

British Columbia Clarifies its Position on the Donation of Life Insurance Policies

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In the fall of 2019, there was much uncertainty created with the charitable gifting of life insurance policies in British Columbia (BC). The BC Financial Services Authority (BCFSA, formerly the FICOM) took the position that a charity accepting life insurance policies as donations would contravene the anti-trafficking provisions of section 152 of BC's *Insurance Act* (the Act) and whether it might be a breach of provincial insurance laws.

In May 2020, the BCFSA clarified its position and is now of the view that, when an insured makes a donation directly to a *bona fide* charitable organization, none of the three ways of donating (discussed below) are generally prohibited. However, the BCFSA did not clarify what constitutes a *bona fide* charity or under what circumstances these types of donations would be prohibited.

What was the Issue?

In the BCFSA's correspondence to at least two registered BC charities, the regulator advised that: 1) accepting life insurance policies as donations is trafficking in insurance (which is an offence); 2) the charities in question cannot solicit gifts of life insurance policies or accept any life insurance policies as donations from BC residents.

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



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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.

The position taken by the BCFSa was concerning to many in the charitable and insurance sectors because gifts of life insurance have long been one of the many strategic charitable giving tools in tax and estate planning. It is also an attractive option for philanthropic individuals who want to help charities of their choice. Also, accepting donations of life insurance policies is a common and established practice for many charities in Canada.

There was also a concern that this issue could emerge elsewhere in Canada since the language in the equivalent statutes in other provinces is identical to BC's *Insurance Act*. Most Insurance Acts in Canada make it an offence for someone 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..."¹

A few commentators have suggested that the BCFSa's concern arose from the practice of mining insurance policies for donations. For example, certain organizations were actively seeking out donors by asking insurance advisors to identify policies that might lapse (or were near renewal that would require a significant price increase) and encouraging the holders of those policies, who had no previous relationship with the charity, to donate their policies in return for a tax receipt. The organizations may have intended to sell the converted policies to a for-profit life settlement company. The BCFSa's initial enforcement letters were perhaps intended to caution that soliciting insurance for purchase and later sale in a secondary market was prohibited.

The BCFSa's Clarification in May 2020

A number of organizations sought clarification of the BCFSa's position and the regulator provided much needed guidance in its [Bulletin: INS-20-003, "Charitable Donation of Life Insurance Policies"](#)

¹ See for example section 152 of British Columbia's *Insurance Act*, RSBC 2012 Chapter 1 (the Act).



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in British Columbia," May 2020). In this bulletin, the BCFSA clarifies that the following are not generally prohibited by section 152 of the Act:

1. the solicitation by *bona fide* charities of donations of life insurance policies or benefits
2. an insured can make a donation directly to a *bona fide* charitable organization in one of the following three ways:
 - Taking out a new policy in the name of the charity and receiving a tax receipt for the premiums the donor pays
 - Naming the charity as the beneficiary of an existing policy; the charity receives the benefits at the time of death, and the estate receives a tax receipt
 - Transferring the ownership of an existing policy to the charity, and receiving a tax receipt for the cash value of the policy²

The BCFSA, however, cautions that its interpretation and application of the Act is subject to an assessment of the facts in specific circumstances.

The Current State of Donations in BC and in Canada

The common methods of donating a life insurance policy are as follows:

1. Donate a new policy where the charity is owner and beneficiary of the policy. The donor will receive a charitable tax receipt for the premiums and for the value of the policy on

² The actual charitable tax receipt is determined under subsection 248(35) of the *Income Tax Act (Canada)*, R.S.C., 1985, c. 1 (5th Supp.). Subsection 248(35) states that the donation receipt will be for the lesser of the fair market value of the policy (as determined by an actuary) and the adjusted cost basis of the policy if the policy is donated within three years or if the policy is donated within ten years and one of the main reasons for originally acquiring the policy was to donate it to a charity.



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transfer. The value of the policy on transfer is the lesser of the adjusted cost basis of the policy or the fair market value of the policy, as determined by an actuary.

2. Donate an existing policy. Again, the charity is owner and beneficiary of the policy. The donor will receive a charitable tax receipt as outlined in the method above.
3. Donate the death benefit proceeds. The donor will be the owner of the policy and will name a charity of his or her choice as the beneficiary of the policy. The donor's estate will receive a charitable tax receipt on the life insured's death.

The above three methods are legitimate charitable gifting strategies in Canada.

The BCFSAs new clarification is a welcome relief to BC charities, tax and estate planning practitioners and to insurance planners. While this clarification is welcome, a couple of questions still remain. For example, what does the BCFSAs consider to be a "bona fide" charity? There are over 170,000 charitable and non-profit organizations in Canada. Over 85,000 of these are registered charities recognized by the Canada Revenue Agency. Presumably, these charities would be considered *bona fide* charities. We also need more guidance from the BCFSAs as to what charitable activities under section 152 they would treat as an offence.

Other provincial and territorial insurance regulators have yet to comment publicly on this. Until some regulatory consensus is reached, there will remain some risk that, under some circumstances, donating a life insurance policy might contravene anti-trafficking laws. In the meantime, advisors should avoid taking steps that might be seen to be "trafficking" or "trading" in insurance policies e.g. soliciting clients to sell their insurance policies without regard to their current insurance needs.

Charitable Gifting Resources

To learn more about the various ways to gift a life insurance policy, please review the following resources from the ITS Group:

- our new Planned Giving Guides:

Client guides

English: <https://www.clarica.com/files/advisorabc/english/pdf/planned-giving-client-guide-en.pdf>

French: <https://www.clarica.com/files/advisorabc/french/pdf/planned-giving-client-guide-fr.pdf>

Advisor guides

English: <https://www.clarica.com/files/advisorabc/english/pdf/planned-giving-advisor-guide-en.pdf>

French: <https://www.clarica.com/files/advisorabc/french/pdf/planned-giving-advisor-guide-fr.pdf>

- our Charitable Tax Credit Calculator

English: <https://www.clarica.com/files/advisorabc/english/pdf/donation-tax-credit-calculator-v1.0-en.pdf>

French: <https://www.clarica.com/files/advisorabc/french/pdf/donation-tax-credit-calculator-v1.0-fr.pdf>

- a recording of our Planned Giving Presentation given on the March 26, 2020 University Days located here: [University Days Q1 takeaway material](#)

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