



Submission to Expert Advisory Panel  
Ontario Ministry of Finance

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Review of the mandate of the  
Financial Services Commission of Ontario

June 5, 2015



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## Preface

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In conjunction with the Government of Ontario’s “Review of the Mandate of the Financial Services Commission of Ontario (FSCO),” and in accordance with the “Consultation Paper (April 2015),” the Life Settlement Association of Canada (LISAC) presents this submission.

In essence, this submission addresses the needs and rights of Ontarians to access a free market system that will allow them to receive the fair market value for their life insurance policy, which currently they are prevented from doing by Section 115 of the Ontario Insurance Act.

Unfortunately, over the past 15 years, Ontario seniors have been denied these rights and access primarily due to the inefficacy and inaction on the part of the Financial Services Commission of Ontario (FSCO). In fact, Ontarians have been denied these rights for over eighty years.

Legislation and recommendations pertaining to the establishment of a life settlement industry\* in Ontario, and the repeal of Section 115 of the Ontario Insurance Act, were made 15 years ago and yet, FSCO, in its role of promulgating regulations, has failed to do so. FSCO, for whatever reasons, has ignored its responsibility regarding Section 115, which, in turn, has contributed to the undermining of the financial well-being of Ontario seniors, and the future of an aging population.

*\*A life settlement pertains to the sale of an unneeded in force life insurance policy for an amount that is more than the policy’s cash surrender value but less than its death benefit.*



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## The issue

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This submission is made on behalf of millions of Ontarians who own, and will own, life insurance and who should have the right to sell their policies, if they choose, in a secondary market regulated by the Government of Ontario through FSCO or an alternative agency if deemed appropriate.

This issue directly relates to the Expert Advisory Panel's review of FSCO's mandate as stated in the Consultation Paper:

1) "Protecting consumers."

The financial stability of seniors can be significantly improved and better "protected" by ensuring there is a well-regulated life settlement industry in which Ontario seniors can receive the fair market value for their life insurance policies if they so choose.

2) "Promoting efficient financial markets."

Life insurance is an asset owned by the policyholder (as proclaimed by the US Supreme Court in 1911), and if the owner decides to sell that asset, she/he should have that right, and not be limited to a predetermined value from a single source, their life insurance company. That is neither "efficient" nor does it constitute a fair and balanced market system.

3) "Maintaining the appropriate balance between protecting consumers and promoting efficient markets."



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Every practical and reasonable means should be employed to protect consumers, as is done throughout the financial sector, and life settlements can, and should, have that protection through proper regulation. A well-regulated life settlement industry can achieve the appropriate balance between protection and efficiency.

In jurisdictions around the world, life settlements are available to owners of life insurance through well-regulated secondary markets, but not in Ontario. And FSCO's past performance has been a primary reason for this flagrant lapse in economic and social responsibility.

### **Terminology**

In this submission some of the government documentation refers to "viatical settlements" so for clarity we have briefly described the terminology used. Often the term life settlement is co-mingled – and confused – with the two other terms: "viatical" and "STOLI." Both are different from life settlements and their usage in the marketplace has declined significantly.

**Viatical** (from the Latin "Viaticum", from via meaning "way"): A viatical settlement typically is used for a settlement involving an insured who is terminally or chronically ill and pertains to the sale of a policy owner's life policy to a third party for more than its cash surrender value but less than its net death benefit. The sale provides the policy owner with a lump sum payment. The third party becomes the new owner of the policy, pays the monthly premiums, and receives the full benefit of the policy when the insured dies. In a viatical settlement, the life expectancy of the insured is generally 24 months or less. As medical advancements have made progress in the lives of those living with AIDS and other life-threatening illnesses, viatical settlements have become less common.



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**Life settlement:** A life settlement is different from a viatical settlement in that the individual insured on the policy has a longer life expectancy. It is similar to a viatical in that a life settlement pertains to the sale of an unneeded in force life insurance policy for an amount that is more than the policy's cash surrender value but less than its death benefit. In a life settlement transaction, the policy owner is usually at least 65 and not terminally or chronically ill. The individual sells the policy to a third party and the third party becomes the new owner of the policy, pays the monthly premiums, and receives the full benefit of the policy when the insured dies.

**STOLI** (stranger originated life insurance): STOLI generally means that at or prior to the issuance of a policy an arrangement is made to initiate a life insurance policy for the intended benefit of a person who, at the time of policy origination, does not have an insurable benefit in the life of the insured. The main characteristic of a STOLI transaction is that the insurance is purchased solely as an investment vehicle rather than for the benefit of the policy owner's beneficiaries. This is quite different from a life settlement.

LISAC, and this submission, pertain only to life settlements and LISAC does not support viaticals or STOLIs.



## Executive summary

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Fifteen years of inaction on this most important issue for Ontario seniors must be rectified.

- 600,000 Canadian seniors live in poverty.<sup>1</sup>
- Another 600,000 seniors are still in the workforce.<sup>2</sup>
- More than 2 million seniors live in Ontario, representing 15.6% of Ontario's population, estimated to rise to 23% in a decade.<sup>3</sup>
- The need for life settlements is irrefutable and the benefits are well established and, as previously recommended by the Ontario Government, should be part of "the broad field of financial services in Ontario."
- Ontario seniors are being denied access to money that is rightfully theirs.
- Section 115 of the Ontario Insurance Act has been in effect for over 80 years and it was recommended for repeal in 2000 and yet, FSCO, as part of its mandate, has not promulgated the change in Section 115 over the ensuing 15 years.
- Canadian life insurance companies are opposed to a well-regulated, life settlement industry because a secondary market will allow seniors (if they so choose) to access the fair market value of their policies before death. Currently, it is estimated that 80% of life insurance policies lapse or are cancelled,<sup>4</sup> thereby, never being paid by insurers. This is why insurers are opposed.
- In 1995 a government committee recommended that the Ministry of Finance look into changing the Ontario Insurance Act dealing with this issue. Nothing has been changed.
- In 2000, the Red Tape Reduction Act, Schedule G, allowed for changing Section 115 of the Ontario Insurance Act. It has been FSCO's responsibility to promulgate this change, which it has not done.



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- Many recommendations are being made to governments concerning how to improve the long-term financial well-being of our aging population (i.e., Ontario Pension Plan; increase CPP; increase Tax Free Savings Accounts and contributions to RRSPs), as well as recommendations on how to offset the ever-increasing costs of healthcare. And yet, for the last 15 years FSCO has disregarded Section 115, which could have provided an alternative financial resource and a significant benefit to Ontario's financially struggling seniors.

The time has come.





## A brief history

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History shows that subsequent to the Government of Ontario stating its intent regarding Section 115 of the Ontario Insurance Act, FSCO did not carry out its duties in an appropriate and timely manner.

## Looking back

- **1994:** James Daw\* wrote about activity as far back as 1994. “Ontario suggested ‘that insurers make available at least half the face value of most policies at ‘reasonable interest’ when life expectancy is two years or less.’” (This is known as a viatical settlement). In the same article, Tory MPP, Frank Sheehan, who chaired a committee on this issue, is quoted, “the government’s legislative agenda is too busy. We can’t just free (the market) up without giving thought to the potential abuse.” Surely 20 years is enough time to not only think about it but to enact something?

\* On March 3, 2015, Finance Minister Sousa announced [a panel of experts](#) to review the [Financial Services Commission of Ontario’s \(FSCO\)](#) mandate and James Daw was named as a member of that Panel.

- **1995:** An exemption to [Section 115 of the Insurance Act](#) was applied for but did not succeed; however, the Standing Committee On Regulations and Private Bills recommended on Wednesday 24, 1996 that the Ministry of Finance look further into changing the Insurance Act (“an amendment asks the Minister of Finance to give consideration to this as part of an overall industry review”). Nothing has changed.



- **1997:** *Living Benefits and Viatical Settlements in Ontario, a feasibility report, April, 1997*, recommended that the government: “Permit, and establish regulations for, viatical settlements in Ontario. It further stated: Recent experience in the US shows that viatical settlement companies, when appropriately regulated, can act in the consumer interest and provide a valuable service, filling any gaps left by insurance company programs. Problems arise when, as in Ontario now, viatical settlement companies operate from outside the jurisdiction without regulation.” Nothing has been done.
- **2000:** Bill 119, the *“Red Tape Reduction Act of 2000, Schedule G*: Schedule G allows for a viatical industry in Ontario to be made legal if licensing is first put in place by the Ministry of Finance. Other documentation states, in part: “The Commission has been asked to recommend repeal of Section 115 of the Insurance Act in order to allow a viatical industry to be established in Ontario ... (and) recommends the Commission supports establishing the viatical industry in Ontario ... and the Ministry of Finance should develop options to allow this industry to operate in Ontario.”

That’s very clear.

On Dec. 5, 2000, Bill 119 passed by a vote of 46 to 38. That said, *Schedule G* of Bill 119 was *not* proclaimed and has not come into effect. It was decided to recommend to the Minister of Finance that the new provisions (Schedule G) *not* be proclaimed until *the insurance industry was given a chance to examine and comment on the regulations that would govern the licensing of the new viatical industry* (our italics). Mark Daniels of the Canadian Life and Health Insurance Association (CLHIA) indicated that it was expected that, prior to proclamation, the draft regulations concerning how viatical settlement companies will be licensed and regulated will be distributed to the insurance industry for comment. That was 15 years ago.



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## **From committee transcripts**

### **Standing Committee on General Government**

Committee Transcripts: - 2000-Nov-01 - Bill 119, Red Tape Reduction Act, 2000

Bill 119, Red Tape Reduction Act, 2000

2000-11-01

Chair / Président, Mr Steve Gilchrist (Scarborough East / Est PC)

Representation by the Canadian Life and Health Insurance Association, Mark Daniels  
(excerpt from transcript)

“In the Ontario context, we believe a more responsible approach is to develop a robust system of regulation that will avoid the negative effects that are evidenced in the US experience before making such transactions permissible under Ontario law. The point is, those consultations need to occur before a law permitting viatication is passed, in order to provide time for careful and sober reflection on the complex regulatory issues involved.

Therefore, we urge the standing committee to recommend that schedule G be removed from Bill 119. This would permit the government to introduce a separate bill on viatical settlements, which would allow prior development of a rigorous regulatory model and permit due attention to be given to the important issues involved.

If the standing committee does not wish to adopt that recommendation, as an alternative, we urge you to recommend in your report to the Legislative Assembly that schedule G of Bill 119 not be proclaimed into force until the standing



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committee has had an opportunity to review and approve the regulations on viatical settlements that would be made pursuant to the amendments contained in schedule G.”

The committee did not accept the CLHIA recommendation “that schedule G be removed from Bill 119” but it did allow the “alternative,” pending comments from the life insurance industry.

Fifteen years later the people of Ontario still have nothing.

We submit that this is an example of representatives for the life insurance companies and their association obstructing the legislative and promulgation process by delays and obfuscation. Regarding Bill 119, because there was no group advocating for seniors and the benefits of life settlements, we believe the CLHIA misrepresented the degree of fraudulent practices in the United States back then and subsequently, did not support the development of “a robust system of regulation.” Of course consultations needed to “occur before a law is passed, in order to provide time for careful and sober reflection on the complex regulatory issues involved ...” But that does not require 15 years.

Conversely, and more recently, in the United States, “there have been only two closed consumer complaints nationwide involving life settlements since 2012, according to the National Association of Insurance Commissioners (NAIC). This is in stark contrast to the more than 8,000 complaints against life insurance carriers in 2014 alone for delays in paying claims.”<sup>5</sup>



## **Red Tape Reduction Act, 2000**

Transcript – December 4, 2000

Excerpt from Mr. Joseph Spina (Brampton Centre)

Moved third reading of Bill 119

“The Ministry of Finance proposes to amend the Insurance Act to allow regulation-making power to govern viatical settlement activity in Ontario. Viatical settlements allow a life insurance policy owner to sell the policy to a third party at a discounted rate from the face value of the policy. Typically, an insured will have a shortened life expectancy and be in need of financial resources to offset medical or other expenses. The insured changes the beneficiary of the policy to the buyer and, when the insured dies, the buyer gets the payout under the policy.

There are other jurisdictions that deal with this in the United States. Viaticals began in 1989. Today there are about 70 operating companies with an estimated \$500 million in life insurance policies viaticated each year according to the Viatical Association of America and the National Viatical Association, two trade groups representing the viatical industry.

In Canada, Nova Scotia and Quebec are the only provinces that allow transactions similar to viatical settlements, and now we trust that the third province will be Ontario [In 2015, New Brunswick and Saskatchewan also allow transactions. But still not Ontario].

In 1997 the Red Tape Commission of Ontario recommended that a greater number of options should be available to the terminally ill who have life insurance policies. Specifically, the commission's final report, Cutting the Red Tape Barriers to Jobs and



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Better Government, January 1997, concluded, *‘There is a consumer demand for viatical settlements that will grow with the demands of an aging population and a business interest from viatical companies wanting to operate in Ontario. The Ministry of Finance will amend the Insurance Act to permit these companies to operate in Ontario. Regulatory systems will be developed to govern viatical settlement activities to ensure that policyholders and investors are informed and protected. The marketing of viatical investments will be protected through either the Insurance Act or the Securities Act or a combination of both acts.’* (our italics).

I'm proud to speak on this issue, and happy now to turn it over to the member from London West, with whom I said I would share my time.”

**May 26, 2015, Ontario Government news release (excerpt):**

“After a lifetime of hard work, Ontarians deserve a secure retirement. The retirement savings challenge is complex, requiring a variety of tools to ensure a strong and stable retirement income system. Voluntary retirement savings mechanisms such as pooled registered pension plans are an important part of the savings toolbox. The actions we are taking now will enhance retirement savings for all Ontarians and strengthen our economic future.”

Charles Sousa, Minister of Finance

In accordance with Minister Sousa’s comment, life settlements can be one of “a variety of tools to ensure a strong and stable retirement income system” and it is a “voluntary mechanism” that can strengthen Ontario’s economic future.

It is our belief that in addressing FSCO’s mandate, the Expert Advisory Panel’s advice and “suggested ways to modernize financial services” should include the establishment of a well-regulated life settlement industry in Ontario. Not to do so would be an injustice to seniors and future generations, and detrimental to the economic growth of Ontario.



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## Current situation

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Had FSCO taken appropriate action 15 years ago, Ontario would be in a better place today.

- The need for life settlements is irrefutable and the benefits well established in jurisdictions around the world.
- Ontario seniors are being denied access to money that is rightfully theirs
- 21 million Canadians own life insurance<sup>6</sup> and 54% of seniors own a policy.<sup>7</sup>
- Canadian life insurance companies have opposed and obstructed the establishment of a well-regulated, life settlement industry and misrepresented the facts.
- 80% of all insurance policies lapse or are cancelled,<sup>8</sup> which annually amounts to an estimated \$6.5 billion *not* going to policyholders or their families in Canada.<sup>9</sup>
- Section 115 of the Ontario Insurance Act has been on the books for over 80 years and was recommended for repeal 15 years ago and yet FSCO has not promulgated the change.
- 90% plus of seniors are unaware that their life insurance policy may have considerably more value than its cash surrender value from the insurer.<sup>10</sup>
- The need for additional financial resources for our aging population and the ever-increasing government costs for healthcare has never been more important.



## The need

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The financial struggle of seniors is well documented and their plight is destined to get worse before it gets better. According to a recent CIBC report, future generations can also expect to face a “steep decline in living standards ... and see a 30-per-cent decline in their standard of living upon retirement.” The author of the report, CIBC deputy chief economist Benjamin Tal said, “That’s why the time to act is now.”<sup>11</sup>

We concur. And life settlements should be a part of the ongoing response to the growing financial crisis of our aging population.

- Ontario, Canada’s most populated province has a projected population of over 13.6 million in 2015 with 15.6% being over age 65 (2.1 million), and by 2036, the number of Ontario seniors aged 65 and over is projected to reach 4.1 million.<sup>12</sup>
- Currently there are 5.6 million seniors in Canada and in ten years there will be over 8 million, and 900,000 will be over the age of 85.<sup>13</sup>
- A decade from now, one-third of Canadian households will be in retirement.<sup>14</sup>
- Of all age groups, seniors are the most likely to have unsecured debts.<sup>15</sup>
- The increase in debt among seniors was the biggest year-over-year of all age groups in the second quarter of 2013, at 6.5%.<sup>16</sup>
- 56% of pre-retired boomers consider their current level of debt an obstacle to achieving their retirement goals.<sup>17</sup>
- Canadians age 60 and over hold, on average, total unsecured debts of more than \$69,000 each, and almost half of that debt is credit card debt.<sup>18</sup>
- In 2010, 1.3 million Canadians (3.9%) were 80 years or over and the 85 plus group will nearly double in the next ten years from 500,000 in 2006 to about 900,000.<sup>19</sup>





Add to this the fact that the average poverty rate for people over age 65 increased two percentage points in just three years (2007-2010)<sup>20</sup> and as of 2014, it had jumped from 6% to 12%.<sup>21</sup>

- 600,000 seniors live in poverty.<sup>22</sup>
- Another 600,000 seniors are still in the workforce.<sup>23</sup>
- Research by Sun Life shows that more Canadian seniors are depending on the equity in their homes in retirement,<sup>24</sup> which means they are going further in debt.
- 38% of Canadians between ages of 35 and 54 had the highest levels of stress and anxiety and said they feared they would run out of money in their old age.<sup>25</sup>
- Rising insolvency is indicating stresses in the financial stability of boomer households. A growing number of seniors are finding themselves faced with the prospect of declaring bankruptcy.<sup>26</sup>
- Health professionals are “now treating personal debt as a public health problem ... on a par with addictions such as obesity, poverty and substance abuse”<sup>27</sup>
- Most workers – a whopping 76 percent – have no pension plan at all, and that number has been steadily rising for years.<sup>28</sup>
- Only 24 per cent of eligible tax filers contributed to an RRSP in 2011, depositing less than five per cent of what they were allowed to contribute. In 2011, just over six million Canadians belonged to a registered pension plan.<sup>29</sup>
- Healthcare costs currently absorb about 11 percent of Canada's gross domestic product and almost half of provincial budgets; however by 2056, seniors will comprise between 25% and 30% of the Canadian population, placing unsustainable burdens on existing healthcare programs.<sup>30</sup>
- Long-term care funding for boomers over the next three decades will have a shortfall of about \$590 billion or roughly \$54,000 for each baby boomer in Canada.<sup>31</sup>
- “Arguably, healthcare is approaching a sustainability tipping point.”<sup>32</sup>



- Financial planners and advisors within the life insurance industry need to provide better service and advice to clients, particularly seniors, when it comes to life settlements. In the USA, they have a fiduciary responsibility to advise clients about life settlements and they should be doing the same in Ontario. If they are not fully informed about life settlements and not discussing them with clients then they are performing a disservice to their clients.

### **Tipping point**

In Ontario, by 2017, seniors will account for a larger share of population than children under 15,<sup>33</sup> which is a critical demographic shift that FSCO, in its analysis of “emerging trends” should consider relative to seniors who own life insurance.

In her book, *Economorphics: The Trends Turning Today Into Tomorrow* (2014), Linda Nazareth looks at economics, demographics and trends that are shaping the future, not unlike the prescience of David Foot’s *Boom, Bust and Echo* and John Naisbitt’s *Megatrends*. These findings have made a valuable contribution to long-term planning, and Nazareth states that the “demographic window” is closing fast in Canada. When the percentage of the population under age 15 is below 30% and the percentage over age 65 is below 15 % economically the nation is in balance. However, today, we have a seismic shift in that balance. Nazareth says, “In North America the demographic window is still open, but only just: It opened in 1970 and will shut by 2015.” She adds, “The demographic circumstances that created many of our positive economic outcomes are disappearing. The new demographics will create an economic situation that is very different – unless policies are put in place to offset the adjustment. To put it mildly, government purse strings will be affected by aging. More people will be looking for pensions, and fewer people (again, relatively speaking) will be paying taxes.”<sup>34</sup>



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Based on Nazareth's analysis, we are at a tipping point. For example, with Ontario's senior population going beyond the 15% "balance" that she warns of – heading to 23% – it is a convergence of costs and time with little relief in sight. We are getting older and poorer, faster.

In a February 21, 2015 column in *Globe and Mail*, *Financial freedom is just \$4.5 million away*, Ian McGugan put a price tag on financial freedom in Canada, which he based on the annual median income for a Canadian family of \$74,000 after-tax [i.e., unsecured debt of \$69,000 (p.16) equals a year's income]. He stated that freedom would cost, roughly \$4.5 million. This compares to \$1.4 million twenty years ago. As McGugan said, "there is no cheap route to freedom."<sup>35</sup> In fact, for most, there is no route at all. And \$4.5 million is a mountain that many seniors and many in the economically stagnating middle class will never climb.

The assumption that if people just save more then everything will work out is a fallacy. How long can we work? How much can we save, even with a Tax Free Savings Account (TFSA)? And how can you contribute more to RRSPs if you have less?

As a 2012, BMO Retirement Institute Report stated: "At a time when it is expected that individuals will have accumulated sufficient assets to carry themselves throughout their retirement years, the increase in the bankruptcy rate of Canada's aging population is of concern ... Boomer's retirement security is in severe jeopardy."<sup>36</sup>

The perfect storm is forming on the near horizon.

Our public sector leaders know the numbers and see the problem. A 2012 survey by the Institute of Public Administration of Canada (IPAC), found that 63% of public sector



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leaders saw the economic situation as the most important public policy priorities, with *healthcare, aging population ... a distinct second tier.*<sup>37</sup>

Governments are well aware of the mounting financial pressures and demographic changes and there are countless initiatives in search of solutions and yet, something as practical and efficacious as life settlements has been prevented, in large part, by FSCO's encumbering structure and lack of capability.



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## **FSCO not keeping pace**

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It seems that FSCO has been unable to keep pace with the ever-changing socio-economic realities. The need to serve our aging population has changed dramatically over the last fifteen years and yet FSCO has been unable to provide Ontario seniors with the viable alternative of life settlements even though the Government of Ontario so directed.

Nazareth points out what Ontario's financial sector is dealing with and what life settlements can help with. If all stakeholders take a realistic and collaborative assessment of life settlements, there is an opportunity to make a significant socio-economic contribution.

In keeping pace, FSCO's new mandate should include oversight of a well-regulated secondary market for life settlements that will provide seniors with an option to obtain fair market value for their asset?

Too many seniors are "outliving their money" and it is only common sense that we establish life settlements as an alternative in the building of a better future for Ontarians, now rather than later.



## Life settlements: the time has come

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The Consultation Paper makes several statements that are relevant to this issue:

“The financial services sector is vital to the well-being and performance of the economy, contributes to a strong business climate, and is entrusted with managing the savings and investments of Ontarians.”

Going forward, if FSCO’s mandate is to help foster this “well-being and performance” then it must be structured in such a way as to ensure that a well-regulated life settlement industry contributes to Ontario’s business climate. Also, it needs to take responsibility in seeing that the “savings and investments of Ontarians” are properly managed by the financial sector. It needs to recognize that life insurance and a life settlement option are a key facet of “savings and investments.” FSCO’s mandate should include ensuring that Ontarians have access to all potential financial resources in maximizing the value of their assets.

“The financial services sector is evolving ... new service providers and new distribution channels have increased options for consumers ... In some instances there are concerns that the regulation of financial services products, or those who sell them, has not kept pace with these changes.”

Nowhere is FSCO’s lack of keeping pace more obvious than in the field of life settlements. Life settlements have been a part of “emerging related financial services” in other jurisdiction for decades and yet, FSCO has not kept pace or acted accordingly.

“The Panel will be looking for fresh ideas ...”



Life settlements are an established and proven asset class, so much so that they are no longer a “fresh idea” around the world (e.g., United States, UK, Europe), but they certainly can, and should, be a “fresh idea” in Ontario.

**A few facts:**

- \$7 million a day is paid to seniors in life settlements in the USA.<sup>38</sup>
- U.S. policy owners received \$5.62 billion more than the policy cash surrender values from life settlements from 2006-2009.<sup>39</sup>
- Life settlement transactions will average approximately \$3 billion per year over the next decade in the US.<sup>40</sup>
- It is estimated to be a \$140 billion industry in the US in 2015.<sup>41</sup>
- A study of 9,002 policies by the London School of Business found, on average, a life settlement transaction produced a cash value of more than four times that of the cash surrender value.<sup>42</sup>
- In Canada, just four Canadian provinces (Que. NS, NB, Sask) do *not* prevent life settlements, and it is estimated that there can be a \$40 billion industry in these provinces, alone.<sup>43</sup> In all of Canada, the industry could well exceed a \$100 billion.<sup>44</sup>
- Eight US states recently 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.<sup>45</sup>
- Life settlements are different and should not be co-mingled or confused with viaticals and stranger originated life insurance (STOLI). The insurance companies have, for decades, co-mingled these terms and yet, they are different.
- Warren Buffett has hundreds of millions invested in life settlements.



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- Life settlements are ‘among the most highly-rated investments available,’ as ranked by Franklin Templeton, ‘... in the same league as government bonds.’”

Life settlements are not some new, high-risk venture; they are a proven business model that brings together societal, economic, investment and government interests for the benefit of everyone.

The life insurance industry is a large segment of the Canadian economy and, in many ways, supportive of the society it serves; however, its current business model does not adequately address the changing needs and growing problems. By extension, FSCO, which oversees the insurance industry, must assess its own business model in view of the socio-economic changes, including the “economorphics,” which are changing faster than the monolithic life insurance industry.

A well-regulated life settlement industry should be part of the changing landscape.





## The life insurance industry

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The life insurance industry is well aware of the magnitude of the socio-economic problems we face and they commented on the long-term care issue in a 2012 article by Stephen Frank, Vice President Policy Development and Health for CLHIA.

*The cost, in current dollars, of providing long-term care to the baby boomer generation over the next 35 years is anticipated to be \$1.2 trillion. While there are government programs currently in place to support long-term care, they are far from adequate. Indeed, it is estimated that, at current funding levels, government programs will only cover about \$595 billion, or half, of the total cost. As a result, Canadians currently have an astounding long-term care funding shortfall of about \$590 billion or roughly \$54,000 for each baby boomer in Canada today [the largest-ever segment of the population]. Given the magnitude of the challenge, urgent action is required to ensure that Canadians will have access to the long-term care they will need.<sup>46</sup>*

This demonstrates the extent of the problem and Frank also said: “There is no one solution to this issue. Rather, we need a mix of structural reform, increased revenues, better pre-funding and active collaboration of the public and private sectors. As with any long-term financial challenge, the sooner we take action the better.”<sup>47</sup> He is right and life settlements should be part of the conversation, collaboration and action because we need more innovative solutions.

As the Consultation Paper states, there is a need to “advise on potential changes to the mandate and ... suggest ways to modernize the regulation of current and emerging related financial services.” Again, we submit that the Expert Advisory Panel’s recommendations regarding FSCO’s insurance industry mandate should include the establishment of a life settlement industry.



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### **In their own words**

On November 18, 2014, Donald Guloien, CEO of Manulife and Chair of the Canadian Life and Health Insurance Association (CLHIA) delivered a speech in Ottawa to an audience gathered to celebrate the industry's 5<sup>th</sup> annual "Advocacy Day." As he aptly pointed out, the industry is a major supporter and contributor in our country, but for those in the life settlement industry, and many seniors, his speech raised more questions than answers.

Leonard H. Goodman, a founding member and president of LISAC, subsequently sent an open letter to Mr. Guloien (01/28/15), asking a number of questions that are pertinent to FSCO's mandate and relationship with life insurance companies. A few excerpts:

*We're deeply involved in ... and committed to ... the health care and financial well-being of Canadians, and Canada's economy.*

Donald Guloien

Mr. Goodman asked:

If this is true, why do Canadian life insurance companies oppose the implementation of a well-regulated and fiscally controlled life settlement industry in Canada?

*The life and health insurance industry has the capacity and the expertise to be a strong partner with government and other stakeholders to explore new ways of providing and financing these critical programs. Programs that help make Canada such a compassionate and wonderful place to live.*

Donald Guloien

Mr. Goodman commented:

This is an excellent principle, one that is being followed in the United States. For example, in Texas there are bills such as the first Medicaid life settlement law, which allow for proceeds of a life settlement to help fund long-term healthcare needs without barring individuals from enrolling in Medicaid. This helps take the burden off of government funded programs.



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Mr. Goodman asked:

If laws in the USA are changing to allow proceeds from life settlements to help long-term healthcare needs then why not in Canada? Are not Canadian seniors who own life insurance and who are struggling financially, “stakeholders” too? Do they not need the industry to help and “explore new ways of providing and financing ...”, which could include life settlements?

*Canada is well respected in international financial circles and is playing a leadership role in developing sensible regulation. As international financial regulators contemplate new rules governing areas such as capital and accounting, Canada must continue to be at the forefront.”*

Donald Guloien

Mr. Goodman commented:

Regarding “regulators contemplating new rules,” Canada has *not* been at the forefront in life settlement regulations that could financially benefit seniors rather we are trailing the rest of the world by a wide margin. Fortunately, Ontario’s Minister of Finance, Charles Sousa, recently appointed a panel to review the mandate of the Financial Services Commission of Ontario (FSCO), which oversees the Ontario Insurance Act. Unfortunately, the Saskatchewan legislature, at the behest of CLHIA, has completed second reading of Bill 177, which, if passed, will obstruct life settlements in that province. This is not, as stated by Mr. Guloien, “exploring new ways,” instead it is going back to old ways that favour insurance companies and hurt Canadians.

Mr. Goodman asked:

Why would the life insurance industry not support “a strong, principles-based regulator ... playing a leadership role in developing sensible regulation ...” which would allow Canadian seniors, through life settlements, to access the life insurance asset they own?

*“We can and want to do more to help Canadians save for retirement.”*

Donald Guloien

Mr. Goodman asked:

Good. So why not do more by assisting Canada’s aging population to access – what is recognized in many jurisdictions around the world – the *fair market value* of a life insurance policy they own?



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As of this date, the only response Mr. Goodman has received is from a lawyer, a Mr. Zinatelli, on behalf of the Canadian Life and Health Insurance Association (CLHIA), and his response was, in fact, a non-response, a couple of unsubstantiated statements with no substance.

### **Positioned to collaborate more**

There is no question that Canadian life insurance firms are well positioned to develop more solutions to our social and economic problems, and that should included life settlements. And FSCO has a role to play.

The CLHIA states that “policies build cash values that can help families meet financial emergencies, pay for specific savings or provide retirement income” and “term insurance policies typically offer benefits on death only and do not build up cash values.”<sup>48</sup> This is true, and has merit, but what has been overlooked – and opposed and obstructed for too long – is the additional value and cash that life settlements can provide for owners of term insurance and, often, much more than the cash surrender value of permanent life policies. Instead, that money remains with the insurance companies.

- More than 21 million Canadians own life insurance.<sup>49</sup>
- Total life insurance owned by Canadians is \$4,060 billion.<sup>50</sup> (\$4.06 trillion)
- During 2013, Canadians purchased a total in life insurance of \$341.4 billion.<sup>51</sup>
- About 718,000 individual policies were purchased during the year.<sup>52</sup>
- Life insurance premiums paid by consumers totaled \$17.2 billion (up 4.1 per cent).<sup>53</sup>

If only a portion of the approximately 80% of policies that lapse or are cancelled could be converted into life settlements, it would provide substantially more cash to those needing



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the money most. Not only would millions of seniors benefit but across the country the more than 83,000 independent agents<sup>54</sup> and over 11,000 financial advisors,<sup>55</sup> would be able to offer clients another practical alternative in their financial planning.

It is time for the life insurance industry leadership to step forward and do what is right, not just for their shareholders but for all stakeholders – customers, financial advisors, brokers, governments and the public as a whole.

There is no legitimate reason for a life settlement industry not to be available to our aging population and play a role in contributing to a better and more prosperous Ontario, and Canada.



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## The FSCO barrier

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Paul Macmillan, Partner, and Deloitte’s Global Public Sector Leader, and Gianni Ciufu, Partner, and National Leader for Deloitte Canada’s Infrastructure Advisory, Project Finance, and Social Finance Practice stated in a January 2015 article:

*“Canada’s National Advisory Board to the G8 Social Impact Investment Task Force got it right when it recently reported that there are two things that need to happen: addressing legislative and policy barriers; and, encouraging impact investing through "catalytic capital" measures. We are on the brink of a new movement in social innovation. One that is fueled not only by innovative governments but by a new breed of social impact investors. The opportunity to improve the lives of millions of Canadians is too great to let slip away.”<sup>56</sup>*

In Ontario, and specific to this issue, there has been an additional barrier that was not cited above: bureaucracies, like FSCO. Whether bureaucratic barriers or barriers of ineptness or undue influence from the life insurance sector, FSCO has not carried out its proper duties.

The way forward, as suggested above, is worthy of consideration: to allow “impact investing through ‘catalytic capital measures.’” In that context, a well-regulated secondary market for life settlements would provide “catalytic capital” and an “opportunity to improve the lives of millions of Canadians.” We must not let the opportunity “slip away” – again!

If the Canadian life insurance industry can, as Mr. Guloien says, “*do more to help Canadians,*” then *now* is the time to demonstrate a willingness to join what Macmillan and Ciufu call “a new movement in social innovation,” of which life settlements can play an important role.



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## In summary

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The case for life settlements in Ontario should not be in question; it is *the right thing to do*, and the political will and intent has been clear, going back two decades or more. What is also clear is the inefficacy and inaction of FSCO in the past. This must change.

*With the preponderance of evidence demonstrating that the value of a well-regulated life settlement industry can help meet the growing financial needs of Ontario seniors, and government programs, and this being the obvious will and intent of the Government of Ontario, the undeniable corollary is that FSCO's mandate must address the need for a well-regulated life settlement industry in Ontario.*



## Endnotes

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- <sup>3</sup> *Ontario Population Projections, 2013–2041 - Table 2*
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- <sup>9</sup> [crownlifecanada](http://crownlifecanada.com/), <http://crownlifecanada.com/>
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