

October 18, 2017

Life Settlements: A response to the Canadian Life and Health Insurance Association

On October 18, 2017, Susan Murray, Vice-President, Government Relations and Policy at the Canadian Life and Health Insurance Association (CLHIA), distributed views on Bill 162. Needless to say, the CLHIA is opposed to Bill 162 and they cited several concerns, which, in actuality, are old, retreaded, unsupportable claims and misleading statements that serve the self-interests of the insurance industry, not the betterment of Ontario, especially for seniors.

The CLHIA, in their submission of October 18, 2017, has proffered six general points regarding the unsuitability of a well-regulated life settlement industry in Ontario and we provide the following evidence to refute their claims.

First, these claims must be considered in the context of the life insurance industry and the positive development of life settlements in jurisdictions around the world. We refer, primarily, to the United States where the life settlement industry has operated as a well-regulated industry and served the needs of millions of seniors for more than 20 years (not “several years” as claimed by CLHIA). It is projected that life settlement payments will be \$3 billion annually over the next ten years.

Further to context, a well-regulated secondary market for life settlements would disrupt the life insurers’ current business model, which is based on an 80% lapse-ratio; thereby, when corrected by Bill 162, it would place billions of dollars in policy owner’s hands instead of the insurance companies. **This is one of the primary reasons life insurers oppose Bill 162.**

Most of their claims are *not* adequately supported by evidence-based information rather they are based on old data or anecdotal information.

Limited demand

In determining market demand, we need look no further than the United States. A common metric for initially measuring the Canadian market is the “10%-of-US” calculation and that is a good starting point for life settlements.



LISAC

Life Insurance Settlement Association of Canada

- The Life Insurance Settlement Association (LISA) in the United States has been operating **since 1994** and the current market for life settlement transactions is estimated to be more than \$3 billion annually over the next ten years.
- Applying the 10% rule, an estimate of the Canadian market for annual life settlements would be \$300 million annually over the next decade. Ontario is approximately 35-40% of the Canadian market, therefore, **the life settlement transactions in the Ontario market could be estimated at over \$100 million annually.**
- In the US, LISA has stated that payments received by people in-excess of the ‘cash surrender value’ in their policies is \$7 million a day. Applying the 10% rule, that’s about \$700,000 a day in Canada and **about \$250,000 a day in Ontario.**
- A study of 9002 policies by the London School of Economics found that, on average, life settlements provide **more than four-times the amount of cash** that the cash surrender value of those policies would. LISA states it to be between 5-7 times greater.
- In the four Canadian provinces (New Brunswick, Nova Scotia, Quebec, Saskatchewan) that do *not* prevent life settlements the total policies in force is estimated at over \$800 billion and it is estimated that approximately 5% of these, \$40 billion, could be expected to have an interest in transacting life settlements (i.e., the potential demand). The combined population of these four provinces is less than Ontario’s population.

There is a significant market in Ontario.

Current options offered

The industry claims to offer insurance options that provide similar benefits to life settlements but this is simply not the case.

- “Accelerated living benefits” and other such “compassionate initiatives” are strictly limited. In most cases the person needs to be terminally ill, as certified by a doctor. Even then, they only have access to a small percentage of the death benefit and the insurance companies will charge interest, treating it as a loan. **This option does not work, as in the case of Morris Adams, who at 91 is in fairly, good health and his**



doctor cannot provide certification. And yet, he has run out of money while being, as MPP Colle said, “insurance rich and cash poor.”

- The CLHIA suggests “meaningful consultation with all stakeholders,” which is welcome and necessary, but the process must not be controlled by the CLHIA, as it was in 2000. At that time, draft regulations were passed (Dec. 5, 2000, Bill 119) but not to be proclaimed until distributed for comment to the insurance industry. **“All stakeholders” were *not* consulted and worse, nothing was ever completed.**
- Certain types of term insurance is/was intended to be permanent and the industry developed and sold a level-cost-term-to-age-100. Unlike the CLHIA claims, **these plans are ideal for life settlements.**
- The CLHIA disputes the 80% lapse ratio, stating, “that figure is skewed significantly by term insurance...” As stated, term policies are ideal for life settlements so the lapse-ratio numbers are not skewed. If the lapse ratios are different, then **we invite the insurance industry to be transparent and provide evidence to all stakeholders as to what they claim to be the lapse ratio.**

Fraud and abuse

The life insurance industry has suggested the risk of widespread fraud for decades with **nothing more than anecdotal evidence or reference to malpractices decades ago.** In the United States, these practices have been virtually eliminated due to a well-regulated industry, which is what is proposed for Ontario.

- In the United States, the National Association of Insurance Commissioners (NAIC) stated: **“There have been only two closed consumer complaints nationwide involving life settlements since 2012.** This is in stark contrast to the more than 8,000 complaints against life insurance carriers in 2014 alone, for delays in paying claims.”
- **Today, the life insurance settlements marketplace is heavily regulated.** As of 2014, 42 states and the territory of Puerto Rico regulate life settlements, affording approximately 90% of the United States population protection under **comprehensive life settlement laws and regulations.**



- Donna Horowitz, senior editor of “The Life Settlements Report” published by [*The Deal*](#), an international financial media outlet, recently investigated consumer complaints filed with state regulators regarding life settlement transactions. Following her review of *The National Association of Insurance Commissioners’* database and subsequent follow-up with individual state regulators, Horowitz reported that **“there are only three consumer complaints” nationwide and “at least two of them don't involve life settlement market players.”**
- Several US states have introduced ***Medicaid Life Settlement*** legislation to enable and encourage people to sell their life insurance policies to pay for long-term care or homecare without compromising their ability to qualify for Medicaid.
- In the US, financial planners and insurance brokers have a **fiduciary responsibility to advise their clients of the life settlement option** and yet, in Ontario they not only *do not* have this responsibility, they are directed by the insurers *not* to discuss the life settlement option, which could lead to termination of their license. Ostensibly **because of the inherent problem in Section 115, which Bill 162 is intended to rectify.**
- In a National Insurance Fraud Forum (USA), sponsored by the Coalition Against Insurance Fraud, in 2000, a report on “Emerging Issues,” listed “Viatical fraud” (sometimes erroneously co-mingled with life settlements) as seventh on a list of eight issues: #1) “Money laundering;” #2) “Shell insurance operations;” #3) “Health care fraud;” #4) “Advanced commission schemes;” #5) “Managed care fraud;” #5) “Companies seeking to leverage cross marketing opportunities” [e.g., like Wells Fargo Bank]; #7) “Viatical fraud;” and #8) “Elderly and senior care fraud.” Obviously, life settlements were not mentioned.

Financial fraud is a reality throughout the financial sector, but life settlements, like other consumer financial products, is, and can be, well-regulated as the others are. The claim of untoward risk is a “strawman” argument and blown out of proportion according current data in the US market.



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Life settlements as an investment

The CLHIA states that “life settlement contracts may not be suitable investments for some investors,” and yet, the financial markets endorse life settlements as an investment in all jurisdictions where life settlements operate in a well-regulated industry.

Franklin Templeton Investments, a global investment company, stated:

“Life settlements are among the most highly-rated investments available ... in the same league as government bonds.”

We should also mention that Warren Buffett has significant investments in life settlements.

Tax implications

The question of taxes is, of course, an individual decision based on a person’s current and future needs and, as in all financial transactions, this needs to be taken under proper advisement. That is why, **in the US, financial planners and brokers have a fiduciary responsibility regarding life settlements.** The same should be established in Ontario.

In summary

The life insurance industry’s opposition is not based on well-documented and well-researched evidence nor is it in the best interests of Ontario seniors, it is based on CLHIA’s members’ best interests. **Of course, consumer protection is paramount** and it should be a part of a well-regulated industry, as it is in the United States and other jurisdictions. Not unlike other financial products in Ontario’s finance sector, **we propose the development of regulations and protections as part of the process going forward to establish a life settlement industry for Ontario.**

There is much more evidence to support and substantiate the benefits of life settlements versus the risks, risks that can be properly mitigated through the collective effort of all stakeholders in creating the requisite regulations and oversight. And unlike the previous experience with the insurance industry (i.e., Bill 119, 2000), this time the process must involve the full interests of the consumer and determine what is best for all Ontarians.