

BULLETIN NUMBER: INS-20-003

TITLE: Charitable Donation of Life Insurance Policies in British Columbia

LEGISLATION: *Insurance Act* (section 152)

DATE: May 2020

PURPOSE

This bulletin clarifies BC Financial Services Authority's (BCFSA) position on the interpretation and application of section 152 of the *Insurance Act* (Act) to certain activities related to the charitable donation of life insurance policies in British Columbia.

BACKGROUND INFORMATION

BCFSA is aware of discussions in the charitable giving community that section 152 of the Act may limit certain activities related to the charitable donation of life insurance policies in British Columbia.

LEGISLATION

Section 152 of the Act states:

Trafficking

152 Any person, other than an insurer or its authorized agent, who advertises, or holds himself or herself out, as a purchaser of life insurance policies or of benefits under them, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person, commits an offence against this Act.

Section 152 prohibits two separate types of activity:

1. Advertisement, or holding out, as a purchaser of life insurance policies or of the benefits under life insurance policies.

2. The trafficking or trading in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of life insurance policies to that person or any person.

Engagement in the activities identified under section 152 is an offence under the Act. BCFSa may investigate activities and make recommendations to Crown Counsel at the BC Prosecution Service to proceed with charges in court.

BCFSa'S POSITION

The intent of section 152's prohibition of trafficking in life insurance policies in British Columbia is to protect vulnerable British Columbians.

BCFSa has reviewed certain legitimate charitable donation activities against the section 152 prohibition, and against the likelihood that a court might find that activities are captured by section 152.

1. *Advertising or Holding Out as a Purchaser of Life Insurance Policies:*

BCFSa is of the view that the solicitation by *bona fide* charities of donations of life insurance policies or benefits is generally not prohibited under section 152 of the Act.

2. *Trafficking or Trading in Life Insurance Policies:*

BCFSa considered three donation methods where an insured:

- i. takes out a new policy in the name of a charity and receives a tax receipt for the premiums the donor pays;
- ii. names the charity as the beneficiary of an existing policy, the charity receives the benefits at time of death, and the estate receives a tax receipt; and
- iii. transfers ownership of an existing policy to the charity and receive a tax receipt for the cash value of the policy.

BCFSa is of the view that, when the donation is made by an insured directly to a *bona fide* charitable organization, none of these three donation methods are generally prohibited by section 152 of the Act.

BCFSA's interpretation and application of the Act is subject to an assessment of the facts in specific circumstances. While BCFSA supports legitimate charitable giving in compliance with the law, we will review and investigate any practices that may involve vulnerable British Columbians or are otherwise suggestive of practices harmful to the public. To that end, we encourage the charitable giving community's adoption of best practices that both support charitable giving and protect the interests of donors.

BCFSA encourages the charitable giving community to seek independent legal advice to ensure its activities are structured in compliance with the Act.

ADDITIONAL INFORMATION

On November 1, 2019, the BCFSA assumed the operations and regulatory authorities of the Financial Institutions Commission (FICOM). Further information on the transition from FICOM to BCFSA can be found at www.bcfsa.ca.

If you have any further comments or questions regarding the above, please email insurance@bcfsa.ca.

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