

DONATING LIFE INSURANCE TO CHARITIES

WESTWARD'S VIEW

The donation of life insurance policies is a valuable and routine philanthropic and estate planning strategy.

In Fall 2019, the British Columbia Financial Services Authority (BCFSA) was reported to have advised a registered charity that accepting life insurance policies as donations is trafficking in insurance and an offence under section 152 of the Insurance Act. The charity was advised that it cannot solicit or accept gifts of life insurance policies, and that their website should include information about the inability of BC residents to donate life insurance policies.

This news created confusion and concern amongst all stakeholders in the charitable community and clarification was sought from the BCFSA.

On May 4, 2020, the BCFSA issued Bulletin INS-20-003 (see www.bcfsa.ca) clarifying its position. They are of the view that section 152 does not prohibit (1) charities from soliciting donations of life insurance policies or benefits, or (2) an insured from donating a life insurance policy or benefit directly to a charity, whether at or after the issue date of the policy.

This Bulletin is welcome relief for charities soliciting gifts of life insurance and for donors making direct gifts of life insurance to charities. The Bulletin does not provide any guidance or examples of life insurance gifts that BCFSA considers to be prohibited by section 152, but warns they will investigate practices they consider harmful to the public or involving vulnerable British Columbians.



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THE ISSUE

Section 152 of the *Insurance Act* states:

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.

BCFSA says individuals found to be engaging in the following two activities may be investigated and charges could be laid under section 152:

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

BCFSA'S POSITION

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 receives 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 [emphasis added].

