

The Insurance & Investment Journal

LIFE AND HEALTH INSURANCE

Life settlement companies seek legislative validation

by Kate McCaffery July 6, 2018 © 07:00 a.m.



When aging clients find themselves holding an in-force, life insurance policy that they no longer need or can afford, they may believe that letting the policy lapse is the only course of action available to them.

However, obtaining a life loan or life settlement may be a viable alternative to letting their policies lapse. The option is legal in Quebec, Nova Scotia and New Brunswick. In the remaining provinces on the other hand, Ontario included, provincial legislation prohibits and precludes many – but not all – companies from offering life loans or life settlements.

In Ontario, section 115 of the Insurance Act states that “any person, other than an insurer or its duly authorized agent (emphasis added), who advertises or holds him self, herself or itself out as a purchaser of life insurance policies... is guilty of an offence.”

Policy lapses

Although most life insurance companies have no interest in opening up a life settlement market in the province – the liability for death benefits drops considerably when policies lapse – one company, the **Orange Benefit Fund**, has authorized **Canadian Life Settlements** to be its agent for that purpose.

“The ‘duly authorized’ means a company is saying we are prepared to participate in the life settlement market, and we are making somebody our agent for that purpose,” says Canadian Life Settlements president, **Paul Tyers**. “We are only aware of one insurance company that has done that.”

Tyers adds that his company can work with all carriers, not just Orange Benefit Fund. In a recent legislative push, those hoping to change section 115 of the *Insurance Act* have introduced a pair of Private Members Bills in the Ontario Legislature that would allow clients to more widely use their insurance policies as collateral for a loan, or to sell them outright in a life settlement arrangement.

The two bills proposed to allow slightly different things: The first, Bill 162, sought to allow policy holders to sell their policies outright to third parties. Life settlements involve the disposition of all rights under a life insurance policy to a third party, in exchange for a cash payment. (Cash payments are often more than the cash surrender value of the policies, but far less than the policy’s face value.) Bill 20, meanwhile, sought an exemption to the *Insurance Act* that would allow third parties to provide a loan to clients, using their life policies as collateral. The first bill passed first and second readings before being referred to a Committee of the Whole House. It died in March when the government prorogued the legislature. The second bill also died in May when the legislature dissolved ahead of the provincial election.

Actuary **Daniel Kahan** of **Viaticus Canada Inc.**, worked with **Trillium Party** MPP, **Jack MacLaren** to introduce Bill 20 after Bill 162 was introduced.

"I wasn't actually planning to do anything on the legislative side, but once 162 came out, I was rather concerned that they were going to legalize settlements, but not loans. Technically, Section 115 (of the Insurance Act) makes loans and settlements illegal. If they wanted to legalize settlements, I wanted them to legalize loans at the same time," he says.

"I personally believe that a policy holder – it's their property. They should be given the choice to do whatever they like with it."

Although those bills died, stakeholders say they are prepared for the fact that the issue will likely be reintroduced when the new government is back in session. "It was a pretty short time to pass legislation," says **Canadian Life and Health Insurance Association (CLHIA)** vice president of government relations and policy, **Susan Murray**. "But I think we can expect, whoever the government is when it comes back, that this issue will come back. It could still be an issue that legislature will have to deal with in Ontario."

Associations like the CLHIA and their members are against opening up a secondary market for life policies. They say allowing any exceptions to the prohibition under section 115 would open up a largely vulnerable population to potential financial exploitation – a claim that life settlement proponents say is untrue.

"Our concern is that people are using their policy and they won't have the full value of it when they're supposed to. Their beneficiaries won't have the full value of the policy. They're taking pieces of it out and using it at far less than its real value," Murray says. "We encourage people to look at what's available to them through their insurer."

When a would-be client comes to him for advice, Kahan says he will always check first to see if benefits can be had from the insurance company. Often, however, he says third parties are more likely to make a better offer. "I only step in when the insurance company is not willing to give these people a loan," or when the insurance company offer is significantly lower than the policy's value. (In one case, he says the company was willing to loan their client \$100,000 against a \$700,000 policy. Kahan, who runs a business in Nova Scotia where there are no prohibitions against life loans, was able to arrange another \$100,000 loan on top of the first.)

Moving to Montreal

Although he hopes that legislation to allow life loans will be revived in Ontario after the next provincial election, Viaticus Canada announced in May that it is moving its operating office from Toronto, Ontario, to Montreal, Quebec to carry on operations in the meantime.

Even though his company enjoys a relative monopoly in the province, Tyers from Canadian Life Settlements says he hopes future legislative efforts will successfully amend the *Insurance Act* to allow life settlements and life loans more broadly in Ontario.

“Greater credibility comes from having other people involved,” he says. “We’re one of the lobbyists that would like to change the regulations to allow a wide open market, open to other agents as well.”

“This isn’t about convincing people to do things that aren’t in their interest. It’s about capitalizing something, providing a better sale or borrowing alternative for an asset they were going to give up anyhow.”