S. life settlement market is heavily regulated and some insurance regulators have had to spend a highly disproportionate amount of resources to oversee this very small segment of its market. However, it continues to be characterized by widespread fraud and abuse of the consumers selling their life insurance policies and investors in syndicates formed to purchase such policies, including insufficient disclosure and payments that constitute a fraction of the face value of the policy.

Another problem area underlined by the U.S. experience involves privacy. Life settlement providers and their investors are compensated through the payment of the purchased



policy's death benefit. To ensure prompt notification of the death of the insured and submission of claims forms to the insurer, the life settlement industry aggressively tracks the health status of those insured individuals. This has led to significant complaints about insensitivity and the need to limit contact between life settlement companies and the insured individuals.

In addition, critics argue that there are no standards imposed on persons wishing to become an investor in life settlements, which raises the concern that unscrupulous investors may be tempted to treat the insured in an insensitive manner (or, indeed, even worse).

Other significant concerns have arisen in relation to possible harm to insurers and to investors. With respect to insurers, problems arise when an individual —with a view to obtaining a policy and selling it to a life settlement provider — applies for a life insurance policy and commits fraud in the application process by means of an omission of a material fact or making untrue, false, deceptive or misleading statements in order to obtain the life insurance policy or to obtain lower policy premiums on the life insurance policy. With respect to investors, life settlement contracts may not be suitable investments for some of the investors to whom they are being marketed (e.g., retired seniors).

It should be noted that most if not all of the lobbying activity to open up the market for life settlements appears to originate from the life settlement industry who see an opportunity to profit and not from policyholders. We would respectfully request that policymakers do not support Bill 162, for the many reasons set out above and to protect Ontario seniors from the potential harm that opening up this type of business would expose them to.