

Ethics and professional practice

Life Licence Qualification Program (LLQP) Exam Preparation Manual

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FOREWORD

This manual is an exam preparation tool for future life insurance agents registered in the Life Licence Qualification Program (LLQP). Its contents will help candidates develop the competency targeted in the ethics and professional practice module of the LLQP Curriculum: *Develop an ethical professional practice, in compliance with the rules governing the life insurance¹ sector.*

Chapter overview page

The first page of every Chapter outlines the Curriculum module competency components and sub-components that will be covered. Highlighting which of the evaluation objectives are addressed in each of the manual's Chapters serves to identify the contents that are essential to attain these objectives.

It is thus recommended that candidates regularly review the competency components and sub-components in order to contextualize and assimilate them as they read each Chapter. This will help develop an understanding of the nature and scope of the evaluated competency. Candidates must have fully understood the knowledge, strategies and skills covered in each Chapter in order to successfully pass the corresponding module of the LLQP licencing exam.

In this text, the masculine form is used for both men and women.

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1. In the context of the ethics and professional practice module of the Curriculum, the term "life insurance" is used to refer broadly to all categories of individual and group insurance of persons, namely: life insurance, accident and sickness insurance (living benefits), annuity contracts (segregated funds, GIAs and immediate annuities) and supplemental pension plans.

TABLE OF CONTENTS

List of tables	xii
List of abbreviations.....	xiii

CHAPTER 1

LEGAL FRAMEWORK GOVERNING LIFE INSURANCE

1.1 Life and accident and sickness insurance in its legal context	3
1.1.1 Life insurance	3
1.1.2 Accident & Sickness insurance	4
1.1.3 Insurers.....	4
1.1.4 Agency relationship	4
1.1.5 Agents	4
1.1.5.1 Independent agents	5
1.1.5.2 Captive agents.....	5
1.1.6 Managing general agent (MGA)	5
1.1.7 Agency.....	5
1.1.8 Regulation of insurance and licencing.....	6
1.2 General legal principles applicable to a life insurance agent	8
1.2.1 Capacity and status of persons	9
1.2.2 Natural persons, partnerships and legal persons (corporations).....	9
1.2.2.1 Natural persons (individuals)	9
1.2.2.2 Partnerships.....	10
1.2.2.3 Legal person (corporation).....	10
1.2.3 Minors and guardians	11
1.2.4 Power of attorney (PoA) and enduring power of attorney	12
1.2.4.1 Power of Attorney	12
1.2.4.2 Enduring Power of Attorney	13
1.2.5 Marriage and common law spouse.....	14
1.2.6 Divorce and separation.....	16
1.2.6.1 Family property	17
1.2.7 Wills, estates and successions.....	17
1.2.7.1 Testate and intestate successions	18

1.2.8	Trusts and trustees	19
1.2.9	Bankruptcy	20
1.3	Legal principles required for the validity of the contract	23
1.3.1	Civil fault	23
1.3.2	Limitation periods	24
1.4	Public insurance and retirement regimes	24
1.4.1	Federally sponsored or facilitated programs	25
1.4.1.1	Canada Pension Plan (CPP) and disability	26
1.4.1.2	Old Age Security (OAS) and Guaranteed Income Supplement (GIS)	26
1.4.1.3	Employment Insurance	26
1.4.2	Provincially or territorially sponsored or facilitated programs	27
1.4.2.1	No-fault automobile insurance	28
1.4.2.2	Workers' compensation	28
1.4.2.3	Universal health care and drug plan	28
1.5	Other relevant provincial and territorial legislation for life insurance agents	29
1.5.1	Privacy Act	29
1.5.1.1	<i>Personal Information Protection and Electronic Documents Act</i> (PIPEDA)	30
1.5.2	Human rights legislation	30
1.6	Other relevant federal legislation for life insurance agents	31
1.6.1	<i>Criminal Code</i>	31
1.6.2	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i> (PCMLTFA)	31
1.6.3	National Do Not Call List (DNCL)	32
1.6.4	Anti-spam legislation	32

CHAPTER 2

INSURANCE POLICY PROVISIONS

2.1	Parties to an individual policy	35
2.1.1	Insurer	35
2.1.2	Policyholder	35
2.1.2.1	Successor policyholder	36

2.1.3	Life insured	37
2.1.4	Beneficiary	37
2.1.4.1	Irrevocable beneficiary designations	39
2.1.4.2	Restriction in legislative definition of beneficiary	41
2.1.4.3	Loss of protection	42
2.1.4.4	Contingent beneficiary	43
2.1.5	Group insurance policies	43
2.1.5.1	Plan sponsor	44
2.1.5.2	Insurer	44
2.1.5.3	Members and scope of coverage to other insured persons	44
2.1.5.4	Beneficiaries	45
2.2	Formation of policy	45
2.2.1	Rules about forming an individual insurance contract	45
2.2.1.1	Application for insurance and representation of risk	46
2.2.1.2	Temporary insurance	47
2.2.1.3	Changes in insurability	48
2.2.1.4	Approval of application by insurer	48
2.2.1.5	Delivery of policy	49
2.3	Term and termination of policy	49
2.3.1	Rescission: 10-day-free look	49
2.3.2	Surrender	50
2.3.3	Expiry or termination	50
2.4	Termination by the insurer	50
2.4.1	Termination in the event of fraud, misrepresentation or intentional concealment	51
2.4.1.1	During the application process	51
2.4.1.2	Within the first two years	52
2.4.1.3	After two years	53
2.4.2	Termination for non-payment of sickness or accident insurance premiums	53
2.4.3	Termination for non-payment of life insurance premiums	54
2.5	Assignment of a policy	55
2.5.1	Absolute assignment	55
2.5.2	Collateral assignment	55

2.6	Product specific policy provisions.....	56
2.6.1	Individual life insurance	56
2.6.1.1	Statutory conditions	57
2.6.1.2	Reduction.....	57
2.6.1.3	Exclusion	58
2.6.1.4	Exclusions—contractual or imposed by law	58
2.6.1.5	Pre-existing condition exclusions.....	59
2.6.1.6	Suicide clause.....	59
2.6.1.7	Living benefits.....	59
2.6.1.8	Cash surrender value (CSV).....	59
2.6.1.9	Distinction between collateral loans and insurance policy loans	60
2.6.1.10	Riders (Policy amendments).....	60
2.6.2	Group life and health insurance.....	60
2.6.2.1	Determination of the plan member group	60
2.6.2.2	Premiums and cost sharing	61
2.6.2.3	Types of group insurance	61
2.6.2.4	Administrative services only (ASO)	62
2.6.2.5	Certificates.....	62
2.6.2.6	Booklets	63
2.6.2.7	Access to copy of policy	63
2.6.2.8	Laws applicable to members (residence)	64
2.6.2.9	Term and termination	64
2.6.3	Individual and group accident and sickness insurance	65
2.6.3.1	Accidental death and dismemberment (AD&D).....	65
2.6.3.2	Disability specifics.....	66
2.6.3.3	Drug insurance	66
2.6.3.4	Critical illness (CI).....	67
2.6.3.5	Long-term care (LTC).....	67
2.6.3.6	Parties.....	68
2.6.3.7	Rights of parties.....	68
2.6.3.8	Effective date	68
2.6.3.9	Termination of accident and sickness insurance	68
2.6.3.10	Statutory conditions	69

2.6.4	Annuities.....	70
2.6.4.1	Parties.....	71
2.6.4.2	The policyholder	71
2.6.4.3	Annuitant (life insured).....	71
2.6.4.4	Payee.....	72
2.6.4.5	Immediate annuities.....	72
2.6.4.6	Group annuities	73
2.6.4.7	Structured settlements.....	73
2.6.5	Segregated funds	74
2.6.6	Pension products and other group annuity products.....	76
2.6.6.1	Defined benefit pension plan (DBPP).....	76
2.6.6.2	Defined contribution pension plan (DCPP).....	76
2.6.6.3	Pooled registered pension plan (PRPP).....	77
2.7	Other products.....	77
2.7.1	Deferred profit-sharing plan (DPSP).....	77
2.7.2	Tax-free savings account (TFSA)	78
2.7.3	Registered retirement savings plans (RRSP).....	78
2.7.4	Registered retirement income fund (RRIF).....	78
2.7.5	Locked-in retirement account (LIRA).....	78
2.7.6	Life income fund (LIF).....	79

CHAPTER 3

LIFE INSURANCE, ACCIDENT & SICKNESS INSURANCE AND ANNUITY CLAIMS-PAYMENT OF PROCEEDS

3.1	Rules pertaining to claims and payment of benefits.....	81
3.1.1	Claimant	81
3.1.2	Insurer's records.....	82
3.1.3	Notice of claim	82
3.1.4	Proof of claim.....	83
3.1.4.1	Documents required	83
3.1.4.2	Probate	84
3.1.4.3	Proof of age	84
3.1.4.4	Proof of identity.....	84
3.1.4.5	Accidental vs. natural causes	84

3.2	Disappearance and presumption of death	85
3.2.1	Death of two or more people	86
3.3	Payment into Court.....	87
3.4	Proceeds on deposit and payout options	87
3.5	Time to pay claim	88
3.6	Denial of claim.....	89
3.6.1	Payment contrary to public order.....	89
3.7	Accident and sickness claims.....	90
3.7.1	Accident death and dismemberment claims.....	90
3.7.1.1	Documents required	90
3.7.2	Disability claims	90
3.7.2.1	Documents required	91
3.7.2.2	Medical and other examinations	91
3.8	Segregated funds and annuities.....	92
3.8.1	Death before retirement.....	93
3.8.2	Death after retirement.....	93

CHAPTER 4

RULES AND PRINCIPLES GOVERNING THE ACTIVITIES OF LIFE INSURANCE AGENTS AND ACCIDENT & SICKNESS INSURANCE AGENTS

4.1	Role of the organizations that protect clients	96
4.1.1	Provincial and territorial regulatory authorities	96
4.1.2	Provincial and territorial insurance regulators	97
4.1.2.1	British Columbia.....	97
4.1.2.2	Alberta	98
4.1.2.3	Saskatchewan	98
4.1.2.4	Manitoba	99
4.1.2.5	Ontario	100
4.1.2.6	Québec	100
4.1.2.7	New Brunswick	101
4.1.2.8	Nova Scotia	101
4.1.2.9	Prince Edward Island.....	101

4.1.2.10	Newfoundland and Labrador	102
4.1.2.11	Yukon	102
4.1.2.12	Northwest Territories	102
4.1.2.13	Nunavut	103
4.1.3	Canadian Insurance Services Regulatory Organizations (CISRO)	103
4.1.4	Other authorities providing client protection	103
4.1.4.1	Office of the Privacy Commissioner of Canada	104
4.1.4.2	Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)	104
4.1.4.3	Assuris	108
4.1.4.4	OmbudService for Life and Health Insurance (OLHI)	109
4.1.4.5	Canadian Council of Insurance Regulators (CCIR)	109
4.1.5	Professional associations	110
4.1.6	International Association of Insurance Supervisors (IAIS)	110
4.1.6.1	Insurance core principles (ICP) 18 and 19 of the IAIS	111
4.2	Main responsibilities of life insurance agents	111
4.2.1	Acting in good faith	113
4.2.1.1	Duty of care	113
4.2.1.2	Integrity	113
4.2.1.3	Competence	114
4.2.2	Managing conflicts of interest	115
4.2.2.1	Priority of client's interest	115
4.2.2.2	Disclosure of conflicts or potential conflicts of interest	116
4.2.2.3	Product suitability	116
4.2.2.4	Avoiding conflict-of-interest occupations	117
4.2.3	Refraining from unfair or deceptive practices	118
4.2.3.1	Tied selling	118
4.2.3.2	Churning and twisting	119
4.2.3.3	Premium rebating	120
4.2.3.4	Trafficking in insurance	121
4.2.3.5	Inducing to insure	122
4.2.3.6	Fronting	122
4.2.3.7	Unnecessary delay in delivering policies	123
4.2.3.8	Misrepresentation	124
4.2.3.9	Misappropriating client funds (commingling of funds)	125

4.2.3.10	Making a false document (forgery)	126
4.2.3.11	Holding out improperly	126
4.2.3.12	Misusing company-provided illustrations	127
4.2.3.13	Defamation	128
4.2.4	Making proper disclosure	129
4.2.4.1	Product disclosure	129
4.2.4.2	Disclosure about replacement	130
4.2.4.3	Commission sharing	131
4.2.4.4	Referrals and referral fees	132
4.2.5	Acting in compliance with regulations and codes of conducts.....	133
4.2.5.1	Maintaining the required liability insurance, errors and omissions (E&O) coverage	133
4.2.5.2	Documenting the file	134
4.2.5.3	Contract delivery	135
4.2.6	Handling complaints in a timely and fair manner	135
4.2.6.1	Definition of complaint	135
4.2.6.2	Ethical complaints	135
4.2.6.3	Procedures to follow	136
4.2.7	Core ethical values	136
4.3	Licencing process and regulations	137
4.3.1	Purpose of licencing life insurance agents and agencies.....	137
4.3.2	Licencing regime	137
4.3.3	Selling to and servicing out-of-province clients	138
4.3.4	Revoking of licence	138
4.3.5	Other products and services for which a licence or registration is required (not exhaustive)	139
4.3.5.1	Property and casualty insurance	139
4.3.5.2	Securities, including exchange-traded funds (ETF) or mutual funds	139
4.3.5.3	Mortgage brokering.....	139
4.3.6	Other products and services for which no licence is required	140
4.3.6.1	Acting as a deposit broker	140
4.3.6.2	Acting as a financial planner	140
CONCLUSION		141
BIBLIOGRAPHY		142

LIST OF TABLES

CHAPTER 1

Table 1.1	Regulatory and statutory framework for common law provinces and territories.....	7
-----------	--	---

CHAPTER 4

Table 4.1	Assuris’ protection	109
Table 4.2	Differences between principles and rules.....	112

LIST OF ABBREVIATIONS

A&S	Accident and sickness
AD&D	Accidental death and dismemberment
AMF	Autorité des marchés financiers
APS	Attending physician's statement
ASO	Administrative services only
C	Chapter
CAILBA	Canadian association of independent life brokerage agencies
CASL	Canadian Anti-Spam Legislation
CCIR	Canadian council of insurance regulators
CE	Continuing education
CEM	Commercial electronic message
CI	Critical illness
CISRO	Canadian insurance services regulatory organizations
CLHIA	Canadian Life and Health Insurance Association
COD	Cash on delivery
CPP	Canada Pension Plan
CRTC	Canadian radio-television and telecommunications commission
CSA	Canadian securities administrators
CSF	Chambre de la sécurité financière
CSV	Cash surrender value
DBPP	Defined benefit pension plan
DCPP	Defined contribution pension plan
DNCL	Do Not Call List
DPSP	Deferred profit-sharing plan
E&O	Errors and omissions
EI	Employment Insurance
ETF	Exchange-traded funds
FATCA	Foreign account tax compliance act
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada

FIO	Future income option
FPSC	Financial Planners Standards Council
FSCO	Financial services commission of Ontario
GIA	Guaranteed investment account
GIS	Guaranteed Income Supplement
IAIS	International association of insurance supervisors
ICBC	Insurance corporation of British Columbia
ICP	Insurance core principle
IFB	Independent life brokerage agencies
IFBC	Independent Financial Brokers of Canada
IIROC	Investment industry regulatory organization of Canada
IVIC	Individual variable insurance contract
LIF	Life income fund
LIRA	Locked in retirement account
LIRD	Life Insurance Replacement Declaration
LLQP	Life licence qualification program
LTC	Long-term care
LTD	Long-term disability
MFDA	Mutual funds dealer association
MGA	Managing general agent
MVA	Market value adjustment
MPI	Manitoba Public Insurance
Nu	Nunavut
OAS	Old Age Security
OFSI	Office of the Superintendent of Financial Institutions
OLHI	Ombudsman for life and health insurance
P.	Page
Para.	Paragraph
PCMLTFA	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>
PIPEDA	<i>Personal Information Protection and Electronic Documents Act</i>
PoA	Power of attorney

PoAPC	Power of attorney for personal care
PRPP	Pooled registered pension plan
ROP	Return of premium on death
RPP	Registered Pension Plan
RRIF	Registered retirement income fund
RRSP	Registered retirement savings plan
S.	Section
SAAQ	Société de l'assurance automobile du Québec
SGI	Saskatchewan Government Insurance
Ss.	Sections
SDM	Substitute decision-maker
SIF	Summary information folder
STOLI	Stranger owned life insurance
TFSA	Tax-free savings account
ULCC	Uniform Law Conference of Canada
V.	Versus



CHAPTER 1

LEGAL FRAMEWORK GOVERNING LIFE INSURANCE

Competency component

- Integrate into practice the legal aspects of insurance and annuity contracts.

Competency sub-component

- Delimit the legal framework governing life insurance.

1

LEGAL FRAMEWORK GOVERNING LIFE INSURANCE

Insurance agents play an essential role in the insurance market. On a daily basis agents need to be familiar with the legal aspects of insurance. These include insurance products and their specific features, the general form and content of insurance contracts, specific limitations as to the capacity of certain persons to enter into valid insurance contracts, and other important legal limitations.

The following Chapter provides an overview of the legal framework applicable to insurance and serves as a guide for insurance agents as it relates to the conduct of their professional practice. Insurance agents are not expected to be legal experts in the field of insurance law; however, they can only benefit by being aware of the legal framework and of certain legal technicalities regulating the insurance industry and, hence, their professional conduct.

In Canada, insurance law is taken from several sources, particularly:

- The Canadian Constitution;
- Common Law;
- Legislation and regulation.

The Canadian Constitution takes precedence over all other sources of law, including federal, provincial and territorial legislation. That means that legislation and regulation enacted in the Parliament of Canada and the Parliament of every province and territory must comply with it.

Notably, the Canadian Constitution regulates the division of legislative powers between the federal and provincial governments (under the *Constitution Act*, 1867).² The repatriation of the Canadian Constitution from the United Kingdom, occurred with the passing of the *Constitution Act*, 1982, which contains the *Canadian Charter of Rights and Freedoms*.³ The Canadian Constitution gives both the federal and provincial governments the power to pass legislation affecting areas or topics under their jurisdiction. Insurance law is considered to be an exclusive provincial matter under the Canadian Constitution.⁴

Common Law, which originates from England, is law developed by courts based on the decisions of judges (case law), as opposed to statute law, a civil law system based on laws adopted through the legislative process of a State or regulations issued by the executive branch of government of a State.

2. Constitution Act, 1867, 30 & 31 Vict, c 3 (U.K.).

3. Schedule B to the Canada Act 1982, (U.K.) 1982, c 11, which came into force on April 17, 1982.

4. Canadian Western Bank v. Alberta, [2007] 2 SCR 3.

Common Law applies everywhere in Canada, except in Québec (where a system of civil law based on the *Civil Code of Québec* is in force). In the Common Law system, when a statute is passed into law and declared in force, some element of pre-existing Common Law changes, as required, to avoid any inconsistency.

More specifically, the principles applicable to contracts, civil fault, property, common law trusts and agency are still mostly governed by Common Law in Canada. In contrast, insurance law has been mostly enacted through legislation passed by provincial and territorial legislatures.

This Chapter presents an overview of the most important Common Law rules, statutes and regulations applicable or relevant to a life and health insurance agent's business (life insurance and accident and sickness insurance).

1.1 Life and accident and sickness insurance in its legal context

An insurance contract is an “undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance.”⁵

Annuity contracts issued by insurers are considered life insurance contracts under provincial and territorial legislation.⁶

1.1.1 Life insurance

Life insurance covers the risk of one or more persons dying.

-
5. Insurance Act, RSO 1990, c I.8, s.1 “insurance”. See the following for the other Canadian jurisdictions: Insurance Act, RSBC 2012, c 1, s.1 “insurance”; Insurance Act, RSA 2000, c I-3, s.1(aa); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.2(1)(gg); The Insurance Act, CCSM c I40, s. 1 “insurance”; Insurance Act, RSNB 1973, c I-12, s. 1 “insurance”; Insurance Act, RSPEI 1988, c I-4, s.1j) “insurance”; Insurance Act, RSNS 1989, c 231, s.3k); Insurance Contracts Act, RSNL 1990, c I-12, s. 2l), Life Insurance Act, RSNL 1990, c L-14, s.2(u) and Insurance Companies Act, RSNL 1990, c I-10, s. 2dd) and Schedule s.1k); Insurance Act, RSNWT 1988, c I-4, s. 1(1) “insurance” and “life insurance”; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 1(1) “insurance” and “life insurance”; Insurance Act, RSY 2002, c 119, s. 1 1 “insurance” and “life insurance”.
 6. Insurance Regulation, BC Reg 403/2012, s.1(2) “life insurance”; Insurance Act, RSA 2000, c I-3, s.639; The Saskatchewan Insurance Act, RSS 1978, c S-26, s.2(1)kk) “life insurance”; Insurance Act, The, CCSM c I40, s.148(3); Insurance Act, RSO 1990, c I.8, s.171(2); Insurance Act, RSNB 1973, c I-12, s.1 “life insurance”; Insurance Act, RSNS 1989, c 231, s.3(o) “life insurance” (vii); Insurance Act, RSPEI 1988, c I-4, s.1(k.1) “life insurance” (vii); Life Insurance Act, RSNL 1990, c L-14, s.3.1; Insurance Act, RSY 2002, c 119, s.1 “life insurance” b), c) and d); Insurance Act, RSNWT 1988, c I-4, s.25, 239 and 244; Insurance Act, RSNWT (Nu) 1988, c I-4, s.25, 239 and 244.

1.1.2 Accident & Sickness insurance

Accident and sickness insurance may cover loss of health in several ways:

- Loss, due to accident or sickness, of the ability to work at gainful employment (disability insurance);
- Onset of a diagnosed illness covered by the contract, such as cancer, heart attack, or stroke (critical illness);
- Accidental death;
- Accidental dismemberment;
- Reimbursement of medical fees and drugs;
- Long term care needs.

1.1.3 Insurers

Insurance contracts are created and underwritten by business corporations or mutual insurance corporations which are licenced by the government to act as insurers.

1.1.4 Agency relationship

In law, a relationship of delegated authority is called “agency”, and the individuals in that role are called “agents”. The person, or corporation, delegating the authority is called “the principal”. The principal controls the extent of the delegation.

1.1.5 Agents

In common law provinces and territories, the relationship between the insurance company and a life insurance agent (who sells that company’s policies) is considered to be that of a principal and agent. In other words, agents act on behalf of the insurance company in selling insurance to clients. The terms and limitations of the agent’s authority are outlined in the written contract each agent signs with each company he represents.

Insurance agents are either employed by individual insurers or are independent representatives of specific insurance companies to sell that company’s products to clients. Agents can be categorized as:

- Independent agents;
- Captive agents.⁷

7. Captive agents are also referred to as career agents or exclusive agents.

1.1.5.1 Independent agents

Independent agents will have contracts with two or more insurers. Independent agents can sell policies from a number of insurance companies. They generally place their business through managing general agents (MGA) who review applications, submit them to the insurers, collect and allocate commissions.

1.1.5.2 Captive agents

Captive agents represent a single insurer. The captive agent is an employee of a specific insurance company (or affiliate of such company) and only sells that company's products in return for commission.

1.1.6 Managing general agent (MGA)

A managing general agent (MGA) facilitates business between agents, their clients, and insurers by providing some or all of the following services:

- Supporting and assisting an agent in obtaining contracts with insurers, which can include granting authority to an agent to act on behalf of an insurer;
- Processing and tracking agents' business submitted by an agent;
- Providing agents with direct sales support;
- Facilitating the two-way flow of information between the insurer and the agent;
- Pooling of commission payments for the agent from various insurers;
- Facilitating the submission of completed contracting requirements between an agent and an insurer;
- Training agents;
- Providing market conduct compliance supports to insurers;
- Developing products and/or assisting in the adjusting of claims on behalf of an insurer.⁸

1.1.7 Agency

An insurance agency is either a corporation or a partnership that holds a licence from a regulator or several regulators. An insurance agency must have at least one licenced insurance agent for the same category of insurance for which the insurance agency holds a licence.

8. Canadian Council of Insurance Regulators. *Issues paper managing general insurance distribution model*. [online]. Revised February 2011. [Cited July 21, 2017].
http://www.ccir-ccrra.org/en/init/agencies_reg/CCIR_ARC_Life_MGA_Issues_Paper_Feb_2011.pdf

An agent who wants to expand his business by hiring, training and supervising other agents must apply for a licence as a corporate agency life licence meeting the requirements of the specific province (or territory) where they intend to operate.⁹ A corporate life insurance agency can also submit their business through MGAs.

There are a number of conditions regarding certain matters, such as nominees, designated representatives, the agency name, trade name, and registration with the government that a corporate agency must meet to become licenced as a life insurance agency.

Any employee of an agency, whether the agency is a corporation or a partnership, who acts as a life insurance agent, will need to be licenced. This includes anyone who:

- Solicits insurance;
- Obtains or takes an application for insurance;
- Negotiates for or procures insurance;
- Transmits insurance applications and/or policies;
- Offers or assumes to act in the negotiation of insurance;
- Negotiates insurance continuance or renewal;
- Collects or receives a premium;
- Develops an illustration for life insurance.

An insurance agency must be licenced in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador.

1.1.8 Regulation of insurance and licencing

Given the importance of insurance products to clients and society, it is not surprising that all companies selling life insurance policies in Canada, as well as the various distribution channels and the agents themselves, are heavily regulated and supervised. Provincial and territorial insurance acts contain extensive provisions governing insurers.

Provincial and territorial insurance legislation gives designated actuaries extensive powers and responsibilities, including reporting on the financial soundness of a life insurer's business operations. Designated actuaries must belong to the Canadian Institute of Actuaries, and they must conform to its practices and processes.¹⁰

9. For an example of the requirements for a corporate agency life licence consult, <http://www.fsco.gov.on.ca/en/insurance/Licensing-Registration/Documents/LifeInsGuide.pdf>

10. See: <http://www.cia-ica.ca/home>

Under the provisions of provincial and territorial law, insurance agents must be licenced. The name of the applicable regulatory and statutory framework varies from province to province. The regulation and supervision of life insurance agents will be covered in more detail in Chapter 4 *Rules and principles governing the activities of life insurance agents and accident & sickness insurance agents*.

From a legal perspective, Table 1.1 provides an overview of the regulatory and statutory framework for the common law provinces and territories.

TABLE 1.1

Regulatory and statutory framework for common law provinces and territories

PROVINCE/ TERRITORY	LEGISLATION	SUPERVISION OF INSURANCE COMPANIES
British Columbia	<i>Insurance Act</i> , RSBC 2012, c 1 <i>Financial Institutions Act</i> , RSBC 1996, c 141	Financial Institutions Commission of British Columbia
Alberta	<i>Insurance Act</i> , RSA 2000, c I-3	Office of the Superintendent of Insurance of Alberta
Saskatchewan	<i>The Saskatchewan Insurance Act</i> , RSS1978, c S-26	Financial and Consumer Affairs Authority
Manitoba	<i>Insurance Act</i> , CCSM, c I40 <i>Insurance Agents and Adjusters Regulation</i> 389/87	Financial Institutions Regulation Branch
Ontario	<i>Insurance Act</i> , RSO 1990, c I.8	Financial Services Commission of Ontario
New Brunswick	<i>Insurance Act</i> , RSNB 1973, c I-12	Financial and Consumer Services Commission (Insurance Division)
Nova Scotia	<i>Insurance Act</i> , RSNS 1989, c 231	Office of the Superintendent of Insurance of Nova Scotia
Prince Edward Island	<i>Insurance Act</i> , RSPEI. 1988, c I-4	Prince Edward Island Superintendent of Insurance
Newfoundland and Labrador	<i>Life Insurance Act</i> , RSNL 1990, c L-14; <i>Accident and Sickness Insurance Act</i> , RSNL 1990, c A-2; <i>Insurance Companies Act</i> , RSNL 1990, c I-10; <i>Insurance Adjusters, Agents and Brokers Act</i> , RSNL 1990, c I-9; <i>Insurance Contracts Act</i> , RSNL 1990, c I-12.	Office of the Superintendent of Insurance of Newfoundland and Labrador
Yukon	<i>Insurance Act</i> , RSY 2002, c 119	Office of the Superintendent of Insurance
Northwest Territories	<i>Insurance Act</i> , RSNWT 1988, c I-4	Office of the Superintendent of Insurance
Nunavut	<i>Insurance Act</i> , RSNWT Nu 1988, c I-4	Superintendent of Insurance of Nunavut

1.2 General legal principles applicable to a life insurance agent

While each province has its own legislation, the provinces and territories have all based their respective insurance legislation on a model statute created in the 1920's in cooperation with a body called the "Uniform Law Conference."¹¹ This is why the insurance legislation applicable in every Canadian jurisdiction (except Québec) is very similar.

Having more uniform practices and procedures when dealing with life insurance contracts is helpful to clients and insurers, regardless of the province in which they are located. If a policyholder moves to another province after the policy is issued, that province's laws will apply to certain aspects of their estate planning, such as their will.

However, the law that applies to the interpretation of an insurance contract (including the naming of beneficiaries) will be the law of the province or territory where the policy was contracted.¹² Fortunately, the statutory basis for the creation and treatment of insurance contracts in the various provinces and territories is very similar. The result is consistent treatment of legal principles and their application to the life insurance agent's business.

These legal principles that arise from Common Law or from statutory law (statutes) are addressed in the following order:

- Capacity and status of persons;
- Natural persons, partnerships and legal persons (corporations);
- Minors and guardians;
- Powers of attorney (PoA);
- Marriage and common law unions;
- Divorce and separation;
- Wills, estates and successions;
- Trusts and trustees;
- Bankruptcy.

11. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002, p. 5.

12. Interpretation Act, RSO 1990, c I.11. s. 28; Club Resorts Ltd. v. Van Breda, 2012 SCC 17, [2012] 1 SCR 572. Insurance Act, RSBC 2012, c 1, s.2 and 39; Insurance Act, RSA 2000, c I-3, s.513, 514 and 640; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 134; Insurance Act, The, CCSM c I40, s. 149(1); Insurance Act, RSO 1990, c I.8, s.172(1); Insurance Act, RSNB 1973, c I-12, s. 133(1); Insurance Act, RSNS 1989, c 231, s.65(1); Insurance Act, RSPEI 1988, c I-4, s.120(1); Life Insurance Act, RSNL 1990, c L-14, s.3(1); Insurance Act, RSY 2002, c 119, s.77(1); Insurance Act, RSNWT 1988, c I-4, s.70(1); Insurance Act, RSNWT (Nu) 1988, c I-4, s.70(1).

1.2.1 Capacity and status of persons

In addition to a minimum age, the law requires that anyone, of any age, who is seeking to enter into any contract, must have “legal capacity” to contract. From a legal standpoint, the concept of capacity relates to a person’s ability to provide valid consent.

The excerpt below illustrates the legal definition presumed for “legal capacity” in Ontario:

2. (1) A person who is eighteen years of age or more is presumed to be capable of entering into a contract.
- (2) A person who is sixteen years of age or more is presumed to be capable of giving or refusing consent in connection with his or her own personal care.¹³

The capacity to enter into a contract means the individual is capable of understanding the terms of the contract, and that they are entering into a binding agreement, even if they do not know all the details. Individuals who are mentally incapable lack the legal capacity to give a valid consent, and therefore, to enter into a contract, including an insurance contract.

There is no recognized maximum age at which a person is presumed to be incapable of giving valid consent age. Therefore, a 100-year-old person is still presumed by law to have the legal capacity to enter into a contract.

1.2.2 Natural persons, partnerships and legal persons (corporations)

It is important to understand that a distinction is made between a natural person, a partnership and a legal person (corporation).

1.2.2.1 Natural persons (individuals)

A natural person is defined as a human being. As stated above, a natural person with legal capacity has the ability to make decisions about their person and property and to bear the risks and rewards of those decisions. This personal autonomy includes the right to enter into contracts. The term “individual” is also used in legislation, including taxation, to describe a natural person.

13. Substitute Decisions Act, 1992, SO 1992, c 30, s. 2 and Health Care Consent Act, 1996, SO 1996, c 2, Sch A. See also: Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996, c 181; Personal Directives Act, RSA 2000, c P-6; Health Care Directives Act, The, CCSM c H27; Infirm Persons Act, RSNB 1973, c I-8; Personal Directives Act, SNS 2008, c 8; Consent to Treatment and Health Care Directives Act, RSPEI 1988, c C-17.2; Care Consent Act, SY 2003, c 21; Personal Directives Act, SNWT 2005, c 16.

1.2.2.2 Partnerships

A partnership is an arrangement between two or more parties carrying on business together with a view to making a profit.¹⁴ The partners themselves can be individuals or corporations. In an ordinary partnership, all partners may sign the contract on behalf of the partnership, and each partner is financially liable for contracts entered into by other partners on behalf of the partnership. Some partnerships enjoy a statutory limitation on partner liability created by the relevant provincial statute. These are called “Limited Liability Partnerships,” and they are a common business arrangement for lawyers and accountants.

1.2.2.3 Legal person (corporation)

A corporation is a “legal person.” In other words, it can be described as a separate entity from those that manage or own it.¹⁵ Corporations effectively have most of the property rights of individuals, and so can enter into contracts, and buy, sell, and own all kinds of property. The forms of corporations for businesses differ from the forms for charities and not-for-profits. Business corporations are owned by shareholders, who can be either individuals, other corporations, or partnerships. According to the federal or provincial laws under which they are established, corporations are governed by a board of directors elected by the shareholders.¹⁶ Under the authority of the directors, the corporation can delegate authority to various executive parties called “officers,” such as the president, vice-president, etc.

When a corporation seeks to make a contract, or transact business, someone must sign on behalf of the corporation. This person is usually referred to as a signing officer. Executive officers, such as the president or secretary, are authorized, usually by a corporate by-law or a resolution of the board of directors, to represent the company in specific transactions or activities. Insurance applications often call for the signatures of two officers or directors, or ask the person signing to indicate that they are one of the persons, or perhaps the only one, authorized to sign on behalf of the corporation.

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14. Partnership Act, RSBC 1996, c 348; Partnership Act, RSA 2000, c P-3; Partnership Act, RSS 1978, c P-3; Partnership Act, CCSM c P30; Partnerships Act, RSO 1990, c P.5; Partnership Act, RSNB 1973, c P-4; Partnership Act, RSNS 1989, c 334; Partnership Act, RSPEI 1988, c P-1; Partnership Act, RSNL 1990, c P-3; Partnership and Business Names Act, RSY 2002, c 166; Partnership Act, RSNWT 1988, c P-1; Partnership Act, RSNWT (Nu) 1988, c P-1.
 15. See: <https://www.educaloi.qc.ca/en/capsules/business-corporations-companies>
 16. Canada Corporations Act, RSC 1970, c C-32; Business Corporations Act, SBC 2002, c 57; Business Corporations Act, RSA 2000, c B-9; Companies Act, RSA 2000, c C-21; Business Corporations Act, The, RSS 1978, c B-10; Companies Act, The, RSS 1978, c C-23; Corporations Act, The, CCSM c C225; Business Corporations Act, RSO 1990, c B.16; Business Corporations Act, SNB 1981, c B-9.1; Companies Act, RSNB 1973, c C-13; Nova Scotia Business Incorporated Act, SNS 2000, c 30; Companies Act, RSNS 1989, c 81; Companies Act, RSPEI 1988, c C-14; Corporations Act, RSNL 1990, c C-36; Business Corporations Act, RSY 2002, c 20; Business Corporations Act, SNWT 1996, c 19; Business Corporations Act, SNWT (Nu) 1996, c 19.

1.2.3 Minors and guardians

The rights to legal autonomy referred to above have not yet been acquired by “minors,” who are persons under what is called the “age of majority.” The age of majority varies from one province or territory to another. It was formerly age 21, but has been reduced to age 18 in Alberta, Manitoba, Ontario, Prince Edward Island, Québec, and Saskatchewan.¹⁷ It is age 19 in British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, and the Yukon.¹⁸

However, provincial insurance legislation says that, for contracting a policy (and not as a beneficiary receiving death benefits), a person 16 years of age or older has the capacity to contract for insurance on its own behalf.¹⁹

Parents of minors aged 16 and under (without the capacity to contract a life or accident and sickness insurance policy) have an insurable interest in their children and may apply for a life insurance policy in their name.

In some provinces, parents also have the right, as guardian of their minor child, to give consent on behalf of the child to conduct some financial transactions. Where it applies, this parental right is conferred by some provincial statute.²⁰

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17. Age of Majority Act, RSA 2000, c A-6, s. 1; Age of Majority Act, RSS 1978, c A-6, s. 1; Age of Majority Act, The, CCSM c A7, s. 1; Age of Majority and Accountability Act, RSO 1990, c A.7, s. 1; Age of Majority Act, RSPEI 1988, c A-8, s. 1.
 18. See: <http://www.cic.gc.ca/english/study/study-minors.asp>
See also: Age of Majority Act, RSBC 1996, c 7, s. 1; Age of Majority Act, RSNB 1973, c A-4, s. 1; Age of Majority Act, RSNS 1989, c 4, s. 2; Age of Majority Act, SNL 1995, c A-4.2, s. 2; Age of Majority Act, RSY 2002, c 2, s. 1; Age of Majority Act, RSNWT 1988, c A-2, s. 2; Age of Majority Act, RSNWT (Nu.) 1988, c A-2, s. 2.
 19. Insurance Act, RSBC 1996, c 226, s. 72 (Life) and s. 110 (A&S); Insurance Act, RSA 2000, c I-3, s. 673 (Life) and 718 (A&S); Saskatchewan Insurance Act, RSS 1978, c S-26, s. 164 (Life) and s. 241 (A&S); Insurance Act, CCSM c I40, s. 179 (Life) and s. 271(3), 218 (A&S); Insurance Act, RSO 1990, c I.8, s. 202 (Life) and s. 307 (A&S); Insurance Act, RSNB 1973, c I-12, s. 163, 164 (Life) and s. 201 (A&S); Insurance Act, RSNS 1989, c 231, s. 204, 205 (Life), s. 81 (A&S); Insurance Act, RSPEI 1988, c I-4, s. 150 (Life) and s. 190 (A&S); Life Insurance Act, RSNL 1990, c L-14, s. 33, 34 and Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 19; Insurance Act, RSY 2002, c 119, s. 107 and 108 (Life) and s. 191 (A&S); Insurance Act, RSNWT 1988, c I-4, s. 100, 101 (Life) and s. 184 (A&S); Insurance Act, RSNWT (Nu.) 1988, c I-4, s. 100, 101 (Life) and s. 184 (A&S).
 20. Family Law Act, SBC 2011, c 25; Public Guardian and Trustee Act, RSBC 1996, c 383; Adult Guardianship Act, RSBC 1996, c 6; Family Law Act, SA 2003, c F-4.5; Public Trustee Act, SA 2004, c P-44.1; Minors' Property Act, SA 2004, c M-18.1; Adult Guardianship and Trusteeship Act, SA 2008, c A-4.2; Public Trustee Act, RSS 1978, c P-43.1; Adult Guardianship and Co-decision-making Act, The, SS 2000, c A-5.3; The Children's Law Act, 1997, SS 1997, c C-8.2; Public Guardian and Trustee Act, The, CCSM c P205; Infants' Estates Act, The, CCSM c I35; Public Guardian and Trustee Act, RSO 1990, c P.51; Children's Law Reform Act, RSO 1990, c C.12; Guardianship of Children Act, RSNB 2011, c 167; Public Trustee Act, SNB 2005, c P-26.5; Guardianship Act, SNS 2002, c 8; Incompetent Persons Act, RSNS 1989, c 218; Public Trustee Act, RSNS 1989, c 379; Public Trustee Act, RSPEI 1988, c P-32.2; Adult Protection Act, RSPEI 1988, c A-5; Public Trustee Act, 2009, SNL 2009, c P-46.1; Children's Law Act, RSY 2002, c 31; Decision-Making Support and Protection to Adults Act, SY 2003, c 21; Public Guardian and Trustee Act, SY 2003, c 21, Sch C; Guardianship and Trusteeship Act, SNWT 1994, c 29; Public Trustee Act, RSNWT 1988, c P-19; Children's Law Act, SNWT 1997, c 14; Children's Law Act, SNWT (Nu) 1997, c 14; Guardianship and Trusteeship Act, SNWT (Nu) 1994, c 29; Public Trustee Act, RSNWT (Nu) 1988, c P-19.

In their will, parents can appoint a guardian for their minor children and authorize the executor²¹ or estate trustee to make payments to such guardian. A guardian of minors may also be appointed by a court. Grandparents, aunts and uncles, or even older siblings or foster parents may apply for, and take on this role in the absence or incapacity of the actual parent.

A court-appointed guardian is important in insurance practice for two main reasons. First, if a death benefit is payable to a minor, the guardian may be entitled to accept the payment and discharge the insurer from its obligations under the contract.²² Second, if insurance is being applied for on behalf of a minor as the life insured, and there is no parent, it may be the guardian who will be answering questions on behalf of young minors and completing the application. The guardian will also give consent, on behalf of the minor, to the release of medical information to support the underwriting of the application. If there is no person capable of giving and authorized to give a valid discharge to the insurer for the insurance money, the insurer shall, within 30 days after receiving the evidence required, pay the money and any applicable interest into court to the credit of the minor.²³ In that case, the money will be managed by an official connected with the Public Trustee, if there is no trustee, or court-appointed guardian to receive it.

1.2.4 Power of attorney (PoA) and enduring power of attorney

As part of a life insurance agent's practice, the agent must understand the circumstances and legal mechanisms relating to when the rights of an insurance policy are transmitted to another person. This Section discusses the transfer of certain rights and its impact in the field of insurance.

To address the risks of becoming unable to look after themselves (personal care) or manage their property, adult individuals may voluntarily appoint a legal representative while they are still capable, to represent them and make decisions on their behalf when they are coming to the end of their life, or in the case they become incapable.

1.2.4.1 Power of Attorney

A power of attorney is a legal document made by one person who appoints another person, called an "attorney," to deal with the business and property of another person and to make financial and legal decisions on their behalf. A power of attorney can be very specific or very broad. A power of attorney ends if the person who gave the power of attorney becomes mentally incapable.²⁴ The attorney is also called the "agent," and the person appointing the attorney is called the "principal."

21. Liquidator in Québec.

22. See the following as an example, Family Law Act, SBC 2011, c 25, Part 4 - Care of and Time with Children, s. 41-50.

23. See the following as an example, The Insurance Act, CCSM c I40, s. 192.

24. Several jurisdictions have of Power of Attorney Act. See: Power of Attorney Act, RSBC 1996, c 370; Powers of Attorney Act, RSA 2000, c P-20; Powers of Attorney Act, 2002, SS 2002, c P-20.3; Powers of Attorney Act, CCSM c P97; Powers of Attorney Act, RSO 1990, c P.20; Powers of Attorney Act, RSNS 1989, c 352; Powers of Attorney Act, RSPEI 1988, c P-16; Powers of Attorney Act, SNWT 2001, c 15; Powers of Attorney Act, SNU 2005, c 9.

1.2.4.2 Enduring Power of Attorney

An enduring power of attorney is a legal document made by one person (the principal) who appoints another person (the attorney or agent) to make financial and legal decisions for the principal.²⁵ An enduring power of attorney will continue even if the principal becomes mentally incapable of making decisions.

To create an enduring power of attorney, the document must be properly signed, and must state:

- Whether the attorney (the person appointed to make decisions) can act while the person is capable or only while the person is incapable;
- That the attorney's authority continues despite the incapability of the person.

A property power of attorney document, depending on its terms, may come into effect immediately; or it may require someone, such as a doctor or capacity assessor, to “trigger” its effect, i.e. to determine that the donor of the power has become incapable of managing its own affairs. The attorney, by statute, usually has all the powers required to deal with the owner's property, but not to make a will.²⁶

In addition, most insurers will refuse a beneficiary designation made by an attorney,²⁷ except if a court order is made to the contrary, or in the case of an annuity contract, when there is a transfer of money from another financial institution in the presence of an existing beneficiary designation made with the former financial institution.²⁸ Otherwise, the attorney would be able to revoke a beneficiary designation made by the principal by transferring monies from one financial institution to another.

When it comes to dealing with insurance transactions, insurance agents (before accepting the instructions given by a purported power of attorney) should obtain a certified true copy of the power of attorney from a notary and have it reviewed by the insurance company that will be asked to act upon instructions given under its authority.

Insurance agents could be asked by trusting clients to act as their power of attorney (and executor, and trustee). This arrangement is not covered by professional errors and omissions insurance, and could put the insurance agent in a conflict of interest with the client and, potentially, in trouble with the insurance regulator. For these reasons, agents should decline to accept such an appointment, at least without thorough legal advice on the subject beforehand.

25. Enduring Power of Attorney Act, RSY 2002, c 73; Enduring Powers of Attorney Act, RSNL 1990, c E-11.

26. Powers of Attorney Act, 2002, SS 2002, c P-20.3, s. 16 (2).

27. David Norwood and John P. Weir, *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002, p. 86. See also: *Richardson Estate v. Mew*, [2009] O.J. 1947 (Ont. C.A.).

28. *Desharnais v. Toronto Dominion Bank*, [2002] B.C.J. No. 2633 (B.C. C.A.), jj. Rowles, Prowse and Thackray.

If an adult becomes incapable and has not appointed a personal representative, a court may appoint someone, including a trust company, to manage their affairs.²⁹ Trust companies commonly act to manage the finances of incapable adult persons, but will not manage the personal care aspects. Court-appointed guardians of an adult person who has become incapable could transact insurance business concerning an existing policy, such as a term renewal or conversion; or they might buy segregated funds or annuity products as an investment for the incapable, always subject to the authority granted by the terms of the court order appointing them.

Unlike powers of attorney, guardianship only comes into effect after a person has been declared incapable. They require the person applying to be appointed as guardian to propose a property management plan for the incapable. Guardians' activities are always subject to review by the court that appointed them.

Clients often mistakenly refer to powers of attorney for personal care (PoAPC) as “living wills.” A power of attorney is a legal document in which a specific person is named to act on an individual's behalf. A “living will” simply addresses your treatment and personal care wishes and does not need to name anyone or be written in any specific way. Nonetheless, treatment wishes (your “living will” or “advance directive”) can still be included in a power of attorney document so that the attorney is aware of them.

1.2.5 Marriage and common law spouse

Insurance agents will often encounter clients who are single, married or with common law spouses or who are experiencing a marriage or relationship breakdown. In the latter situation, a client can be obligated to pay spousal and child support. To do a thorough needs analysis, taking these client obligations into account and developing a familiarity with how and when support obligations may arise, can be useful. This in turn calls for an understanding of the legal relationships clients may enter into with third parties.

It is crucial for agents to understand that the property rights of married spouses usually differ significantly from those of common law spouses when their relationship breaks down. Common law status (no presumed division)³⁰ is different from married status (presumed division)³¹ in this regard. Furthermore, the rights of married spouses to share on an intestacy (the state or condition

29. Substitute Decisions Act, 1992, SO 1992, c 30, s. 22.

30. Except in some jurisdictions: Family Law Act, SBC 2011, c 25 (s. 1 “spouse” and s. 81); Family Property Act, The, SS 1997, c F-6.3 (s.2 “spouse” and 20); Family Property Act, CCSM c F25 (s.1(1) “common law relationship”, “spouse” and 13); Family Law Act, SNWT 1997, c 18 (s.1 “spouse” and 33); Family Law Act, SNWT (Nu) 1997, c 18 (s.1 “spouse” and 33).

31. Matrimonial Property Act, RSA 2000, c M-8 (s.1e) and 3); Family Law Act, RSO 1990, c F.3 (s.1 “spouse” and 4); Marital Property Act, SNB 2012, c 107 (s.1 “spouse” and 3); Matrimonial Property Act, RSNS 1989, c 275 (s.2 “spouse” and 12); Family Law Act, RSPEI 1988, c F-2.1 (s.1(1)g) and 6); Family Law Act, RSNL 1990, c F-2 (s.2(1)e), 5, and 21); *Family Property and Support Act*, RSY 2002, c 83 (s.1 “spouse and 6).

of dying without a will, which is discussed below) are usually dramatically different from those of common law spouses.³²

Marriage is a formal legal status that is acquired and terminated pursuant to federal law,³³ though the format of the marriage “celebration” is controlled provincially.³⁴ The legally recognized state of marriage immediately has significant effects on property ownership and civil rights that are subject to provincial and territorial law. It creates both legal rights and obligations. In Canada, any two persons may become married,³⁵ but individuals may only be formally married to one spouse at a time. Married status is retained until the death of a spouse, the annulment of the marriage or until a legally valid divorce is granted by court order.

Couples may adjust their legal rights before (pre-nuptial) or during a relationship by entering into a domestic or marriage contract with each other. Common law couples can also enter into a domestic contract, sometimes called a “cohabitation agreement.”

Common law status in most provinces and territories is determined by cohabitation in a conjugal or marriage-like relationship for a specific period of time. Rights acquired under common law spousal status vary widely. In most provinces and territories, common law partners can acquire the right to seek spousal support, if needed, upon relationship breakdown.³⁶ In addition to support while living together as a couple, common law spouses are sometimes entitled to claim dependant’s relief in the event of the death of a spouse who failed to make adequate provision for the other. Spousal status is also very important in pension law, where the right to

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32. Wills, Estates and Succession Act, SBC 2009, c 13 (s.2 and 20 to 22); Wills and Succession Act, SA 2010, c W-12.2 (s.1(1)a) and 60 to 64: adult interdependent has the same rights as a married spouse); Adult Interdependent Relationships Act, SA 2002, c A-4.5 (s.3); Intestate Succession Act, 1996, The, SS 1996, c I-13.1 (s. 2 “spouse” and 6 to 8); Intestate Succession Act, The, CCSM c I85 (s.2: common law spouse has same right as married spouse); Succession Law Reform Act, RSO 1990, c S.26 (s.1(1) “spouse” and 44 to 46; Devolution of Estates Act, RSNB 1973, c D-9 (s. 21 to 28 and 36); Intestate Succession Act, RSNS 1989, c 236 (s. 4 to 6); Probate Act, RSPEI 1988, c P-21 (s. 88 to 99); Intestate Succession Act, RSNL 1990, c I-21 (s.4 to 6); Probate Act; Estate Administration Act, RSY 2002, c 77 (s. 74 and 80); Intestate Succession Act, RSNWT 1988, c I-10 (s.1 “spouse” and 2(3): common law spouse has same right as married spouse); Intestate Succession Act, RSNWT (Nu) 1988, c I-10 (s.1(1) “spouse” and 2(3): common law spouse has same right as married spouse).
 33. Civil Marriage Act, SC 2005, c 33.
 34. See as an example: Marriage Act, RSO 1990, c M.3.
 35. Marriage Act, RSO 1990, c M.3, s. 5. With the exception of the cases indicated in the Marriage (Prohibited Degrees) Act, SC 1990, c 46.
 36. Family Law Act, RSO 1990, c F.3; Family Law Act, SBC 2011, c 25; Family Law Act, SA 2003, c F-4.5; Family Property Act, The, SS 1997, c F-6.3; Family Property Act, CCSM c F25; Marital Property Act, SNB 2012, c 107; Matrimonial Property Act, RSNS 1989, c 275; Family Law Act, RSPEI 1988, c F-2.1; Family Law Act, RSNL 1990, c F-2; Family Property and Support Act, RSY 2002, c 83; Family Law Act, SNWT 1997, c 18; Family Law Act, SNWT (Nu) 1997, c 18. Regarding common law spouses right to division of family property, see above footnotes 29 and 30.

be a surviving beneficiary will be affected by the existence or non-existence of someone else qualifying as a spouse under the terms of the pension plan.³⁷

Insurance agents can perform a valuable service by advising clients to seek competent legal advice concerning the effects of marriage compared to a common law spouse relationship on their financial and legal arrangements.

1.2.6 Divorce and separation

In the event of divorce or separation,³⁸ the value of the policy may become subject to the valuation and division of property. Insurance proceeds received from a third party may receive preferential treatment similar to inheritances and gifts, and be excluded from the rebalancing of financial assets.³⁹

Grounds for divorce are controlled by the *Divorce Act*⁴⁰ and the right to spousal and/or child support payments on divorce also arises under the Act. Less commonly, marriages are annulled, meaning they are legally treated as never having been in effect. In either case, the main legal effect is the same: the marriage is dissolved and the divorced or unmarried persons are free to remarry. Since property rights are under provincial jurisdiction, most changes to financial status (except child support resulting from a divorce) arise from provincial and territorial legislation.

The effect of a divorce or separation on insurance needs analysis and beneficiary designation planning is an increasingly complex and important part of insurance law.

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37. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp) (s.2(1) “survivor”, 16.3, 22(2), 23, 24 and 25); Pension Benefits Division Act, SC 1992, c 46, Sch II; Pension Benefits Standards Act, RSBC 1996, c 352 (s.1(1) “spouse”, 34 and 35); Employment Pension Plans Act, SA 2012, c E-8.1 (s.1(3) and 88 to 90); Pension Benefits Act, 1992, SS 1992, c P-6.001 (s.2(1)ff), 33 and 34); Pension Benefits Act, The, CCSM c P32 (s.1(1) “common-law partner”, 21(26), 23(2)); Pension Benefits Act, RSO 1990, c P.8 (s.1(1) “spouse”, 44 and 48); Pension Benefits Act, SNB 1987, c P-5.1 (s.1 “common-law partner” and “spouse”, 1(2), 41(3) and 43.1; Pension Benefits Act, RSNS 1989, c 340 (s.2ga) and aj), 52 and 56); Pension Benefits Act, 1997, SNL 1996, c P-4.01 (s.2(c.1) and ff), 41 and 45).
 38. Legally recognized separations are treated with an agreement or a court order. Agreements and separation orders can resolve some family issues, but they do not legally end the marriage. The only way to legally end the marriage is to obtain a divorce. See as an example: <http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/default.asp>
 39. Family Law Act, RSO 1990, c F.3, s. 4(2); Family Law Act, SBC 2011, c 25, s.85 (1) (d); Family Law Act, SA 2003, c F-4.5, s. 80.1 (1) (f); Family Property Act, The, SS 1997, c F-6.3, s. 23 (1) (b); Family Property Act, CCSM c F25, s.10 (1) (i); Marital Property Act, SNB 2012, c 107, s.1 (iv) (v); Matrimonial Property Act, RSNS 1989, c 275, s. 4; Family Law Act, RSPEI 1988, c F-2.1, s. 4; Family Law Act, RSNL 1990, c F-2, s. 40(1); Family Property and Support Act, RSY 2002, c 83, s. 38 (1) (h); Family Law Act, SNWT 1997, c 18, s.18 (1) (g); Family Law Act, SNWT (Nu) 1997, c 18, s. 9 (g).
 40. Divorce Act, RSC 1985, c 3 (2nd Supp.).

1.2.6.1 Family property

All provinces have laws that attempt to determine how spousal wealth and property will be divided when a relationship comes to an end through separation, divorce, or in some cases, death.⁴¹ Division may depend on when the property was acquired, and from what source.⁴² The phrase “family property” variously implies property that was acquired during the marriage, or is used or enjoyed by the family of married spouses, or that generates income that supports the family.

Ownership of family property is presumed subject to equal division when the married spousal relationship breaks down, but subject to a judge’s discretion.

In contrast, property that was acquired prior to the marriage (or relationship), or that came from an inheritance during the marriage, usually gets protection from division. The rules are specific to the particular jurisdiction where the couple resides when the relationship ends. Rights to spousal support are separate from, and additional to, a right of property division. All of these rights given by statute may be modified by competent adults who enter into a contract by which they modify or even give up rights.

1.2.7 Wills, estates and successions

The term “succession law” applies to the body of provincial law that deals with deceased persons’ estates and the rules governing property-passing as a result of a death. The collection of property and property rights that the deceased owned is referred to as their “estate.” All the provinces and territories of Canada permit an individual to prepare a will leaving their estate to whomever they wish.⁴³

People usually also appoint a person to be in charge of the estate. If appointed under a will, that person may be referred to as the executor (male) or executrix (female) or estate trustee (gender neutral). As the person who controls the estate, they have the legal obligation to pay the debts (including taxes) of the deceased from estate assets, and to manage and distribute the remaining assets in accordance with the terms of the will.

41. Family Law Act, RSO 1990, c F.3; Family Law Act, SBC 2011, c 25; Family Law Act, SA 2003, c F-4.5; Family Property Act, The, SS 1997, c F-6.3; Family Property Act, CCSM c F25; Marital Property Act, SNB 2012, c 107; Matrimonial Property Act, RSNS 1989, c 275; Family Law Act, RSPEI 1988, c F-2.1; Family Law Act, RSNL 1990, c F-2; Family Property and Support Act, RSY 2002, c 83; Family Law Act, SNWT 1997, c 18; Family Law Act, SNWT (Nu) 1997, c 18.

42. Excerpt from the Government of Saskatchewan’s website on the *Family Property Act*. *The Family Property Act* establishes as a general rule that each legally married spouse, common law spouse and same sex spouse is entitled to an equal share of their family property, subject to the exceptions, exemptions and equitable considerations set out in the Act. For example, property acquired before the commencement of the relationship is exempt from distribution:

<http://www.http://www.publications.gov.sk.ca/details.cfm?p=535>

43. Wills, Estates and Succession Act, SBC 2009, c 13; Wills and Succession Act, SA 2010, c W-12.2; Wills Act, 1996, The, SS 1996, c W-14.1; Wills Act, The, CCSM c W150; Succession Law Reform Act, RSO 1990, c S.26; Wills Act, RSNB 1973, c W-9; Wills Act, RSNS 1989, c 505; Probate Act, RSPEI 1988, c P-21; Wills Act, RSNL 1990, c W-10; Wills Act, RSY 2002, c 230; Wills Act, RSNWT 1988, c W-5; Wills Act, RSNWT (Nu) 1988, c W-5.

Not all property owned by an individual is controlled by their will. Ownership of property held in “joint tenancy”⁴⁴ with one or more persons usually passes outside the will. Registered plans with a named beneficiary, including registered retirement savings plans (RRSP), registered retirement income funds (RRIF), and tax-free savings plans (TFSA), pass directly to the named beneficiary. Life insurance payable to a named beneficiary also passes outside the will to the named beneficiary. In contrast, life insurance payable to the estate of the policyholder is disposed of under the terms of the will.

Coupled with will-making, there are strong laws to protect those to whom the deceased owed legal or moral obligations of support. Financially dependent persons, such as a surviving spouse or children, can sue the estate for support if the deceased person owed them a duty of support and failed to make “adequate” provision. The laws governing this, generically called “dependant’s relief legislation”⁴⁵, give dependants priority before any disposition or distribution under the deceased’s will is made. The prior rights of financial dependants and spouses allow them to be adequately provided for even though they may receive life insurance as a named beneficiary. Such insurance may be considered part of the estate and made subject to an order for the support of dependants.

1.2.7.1 Testate and intestate successions

Clients may or may not have a valid will when they die. If they do, they are said to have died “testate” – with a will.

If there is no will, the client is said to have died “intestate.”⁴⁶ Sometimes there is a complete will, or a partial will, but no named executor able and willing to act. If there is no will, or no willing and able executor, someone must apply to the court to be put in charge of the estate. This person will also be recognized as an administrator or estate trustee. This is usually one or more of the adult beneficiaries who will be inheriting the estate. When there is no will, the estate trustee will distribute the estate in accordance with the applicable provincial rules on intestacy.⁴⁷

If there is a will, the executor will distribute the estate, after the payment of the debts, according to the will.

44. “Joint tenancy” is a legal term. See art. 3 (2) of the *Partition Act* in Ontario. The other form of co-ownership is the tenancy in common.

45. The Dependants Relief Act, CCSM c D37; Dependants Relief Act, RSA 200, c D-10.5; The Dependants’ Relief Act, 1996, SS 1996, c D-25.01; Dependants Relief Act, RSNWT (Nu) 1998, c D-4; Dependants Relief Act, RSNWT 1998, c D-4; Dependants of a Deceased Person Relief Act, RSPEI 1998, c D-7; Testators’ Family Maintenance Act, RSNS 1989, c 465; Family Relief Act, RSNL 1990, c F-3; Dependants Relief Act, RSY 2002, c 56; Succession Law Reform Act, RSO 1990, c S.26; Wills, Estates and Succession Act, SBC 2009, c13.

46. “Intestate” signifies being without a will.

47. See the following as an example: Succession Law Reform Act, RSO 1990, c S.26, ss. 72(1)(f) and (f.1). Wills, Estates and Succession Act, SBC 2009, c 13; Wills and Succession Act, SA 2010, c W-12; Intestate Succession Act, 1996, The, SS 1996, c I-13.1; Intestate Succession Act, The, CCSM c I85; Devolution of Estates Act, RSNB 1973, c D-9; Intestate Succession Act, RSNS 1989, c 236; Probate Act, RSPEI 1988, c P-21; Intestate Succession Act, RSNL 1990, c I-21; Estate Administration Act, RSY 2002, c 77; Intestate Succession Act, RSNWT 1988, c I-10; Intestate Succession Act, RSNWT (Nu) 1988, c I-10.

Separation of married partners has no effect on a will, and signing a separation agreement may allow alimony claims to be made against the other spouse's estate but it does not usually affect voluntary gifts made by will or the designation of beneficiaries. If clients wish to disinherit a former legal spouse (marriage) after separation, they need to change their will and their beneficiary designations, and sign a separation agreement.

Divorce does not revoke a will either; the will is interpreted as if the former spouse had predeceased the testator. Likewise, a divorce does not revoke the designated beneficiaries,⁴⁸ except in Québec.⁴⁹

If a policyholder's beneficiary designations contained in a will are revoked, and there is no valid beneficiary designation, the insurance or registered plan proceeds will become payable to the policyholder's estate. When the policyholder dies without a will, the estate will be distributed according to the provincial law that determines who inherits on intestacy.⁵⁰

Insurance agents should not hesitate to direct clients to the clients' own legal advisors to provide for estate planning or to manage specific life events such as separation or dissolution of marriage.

1.2.8 Trusts and trustees

Trusts established during life of the settlor⁵¹ are called "inter-vivos" trusts (between living people). Trusts established upon, and as a consequence of, someone's death are called "testamentary" trusts.

While guardians and powers of attorney⁵² have certain powers over a person's property, they do not take title to the property. In contrast, trustees have legal title (as opposed to equitable title or beneficial ownership) to the property given to them, "in trust."

While a power of attorney may choose to act, they generally do not have to do so and may resign. In contrast, once a trust has been created, a trustee is already under a positive legal obligation to act as and when the need arises. A trust is therefore arguably a form of property management for the benefit of beneficiaries (considered vulnerable). Put another way, trusts are simply a form of surrogate ownership, where the trustee has title to, and control over, the trust property with the obligation to distribute them to the beneficiaries.

48. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002 p. 61, 284-287, 299-302 and 306.

49. Civil Code of Québec, RLRQ c C-1991, art. 2459.

50. Wills, Estates and Succession Act, SBC 2009, c 13; Wills and Succession Act, SA 2010, c W-12; Intestate Succession Act, 1996, The, SS 1996, c I-13.1; Intestate Succession Act, The, CCSM c I85; Succession Law Reform Act, RSO 1990, c S.26; Devolution of Estates Act, RSNB 1973, c D-9; Intestate Succession Act, RSNS 1989, c 236; Probate Act, RSPEI 1988, c P-21; Intestate Succession Act, RSNL 1990, c I-21; Estate Administration Act, RSY 2002, c 77; Intestate Succession Act, RSNWT 1988, c I-10; Intestate Succession Act, RSNWT (Nu) 1988, c I-10.

51. This is the person who created the trust and from whom the assets come.

52. A power of attorney is legally authorized to represent a person through a mandate or other document which provides for the delegation of authority of this person to the power of attorney.

 EXAMPLE

Rob gives money to his lawyer, to be used towards Rob's purchase of a house. The money is put into the lawyer's trust account, so only he has control over it, and it is in his name. But there is no doubt in anyone's mind about who the money belongs to, or what it is to be used for. If the lawyer dies, or goes bankrupt, the trust money is unaffected, because it does not belong beneficially to the lawyer.



Insurance proceeds can be used to create a trust fund, or to enhance the size of an existing one. Trustees can own any type of property that individuals can, so they can also hold an insurance policy, pay the premiums (from trust monies) as long as necessary, and then either transfer ownership of the policy to the beneficiary, or collect and handle the proceeds of the insurance in accordance with the terms of the trust (i.e. as the person who set up the trust directed).

Insurance agents should not hesitate to direct clients to the clients' own legal advisors to provide for trust and estate planning.

1.2.9 Bankruptcy

Individuals may incur more debt than they are ever able to repay. They may have assets, and income, but if they are unable to meet their financial obligations as they fall due, they are insolvent. If some creditor formally pushes them to pay a debt, they may decide to make a formal declaration of bankruptcy, or be adjudged bankrupt.⁵³ Either case leads to the appointment of a bankruptcy trustee. The trustee in bankruptcy collects the available assets of the bankrupt person and uses them to the benefit of the bankrupt's creditors according to the rules in the *Bankruptcy and Insolvency Act*.

Similar policy considerations also underpin laws that provide for particular legal protections to apply to life insurance proceeds. Life insurance, or financial products that qualify as life insurance, including life annuities and segregated funds, may qualify for special protection against creditors in the event of an insolvency or bankruptcy of the policyholder.

As discussed earlier, when an individual dies, the first duty of the estate representatives is to pay the debts and taxes owed by the deceased. It is entirely possible that there will not be enough money in the estate for all the creditors to be paid. In such a case the persons named in the deceased individual's will receive nothing and they may simply refuse the inheritance. An estate might be bankrupt, just as an individual can be bankrupt during their lifetime.

53. Bankruptcy and Insolvency Act, RSC 1985, c B-3, s.67(1) a), b), b.1), b.2) and b.3). The same rules apply for a consumer proposal made by a debtor under the Bankruptcy and Insolvency Act, s. 66.4 (1). However, with respect to consumer proposals, the trustee in bankruptcy (called, for consumer proposals, the "administrator") does not have the "seisin" of the property of the debtor, unlike under a bankruptcy of the debtor (s. 67(1) c) and d).

However, provincial insurance legislation states that insurance proceeds payable to beneficiaries do not form part of the insured's estate.⁵⁴ Since they are not part of the estate, they are not subject to control by the estate's creditors.

In addition, while a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the insurance money and the rights and interests of the insured therein and in the contract are exempt from execution or seizure.⁵⁵

Asset protection is one reason that agents usually advise clients to name direct beneficiaries, rather than their estate. Another opportunity to create asset protection, even for beneficiaries outside the protected family class, is the irrevocable beneficiary designation. In such a situation, the policy itself (which could have substantial cash values) is also not subject to seizure and cancellation by execution creditors.⁵⁶

Generally the property divisible among creditors must not include any property that is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides.⁵⁷ For beneficiaries to be protected, there must be specific

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54. Insurance Act, RSBC 2012, c 1, s. 65(1) (life insurance), 124(1) (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 666(1) (life insurance), 731(1) (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.158(1) (life insurance), 251(1) (accident & sickness insurance); Insurance Act, The, CCSM c I40, s. 173(1) (life insurance), 228(1) (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 196(1) (life insurance), 317(1) (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.157(1) (life insurance), 211(1) (accident & sickness insurance); Insurance Act, RSNS 1989, c 231, s.198(1) (life insurance), 91(1) (accident & sickness insurance); Insurance Act, RSPEI 1988, c I-4, s. 144(1) (life insurance), 200(1) (accident & sickness insurance); Life Insurance Act, RSNL 1990, c L-14, s. 27(1); Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 29(1); Insurance Act, RSY 2002, c 119, s. 101(1) (life insurance), 201(1) (accident and sickness insurance); Insurance Act, RSNWT 1988, c I-4, s. 94(1) (life insurance), 194(1) (accident and sickness insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 94(1) (life insurance), 194(1) (accident and sickness insurance).
 55. Insurance Act, RSBC 2012, c 1, s. 65(2) (life insurance), 124(2) (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 666(2) (life insurance), 731(2) (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.158(2) (life insurance), 251(2) (accident & sickness insurance); Insurance Act, The, CCSM c I40, s. 173(2) (life insurance), 228(2) (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 196(2) (life insurance), 317(2) (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.157(2) (life insurance), 211(2) (accident & sickness insurance); Insurance Act, RSNS 1989, c 231, s.198(2) (life insurance), 91(2) (accident & sickness insurance); Insurance Act, RSPEI 1988, c I-4, s. 144(2) (life insurance), 200(2) (accident & sickness insurance); Life Insurance Act, RSNL 1990, c L-14, s. 27(2); Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 29(2); Insurance Act, RSY 2002, c 119, s. 101(2) (life insurance), 201(2) (accident and sickness insurance); Insurance Act, RSNWT 1988, c I-4, s. 94(2) (life insurance), 194(2) (accident and sickness insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 94(2) (life insurance), 194(2) (accident and sickness insurance).
 56. Insurance Act, RSBC 2012, c 1, s. 60 (life insurance), 118 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 661 (life insurance), 725 (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.153 (life insurance); Insurance Act, The, CCSM c I40, s. 168 (life insurance), 224.1 (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 191 (life insurance), 314.1 (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.152 (life insurance); Insurance Act, RSNS 1989, c 231, s.193 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 139 (life insurance); Life Insurance Act, RSNL 1990, c L-14, s. 22; Insurance Act, RSY 2002, c 119, s. 96 (life insurance); Insurance Act, RSNWT 1988, c I-4, s. 89 (life insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 89 (life insurance).
 57. Bankruptcy and Insolvency Act, RSC 1985, c B-3, s. 67(1)(b).

provincial legislation which clearly states that a specific insurance product is exempt from seizure and under what circumstances. For example, in Ontario the *Insurance Act* clearly states that when an insured makes an irrevocable beneficiary designation, the insurance money will not be subject to the control of the insured's creditors.⁵⁸ The extent of the beneficiaries' protection is limited to the terms of the provincial legislation which provides for such protection.⁵⁹

The use of irrevocable beneficiary designation is not commonplace and agents should not hesitate to invite their clients to consult with legal advisors should the facts in a specific case require specialized attention. Please consult Chapter 2 for additional information on this topic.

Pension funds (including LIRA, LIF and annuities purchased with pension funds money) are also generally exempted from seizures.⁶⁰ In some jurisdictions, registered products, such as RRSP and RRIF, are exempt from seizure, even without beneficiary designation, and even if issued by financial institutions other than life insurance companies.⁶¹ It is also important to mention that in every Canadian jurisdiction, other than Québec, it is possible for the owner of certain registered products, such as RRSP, RRIF and TFSA, to designate a beneficiary (in that case, the beneficiary will receive the death benefit outside of the estate and avoid probate fees).⁶²

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58. Insurance Act, RSO 1990, c I.8, s. 191 (1); Insurance Act, RSBC 2012, c 1, ss. 60 (life), 118 (accident & sickness); Insurance Act, RSA 2000, c I-3, ss. 661 (life), 725 (accident & sickness); The Saskatchewan Insurance Act, RSS 1978, c S-26, ss. 153 (life); Insurance Act, The, CCSM c I40, ss. 168 (life), 224.1 (accident & sickness); Insurance Act, RSO 1990, c I.8, ss. 314.1 (accident & sickness); Insurance Act, RSNB 1973, c I-12, s. 152 (life); Insurance Act, RSNS 1989, c 231, s. 193 (life); Insurance Act, RSPEI 1988, c I-4, s. 139 (life); Life Insurance Act, RSNL 1990, c L-14, s. 27(2); Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 29(2); Insurance Act, RSY 2002, c 119, s. 96 (life); Insurance Act, RSNWT 1988, c I-4, s. 89 (life); Insurance Act, RSNWT (Nu) 1988, c I-4 s. 89 (life).
59. *Ibid.*
60. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp), s. 18(1)a), 36(3); Pension Benefits Standards Regulations, 1985, SOR/87-19, s. 21(1); Pension Benefits Standards Act, RSBC 1996, c 352, s. 63; Employment Pension Plans Act, SA 2012, c E-8.1, s. 72; Pension Benefits Act, 1992, SS 1992, c P-6.001, s. 63; Pension Benefits Act, The, CCSM c P32, s. 31; Pension Benefits Act, RSO 1990, c P.8, s. 66; Pension Benefits Act, SNB 1987, c P-5.1, s. 57; Pension Benefits Act, RSNS 1989, c 340, s. 71; Pension Benefits Act, 1997, SNL 1996, c P-4.01, s. 33.
61. Court Order Enforcement Act, RSBC 1996, c 78, s. 71.3; Civil Enforcement Act, RSA 2000, c C-15, s. 92(1)(2); Civil Enforcement Regulation, Alta Reg 276/1995, s. 40.2; Registered Plan (Retirement Income) Exemption Act, The, SS 2002, c R-13.01, s. 3(1) and 4(1); Registered Retirement Savings Protection Act, CCSM c R116, s. 3(1) and 4(1); An Act respecting protection for registered retirement savings (Bill 70) [Not yet in force], s. 3(1) and 4(1); Designation of Beneficiaries Under Benefit Plans Act, RSPEI 1988, c D-9, s. 10; Judgment Enforcement Act, SNL 1996, c J-1.1, s. 131.1(2).
62. Wills, Estates and Succession Act, SBC 2009, c 13, s. 1 and 85 to 100; Wills and Succession Act, SA 2010, c W-12.2, s. 1 and 71; Queen's Bench Act, 1998, The, SS 1998, c Q-1.01, s. 72 to 75; Beneficiary Designation Act (Retirement, Savings and Other Plans), The, CCSM c B30; Succession Law Reform Act, RSO 1990, c S.26, s. 50 to 54.1; General, O Reg 54/95, s. 2; Retirement Plan Beneficiaries Act, SNB 2012, c 114; Beneficiaries Designation Act, RSNS 1989, c 36; Designation of Beneficiaries Under Benefit Plans Act, RSPEI 1988, c D-9; Pension Plans Designation of Beneficiaries Act, RSNL 1990, c P-5; Retirement Plan Beneficiaries Act, RSY 2002, c 197; Retirement Plan Beneficiaries Act, RSNWT 1988, c R-6; Beneficiaries Designation Act (Retirement, Savings and Other Plans), RSNWT (Nu) 1988, c R-6.

1.3 Legal principles required for the validity of the contract

A contract or agreement established under Common Law principles is enforceable. It must be created by one or more parties with the shared intention of entering into a binding agreement. This is an important part of contracts; they are often described as a “meeting of the minds,” meaning that unless and until both sides are in agreement, there is no contract. The subject matter of the contract must also be acceptable under shared values described as public policy, which are the principles on which social laws are based.

Chapter 2 *Insurance policy provisions* takes a more insurance policy specific approach while this Section is more generic.

EXAMPLE

Ralph found a criminal who was willing to commit arson so Ralph could collect fire insurance money on a commercial property. Ralph paid the criminal \$10,000 but the criminal promptly gambled the money away. Ralph could not get his money back. The contract was unenforceable—it was void because it was against public policy.

1.3.1 Civil fault

Civil fault is an action or omission which causes someone loss or harm for which the wrongdoer is liable.

A breach of the privacy obligations of an agent could lead to a civil action against the agent in torts.

The loss or harm is therefore not limited to the physical loss and may include the following damages:

- Injury to reputation (defamation);
- Emotional injury;
- Economic injury;
- Violations of privacy;
- Violations of property;
- Violations of constitutional neglect.

If claiming to be the victim of civil wrongdoing, a client could initiate civil litigation against the agent or insurer depending on the case.

1.3.2 Limitation periods

A limitation period is a timeframe during which a court action must be started, or the right to sue is lost forever. Once someone discovers that civil wrongdoing has been done to them, the limitation period clock starts ticking. There are different limitation periods for different civil wrongdoing and each jurisdiction dictates this.⁶³ It can occasionally take some time before damage, like hidden faulty building construction, for example, is discovered. In other cases, knowledge of the wrong is immediate. Prompt legal advice is always advisable.

EXAMPLE

John died. His beneficiary Betty filed a claim for a life insurance benefit. The insurer refused to pay, claiming John had misrepresented his health on his application. Betty will only have a finite length of time to launch a lawsuit. In Betty's case, the clock starts running from the date she received notice that her claim was refused.

1.4 Public insurance and retirement regimes

Over time, both the federal and provincial levels of government have set up programs that contribute to the social “safety net” for citizens and others.

It is important that insurance agents monitor changes to such programs to be able to guide their clients with up-to-date information.

Insurance agents need to understand all aspects of these public insurance and retirement regimes, which may affect or be available to their clients, so that any needs analysis or advice provided takes into account relevant information and facilitates the coordination of benefits.

When spouses are both entitled to benefits for themselves and their family members under a privately sponsored health, drug, or group dental plan, care must be taken to avoid double payment for the same expense. To prevent overpayment, the benefit companies apply “coordination of benefits” so that one benefit plan pays first, while the second plan pays only the unpaid balances remaining.

The phrase is also used when considering benefits provided by a provincial health plan and a private insurer. Private coverage is only supposed to address services not covered by a provincial

63. See the following as an example, Limitations Act, RSA 2000, c L-12, s. 3(1); See also Limitations Act, SNL 1995, c L-16.1; Limitation Act, SBC 2012, c 13; Statute of Limitations, RSPEI 1988, c S-7; The Limitations Act, SS 2004, c L-16.1; Limitations Act, 2002, SO 2002, c 24, Sch B.; Limitation of Actions Act, RSNS 1989, c 258; Limitations of Actions Act, SNB 2009, c L-8.5; Limitations of Actions Act, RSNWT (Nu) 1998, c L-8; Limitations of Actions Act, RSY 2002, c139; Limitation of Actions Act, RSNWT 1998, c L-8; The Limitation of Actions Act, CCSM c L150.

plan. An example would be private insurance paying for a semi-private hospital room, if ward accommodation is the basic provincial standard. Another example might be private insurance payment for a very expensive prescription drug not covered by the province on their list of publicly funded drugs.⁶⁴

1.4.1 Federally sponsored or facilitated programs

On a federal level, the following will be addressed:

- Canada Pension Plan (CPP) and disability;
- Old Age Security (OAS) and Guaranteed Income Supplement (GIS);
- Employment Insurance (EI).

The purpose of the CPP, OAS, and GIS is to provide a secure, modest base upon which to build additional retirement income. These federally sponsored plans are not intended to meet all the retirement income needs of Canadians. It is each person's responsibility to look at their own circumstances to decide what level of income is right for them and develop their own retirement plan. Agents should be able to guide their clients with other insurance products which may be used to achieve retirement objectives (such as tax planning, estate planning, financial security, investment and/or creditor protection) such as RRSPs, annuities, life insurance, etc.

The purpose of the Employment Insurance (EI) program is to provide temporary income support to those who are between jobs; cannot work for reasons of sickness, childbirth, or parenting, or who are providing care or support to a family member who is gravely ill with a significant risk of death.

64. British Columbia, see: <http://www2.gov.bc.ca/gov/content/health/health-drug-coverage/pharmacare-for-bc-residents>; Pharmaceutical Services Act, SBC 2012, c 22; Alberta, see: <https://www.ab.bluecross.ca/dbl/publications.html>; Saskatchewan, see: <https://www.saskatchewan.ca/residents/health/prescription-drug-plans-and-health-coverage>; Prescription Drugs Act, The, RSS 1978, c P-23; Manitoba, see: <http://www.gov.mb.ca/health/pharmacare/>; Prescription Drugs Cost Assistance Act, The, CCSM c P115; Ontario, see: <http://www.health.gov.on.ca/en/public/programs/drugs/programs/programs.aspx>; Drug Interchangeability and Dispensing Fee Act, RSO 1990, c P.23; New Brunswick, see: <http://www2.gnb.ca/content/gnb/en/departments/health/MedicarePrescriptionDrugPlan.html>; Prescription and Catastrophic Drug Insurance Act, SNB 2014, c 4; Prescription Drug Payment Act, SNB 1975, c P-15.01; Nova Scotia, see: <https://novascotia.ca/dhw/pharmacare/>; <http://novascotia.ca/dhw/pharmacare/>; Fair Drug Pricing Act, SNS 2011, c 7; Prince Edward Island, see: <http://healthpei.ca/pharmacare/>; Drug Cost Assistance Act, RSPEI 1988, c D-14.1; Drug Product Interchangeability and Pricing Act, RSPEI 1988, c D-15; Newfoundland and Labrador, see: <http://www.health.gov.nl.ca/health/prescription/>; Pharmaceutical Services Act, SNL 2006, c P-12.01; Yukon, see: <http://www.hss.gov.yk.ca/pharmacare.php>; Northwest Territories, see: <http://www.drugcoverage.ca/en-ca/Provincial-Coverage/northwest-territories/reimbursement-overview.aspx>; see also: <http://www.hss.gov.nt.ca/health/nwt-health-care-plan/nwt-health-care-plan-general-information-residents#health-care-card-cover>; Nunavut, see: <http://www.gov.nu.ca/health/information/health-insurance>. See also Health Canada: <https://www.canada.ca/en/health-canada/services/health-care-system/pharmaceuticals/access-insurance-coverage-prescription-medicines/provincial-territorial-public-drug-benefit-programs.html>. Other reference: <http://canadaonline.about.com/od/prescriptiondrugsprograms/>

Agents should be able to guide their clients with other insurance products which may supplement EI should benefits offered under this federal plan be insufficient to meet the client's needs. Such products generally include but are not limited to disability, accidental death and dismemberment and long-term care insurance.

1.4.1.1 Canada Pension Plan (CPP) and disability

Individuals who are employed or self-employed in Canada contribute to a mandatory pension plan.⁶⁵ The CPP is funded by contributions, and not by the government through duties and taxes. Employers also contribute an equal amount for their employees. The contributions of the employer are deductible on the employer's income tax return, and the pension is taxable income for the employee when received. Incomes over the maximum pensionable earnings do not contribute to CPP, so high-income individuals must seek other forms of retirement security. An individual may begin drawing a reduced pension any time after age 60 or an enhanced pension as of age 70. CPP contributors may also draw a disability benefit if they become permanently and totally disabled. There are also provisions for a modest death benefit to assist with funeral expenses, and survivor benefits for spouses and children. Spouses may split CPP benefits to enable income splitting in retirement. Benefits may also be assigned as part of the property settlement should the marriage break down.

1.4.1.2 Old Age Security (OAS) and Guaranteed Income Supplement (GIS)

Unlike the CPP, Old Age Security (OAS) is non-contributory and is government funded through duties and taxes. OAS pension benefits are considered taxable income for the pensioner. The benefit amount depends on how long the resident has been in Canada since age 18, spousal status and pensioner status of the other spouse.⁶⁶

The Guaranteed Income Supplement (GIS) is a non-taxable supplement for those already getting the OAS pension.

1.4.1.3 Employment Insurance

Persons employed in Canada must also contribute through payroll earnings to a plan that provides financial support during periods of unemployment.

Employment Insurance (EI) provides temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills.⁶⁷

65. See: <http://www.servicecanada.gc.ca/eng/services/pensions>

66. See: <http://www.servicecanada.gc.ca/eng/services/pensions>

67. See: <http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

The individual must have a minimum number of insurable hours of employment before becoming eligible for benefits, and the benefit payable will depend on the number of hours worked. Self-employed individuals are not eligible for EI benefits. Unemployed individuals seeking work must file a bi-weekly report of any earnings they did manage to acquire, perhaps through part-time work or even self-employment. Depending on the duration of unemployment, the amount of benefit paid, and money earned by the end of the year, some of the benefits received may have to be repaid as part of income tax filing obligations.

1.4.2 Provincially or territorially sponsored or facilitated programs

On a provincial level, the following will be addressed:

- No-fault automobile insurance;
- Workers' compensation;
- Universal health care and drug plan.

The purpose of such plans varies, but all provide public coverage to individuals in certain circumstances and avoid lawsuits.

No fault automobile insurance is a provincially sponsored plan with which a resident of the province (the policyholder) and his/her passengers are not only reimbursed by the policyholder's own insurance company without proof of fault, but also restricted in the right to seek recovery through the legal system for losses caused by other parties. This type of public plan may be supplemented with private insurance products such as disability, accidental death and dismemberment, and long-term-care benefits.

Workers' compensation was the first social program to be introduced in Canada. Workers' groups supported the program, as did employers who hoped to provide disability benefits to workers and thereby avoid lawsuits. Workers' compensation is a provincial responsibility, and the rules vary from province to province. Workers may supplement such public insurance with private coverage through products which include but are not limited to disability, accidental death and dismemberment, and long-term-care benefits.

The purpose of a universal health care and drug plan is to provide a specified package of benefits to all members of a society with the end goal of providing financial risk protection, improved access to health services, prescription drugs and improved health outcomes. Such public plans may be supplemented with additional private coverage through disability, critical illness, and long-term-care benefits.

1.4.2.1 No-fault automobile insurance

Despite the name, no-fault insurance is still very much concerned with who caused an accident, so as to decide who pays for direct compensation and property damage. The big change from traditional, fault-based litigation is that insured persons look to their own insurance company for accident benefits, such as health care and income replacement. Fault is determined by the insurance companies using a series of allocation rules based on typical accident fact situations.

British Columbia, Saskatchewan, Manitoba and Québec have government-run insurance programs, whereby the province provides the basic insurance benefits (which vary from one jurisdiction to another) in the event of an accident, and private insurers compete to sell top-up coverage.⁶⁸

In other provinces, these rules have been incorporated into provincial law as a regulation adopted under the *Insurance Act*. For example, in New Brunswick the *Insurance Act* has a regulation named *Fault Determination Regulation—Insurance Act*.⁶⁹

Agents should become familiar with the regulations applicable to the jurisdiction in which they sell insurance products.⁷⁰

1.4.2.2 Workers' compensation

Compensation and rehabilitation benefits are available to the workers on a no-fault basis, i.e. without any finding of fault with them or the employer. These are managed on a provincial level. Benefits payments are secure because they are funded by mandatory employer contributions through a payroll tax. In exchange to being entitled to these benefits, workers give up the right to sue their employers.⁷¹

1.4.2.3 Universal health care and drug plan

Canadians with valid provincial health care enrolment enjoy a form of universal health care anywhere in Canada, with medically necessary care and treatment available through publicly funded doctors and hospitals. There is not one unified plan, but 13 separate provincial and territorial plans coordinated under agreed upon standards, defined under federal legislation,

68. In British Columbia, it is the Insurance Corporation of British Columbia (ICBC), in Saskatchewan it is the Saskatchewan Government Insurance (SGI), in Manitoba it is the Manitoba Public Insurance (MPI) and in Québec it is the Société de l'assurance automobile du Québec (SAAQ).

69. Fault Determination Regulation, NB Reg 2004-141.

70. See: <http://www.ibc.ca/nl/auto/auto-insurance>

71. Workers Compensation Act, RSBC 1996, c 492; Workers' Compensation Act, RSA 2000, c W-15; Workers' Compensation Act, SNS 1994-95, c 10; Workers Compensation Act, RSPEI 1988, c W-7.1; Workers' Compensation Act, RSNB 1973, c W-13; The Workers Compensation Act, CCSM c W200; Workers' Compensation Act, SNWT 2007, c 21; Workers' Compensation Act, SY 2008, c 12; Workers' Compensation Act, SNu 2007, c 15; Workers' Compensation Act, CQLR c A-3; Workers Compensation Act Appeal Regulation, BC Reg 321/2002; The Workers' Compensation Act, 2013, SS 2013, c W-17.11; Workplace Health, Safety and Compensation Act, RSNL 1990, c W-11.

the *Canada Health Act*.⁷² The provinces and territories remain responsible for the management, organization and delivery of health care services. The provincial and territorial governments also provide various prescription drug coverage benefits,⁷³ paying some or all defined drug costs for those with low income, the disabled, and seniors over 65, and residents of long-term care homes and hospitals.

1.5 Other relevant provincial and territorial legislation for life insurance agents

In addition to the basic legal framework and contract formation discussed above, there are a number of important legal considerations that agents must take note of while dealing with life and health insurance contracts.

It is very important that agents remain continually aware of the obligations which apply to them. Poor awareness of such obligations may hurt clients and have severe consequences for an agent, including stiff monetary penalties and even the revocation of the agent's licence. Such obligations are described in greater detail in Chapter 4 *Rules and principles governing the activities of life insurance agents and accident & sickness insurance agents*.

1.5.1 Privacy Act

In the course of carrying out their business, life insurance agents have access to a great deal of personal information about their clients. How they handle that information is regulated by privacy legislation.

72. Canada Health Act, RSC 1985, c C-6.

73. See the following as an example, Ontario Drug Benefit Act, RSO 1990, c O.10. For British Columbia, see: <http://www2.gov.bc.ca/gov/content/health/health-drug-coverage/pharmacare-for-bc-residents>; Pharmaceutical Services Act, SBC 2012, c 22; Alberta, see: <https://www.ab.bluecross.ca/dbl/publications.html>; Saskatchewan, see: <https://www.saskatchewan.ca/residents/health/prescription-drug-plans-and-health-coverage>; Prescription Drugs Act, The, RSS 1978, c P-23; Manitoba, see: <http://www.gov.mb.ca/health/pharmacare/>; Prescription Drugs Cost Assistance Act, The, CCSM c P115; Ontario, see: <http://www.health.gov.on.ca/en/public/programs/drugs/programs/programs.aspx>; Drug Interchangeability and Dispensing Fee Act, RSO 1990, c P.23; New Brunswick, see: <http://www2.gnb.ca/content/gnb/en/departments/health/MedicarePrescriptionDrugPlan.html>; Prescription and Catastrophic Drug Insurance Act, SNB 2014, c 4; Prescription Drug Payment Act, SNB 1975, c P-15.01; Nova Scotia, see: <http://www.drugcoverage.ca/en-ca/Provincial-Coverage/nova-scotia/drug-benefit-programs>; see also: <http://novascotia.ca/dhw/pharmacare/>; Fair Drug Pricing Act, SNS 2011, c 7; Prince Edward Island, see: <http://healthpei.ca/pharmacare/>; Drug Cost Assistance Act, RSPEI 1988, c D-14.1; Drug Product Interchangeability and Pricing Act, RSPEI 1988, c D-15; Newfoundland and Labrador, see: <http://www.health.gov.nl.ca/health/prescription/>; Pharmaceutical Services Act, SNL 2006, c P-12.01; Yukon, see: <http://www.hss.gov.yk.ca/pharmacare.php>; Northwest Territories, see: <http://www.drugcoverage.ca/en-ca/Provincial-Coverage/northwest-territories/reimbursement-overview.aspx>; see also: <http://www.hss.gov.nt.ca/en/services/nwt-health-care-plan/general-information-residents>; Nunavut, see: <http://www.gov.nu.ca/health/information/health-insurance>. See also Health Canada: <http://www.hc-sc.gc.ca/hcs-sss/pharma/acces/ptprog-eng.php>. Other reference: <http://canadaonline.about.com/od/prescriptiondrugsprograms/>

The federal government has appointed a Privacy Commissioner to investigate complaints about breaches of privacy under federal jurisdiction and make his findings public. The Commissioner has authority under two laws. The first one is the *Privacy Act*,⁷⁴ which is federal legislation governing how the federal government and its agencies handle personal information.

1.5.1.1 *Personal Information Protection and Electronic Documents Act (PIPEDA)*

More important for insurance agents is the second privacy statute—the *Personal Information Protection and Electronic Documents Act* (PIPEDA).⁷⁵ PIPEDA sets out ground rules for how businesses and other organizations may collect, use or disclose personal information in the course of commercial activities. PIPEDA also controls how federally regulated businesses must act in handling employee personal information. If provinces have chosen to pass laws similar to PIPEDA, those laws take precedence in the province. Three provinces have passed laws for privacy,⁷⁶ and three others have adopted legislation protection personal health information.⁷⁷

PIPEDA ensures that only information that is needed and relevant to conduct a business transaction should be collected. Once the need for the information is over, the information should be disposed of in a careful fashion.

The provinces have also appointed Privacy Commissioners, whose mandate is connected to matters under provincial or municipal jurisdiction. Their mandate is especially directed at maintaining the privacy of health care information. Privacy Commissioners are also involved with freedom of information activities on behalf of citizens seeking to obtain publicly held or governmental information. In the other Canadian jurisdictions, PIPEDA applies.

1.5.2 Human rights legislation

Under provincial and federal human rights legislation, discrimination on the basis of a number of personal and/or group attributes and characteristics is prohibited. On a federal level such legislation includes the *Canadian Human Rights Act*⁷⁸ and there is various provincial legislation to the same

74. Privacy Act, RSC 1985, c P-21.

75. Personal Information Protection and Electronic Documents Act, SC 2000, c 5.

76. Three provincial laws on the protection of privacy have been declared similar to PIPEDA by the Governor in Council: Alberta: Personal Information Protection Act, SA 2003, c P-6.5; British Columbia: Personal Information Protection Act, SBC 2003, c 63; Québec: Law on the Protection of Personal Information in the Private Sector (Québec), RLRQ c P-39.1.

See also: <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-privacy-act/>

See also: https://www.priv.gc.ca/resource/fs-fi/02_05_d_15_f.asp

77. Ontario: Personal Health Information Protection Act, 2004, SO 2004, c 3, Sch A;
New Brunswick: Personal Health Information Privacy and Access Act, SNB 2009, c P-7.05;
Newfoundland and Labrador: Personal Health Information Regulations, NLR 38/11.

78. Canadian Human Rights Act, RSC 1985, c H-6.

effect.⁷⁹ Discrimination is forbidden on the basis of gender, religion, skin colour, national origin, family status, marital status, sexual orientation, and age. Insurers, however, are permitted to discriminate in providing insurance coverage as long as they can justify it on reasonable and bona fide grounds.⁸⁰

1.6 Other relevant federal legislation for life insurance agents

Life insurance agents should take the following legislation into consideration when dealing with clients and carrying out their business.

1.6.1 Criminal Code

The *Criminal Code* is a Canadian federal law defining behaviour and actions that constitute a “crime” and are generally more serious offences, including those that may result in jail time as well as fines.⁸¹

1.6.2 Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)

This important Canadian law aims at detecting individuals and corporations involved in criminal activity and preventing them from getting their illegally obtained money into the banking system.

Insurance agents are part of the process since insurance products can be used as wealth creation, storage, and transfer tools. Reporting suspicious transactions and the suspected possession of terrorist property (money or investments) remains the personal responsibility of every insurance agent. Agents also face severe personal penalties and even imprisonment if they fail to report.

Suspected money laundering or terrorist financing must be reported to an agency called the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) who will monitor and investigate.⁸² This Act is covered in more details in the Section *Financial Transactions and Reports*

79. Human Rights Code, RSBC 1996, c 210, s. 1 and 13; Alberta Human Rights Act, RSA 2000, c A-25.5, s. 7 and 11; Saskatchewan Human Rights Code, SS 1979, c S-24.1, s. 1, 15 and 16; The Human Rights Code, CCSM c H175, s. 9, 14 and 15; Human Rights Code, RSO 1990, c H.19, s. 1, 9, 10, 22, 23 and 25; Human Rights Act, RSNB 1973, c H-11, s. 2 and 3; Human Rights Act, RSNS 1989, c 214, s. 3, 4, 5 and 6; Human Rights Act, RSPEI 1988, c H-12, s. 1, 6 and 11; Human Rights Code, RSNL 1990, c H-14, s. 1 and 9; Human Rights Act, RSY 2002, c 116, s. 7, 9, 10 and 11; Human Rights Act, SNWT 2002, c 18, s. 1, 5 and 7; Human Rights Act, SNU 2003, c 12, s. 1, 5 and 7.

80. See the following as an example, Human Rights Code, RSO 1990, c H.19, s. 22: The right under Sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or disability.

81. Criminal Code, RSC 1985, c C-46.

82. See: <http://www.fintrac.gc.ca/intro-eng.asp>

Analysis Centre of Canada (FINTRAC) in Chapter 4 Rules and principles governing the activities of life insurance agents and accident & sickness insurance agents.

1.6.3 National Do Not Call List (DNCL)

The federal government has created a system, under the Canadian Radio-television and Telecommunications Commission (CRTC),⁸³ whereby clients may register their phone numbers and request that telemarketers do not call them. Calls to businesses are not prohibited. These rules apply to life insurance agents who call clients and prospective clients.

Agents making their own telemarketing calls must register and subscribe to the national DNCL. If agents hire telemarketers to make calls on their behalf, then the telemarketers must comply with the national DNCL.

1.6.4 Anti-spam legislation

Effective July 1, 2014, federal legislation known generically as the Canadian Anti-Spam Legislation (CASL)⁸⁴ came into effect. CASL prohibits the sending of commercial electronic message (CEM) if the sender does not first have the recipient's consent. The CEM must have prescribed consent and a mechanism to unsubscribe. A request to unsubscribe must be honoured immediately and no later than within 10 business days.

Agents should establish and document, from their very first dealings with clients, the practices to be followed when dealing with their clients' personal information.

83. See: <https://www.lnnte-dncl.gc.ca/index-eng>

84. See: <http://fightspam.gc.ca/eic/site/030.nsf/eng/home>



CHAPTER 2

INSURANCE POLICY PROVISIONS

Competency component

- Integrate into practice the legal aspects of insurance and annuity contracts.

Competency sub-components

- Characterize the parties involved in the contract;
- Contextualize the rules relating to the contract's formation, taking effect, reinstatement and termination;
- Explain the main provisions and clauses of an insurance or annuity contract.

2

INSURANCE POLICY PROVISIONS

When a life insurance company enters into a contract of insurance, it issues a “policy.”

The policy and all amendments are generally also referred to as the insurance contract.

Life insurance policies can be lengthy legal documents, but they have certain characteristics which are common to most. It should be noted that individual insurance, group insurance and accident and sickness insurance⁸⁵ have many similar but slightly different statutory provisions governing them.

The first part of this Chapter will briefly describe these components:

- Parties to an individual policy;
- Formation of the policy;
- Term and termination of policy;
- Assignment of a policy.

The second part of the Chapter will review the specific provisions of the following forms of life insurance:

- Individual life insurance;
- Group life insurance;
- Accident and sickness insurance.

Other kinds of policies or products marketed by life insurance companies legally qualify as “life insurance,” but do not resemble traditional life insurance policies:

- Annuities;
- Segregated funds (individual variable insurance policy (IVIC));
- Registered retirement products;
- Pension products.

85. The definition of accident and sickness insurance varies considerably between provinces, and care needs to be taken to ensure reference to the correct statutory provisions. For example, some sections include disability insurance, some exclude accidental death insurance.

A key point to be made, from a legal perspective, in relation to these specialty products is that they are subject to special regulation and that the contract terms and conditions must meet regulatory requirements to qualify for preferred tax treatment.

2.1 Parties to an individual policy

Individual life insurance contracts are entered into between the following parties:

- Insurer;
- Policyholder (also known as the insured).

A life insurance policy is simply the contract between an insurer (insurance company) and the policyholder. Depending on the type of insurance, there may be other persons referenced or involved in and/or deriving rights thereunder, such as the life insured, the beneficiary, a contingent beneficiary, a successor owner or an assignee. These will be discussed more fully below.

2.1.1 Insurer

The insurer is the life insurance company that takes on the risk and issues the policy. The insurer actually responsible for the policy may change over the years because of corporate purchases and amalgamations between insurers, or acquisitions of their books of business. The rights and obligations under a policy are assigned to and assumed by the new insurer. Acquiring insurers who assume the obligations of the former insurer are required by regulators to issue certificates of assumption to affected policyholders. The terms of the policy continues to be binding on the parties to it, and persons claiming under them.

2.1.2 Policyholder

The policyholder is the individual or legal person (e.g., corporation) who has legal ownership of the policy and exercises the contractual and statutory rights that go with being the owner. The first policyholder is the one that forms the original contract with the insurer. In summary, “the person who makes the contract with the insurer is the *insured* (or policyholder, or owner) and is a party to the policy with contractual rights.”⁸⁶

The policyholder can also be the life insured, owning insurance on their own life, but it is common for the policyholder to own insurance on the life of someone else, such as a spouse, child, or parent.

There can also be more than one policyholder. There may be co-owners of a policy.

86. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002, p. 74.

EXAMPLE 1

Thelma and Arthur are spouses. They co-own a policy on both their lives, which will pay the death benefit when the second life insured dies.

EXAMPLE 2

Elliot and Alice are siblings. After a meeting with their father and their agent, they have opted to own and pay for an annuity policy with their father as beneficiary. This annuity provides for the care and financial needs of their father who retired with limited income. This ensures that as siblings, they will both have access to policy information, and that any beneficiary changes to the policy must be approved and signed jointly.

Two policyholders may also own different portions of a policy.

EXAMPLE

Roger owns ABC Bikes Inc., a cycling equipment company. The company needs financial protection against the death of Roger, who is a key person in its operations. Roger purchases insurance on his life and assigns the ownership of the death benefit to the company. Roger retains ownership of the savings and investment component, where he will be able to shelter personal investment capital for retirement. The company and Roger divide the cost of the insurance on a reasonable basis, with the help of their accountant.

Co-owners of a policy may enter into their own private agreement that is separate from the insurance policy. The shared ownership agreement can set out their rights and responsibilities, including what happens to the insurance policy when one of the co-owners dies.

2.1.2.1 Successor policyholder

If the policyholder is not also the life insured, the policyholder could die before the insured person (i.e., while the insurance is still in effect). Ownership of the policy will then be transferred to a new owner. The identity of the new owner can be determined in advance by the policyholder.⁸⁷

87. Insurance Act, RSO 1990, c I-8, s. 199; Insurance Act, RSBC 2012, c 1, s. 68; Insurance Act, RSA 2000, c I-3, s. 669; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 161; The Insurance Act, CCSM c 140, s. 176; Insurance Act, RSNB 1973, c I-12, s. 160; Insurance Act, RSPEI 1988, c I-4, s. 147; Insurance Act, RSNS 1989, c 231, s. 201; Life Insurance Act, RSNL 1990, c L-14, s. 30; Insurance Act, RSNWT 1988, c I-4, s. 97; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 97; Insurance Act, RSY 2002, c 119, s.104.

This can be done in the policy or by an amendment. The person identified to become the owner when the policyholder dies is called the successor policyholder.

If the policyholder has not named a successor policyholder, then the new owner will be his estate and therefore indirectly his estate beneficiaries. This may not be what the policyholder intended.

EXAMPLE

Roger owns a policy on his own life and one on the life of his common law spouse, Susan. Roger wants ownership of the policy on Susan to pass to her if he dies first, and not to his children, so he appoints Susan as the successor owner by an amendment to his policy. While Susan is not a party to the policy during Roger's life, after his death Susan will acquire all of the rights and privileges that Roger had under the policy.

2.1.3 Life insured

The "life insured" means the person whose life is insured and on whose death the benefit is paid, also called the person insured or insured person.

It is common that the lives of several individuals are insured under one policy. For life insurance to be valid at issue, the policyholder must have an insurable interest in the life of the life insured.⁸⁸

2.1.4 Beneficiary

A beneficiary is a person to whom or for whose benefit insurance money is payable.

88. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002. p. 82 to 84. See also: Insurance Act, RSO 1990, c I-8, ss. 178, 179; Insurance Act, RSBC 2012, c1, s. 45; Insurance Act, RSA 2000, c I-3, ss. 646(1), 647; Saskatchewan Insurance Act, RSS 1978, c S-26, ss.140, 141; The Insurance Act, CCSM c 140, s. 155(1); Insurance Act, RSNB 1973, c I-12, ss. 139(1) (2), 140; Insurance Act, RSPEI 1988, c I-4, ss. 126(1), 127; Insurance Act, RSNS 1989, c 231, ss. 180, 181; Life Insurance Act, RSNL 1990, c L-14, ss. 9 (1) (20, 10; Insurance Act, RSNWT 1988, c I-4, ss. 76, 77; Insurance Act, RSNWT (Nu) 1988, c I-4, ss. 76, 77; Insurance Act, RSY 2002, c 119, ss. 83, 84.

The ability to designate a beneficiary by contract or a written declaration is enabled by the provincial or territorial insurance statutes.⁸⁹ Beneficiaries have rights under the insurance policy, but are not a party to it. They may be named as a beneficiary at the time the application is completed, but they may or may not be mentioned in the policy itself. The policy may say that “the beneficiary is the person you named in the application for this policy.”

The rules which apply to beneficiary designations are invariable and as such the type of benefit is irrelevant in determining the validity or effect of a beneficiary designation.

If several beneficiary designations have been made and there is confusion as to who is rightfully entitled to the benefit, agents should not hesitate to invite clients or their representatives to obtain legal advice to ensure that their rights are protected and that the payment of the benefit is executed in accordance with the policyholder’s intent.

Designating certain individuals as beneficiaries of a policy cannot only protect death benefits, it can protect the policy itself from execution and seizure (in this context execution is the action of enforcing a judgment). These certain individuals are commonly known as “protected” or “family class” beneficiaries. These “preferred beneficiaries” are the following:

- Spouse (including the common law spouse);
- Child;
- Grandchild;
- Parent of the life insured.

89. Insurance Act, RSBC 2012, c 1, s. 37 and 59 (life insurance); 92 and 117 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 637 and 660 (life insurance), 695 and 724 (accident and sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 133 and 152 (life insurance), 226 and 247 (accident & sickness insurance); Insurance Act, The, CCSM c I40, s. 148 and 167 (life insurance); 203 and 224 (accident and sickness insurance); Insurance Act, RSO 1990, c I.8, s. 171 and 190 (life insurance), 290 and 313 (accident and sickness insurance); Insurance Act, RSNB 1973, c I-12, s. 132 and 151 (life insurance), 186 and 207 (accident and sickness); Insurance Act, RSNS 1989, c 231, s. 64 and 87 (accident and sickness), 173 and 192 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 119 and 138 (life insurance), 174 and 196 (accident and sickness insurance); Life Insurance Act, RSNL 1990, c L-14, s. 2 and 21; Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 2 and 25; Insurance Act, RSY 2002, c 119, s. 76 and 95 (life insurance), 174 and 197 (accident and sickness insurance); Insurance Act, RSNWT 1988, c I-4, s. 69 and 88 (life insurance), 167 and 190 (accident and sickness insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 69 and 88 (life insurance), 167 and 190 (accident and sickness insurance)

The policyholder may also later name or change a beneficiary using a beneficiary designation or change form issued by the insurer, unless the existing designation is irrevocable.⁹⁰ Since beneficiary designations must be in writing, they may also be found in other written documents such as a will, or other documents prepared and signed by the policyholder.⁹¹

If the designation is revocable, a different beneficiary, including another protected class beneficiary can be named without the beneficiary's permission. However, there may be restrictions on a policyholder changing beneficiary designations, such as a separation agreement, or even a Court order, despite the fact that the designation is shown on the records of the insurer as revocable.

It is important for agents to be aware that insurers will pay benefits based on the most recent beneficiary designation they have on file, or to the estate in accordance with the most recent will or estate document filed with the insurer if there is no beneficiary designation. Insurers making such payments are protected by law when doing so and are not liable if another beneficiary designation or will exists and they have not been made aware of it. Agents need to be aware so they can properly advise the insured.

2.1.4.1 Irrevocable beneficiary designations

A policyholder may agree to make a designation irrevocable. Such a declaration must be filed with the head office of the insurer in order to become irrevocable. If not filed, it remains a revocable designation.⁹² If the policyholder names a beneficiary as an irrevocable beneficiary, then they can only change (revoke) that designation if the irrevocable beneficiary consents to the change. They

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90. Insurance Act, RSBC 2012, c 1, s. 60 (life insurance), 118 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 661 (life insurance), 725 (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.153 (life insurance); Insurance Act, The, CCSM c I40, s. 168 (life insurance), 224.1 (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 191 (life insurance), 314.1 (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.152 (life insurance); Insurance Act, RSNS 1989, c 231, s.193 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 139 (life insurance); Life Insurance Act, RSNL 1990, c L-14, s. 22; Insurance Act, RSY 2002, c 119, s. 96 (life insurance); Insurance Act, RSNWT 1988, c I-4, s. 89 (life insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 89 (life insurance).
91. Insurance Act, RSO 1990, c I-8, ss. 190, 191, 192; Insurance Act, RSBC 2012, c 1, ss. 59, 60, 61; Insurance Act, RSA 2000, c I-3, ss. 660, 661, 662; Saskatchewan Insurance Act, RSS 1978, c S-26, ss. 152, 153, 154; The Insurance Act, CCSM c 140, ss. 167, 168, 169; Insurance Act, RSNB 1973, c I-12, ss. 151, 152, 153; Insurance Act, RSPEI 1988, c I-4, ss. 138, 139, 140; Insurance Act, RSNS 1989, c 231, ss. 192, 193, 194; Life Insurance Act, RSNL 1990, c L-14, ss. 21, 22, 23; Insurance Act, RSNWT 1988, c I-4, ss. 88, 89, 90; Insurance Act, RSY 2002, c 119, ss. 95, 96, 97.
92. Insurance Act, RSO 1990, c I-8, s 191(2); Insurance Act, RSBC 2012, c 1, s.60; Insurance Act, RSA 2000, c I-3, s.661(1); Saskatchewan Insurance Act, RSS 1978, c S-26; The Insurance Act, CCSM c 140, s. 168(1); Insurance Act, RSNB 1973, c I-12, s.152(1) (2); Insurance Act, RSPEI 1988, c. I-4, ss. 139(1) (2); Insurance Act, RSNS 1989, c 231, s. 193; Life Insurance Act, RSNL 1990, c L-14, s. 22(1) (2); Insurance Act, RSNWT 1988, c I-4, s. 89(1); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 89(1); Insurance Act, RSY 2002, c 119, s. 96(1).

must also get the consent of the beneficiary to withdraw policy cash, pledge or assign the policy, take policy loans, or surrender the policy.⁹³

In Nova Scotia, to make a valid irrevocable beneficiary designation, the irrevocable beneficiary designation must contain, attached to the policy, the following declaration signed by the insured:⁹⁴

I understand that the effect of my designating a beneficiary irrevocably is that, under the provisions of the *Insurance Act*, while the beneficiary is living, I may not alter or revoke the designation without the consent of the beneficiary and I may not assign, exercise rights under or in respect of, surrender or otherwise deal with the contract without the consent of the beneficiary.

It must also contain the following declaration signed by the agent:

I certify that I have fully explained to the insured the nature and effect of making an irrevocable designation of beneficiary and such explanation was given to the insured not in the presence of the beneficiary and that the insured indicated that he was aware of the irrevocable nature of the designation so made by him.

EXAMPLE

Robert and Edna separated and signed a Separation Agreement which included a promise by Robert to make and keep Edna as beneficiary of his life insurance policy until he no longer had to pay her child support. To reduce the chances of this not happening, Edna's lawyer asked to have Robert sign a change of beneficiary form making Edna the irrevocable beneficiary of his policy. The lawyer then sent the signed form to the insurer head office and asked them to acknowledge receipt, thereby putting the irrevocable nature of the designation into effect.

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93. Insurance Act, RSBC 2012, c 1, s. 60, 66, 67 and 69 (life insurance), 118, 123, 125 and 126 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 661, 667, 668 and 670 (life insurance), 725, 730, 732 and 733 (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.153, 159, 160 and 162 (life insurance); Insurance Act, The, CCSM c I40, s. 168, 174, 175 and 177 (life insurance), 224.1, 227, 228.1 and 228.2 (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 191, 197, 198 and 200 (life insurance), 314.1, 316, 317.1 and 317.2 (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.152, 158, 159 and 161 (life insurance); Insurance Act, RSNS 1989, c 231, s.193, 199, 200 and 202 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 139, 145, 146 and 148 (life insurance); Life Insurance Act, RSNL 1990, c L-14, s. 22, 28, 29 and 31; Insurance Act, RSY 2002, c 119, s. 96, 102, 103 and 105 (life insurance); Insurance Act, RSNWT 1988, c I-4, s. 89, 95, 96 and 98 (life insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 89, 95, 96 and 98 (life insurance).
94. Insurance Act, RSNS 1989, c 231, s 193.

The designation of an irrevocable beneficiary, even though not of the “preferred beneficiary class,” also renders the policy exempt from execution of judgment and seizure.⁹⁵

2.1.4.2 Restriction in legislative definition of beneficiary

It is important to note that the term “beneficiary” as contained in provincial insurance legislation has a restricted meaning for some legal purposes. For example, the different *Insurance Acts* define “beneficiary” as “a person, other than the insured or the insured’s personal representative to whom or for whose benefit insurance money is made payable in a policy or by a declaration.”⁹⁶

Policyholders may also choose to designate their estate as the recipient of the insurance benefits. This is the subject of the second part of the restricted definition of “beneficiary.” The personal representative referred to in the definition is the executor or estate trustee, and they do not meet the statutory definition of “beneficiary” of the insurance. Proceeds payable to the estate⁹⁷ would be collected by the executor and distributed according to the policyholder’s will or the relevant provincial law if the policyholder was intestate.

EXAMPLE

Ted owns a policy on the life of his wife Laura, and has named himself as the beneficiary. Ted is the policyholder i.e., the person who entered into the policy with the insurer. Ted therefore does not qualify as a “beneficiary” under the statutory definition. He will still receive the insurance money if Laura dies. If Laura owned the policy on her life, so that she was both the insured, as well as the life insured, and she named Ted as her beneficiary, he would qualify as a “beneficiary” under the legislative definition.

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95. Insurance Act, RSBC 2012, c 1, s. 60 (life insurance), 118 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 661 (life insurance), 725 (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.153 (life insurance); Insurance Act, The, CCSM c I40, s. 168 (life insurance), 224.1 (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 191 (life insurance), 314.1 (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.152 (life insurance); Insurance Act, RSNS 1989, c 231, s.193 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 139 (life insurance); Life Insurance Act, RSNL 1990, c L-14, s. 22; Insurance Act, RSY 2002, c 119, s. 96 (life insurance); Insurance Act, RSNWT 1988, c I-4, s. 89 (life insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 89 (life insurance).
96. Insurance Act, RSO 1990, c I-8, s.171; Insurance Act, RSBC 2012, c 1, s. 37; Insurance Act, RSA 2000, c I-3, s. 637; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 133; The Insurance Act, CCSM c 140, s. 148; Insurance Act, RSNB 1973, c I-12, s. 132; Insurance Act, RSPEI 1988, c I-4, s. 119; Insurance Act, RSNS 1989, c 231, s. 173; Life Insurance Act, RSNL 1990, c L-14, s. 2; Insurance Act, RSNWT 1988, c I-4, s. 69; Insurance Act, RSNWT 1988 (Nu.), c I-4, s. 69; Insurance Act, RSY 2002, c 119, s. 76.
97. Insurance Act, RSO 1990, c I-8, s. 190; Insurance Act, RSBC 2012, c 1, s.59; Insurance Act, RSA 2000, c I-3, s. 660; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 152; The Insurance Act, CCSM c 140, s. 167; Insurance Act, RSNB 1973, c I-12, s. 151; Insurance Act, RSPEI 1988, c I-4, s. 138; Insurance Act, RSNS 1989, c 231, s. 192; Life Insurance Act, RSNL 1990, c L-14, s. 21; Insurance Act, RSNWT 1988, c I-4, s. 88; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 88; Insurance Act, RSY 2002, c 119, s. 95.

Meeting the statutory definition of beneficiary could be very important in determining the protection the policy would enjoy from creditors during life insured's lifetime, and the protection the proceeds might enjoy upon her death. Policyholders who do not qualify under the legislative definition of "beneficiary" receive the insurance money in their capacity as owner of the policy.⁹⁸

In the common law jurisdictions, it is the relationship between the life insured and the beneficiary, not between the policyholder and beneficiary, which is crucial to creating creditor protection.⁹⁹ In the case of the death of the life insured under the policy, for the death benefits not to be paid through the estate of the policyholder (and his creditors, as the case may be), the death benefits must be payable to a beneficiary. The policyholder or his estate does not qualify as a "beneficiary" under the relevant *Insurance Act*.¹⁰⁰

The following example illustrates how these provisions might operate to protect the insurance proceeds and the policy.

EXAMPLE

Rick purchases a policy on his own life. He is both the policyholder and life insured. He designates his spouse Renee as the beneficiary. She qualifies as a "beneficiary" under the statutory definition, since she is not the policyholder. The proceeds are therefore presumed to be protected from the creditors of Rick's estate. In addition, since Renee is the spouse of the life insured (Rick), Renee is also within the protected class of beneficiaries. Accordingly, the rights and interests of Rick in the contract itself during his lifetime are also exempt from execution or seizure.

2.1.4.3 Loss of protection

The designation of a beneficiary, including a protected class beneficiary, is subject to being set aside and ignored if it is made in an attempt to defeat, delay, or hinder creditors. This is an aspect of bankruptcy and insolvency law and fraudulent conveyances, and beyond the scope of this Chapter.

98. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002. p. 74.

99. In Québec, it is the relationship between the policyholder and the beneficiary that determines if a policy is creditor protected. See Civil Code of Québec, CQLR c C-1991, art. 2457.

100. Insurance Act, RSO 1990, c I-8, s. 171(1); Insurance Act, RSBC 2012, c 1, s. 37; Insurance Act, RSA 2000, c I-3, s. 637; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 133; The Insurance Act, CCSM c 140, s. 148; Insurance Act, RSNB 1973, c I-12, s. 132; Insurance Act, RSPEI 1988, c I-4, s. 119; Insurance Act, RSNS 1989, c 231, s. 173; Life Insurance Act, RSNL 1990, c L-14, s. 2c; Insurance Act, RSNWT 1988, c I-4, s. 69; Insurance Act, RSNWT 1988 (Nu.), c I-4, s. 69; Insurance Act, RSY 2002, c 119, s. 76. The statutory definition of "beneficiary" excludes the "insured" (policyholder).

The important principle is that designations that are made in an attempt to defeat creditors may be subject to challenge, despite the insurance provisions. The same would apply to the purchase of a life annuity or segregated funds, which qualifies as life insurance and could otherwise normally be protected.

EXAMPLE (cont.)

Rick owns a life policy with a very large cash value payable to his estate. He learns that a lawsuit from a business supplier has gone against him, and the creditor is about to obtain a judgment against him, so he designates his son Roger as a beneficiary. Roger is within the protected family class of beneficiaries, but the timing of Rick's action shows it was intended to frustrate his supplier's claim. Therefore, the designation may be subject to challenge.

2.1.4.4 Contingent beneficiary

It is also possible to name a “contingent,” also called secondary beneficiary, to address the possibility that the primary beneficiary might die before the life insured.

If there are multiple beneficiaries (primary or contingent) and one or more die before the life insured, the policy provisions, beneficiary designation form provisions (also part of the policy) or statutory provisions¹⁰¹ in default of policy provisions, may determine how the proceeds are re-distributed. If there is no valid primary or contingent beneficiary designation in effect on the death of the life insured, the insurance proceeds will be paid to the current policyholder or to their estate if they are deceased.

2.1.5 Group insurance policies

Insurance companies also offer group insurance policies, insuring the lives or health of a defined pool of individuals (and often their spouses and dependents) under one policy. The pool usually consists of employees or members of a group such as a union or association with a clearly definable and controlled membership.

101. Insurance Act, RSO 1990, c I-8, s. 194; Insurance Act, RSBC 2012, c 1, s. 63; Insurance Act, RSA 2000, c I-3, s. 664; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 156; The Insurance Act, CCSM c 140, s. 171; Insurance Act, RSNB 1973, c I-12, s. 155; Insurance Act, RSPEI 1988, c I-4, s. 142; Insurance Act, RSNS 1989, c 231, s. 196; Life Insurance Act, RSNL 1990, c L-14, s. 25; Insurance Act, RSNWT 1988, c I-4, s. 92; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 92; Insurance Act, RSY 2002, c 119, s. 99.

2.1.5.1 Plan sponsor

Group plans are arranged by a plan sponsor. The sponsor may be the employer, or a union, or professional association, or some other entity representing the group. It is the sponsor (called the group insured, or group policyholder) who enters into the master contract/policy with the insurer. In accordance with normal contract law, it is therefore the group policyholder who determines through the policy provisions what the insurance benefits will be for members of the group.¹⁰²

2.1.5.2 Insurer

The life insurance company providing group insurance benefits does not have a contract with each individual member of the group. Instead, as mentioned, they contract with the plan sponsor, known as the group policyholder.

2.1.5.3 Members and scope of coverage to other insured persons

Under group policies, the person or member whose life is insured is known as the “group life insured.”

Group plans define who is eligible for coverage, which typically includes the members of the group and their families.

In the case of employer-sponsored plans, some basic coverage provided on the employee will be mandatory. Coverage may also include spouses, and children typically further defined by age or financial dependency, or educational status (as fulltime students).

Many plans offer the ability to apply for “optional” increased insurance coverage, which is subject to individual underwriting.

One reason membership in an employee group plan is mandatory is so that the insurer can count on a relatively constant number of lives, upon which the premiums may be calculated. Another reason is to prevent the “anti-selection of the risks.” Enrolling in the plan usually must happen within a defined short time after gaining employee status. Subject to the provisions of the plan, making coverage changes is usually limited to an annual event, or perhaps to the times when there are life changes in the group life insured’s situation, such as marriage, births or adoptions. This limits the changes in the coverage in force, which reduces the amount of premium recalculation that must be done to price the annual renewal.

102. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002. p. 216, 217.

2.1.5.4 Beneficiaries

Although not parties to the group master policy, under provincial insurance legislation,¹⁰³ the group person insured may designate beneficiaries to receive the insurance benefit for which they are the life insured.

2.2 Formation of policy

In Common Law, a contract is not formed until there is both an agreement as to what is being contracted for, i.e., a meeting of the minds about the insurance policy's subject matter and an exchange of value, including a promise, to make the insurance policy binding. With life insurance, the insurer is simply promising to pay the defined insurance benefit if the insured pays the premium.

2.2.1 Rules about forming an individual insurance contract

The process of forming any contract is often described as having two steps, called “offer” and “acceptance.” The offer may be outstanding for a limited period of time, according to its terms. If not accepted, it may be withdrawn.

With an insurance contract, the concept of offer and acceptance is unique. An insurance agent presenting a proposal to a potential client is not representative of an offer of insurance in the standard offer-acceptance principles of contracting. Rather, in practice, the completion of an insurance application by an individual is generally considered an offer where the individual becomes the offeror. Then, in practice, the offer is generally accepted when the insurance carrier issues the contract and the contract is delivered to the applicant. However, under the law of the Canadian common law jurisdictions, it is the insurer's tender of the policy which constitutes the “offer”, and the “acceptance” takes place only when the applicant decides to take (receive) the policy. Tender of delivery by the insurer is its offer and indicates its willingness to insure the risk not a binding contract, which is consummated only when the insured accepts the policy on delivery.

103. Insurance Act, RSO 1990, c I-8, s. 37; Insurance Act, RSBC 2012, c 1, s. 37; Insurance Act, RSA 2000, c I-3, s. 637; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 133; The Insurance Act, CCSM c 140, s. 148; Insurance Act, RSNB 1973, c I-12, s. 132; Insurance Act, RSPEI 1988, c I-4, s. 119; Insurance Act, RSNS 1989, c 231, s. 173; Life Insurance Act, RSNL 1990, c L-14, s. 2; Insurance Act, RSNWT 1988, c I-4, s. 69; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 69; Insurance Act, RSY 2002, c 119, s. 76. Definition of “insured” means group life insured when making beneficiary declaration.

The insurer and the applicant have clearly effected the contract, and that is the point of view where it may be said that the contract is “made”¹⁰⁴.

In comparison with ordinary contracts, life insurance policies have several additional requirements before they are considered to be valid and in effect.

The Sections below explain the rules:

- Application for insurance and representation of risk;
- Temporary or conditional insurance coverage;
- Changes in insurability;
- Acceptance of application by insurer;
- Payment of initial premium;
- Delivery of policy.

2.2.1.1 Application for insurance and representation of risk

The application form completed by the applicant and proposed life insured, with the assistance of the agent, is an important part of forming the policy. It is the policyholder and the insurer who are the parties to the policy; but the role of the agent is very important, since it is his role to help the applicant understand and correctly answer the questions.

It is crucial that the agent not paraphrase or change the wording of the questions created by the insurer (which can be lengthy), so that the response given is as complete and accurate as possible, leading to no doubt that the risk to be underwritten has been completely disclosed. This allows the insurer to adequately assess the risk it is about to underwrite.

104. David NORWOOD and John P. WEIR, *Norwood on Life Insurance Law in Canada*, 3rd ed., Toronto, Carswell, 2002, pp. 94 to 96. A life insurance contract requires both delivery of the policy and payment of the initial premium before acceptance is complete and the contract effective. An accident and sickness insurance contract only requires delivery of the policy, whether or not the first premium is paid (Richard HAYLES, *Disability – Canadian Law and Business Practice*, Toronto, Carswell, 1998, pp. 106, 146, 147, 172, 186-188 ; Eric J. SCHJERNING, *Disability Insurance Law in Canada*, 2nd ed., Toronto, Thomson, pp. 22 and 23). See: Insurance Act, RSBC 2012, c 1, s. 48 (life insurance and s. 106 (accident and sickness insurance); Insurance Act, RSA 2000, c. I-3, s. 649 (life insurance) and s. 714 (accident and sickness insurance); Saskatchewan Insurance Act, The, RSS 1978, c S-26, s. 142 (life insurance) and s. 237 (accident and sickness insurance); Insurance Act, The, CCSM c140, s. 157 (life insurance) and s. 217.4(2) (accident and sickness insurance); Insurance Act, RSO 1990, c I.8, s. 180 (life) and s. 303 (accident and sickness); Insurance Act, RSNB 1973, c I-12, s. 141 (life insurance) and s. 197 (accident and sickness insurance) ; Insurance Act, RSNS 1989, c 231, s. 77 (accident and sickness insurance) and s. 182 (life insurance); Insurance Act, RSPEI 1988, c. I-4, s. 128 (life insurance) and s. 186 (accident and sickness insurance); Life Insurance Act, RSNL 1990, c. L-14, s. 11 and Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 15 ; Insurance Act, RSY 2002, c 119, s. 95 (life insurance) and s. 187 (accident and sickness insurance) ; Insurance Act, RSNWT 1988, c I-4, s. 78 (life insurance) and s. 180 (accident and sickness insurance); Insurance Act, RSNWT (Nu) 1988, c. I-4, s. s. 78 (life insurance) and s. 180 (accident and sickness insurance).

The answers recorded in the application are also the benchmark against which “changes in insurability” are later measured when the insurance policy is issued.

EXAMPLE

The question on the life application form specifically asked: “Have you ever been treated for or had any known indication of disease or disorder of the brain or nervous system, such as...” and then listed 21 separate symptoms, conditions, diseases, or problems. Georgina, the agent, wanting to save time, just asked the proposed life insured: “*You don’t have any problems with your nerves, or brain tumours or anything, do you?*” The validity of the resulting policy will be open to challenge, and if anything goes wrong Georgina will be involved in the lawsuit for failing to perform her duties.

All of the answers provided by the applicant (and the proposed life insured when the proposed life insured is different from the applicant) on both the application form and any additional document such as a questionnaire constitute representations to the insurer that it will rely upon during the underwriting process. Policy applicants and the proposed life insured are asked to warrant the accuracy and completeness of their answers by signing the application and other documents after completion of the application.

2.2.1.2 Temporary insurance¹⁰⁵

An applicant may be able to obtain temporary coverage during the underwriting process. If he can answer “no” to three or four temporary insurance questions confirming his good health and that he has not been in hospital or ill, this separate insurance agreement can provide limited insurance coverage, typically for 90 days. It will expire once the policy applied for is approved, or declined, and is subject to terms and conditions outlined in a separate temporary coverage agreement. If the proposed insured person dies before underwriting is completed or the policy applied for is issued, the insurer may be obligated to pay a death benefit under the provisions of the temporary coverage.

The amount of temporary insurance coverage available varies between insurers, but is typically set as the lesser of the face amount being applied for, or a maximum limit set by the insurer.

105. There may be other forms of temporary insurance. However, the description given is suited for individual life insurance which is the most common scenario.

2.2.1.3 Changes in insurability

If there has been a change in insurability between application and policy delivery, the policy does not take effect, even if it was delivered and the first premium taken.¹⁰⁶ This is because a change in insurability means the risk disclosed in the application and underwritten by the insurance company is different than the actual risk present at the time the policy is delivered to the policyholder. The insurer is entitled to know and consider any change in risk before being bound to the coverage. This is the case whether the policyholder and the life insured knew about the change in insurability, or not. How difficult it may be to prove that a change in insurability occurred between the application and time the policy is issued will vary from case to case.

Both the policyholder and the proposed insured person have a duty to disclose to the insurer any change in insurability that is within their knowledge, from the time of making of the application until the policy is delivered. It may be hard for an applicant to know what a “change in insurability” might mean, since that is essentially an underwriting concept. This could relate to any aspect of insurability, such as a significant change in the life insured’s health or the prescription medication he or she takes.

EXAMPLE

George applied for life insurance in October. In November, he went to his physician to get a routine influenza shot. The insurance policy was to be delivered in early December. If George is asked by the agent about changes in his insurability, he could truthfully answer “none,” even if he is not entirely sure what that means. But if George is asked whether anything has happened that would change an answer in his application, he must answer “yes” and disclose his medical appointment and influenza shot, since applications typically ask about the date of the last visit to the doctor and any treatment prescribed or recommended. The insurance company can then decide if the updated information changes anything; in this case, they would give the agent permission to go ahead and deliver the policy.



2.2.1.4 Approval of application by insurer

If the insurer decides to make an offer of insurance, they will notify the applicant of their underwriting decision and prepare a policy to be delivered if the applicant indicates they wish to go ahead. The policy tendered may include changes from the presumed terms and conditions the applicant contemplated when they applied. This may include a different underwriting classification,

106. Insurance Act, RSO 1990, c I-8, ss. 181, 183; Insurance Act, RSBC 2012, c 1, s. 48; Insurance Act, RSA 2000, c I-3, s. 649; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 142; The Insurance Act, CCSM, c 140, s. 157; Insurance Act, RSNB 1973, c I-12, s. 141; Insurance Act, RSPEI 1988, c I-4, s. 128; Insurance Act, RSNS 1989, c 231, s. 182; Life Insurance Act, RSNL 1990, c L-14, s. 11; Insurance Act, RSNWT 1988, c I-4, s. 78; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 78; Insurance Act, RSY 2002, c 119, s. 85.

either better or worse than applied for. It could contain exclusions to the proposed coverage and changes to the premium to be paid by the applicant if the offer is accepted.

2.2.1.5 Delivery of policy

If the applicant indicates that they will accept the insurance policy offered, the policy will be printed out and sent to the agent for “delivery” to the applicant, together with any instructions relating to delivery requirements. If there are no delivery requirements and money has already been received, it may be sent directly to the applicant.¹⁰⁷

The policy is not in force until all delivery requirements have been obtained and the first premium paid. If a premium was submitted with the application, and the application is accepted, then the insurance comes into force on an effective date (the policy in-force date) determined by the insurer. Sometimes the applicant requests, and the insurer agrees, to backdate the policy in order to conserve a younger age of the life to be insured for premium calculation purposes. In such situations, the applicant will also have to pay the premiums for the backdated coverage.

If no premium has been submitted and the policy is being applied for as cash on delivery (COD), then the insurance will not be in force until payment is received by the insurer after the policy has been delivered.

2.3 Term and termination of policy

A policy may be annulled or cancelled either voluntarily by the owner or for limited specific reasons by the insurer (discussed in the Section *Termination by the insurer*). It may also come to an end and expire. The differences between these are discussed below.

2.3.1 Rescission: 10-day-free look

When an individual policy is delivered, the policyholder is said to have a “10-day free look.” This is to allow him time to review the policy to confirm that it is consistent with what was expected when he applied for the policy. During this time, he can change his mind and return the policy for a full refund. The policy is effectively annulled; the technical term is rescission, meaning the contract is withdrawn or rescinded. The terms of the policy will govern the contractual right to rescind the contract. Guideline G10 of the Canadian Life and Health Insurance Association (CLHIA)¹⁰⁸ calls for

107. Insurance Act, RSO 1990, c I-8, s. 232 (3); Insurance Act, RSBC 2012, c 1, s. 48 (1); Insurance Act, RSA 2000, c I-3, s. 522(1); The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 112; The Insurance Act, CCSM c 140, s. 125(1); Insurance Act, RSNB 1973, c I-12, s. 141(2); Insurance Act, RSPEI 1988, c I-4, s. 128(1); Insurance Act, RSNS 1989, c 231, s. 20; Life Insurance Act, RSNL 1990, c L-14, s. 11(2); Insurance Act, RSNWT 1988, c I-4, s. 51; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 51; Insurance Act, RSY 2002, c 119, s. 60.

108. Canadian Life and Health Insurance Association. *Guideline 10 – 10-day Insurance Contract Rescission Right*. [online]. Revised September 2009. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G10.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/$file/Guideline_G10.pdf)

this “10-day-free look” in the case of individual life insurance contracts and individual accident and sickness insurance contracts.¹⁰⁹ Therefore, a policyholder can rescind an insurance contract within 10 days of signing it, without penalty and with a reimbursement of the premiums paid.

For individual annuity contracts relating to segregated funds, there is also a 2-business-days rescission right under CLHIA’s Guideline G2 entitled “Individual Variable Insurance Contracts relating to Segregated Funds” (s. 4.1h).¹¹⁰

2.3.2 Surrender

Individual life policies are referred to as “unilateral” contracts, in that the individual policyholder can always cancel the policy at any time. A policyholder can “surrender” a policy at any time, resulting in a complete termination of rights under the policy for both the policyholder and any beneficiary. If the policy has cash surrender values (CSV), those will be paid out subsequently to the policy termination, once they are calculated.

Surrender does not necessarily result in a cash surrender value, because that will depend on the type of permanent insurance and policy funding levels; but even a renewable term policy may have unused/unearned premiums which insurers will return to the policyholder, in accordance with the terms of the policy.

2.3.3 Expiry or termination

A life insurance policy, or some coverage under it, may simply terminate in accordance with its terms. For example, a policy of term life insurance may have a finite duration of coverage for a number of years, or to a particular age at which point it expires. The coverage simply comes to an end as planned. Even guaranteed renewable and convertible term policies will have a limit, after which they cannot be converted to permanent insurance, and another age beyond which they cannot be renewed. They also have a termination date, at which point the policy and its coverage simply expire, in accordance with the terms of the policy.

2.4 Termination by the insurer

In some circumstances, life insurance policies can also be cancelled by the insurer before their coverage expires. Possible reasons are discussed in the following order:

- Termination for fraud, misrepresentation or concealment;
- Termination for non-payment of sickness or accident insurance premiums;
- Termination for non-payment of life insurance premiums.

109. Applies to individual life insurance and A&S. See CLHIA Guideline G10 for exclusions:
[https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G10.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/$file/Guideline_G10.pdf)
110. See: https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/page/E0DABC49378B65DE85257A5B0062D156!OpenDocument

2.4.1 Termination in the event of fraud, misrepresentation or intentional concealment

An applicant for insurance and/or the proposed insured person (if they are not the same person) commit insurance fraud when they do one of the following:

- Make a deliberate misstatement;
- Deliberately omit to inform the insurer of a material fact;
- Obtain insurance for which the policyholder or insured person does not qualify.

EXAMPLES

- Failing to disclose that the proposed insured person was recently treated for cancer;
 - Claiming to be a non-smoker when the person in fact smokes;
 - Claiming to need the insurance for personal reasons when in fact the policyholder intends to sell it to someone else.
- 

Unlike misrepresentation and concealment, fraud includes an intent to mislead the insurer. When fraud is involved, the incontestability period does not apply. If an applicant or the life insured made a misrepresentation or concealed some material fact in the course of the application, several outcomes are possible depending on whether the misrepresentation was innocent or fraudulent, and when it was discovered. This can arise during one of the following periods:

- During the application process;
- Within the first two years;
- After two years.

2.4.1.1 During the application process

If the applicant misrepresents some factual information, the insurer would be entitled to adjust the proposed coverage to that which the premium would have acquired if the truth had been known. Since no policy has been issued yet, it is really a question of whether the insurer wishes to continue gathering evidence of insurability, or whether they have lost confidence in the truthfulness or motivation of the applicant and wish to decline the application.

EXAMPLE

Josephine did not want to write her true age on the application form and said she was five years younger than she really is. When her agent verified the application form with her identification, he saw the misrepresentation of age, corrected the application and adjusted the coverage sought accordingly.



If a mistake in age was somehow not discovered until the policy was already in force, including because the applicant lied, the different *Insurance Acts* contains statutory protection against termination for misstatement of age.¹¹¹ The insurer would be entitled to amend the contract and adjust the coverage to match premiums paid (unless contractual age limits for policy coverage issued would be violated, in which case termination could be effected), or adjust the premiums to the correct amount for the true age.

2.4.1.2 Within the first two years

If a misrepresentation or concealment other than age that is in good faith is discovered during the first two years of the policy, the insurer would have the option of cancelling the policy. It would have to determine whether the discrepancy was significant enough to take action. This two year period is known as the statutory “incontestability” period.¹¹² If the insurer does not cancel the policy, it would remain in effect. After the expiry of the two-year period, the insurer can no longer cancel the policy for misrepresentation or concealment that was in good faith.

EXAMPLE

Jacob takes out a new life insurance policy in September. In answering the questions about tobacco usage, Jacob denies ever using any form of tobacco. He forgot that he smoked a cigar at the charitable golf tournament he participated in last month. A picture in the local paper shows him with a cigar in hand, celebrating with his winning foursome. His agent sees the picture, contacts Jacob and explains the risks he may be running by not clarifying his mistaken answer with the insurer. Jacob elects to complete a tobacco usage questionnaire, confirming his single usage of a cigar, and has his agent bring his mistake to the attention of the insurance company. The insurer decides to take no action. The two-year incontestability period ends and Jacob is now protected against the insurance company changing its mind about his inadvertent misrepresentation.

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111. There is statutory protection against cancellation for misstatements of age. Insurance Act, RSO 1990, c I-8, ss. 184, 186; Insurance Act, RSBC 2012, c 1, s. 52; Insurance Act, RSA 2000, c I-3, s. 655; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 149; The Insurance Act, CCSM c 140, s. 163; Insurance Act, RSNB 1973, c I-12, ss. 145, 147; Insurance Act, RSPEI 1988, c I-4, s. 132, 134; Insurance Act, RSNS 1989, c 231, s. 186, 188; Life Insurance Act, RSNL 1990, c L-14, s. 17; Insurance Act, RSNWT 1988, c I-4, s. 82, 84; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 82, 84; Insurance Act, RSY 2002, c 119, s. 89, 91.
112. Insurance Act, RSO 1990, c I-8, s. 309; Insurance Act, RSBC 2012, c 1, s. 52(2) (3), 53; Insurance Act, RSA 2000, c I-3, s. 653 (2) (3), 654; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 243; The Insurance Act, CCSM c 140, s. 161(3); Insurance Act, RSNB 1973, c I-12, ss. 145(3), 146; Insurance Act, RSPEI 1988, c I-4, s. 132(2) (3); Insurance Act, RSNS 1989, c 231, s. 83 (1) (2); Life Insurance Act, RSNL 1990, c L-14, s. 15 (1) (2) (3); Insurance Act, RSNWT 1988, c I-4, s. 82(2); Insurance Act, RSNWT 1988 (Nu), c I-4, s. 82(2); Insurance Act, RSY 2002, c 119, s. 89.

2.4.1.3 After two years

Once the policy has been in force for two years, the insurer can only cancel it based on a fraudulent misrepresentation or concealment. Insurance fraud is an attempt to get insurance that would otherwise not be offered, or to acquire it on better terms than the applicant was entitled to on a true statement of the facts. It is sometimes described as intentional deception or reckless disregard of the truth. The person answering insurance application questions either intentionally answers incorrectly or does so without caring if the answers are incomplete or untrue. An insurer may cancel an insurance policy at any time for fraud, including a claim for a death benefit. The incontestability period will not protect the policy.¹¹³

EXAMPLE

Arne dies of bowel cancer three years after buying a policy. A thorough review of his medical history in response to the claim for the death benefit reveals that Arne had a previous round of bowel surgery for cancer four months before he applied for the insurance. But he stated on the application that he had never had any indication of, or treatment for, cancer. Arne committed fraud – deliberate misrepresentation and concealment. The insurance company refuses to pay the death claim.

2.4.2 Termination for non-payment of sickness or accident insurance premiums

For insurance to remain in effect, the policyholder must pay premiums when they are due according to the insurance contract. If a policy has been issued or a renewal certificate has been delivered, even in error, and the premiums have not been paid, the policy will stay in force until a termination notice is sent.¹¹⁴ The insurer may terminate the policy for non-payment by mailing a postage pre-paid, registered, written notice of termination to the last known address of the

113. Insurance Act, RSBC 2012, c 1, s. 51 and 52 (life insurance), 111 and 112 (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 652 and 653 (life insurance), 719 and 720 (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.145 and 146 (life insurance), 242 and 243 (accident & sickness insurance); Insurance Act, The, CCSM c I40, s. 160 and 161 (life insurance), 219 and 220 (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 183 and 184 (life insurance), 308 and 309 (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.144 and 145 (life insurance), 202 and 203 (accident & sickness insurance); Insurance Act, RSNS 1989, c 231, s. 82 and 83 (accident & sickness insurance), 185 and 186 (life insurance); Insurance Act, RSPEI 1988, c I-4, s. 131 and 132 (life insurance), 191 and 192 (accident & sickness insurance); Life Insurance Act, RSNL 1990, c L-14, s. 14 and 15; Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 20 and 21; Insurance Act, RSY 2002, c 119, s. 88 and 89 (life insurance), 192 and 193 (accident & sickness insurance); Insurance Act, RSNWT 1988, c I-4, s. 81 and 82 (life insurance), 185 and 186 (accident & sickness insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 81 and 82 (life insurance), 185 and 186 (accident & sickness insurance).

114. See the following as an example, Accident and Sickness Insurance Act, RSNL 1990, c A-2, S. 9(5).

policyholder. The notice of termination will take effect and the coverage will end after 10 days' written notice measured from the day after it is mailed.

2.4.3 Termination for non-payment of life insurance premiums

If life insurance policy premiums are not paid in a timely fashion, any term life policy or permanent life policy with no cash values will also terminate, subject to a 30 days grace period.¹¹⁵

Agents should be aware of the specific termination features of a policy. A number of exceptions may exist to the termination for non-payment of premiums especially when the policy has a cash surrender value. The agent should always be aware of the termination features to properly guide his clients.

The cancellation is not final, however, since the insurer is obliged to reinstate the individual life insurance under the following conditions:

- The client applies for the reinstatement within two years of the date of the cancellation; and
- The insurer determines that the insured still meets the insurability conditions of the cancelled contract.¹¹⁶

115. Insurance Act, RSBC 2012, c 1, s. 50; Insurance Act, RSA 2000, c I-3, s. 651; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 144; Insurance Act, The, CCSM c I40, s. 159; Insurance Act, RSO 1990, c I.8, s. 182; Insurance Act, RSNB 1973, c I-12, s. 143; Insurance Act, RSNS 1989, c 231, s. 184; Insurance Act, RSPEI 1988, c I-4, s. 130; Life Insurance Act, RSNL 1990, c L-14, s. 13; Insurance Act, RSY 2002, c 119, s. 87; Insurance Act, RSNWT 1988, c I-4, s. 80; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 80. In British Columbia, Alberta, Manitoba and Ontario, if a contract lapses at the end of a period of grace because a premium due at the beginning of the period of grace was not paid, the contract may be reinstated by payment of the overdue premium within a further period of 30 days after the end of the period of grace, but only if the person whose life was insured under the contract is alive at the time payment is made.

116. Insurance Act, RSBC 2012, c 1, ss. 37, 56 and 57 (life) and ss. 92 and 113 (accident/sickness); Insurance Act, RSA 2000, c I-3, ss. 637, 657 and 658 (life) and ss. 695 and 721 (accident/sickness); The Saskatchewan Insurance Act, RSS 1978, c S-26, ss. 133, 150 and 151 (life) and ss. 226 and 244 (accident/sickness); Insurance Act, The, CCSM c I40, ss. 148, 165 and 166 (life) and ss. 203 and 221 (accident/sickness); Insurance Act, RSO 1990, c I.8, ss. 171, 188 and 189 (life) and ss. 290 and 310 (accident/sickness); Insurance Act, RSNB 1973, c I-12, ss. 132, 149 and 150 (life) and ss. 186 and 204 (accident/sickness); Insurance Act, RSNS 1989, c 231, ss. 64 and 84 (accident/sickness) and ss. 173, 190 and 191 (life); Insurance Act, RSPEI 1988, c I-4, ss. 119, 136 and 137 (life) and ss. 174 and 193 (accident/sickness); Life Insurance Act, RSNL 1990, c L-14, ss. 2, 19 and 20; Accident and Sickness Insurance Act, RSNL 1990, c A-2, ss. 2 and 22; Insurance Act, RSY 2002, c 119, ss. 76, 93 and 94 (life) and ss. 174 and 194 (accident/sickness); Insurance Act, RSNWT 1988, c I-4, ss. 69, 86 and 87 (life) and ss. 167 and 187 (accident/sickness); Insurance Act, RSNWT (Nu) 1988, c I-4, ss. 69, 86 and 87 (life) and ss. 167 and 187 (accident/sickness).

2.5 Assignment of a policy

2.5.1 Absolute assignment

“Absolute assignment” of a policy by the policyholder is the transfer of ownership of the policy. Agents should investigate the possible consequences of an assignment before advising clients about insurance policy transfers. A change in ownership is a disposition for tax purposes, and may result in taxable gains for the assignor. The person who becomes the new owner, the absolute assignee, has all the rights of the original policyholder (the assignee), including the right to designate a new beneficiary or to withdraw money from the policy.

The right to assign a policy is not unlimited in all provinces and territories. In some provinces certain forms of trading, buying and selling life insurance policies are considered “trafficking” and are prohibited.¹¹⁷

These are variously called viatical settlements, or life settlements, or Stranger Owned Life Insurance (STOLI). Individuals may be induced to sell their existing policies during life as a means of raising necessary funds.¹¹⁸ Alternatively, they may be induced to apply for new life insurance, and then assign ownership of the policy to a third party in exchange for payment.

2.5.2 Collateral assignment

Some kinds of permanent policies may have substantial cash surrender values, in addition to a death benefit. This means they may be acceptable to third party lenders as additional collateral for a loan. This is called “collateral assignment,” in contrast to “absolute assignment” discussed earlier. This means the policyholder assigns ownership of the policy to the lender, but only as collateral. This restricts the policyholder from doing anything with their policy that could affect the value of the security.

When the loan is paid, the collateral assignee releases their right to the policy and full ownership reverts to the original policyholder. If the life insured dies, the lender/collateral assignee is only entitled to enough of the policy death benefit to retire the loan balance.¹¹⁹ The remainder, if any, belongs to the insurance beneficiary.

117. Insurance Act, RSO 1990, c I-8, s. 115; Insurance Act, RSBC 2012, c 1, s. 152; Insurance Act, RSA 2000, c I-3, s. 784; The Insurance Act, CCSM c 140, s. 90; Insurance Act, RSPEI 1988, c I-4, s. 73; Insurance Companies Act, RSNL 1990, c I-10; Insurance Act, RSNWT 1988, c I-4, s. 32; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 32; Insurance Act, RSY 2002, c 119, s. 41.

118. Canadian center for elder law studies/British Columbia Law Institute. *Study paper on viatical settlements*. [online]. Revised 2006. [Consulted July 21, 2017]. http://www.bcli.org/sites/default/files/Viatical_Settlements_Study_Paper.pdf

119. Such repayment is provided for under standard collateral assignment agreements between borrower and lender.

2.6 Product specific policy provisions

This part of the Chapter will review the specific policy provisions of the following products:

- Individual life insurance;
- Group life and health insurance;
- Individual and group accident and sickness insurance;
- Annuities;
- Segregated funds (individual variable insurance policies);
- Pension products and other group annuity products.

2.6.1 Individual life insurance

Individual life insurance policies come in many different forms. However, all contain basic provisions, required by provincial insurance law,¹²⁰ which are necessary to define and document what the policy covers and what it will cost. Since the insurer is required to issue an insurance policy to the policyholder,¹²¹ the latter will be aware of the terms and conditions contained in the policy.

These provisions are typically summarized on a page containing the policy particulars.¹²² This includes:

- The name or a sufficient description of the insured and of the person whose life is insured;
- The amount, or the method of determining the amount, of the insurance proceeds payable by the insurer, and the conditions under which the amount becomes payable;
- The amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;
- Whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;

120. Insurance Act, RSO 1990, c I-8, s. 175; Insurance Act, RSBC 2012, c 1, s. 42; Insurance Act, RSA 2000, c I-3, s. 643; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 137; The Insurance Act, CCSM c 140, s. 152; Insurance Act, RSNB 1973, c I-12, s. 136; Insurance Act, RSPEI 1988, c I-4, s. 123; Insurance Act, RSNS 1989, c 231, s. 177; Life Insurance Act, RSNL 1990, c L-14, s. 6; Insurance Act, RSNWT 1988, c I-4, s. 73; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 73; Insurance Act, RSY 2002, c 119, s. 80.

121. Insurance Act, RSO 1990, c I-8, s. 174; Insurance Act, RSBC 2012, c 1, s. 41; Insurance Act, RSA 2000, c I-3, s. 642; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 136; The Insurance Act, CCSM c 140, s. 151; Insurance Act, RSNB 1973, c I-12, s. 135; Insurance Act, RSPEI 1988, c I-4, s. 122; Insurance Act, RSNS 1989, c 231, s. 176; Life Insurance Act, RSNL 1990, c L-14, s. 5; Insurance Act, RSNWT 1988, c I-4, s. 72; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 72; Insurance Act, RSY 2002, c 119, s. 79.

122. Insurance Act, RSO 1990, c I-8, s. 175; Insurance Act, RSBC 2012, c 1, s. 42; Insurance Act, RSA 2000, c I-3, s. 643; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 137; The Insurance Act, CCSM c 140, s. 152; Insurance Act, RSNB 1973, c I-12, s. 136; Insurance Act, RSPEI 1988, c I-4, s. 123; Insurance Act, RSNS 1989, c 231, s. 177; Life Insurance Act, RSNL 1990, c L-14, s. 6; Insurance Act, RSNWT 1988, c I-4, s. 73; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 73; Insurance Act, RSY 2002, c 119, s. 80.

- The conditions upon which the contract may be reinstated if it lapses;
- The options, if any:
 - of surrendering the contract for cash;
 - of obtaining a loan or an advance payment of the insurance money; and
 - of obtaining paid-up or extended insurance.

If the policy grants contractual rights so that it can be renewed, or converted, the terms and conditions governing those rights must be explained. These terms must include whether the cost of the coverage on renewal is fixed in advance or not and how it would be determined on renewal or conversion.

2.6.1.1 Statutory conditions

The provincial and territorial insurance acts exert considerable control over provisions that are incorporated into life policies. This includes a requirement that all the policy terms and conditions must be set out in full when the policy is issued.¹²³ The following documents constitute the entire agreement between the parties:¹²⁴

- Application;
- Policy;
- Any document attached to the insurance policy when issued;
- Any amendment to the policy agreed to in writing after the policy is issued.

2.6.1.2 Reduction

Some policies contain customized provisions that affect the coverage offered, or the amounts payable under a particular coverage.

Some policies have a death benefit that reduces in amount as the life insured attains stated ages. A contractual reduction in face amount does not affect the insurer liability for payment upon death, only the amount to be paid.

123. Insurance Act, RSO 1990, c I-8, s. 175; Insurance Act, RSBC 2012, c 1, s. 41; Insurance Act, RSA 2000, c I-3, s. 642; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 136; The Insurance Act, CCSM c 140, s. 151; Insurance Act, RSNB 1973, c I-12, s. 135; Insurance Act, RSPEI 1988, c I-4, s. 122; Insurance Act, RSNS 1989, c 231, s.176; Life Insurance Act, RSNL 1990, c L-14, s. 7; Insurance Act, RSNWT 1988, c I-4, s. 72; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 72; Insurance Act, RSY 2002, c 119, s. 79.

124. Insurance Act, RSO 1990, c I-8, s. 174; Insurance Act, RSBC 2012, c 1, s. 41; Insurance Act, RSA 2000, c I-3, s. 642; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 136; The Insurance Act, CCSM c 140, s. 151; Insurance Act, RSNB 1973, c I-12, s. 135; Insurance Act, RSPEI 1988, c I-4, s. 122; Insurance Act, RSNS 1989, c 231, s. 176; Life Insurance Act, RSNL 1990, c L-14, s. 6; Insurance Act, RSNWT 1988, c I-4, s. 72; Insurance Act, RSNWT 1988, c I-4, s. 72; Insurance Act, RSY 2002, c 119, s. 79.

 EXAMPLE

Regina purchased a reducing term policy which ran to age 70; the policy death benefit contractually reduced to \$25,000 at age 60, further reduced to \$10,000 at age 65, and will terminate coverage at age 70.

**2.6.1.3 Exclusion**

In contrast to a reduction, an exclusion is a change to the coverage provided. Death caused by some exclusion in the insurance policy would not result in any policy benefits.

 EXAMPLE

Nicky purchased a large individual life policy; but due to her having a pilot's licence and her frequent involvement with both flying in private planes and practising underwater sports, the policy contained two exclusions: (1) death caused by or as a consequence of underwater diving and (2) death caused by flying in a plane as other than a fare-paying passenger, i.e., as a pilot or crew member.

**2.6.1.4 Exclusions—contractual or imposed by law**

Contractual exclusions are specified in the policy. Exclusions imposed by law are established by decisions made by the courts. They may relate to actions that are deemed a violation of public order, or because the beneficiary or insured caused or ran the very risk insured against, which constitutes grounds for denying entitlement to insurance proceeds.

 EXAMPLE

Ron owned and was the beneficiary of a life policy on his wife, Melissa. He was convicted of her murder. In Common Law, it is against public order to permit wrongdoers to profit from their crime. Ron would be disqualified from being entitled to the death benefit. Melissa's children, on the other hand, would benefit from any insurance owned by her and payable to them, because they were innocent parties.



2.6.1.5 Pre-existing condition exclusions

Some policies also contain exclusions for death caused by or related to pre-existing conditions. This exclusion is more common under disability insurance, where diagnosed medical conditions that are not usually life threatening can ultimately cause a person's disability. Disability benefits might be excluded and unavailable to compensate a related disability suffered by someone with a pre-existing hearing loss, or a history of back problems, even if the conditions had never caused time off work before they applied for the insurance.

2.6.1.6 Suicide clause

Committing or attempting to commit suicide is not illegal but a policy does not have to provide a benefit if a person insured commits suicide. Most individual policies will pay, but restrict paying the death benefit, if death is caused by suicide or attempting suicide within the first two years that the policy is in effect or within two years of any reinstatement. After a policy has been in effect for a stipulated period of time, typically two years, the exclusion provision ends and the death benefit is payable even if death is due to suicide. Provincial and territorial insurance statutes confirm that this is not a violation of public order.¹²⁵

2.6.1.7 Living benefits

Some insurance policies entitle the policyholder to receive an advance payment of a portion of the death benefit if the person whose life is insured is diagnosed with a terminal illness and has only a short time to live. The time period can vary; usually death is expected in less than two years. Some other policies may allow the policyholder to withdraw cash values, if any are available, on a tax-free basis if the life insured is totally disabled.

2.6.1.8 Cash surrender value (CSV)

Some kinds of permanent insurance provide for the buildup of cash values on either a contractually guaranteed basis, or on a non-guaranteed variable basis dependent upon the performance of insurance policy investment accounts.

If the policy is cancelled by the policyholder, the amount that they will receive in cash is called the cash surrender value (CSV). It will be reduced by things such as outstanding policy loans, unpaid premiums or insurance policy surrender charges.

125. Insurance Act, RSO 1990, c I-8, s. 188; Insurance Act, RSBC 2012, c 1, s. 56; Insurance Act, RSA 2000, c I-3, s. 657; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 150; The Insurance Act, CCSM c 140, s. 165; Insurance Act, RSNB 1973, c I-12, s. 149; Insurance Act, RSPEI 1988, c I-4, s. 136; Insurance Act, RSNS 1989, c 231, s. 190; Life Insurance Act, RSNL 1990, c L-14, s. 19; Insurance Act, RSNWT 1988, c I-4, s. 86; Insurance Act, RSNWT 1988, c I-4, s. 86; Insurance Act, RSY 2002, c 119, s. 93.

2.6.1.9 Distinction between collateral loans and insurance policy loans

When a third party lender takes a collateral assignment of a policy as security, there is no limit on the size of the loan apart from those established by the lender's loan underwriting criteria. If granted, the size of the loan will usually be a percentage of the value of the CSV. The percentage may be larger if the policy is invested in fixed income investments, rather than equity based funds.

In contrast, an insurance policy loan has limits created by the taxation of life policy transactions. If too much money is borrowed on an insurance policy, it can trigger policy gains taxable as income to the policyholder. Agents need to be aware of this and inquire about the available loan amount and any taxable disposition before processing the policy loan paperwork on behalf of the policyholder. The insurer can readily provide this information.

2.6.1.10 Riders (Policy amendments)

With the agreement of the insurer, an insurance policy may have additional coverages added to it through documents sometimes called "riders," more commonly now referred to as "additional" or "attached" benefits. These amendments may change existing benefits, or provide additional coverages (e.g., term life insurance coverages on the life insured or a new life insured such as their children).

2.6.2 Group life and health insurance

Group insurance means a type of insurance in which a single insurance policy, sometimes called a "master policy," covers specified people who can be called plan members (or participants), and their eligible dependents, against a specific risk or risks.

The plan sponsor, called the group policyholder (or in legislation called the group insured), is the entity that contracts with the insurer. As such, as a matter of contract law, they are the party that determines which benefits will be the subject matter of the policy. The group policyholder may have obligations to other individuals perhaps created by collective bargaining (e.g., to arrange benefits) but these obligations have no effect on the group master policy.

2.6.2.1 Determination of the plan member group

The group must be clearly defined so that entitlement to coverage can be readily determined. Employees are easily determined by an employer. Membership in a union, or professional association, such as chartered accountants in a particular province, is another easily determinable group.

2.6.2.2 Premiums and cost sharing

When the group policyholder is an employer, the employer is responsible for paying the premiums owed to the insurer (even though the cost sharing might be 50% by the employer and 50% by the employee). Non-payment of the premiums due under the master contract, perhaps by an employer in financial difficulty, can result in termination of the master contract. When the group policyholder is a professional corporation or professional association, the premiums are usually paid to the insurer directly by the members.

The premiums charged for group benefits are not guaranteed. The costs of coverages are reassessed based on group census data, which are compiled, tracked, and provided by the group policyholder and are averaged over the membership. The premiums can be changed annually by the insurer and are an annual subject of negotiation, subject to the insurer's arrangement with the group policyholder. The premium calculation takes into account the insurer's claims experience (i.e., the ratio between the premiums collected and the benefits paid).

EXAMPLE

Quality Corp. had a terrible year. Five young employees were injured or became disabled through sickness, and went on long-term disability (LTD) benefits. Upon renewal, the group benefits insurer determined that the premium for the LTD benefit coverage had to rise very substantially. The agent provides renewal terms to Quality Corp. and is asked questions on the changes to the premiums. The agent who has discussed renewal terms with the insurer informs his client that the insurer must set aside rather large reserves to fund a potential long term disability, especially if a claimant is young and in the early stage of their working life. Those costs must be passed along to the group plan.



2.6.2.3 Types of group insurance

Group plans can cover a wide array of benefits, including:

- Life insurance;
- Accidental death and dismemberment insurance;
- Short term disability and long term disability plans (income replacement);
- Critical illness coverage;
- Health care and dental care.¹²⁶

126. Extended healthcare would cover the cost of prescription drugs, health professional fees and medical devices, and can include items like glasses or contact lenses and hearing aids. Dental plans tend to cover the cost of regular maintenance like checkups and cleaning, but can also cover other dental services.

Whatever the private obligations that the plan sponsor may choose to assume towards its members, the relationship with the insurer and the financial obligations of the insurer are governed by the terms of the master group policy.

Coverage under these kinds of plans usually has defined annual dollar limits. The plan sponsor can adjust the coverage to suit their budget, and the age and preferences of their employee population. Many employers offer the employee a dollar budget to allocate to their own choice of coverage, called flexible benefits. The coverage required can sometimes be stipulated in a collective agreement between the employer and the union that represents the employees.

2.6.2.4 Administrative services only (ASO)

Some large employers prefer to fund the benefits for their employees themselves, rather than paying premiums to an insurer to transfer the risk and costs (self-insurance). However, the plan sponsor may choose to hire an insurer to process, adjudicate and administer claims and payments on their behalf. In that case, the insurer does not fund benefit payments. They are merely the conduit of funds provided by the employer. These plans are known as administrative services only (ASO) plans. Because employers with ASO plans are self-insuring, these are not insurance plans and they are not covered by provincial or territorial insurance statutes. Since July 1, 2014, long-term disability plans for federally regulated employees must be insured.¹²⁷

2.6.2.5 Certificates

When members join an insured group plan, they do not have any contractual connection with the insurer. Their entitlement to the master contract is limited in most provinces and territories. Instead, the insurer gives the employer (sponsor) certificates, in paper or electronic form, to deliver to the group members. Certificates contain individualized information for the group, based on information relayed to the insurer by the group policyholder. It is up to the employer or group sponsor to distribute the certificates. Provincial insurance statutes typically prescribe the information that must be provided. For instance, in the Ontario *Insurance Act* provides the following:¹²⁸

In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set forth the following particulars:

1. The name of the insurer and an identification of the contract.

127. Canada Labour Code, RSC 1985, c L-2, s. 239.2; Insurance Act, RSO 1990, c I-8, s. 115.1 (not in force yet).

128. Insurance Act, RSO 1990, c I-8, s. 177. See also: Insurance Act, RSBC 2012, c 1, s. 44; Insurance Act, RSA 2000, c I-3, s. 645; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 139; The Insurance Act, CCSM c 140, s. 154; Insurance Act, RSNB 1973, c I-12, s. 138; Insurance Act, RSPEI 1988, c I-4, s. 125; Insurance Act, RSNS 1989, c 231, s. 179; Life Insurance Act, RSNL 1990, c L-14, s 8; Insurance Act, RSNWT 1988, c I-4, s 75; Insurance Act, RSNWT 1988 (Nu), c I-4, s 75; Insurance Act, RSY 2002, c 119, s 82.

2. The amount, or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent upon, or related to, him or her.
3. The circumstances in which the insurance terminates and the rights, if any, upon such termination, of the group life insured or of any person whose life is insured under the contract as a person dependent upon, or related to, him or her.

2.6.2.6 Booklets

Plan sponsors may also use booklets to explain the different group benefit coverages. These booklets are only summaries, not insurance policies; the provisions of the group policy with the plan sponsor govern in the case of any dispute. However, they usually contain enough detail that any covered member can determine the coverage they enjoy and the details thereof. The method of determining the basic amount of life insurance is often quite straightforward (e.g., 2 times base salary).

Under Section 6 of the CLHIA Guideline G3, when a group insured person leaves the group, he has (if under 65) a group conversion privilege to convert his group life insurance policy into an individual insurance policy (without having to undergo any underwriting).¹²⁹ This right must be exercised within 31 days after the date of termination of the plan member's life coverage under the group insurance contract.¹³⁰

2.6.2.7 Access to copy of policy

Because different classes of employees are typically entitled to different benefit packages, the employer may not want those details provided to all members of the group. There is not the same legislative entitlement to a copy of the master or group policy as there is for individual insurance policies.

Some provinces are moving towards increased availability of the master policy, even allowing plan members to obtain a copy of the master contract provisions (British Columbia, Alberta, Manitoba and Ontario).¹³¹

129. Canadian Life and Health Insurance Association. *Guideline G3—Group Life and Group Health Insurance*. [online]. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/Guideline_G3.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/Guideline_G3.pdf)

130. Canadian Life and Health Insurance Association. *Guideline G3—Group Life and Group Health Insurance*. [online]. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/Guideline_G3.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/Guideline_G3.pdf)

131. Insurance Act, RSO 1990, c I-8, s. 175(4); Insurance Act, RSBC 2012, c 1, s. 41; Insurance Act, RSA 2000, c I-3, s. 642; The Insurance Act, CCSM c 140, s. 151; Ontario Insurance Act, RSO 1990, c I.8, s. 174 (5) would entitle a group life insured to a copy of the master policy.

2.6.2.8 Laws applicable to members (residence)

Employees and group members may live in any province, and provincial law governs property rights including insurance. The various insurance acts stipulate that the law of the province where a group life insured is residing when he becomes insured¹³² is the law that applies in determining the insurer's rights and obligations, and the rights and status of beneficiaries under the group coverage.

2.6.2.9 Term and termination

All group insurance policies are renewable annually. Group plan members must qualify for coverage when the group coverage becomes available to them. Coverage for group plan members ends when the group plan terminates, other than for members who deceased earlier or are already receiving long-term disability benefits when the group plan terminates. Group policy premiums are not guaranteed and, subject to negotiations with the group policyholder, the insurer may increase the price annually at the time of the contract renewal. The employer or group sponsor may decide to change the benefit mix, reduce benefits or even terminate the master contract and change insurers.

There are complex legislative provisions allowing the policy of one insurer to be transferred to another.¹³³ While the group master policy will continue, individual coverage generally terminates when an individual is no longer a member of the covered group (i.e., terminates employment) or becomes ineligible by becoming a member of some other group eligible for coverage under the group plan, such as a change of job with the employer.

Group benefits often seem relatively inexpensive, compared to individually owned coverage, but care needs to be taken in making the comparison. Optional group benefits may be available subject to much simpler underwriting than individual policies. But this may also mean rejection of an optional application in some cases, where an individual contract might be approved but fine-tuned through a rating or coverage exclusion. Depending on the group age and health and the group sponsor's contribution, group plan members may pay less than individual policyholders for similar protection, but they do not enjoy access to the portability and contractual guarantees available with individual policies.

132. Insurance Act, RSO 1990, c I-8, s. 173; Insurance Act, RSBC 2012, c 1, s. 40; Insurance Act, RSA 2000, c I-3, s. 641; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 135; The Insurance Act, c 140, s. 150; Insurance Act, RSNB 1973, c I-12, s. 134; Insurance Act, RSPEI 1988, c I-4, s. 119; Insurance Act, RSNS 1989, c 231, s. 175; Life Insurance Act, RSNL 1990, c L-14, s. 4; Insurance Act, RSNWT 1988, c I-4, s. 71; Insurance Act, RSNWT 1988 (Nu) c I-4, s. 71; Insurance Act, RSY 2002, c 119, s. 78.

133. Canadian Life and Health Insurance Association. *Guideline G3 – Group Life and Group Health Insurance* (Section 8). [online]. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/Guideline_G3.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/Guideline_G3.pdf)

2.6.3 Individual and group accident and sickness insurance

Accident and sickness insurance may be available in an individual personal contract, or as part of a group benefit plan, as seen in the Section *Types of group insurance*.

Individual or group accident and sickness insurance¹³⁴ can be acquired to protect against the following risks:

- Accidental death and dismemberment (AD&D);
- Disability specifics;
- Drug insurance;
- Critical illness;
- Long-term care (LTC).

2.6.3.1 Accidental death and dismemberment (AD&D)

This insurance covers the risk of the insured person suffering a defined physical loss or death due to an accident. The physical losses can include loss of limbs, or hearing or eyesight.

The insurance policy indicates the amount of the death benefit and the amounts payable for various levels of dismemberment (or paralysis) are often expressed as a percentage of that amount.

The definition of what constitutes an “accident” in the insurance policy can be very complex. There may be many restrictions and exclusions to coverage, situations in which an insurer will not pay a benefit. Subject to the terms of the insurance policy, these exclusions could include:

- Death from or involving sickness;
- Illness;
- Bodily or mental infirmity or disease;
- Suicide or self-inflicted injury;
- War (declared or undeclared);
- Riot;
- Events involving the ingestion of alcohol, drugs, poison or sedatives;
- Events involving the commission of a criminal offence or assault;

134. Insurance Act, RSBC 2012, c 1, s.92 to 139; Insurance Act, RSA 2000, c I-3, s. 695 to 750; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 226 to 265; Insurance Act, The, CCSM c I40, s. 203 to 230.17; Insurance Act, RSO 1990, c I.8, s. 290 to 329; Insurance Act, RSNB 1973, c I-12, s. 186 to 223; Insurance Act, RSNS 1989, c 231, s. 64 to 103; Insurance Act, RSPEI 1988, c I-4, s. 174 to 213; Accident and Sickness Insurance Act, RSNL 1990, c A-2; Insurance Act, RSY 2002, c 119, s. 174 to 213; Insurance Act, RSNWT 1988, c I-4, s. 167 to 206; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 167 to 206.

- Extreme sports, racing;
- Certain surgical mishaps.

As a result of this, processing a death claim may take some time, since determining that death was “accidental” and not affected by some exclusion may not be a simple process.¹³⁵ Accidental death insurance can be very helpful in providing at least partial protection to persons who are medically unable to qualify for traditional individual life insurance.

Personal accident insurance can provide hospitalization benefits, and funds to cover some loss of income and out of pocket expenses after an accident.

2.6.3.2 Disability specifics

Individual disability insurance coverage can be very complex, as it can cover both full and partial disability, as well as temporary or permanent reductions in the ability to earn income. The insurance policy can give the policyholder the ability to purchase additional income protection, at certain points in time, without going through medical underwriting again. This optional increase permits the policyholder to increase coverage to keep pace with increases in income. It is typically called a “future income option” (FIO).

Disability coverage does not come into effect until the insurance policy is delivered to an applicant who has confirmed that they continue to be in good health and the premium is collected. The policy will contain a policy-in-force date. This is the date when coverage begins.

2.6.3.3 Drug insurance

Clients may choose to purchase their own health insurance covering the cost of expensive medication. They would be both the policyholder and the life insured. This type of personal coverage is similar to group benefits coverage, and is usually part of a personal health insurance plan that covers drugs, dental and out of country or extended expenses. These individually owned, private plans can vary widely in terms of the drugs they cover, the extent of coverage, deductible amounts before coverage commences, co-payments or cost sharing on prescriptions, and caps on benefits. Some are based on covering any prescription if issued on an out-patient basis. Other insurers may cover drugs on a defined list or formulary.

135. David Norwood and John P. Weir. *Norwood on Life Insurance Law in Canada*, 3rd Ed., Toronto, Carswell, 2002. c 18.

2.6.3.4 Critical illness (CI)

Critical illness (CI) insurance started out as cancer insurance, and rapidly expanded to cover heart attacks, strokes and other illnesses. It insures against the risk of a person suffering a life threatening illness.

If the person is diagnosed with a covered critical illness and survives for a period of usually 30 days, the insurer pays a lump sum amount. Coverage can now be obtained for a wide array of critical illnesses. Some insurance policies include up to 25 covered critical illnesses and insurers may offer additional benefits. Today, those features could include a return of premium (ROP) on death, or cancellation of the policy benefit. If the policy has been in force for a set number of years and is cancelled, or the life insured dies without making a claim, the policyholder can designate a beneficiary to receive the benefit. This opens the possibility of there being the same parties to a critical illness policy as to a life policy, namely the insurer, the policyholder, the life insured, and beneficiaries of the return of premium benefits (which could be different). The insurance policy and benefits may also be held jointly.

It is worth noting that critical illness insurance as a product is not yet addressed by the provisions of the *Income Tax Act*, and the inclusion of a ROP benefit on death, in particular, may confuse the classification of the policy as accident and sickness insurance. The law is evolving in this area.

2.6.3.5 Long-term care (LTC)

Long-term care (LTC) insurance provides a benefit when the insured person cannot safely and independently perform a number of daily living activities, or must be constantly supervised due to deterioration of mental functions. Some insurers offer a weekly or monthly benefit amount that is like an income benefit. It is not an actual income benefit because it does not replace income. The benefit can sometimes be used any way the policyholder chooses. Other insurers only reimburse expenses based on daily living activities, which include things like:

- Feeding oneself;
- Getting dressed;
- Grooming and hygiene, including bathing;
- Getting in and out of bed;
- Using the toilet.

Disability and long-term care insurance may cover services in a variety of settings: at home, through adult day care, in a retirement home, assisted-living setting, or a long-term care facility. Services may include:

- Nursing care;
- Rehabilitation and therapy;
- Personal care (help with daily living activities such as dressing, eating and bathing);

- Homemaking services (cleaning, laundry, preparing meals);
- Having another person there to watch over the insured and to help them when, where and as needed.

All disability and long-term care insurance plans in Canada have a specific wait period (also called a “grace period”) before benefits are payable, usually 30 days, 90 days, 180 days or longer.

2.6.3.6 Parties

As with other kinds of insurance, the policyholder enters into a contract with the insurer, but the policyholder and the person insured for accident and sickness insurance do not need to be the same person. In some cases, a corporation or partnership may own accidental death, disability or critical illness coverage on a key employee, partner or shareholder. If that individual dies, or become disabled, or suffers a covered condition and survives as the case may be, benefits will be paid to the corporation or partnership, and may be used at their discretion, subject to any private agreement relating to the use of the proceeds. Note that there may be co-owners of an insurance policy.

2.6.3.7 Rights of parties

The rights of the policyholder and the beneficiary are governed by the insurance policy. The provincial and territorial insurance statutes also contain provisions relating expressly to accident and sickness insurance.¹³⁶

2.6.3.8 Effective date

Because no medical underwriting is necessary for personal accident, or accidental death or dismemberment insurance, the policy can take effect quite quickly, sometimes immediately on the insurer’s acceptance of the application. In contrast, sickness insurance, which requires underwriting and collecting evidence of insurability, will require a similar process and timeline to applying for individual life insurance. The policy will specify an effective date of coverage.

2.6.3.9 Termination of accident and sickness insurance

The insurance policy can be terminated by the policyholder at any time on giving written notice and surrendering the policy. If the policyholder stops paying the premium, the policy will be terminated

136. Insurance Act, RSO 1990, c I-8, s. 300; Insurance Act, RSBC 2012, c 1, s. 92; Insurance Act, RSA 2000, c I-3, s. 695; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 226; The Insurance Act, CCSM c 140, s. 203; Insurance Act, RSNB 1973, c I-12, s. 186; Insurance Act, RSPEI 1988, c I-4, s. 174; Insurance Act, RSNS 1989, c 231, s. 64; Accident and Sickness Insurance Act, RSNL 1990, c A-2; Insurance Act, RSNWT 1988, c I-4, s. 167; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 167; Insurance Act, RSY 2002, c 119, s. 174.

for non-payment of premiums after the expiry of the grace period defined in the policy. 10 days' written notice of termination is also required if it is being mailed to the client, measured from the day after it is mailed.¹³⁷

More importantly, unless their provisions have been adjusted to make the policy non-cancellable,¹³⁸ accident and sickness policies may only be terminated by the insurer after it sends written notice and once the period indicated in the insurance policy expires. Non-payment of the premiums in and of itself therefore does not allow the insurer to terminate such an insurance policy; the formalities mentioned above must be followed for the policy to be cancelled. For this reason, policies that include this kind of provision are referred to as "cancellable." However, insurers may modify their contracts to delete the right to cancellation on notice, since that change is in favour of the life insured.

2.6.3.10 Statutory conditions

There are also statutory terms and conditions¹³⁹ that must be included in every individual accident and sickness policy for the policy to be valid.

The insurer must also issue an insurance policy when an individual takes out coverage, and the policy must contain:

- The name or a sufficient description of the insured and of the person insured.
- The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable.
- The amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid.
- The conditions upon which the contract may be reinstated if it lapses.
- The term of the insurance or the method of determining the day upon which the insurance commences and terminates.

137. Insurance Act, RSBC 2012, c 1, s. 101 and 106; Insurance Act, RSA 2000, c I-3, s. 705 and 714; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 234, 237 and 238; Insurance Act, The, CCSM c I40, s. 211 and 217.4; Insurance Act, RSO 1990, c I.8, s. 300, 303 and 304; Insurance Act, RSNB 1973, c I-12, s. 194, 197 and 198; Insurance Act, RSNS 1989, c 231, s. 74, 77 and 78; Insurance Act, RSPEI 1988, c I-4, s. 183, 186 and 187; Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 12, 15 and 16; Insurance Act, RSY 2002, c 119, s. 184, 187 and 188; Insurance Act, RSNWT 1988, c I-4, s. 177, 180 and 181; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 177, 180 and 181.

138. Insurance Act, RSO 1990, c I-8, s. 300; Insurance Act, RSBC 2012, c 1, s. 101; Insurance Act, RSA 2000, c I-3, s. 705; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 234; The Insurance Act, CCSM c 140, s. 211; Insurance Act, RSNB 1973, c I-12, s. 194; Insurance Act, RSPEI 1988, c I-4, s. 183; Insurance Act, RSNS 1989, c 231, s. 74; Accident and Sickness Insurance Act, RSNL 1990, c A-2; Insurance Act, RSNWT 1988, c I-4, s. 177; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 177; Insurance Act, RSY 2002, c 119, s. 184.

139. Insurance Act, RSO 1990, c I-8, s. 300; Insurance Act, RSBC 2012, c 1, s. 101; Insurance Act, RSA 2000, c I-3, s. 705; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 234; The Insurance Act, CCSM c 140, s. 211; Insurance Act, RSNB 1973, c I-12, s. 194; Insurance Act, RSPEI 1988, c I-4, s. 183; Insurance Act, RSNS 1989, c 231, s. 74; Accident and Sickness Insurance Act, RSNL 1990, c A-2; Insurance Act, RSNWT 1988, c I-4, s. 177; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 177; Insurance Act, RSY 2002, c 119, s. 184.

Group accident and sickness policies have similar requirements, and like other group plan benefits, a certificate must be issued confirming basic coverage details.¹⁴⁰

2.6.4 Annuities

Annuities are policies issued by insurers or other financial institutions where they agree to pay a fixed amount to a payee over a specified period of time.

Annuity contracts may be used as investments, financial security, tax planning, estate planning and/or creditor protection.

If the duration of the payments is determined by a person's life, it is called a "life annuity." If the payments are for a defined period of time, it is called a "term certain" or "fixed-term annuity." Only companies authorized to conduct life insurance business can offer life annuities. Annuities (life annuities as well as fixed term annuities) issued by life insurance companies are treated as life insurance under the various provincial and territorial insurance acts.¹⁴¹

Annuities can be issued as individual or as group annuity contracts.

Annuities can be purchased as registered contracts (RRSP, RRIF, TFSA, RRP, DPSP, LIF, LIRA, etc.), or as unregistered contracts.

Annuities can be deferred or immediate. The following annuity contracts are available on the market:

- Annuity contracts relating to segregated funds, which may be available as an individual (called individual variable insurance contract (IVIC)) or group annuity. This type of annuity is a deferred annuity;
- Guaranteed interest accounts (GIA), which may be available as an individual or group annuity. This type of annuity is a deferred annuity. The amounts (called "contributions" or "premiums") are alienated by the holder to the insurer to purchase a non-variable annuity contract (for example, a guaranteed interest account (GIA) with 3% interest for 5 years) are paid into the insurer's general funds. This type of annuity contract resembles a guaranteed investment certificate (GIC) issued by banks or credit unions;
- Immediate annuity contracts, which may be available as an individual or as part of a group annuity contract.

140. In British Columbia, Alberta and Manitoba, additional mentions must be part of the group contract.

141. Insurance Act, RSO 1990, c I-8, s. 171(2); Insurance Act, RSA 2000, c. I-3, s. 639; The Insurance Act, CCSM c 140, s. 148(2); Insurance Act, RSNWT 1988, c I-4, s. 244; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 244.

2.6.4.1 Parties

The following parties are involved in an annuity policy issued by an insurer:

- The insurer (the debtor) or annuity provider which is the entity that provides the undertaking to pay the periodic amounts;
- The policyholder or annuity holder, as with other forms of life insurance, is the individual or corporation that contracts with the annuity provider. The annuitant, or life insured, is the measuring life on which the duration of a life annuity is based;
- The policyholder may designate a named recipient, called the annuitant grantee, to receive the actual annuity payments. If the annuity is registered, the policyholder, the annuitant and the annuity grantee will be the same person;
- The designated beneficiary.

Annuities (other than those derived from registered plans) may be owned by individuals, corporations or trusts. An owner who is not the measuring life may designate a successor owner, as with other life insurance policies.¹⁴²

2.6.4.2 The policyholder

As with other insurance products it is the policyholder who has the right to determine to whom the payments will be paid. If there is a guaranteed number of payments that will be paid, regardless of how long the measuring life lives, the policyholder may designate a beneficiary for the remaining payments in the guarantee period after the death of the measuring life.

The policyholder is often referred to as the “annuitant” in annuity contracts, or as the “investor.” Under the *Income Tax Act* (Canada), the “annuitant” is the owner of the registered contract (RRSP, RRIF, etc.). It is important to carefully read the definitions of the annuity contract, since the wording of the different parties of the annuity contract might be different from one annuity contract to another, or from one insurer to another.

2.6.4.3 Annuitant (life insured)

When talking about annuities, people often refer to the annuitant as the person who will be receiving the annuity payments. But this person is simply the measuring life on which an annuity is based. They do not always get the payments.

142. Insurance Act, RSBC 2012, c 1, s. 68; Insurance Act, RSA 2000, c I-3, s. 669; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 161; Insurance Act, The, CCSM c I40, s. 176; Insurance Act, RSO 1990, c I.8, s. 199; Insurance Act, RSNB 1973, c I-12, s. 160; Insurance Act, RSNS 1989, c 231, s. 201; Insurance Act, RSPEI 1988, c I-4, s. 147; Life Insurance Act, RSNL 1990, c L-14, s. 30; Insurance Act, RSY 2002, c 119, s. 104; Insurance Act, RSNWT 1988, c I-4, s. 97; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 97.

The annuitant must be a natural person who has a lifetime. Often, there is more than one life. On the death of the first annuitant, there may be a second or successor annuitant, most often a spouse. Life insurance companies can offer a deferred annuity, which will exist for a period of time before payments commence, if there continues to be a “life contingency” and therefore a measuring life “annuitant.”

2.6.4.4 Payee

This is the person to whom the annuity payments will be directed by the policy holder. It could be the policyholder himself or some other payee, including a corporation or trustee.

Once payments have begun under a life annuity, it cannot be commuted to a lump sum.

The payee is sometimes called the “annuity grantee,” but is also often referred to as the “annuitant.” Again, it is important to look at the definitions of the annuity contract, in order to avoid confusion.

For all registered contracts (RRSP, RRIF, LIF, LIRA, DPDP, TFSA, etc.), the policyholder, the annuitant (life insured) and the payee are always the same person.

For non-registered annuity contracts, even if, most of the time, the policyholder, the annuitant (life insured) and the payee are the same person, it is possible to have two or three different persons with respect to the policyholder, the annuitant and the payee (for instance, X acting as the policyholder and annuitant, and Y as payee, or X acting as policyholder, Y as annuitant et Z as payee).

2.6.4.5 Immediate annuities

Annuities called immediate or payout annuities provide that the first payment will begin on the next defined periodic annuity frequency period, whether that is monthly, quarterly, semi-annually or on the first anniversary date (annually).

Deferred (accumulation) annuities

As the name suggests, these plans permit the investment and accumulation of income over time, with payments to start later. The start date of the periodic payments is called the “maturity date.” These policies are also called “deferred annuities.” During the accumulation phase, they are subject to annual accrual taxation under the *Income Tax Act*, based on the annual policy date. Registered accumulation annuities, which are a form of registered savings plan where all the income will be taxable upon payment, are not subject to accrual taxation.

Withdrawal and surrender rights

With respect to immediate annuities, as with most long-term, interest-bearing vehicles, withdrawal or surrender while the annuitant is alive is not anticipated and not generally permitted. Death may

trigger liquidity, subject to the terms of the insurance policy (annuity contract), including possible market value adjustments (MVA). Because it qualifies as insurance, death of a sole annuitant will trigger payment of the balance of the annuity to the named beneficiary, failing which to the estate of the policyholder.

With respect to deferred annuities, withdrawal or transfer while alive are generally permitted in the case of annuities related to segregated funds, subject to the terms of the insurance policy, including a possible market value adjustment (MVA) and withdrawal fees. Since it qualifies as insurance, the death of a sole annuitant (before maturity) will trigger payment of the balance of the policy to the named beneficiary or, if none, to the estate of the policyholder. However, with respect to GIAs, as with most guaranteed rate, interest-bearing vehicles, withdrawal and transfer while the annuitant is alive is not anticipated and not generally permitted. Death may trigger liquidity, subject to the terms of the policy.

2.6.4.6 Group annuities

Group annuity contracts may be entered into by a group, such as an employer, a union, a professional corporation or association, for the benefit of their employees or members.

An employer may use a group annuity contract with a life insurance company to capitalize a pension fund, group RRSPs, DPSPs, as well as other registered or unregistered contracts.

The plan administrator holds an annuity policy for the benefit of all the members of the plan, who make contributions to it or for whom contributions are made. As an annuity falls within the definition of insurance, there are fewer rules for managing it than for individual annuities, which could lead to lower administration expenses.

The parties to a group annuity contract are typically the group plan sponsor, which could be an employer, a union, a professional corporation or professional association, and an insurance company willing to provide for annuities to the group plan members through a group annuity contract.

The plan members are typically the members of a specified group (i.e. employees, association members, etc.).

2.6.4.7 Structured settlements

Structured settlements¹⁴³ are a special kind of single-premium annuity, non-assignable, non-commutable and non-transferrable that is accorded special tax treatment. Instead of a court awarding (or the parties to litigation agreeing on) a lump sum in damages, a structured settlement means that the court awards or the litigants agree to a customized stream of damage payments to be funded through the purchase usually by the defendant or the defendants' insurer of a structured settlement annuity.

143. Income Tax Act, SRC 1985, c 1 (5th suppl.), s 81(1) (g.1) (g.2).

From a tax perspective, damages paid for personal injury caused by a wrongdoer are considered to be compensation for loss of the ability to earn an income, not on account of lost income itself.¹⁴⁴ This means the money is on capital account, and simply puts the injured party back where they were before they were injured, so no tax is payable on the receipt.

Lump-sum (single) payments to settle court proceedings have some advantages such as finality, but also some downsides, including the need for money management and the risk of dissipation of the money, leaving the injured party with greater than average needs in financial difficulties but without further recourse.

The stream of payments from the annuity policy does not result in any taxable income to the recipient, provided they are designed in accordance with principles outlined in the Canada Revenue Agency's (CRA) Interpretation Bulletin IT-365R2, dated May 8, 1987. This includes not being purchased by the injured party or someone on their behalf. Payments from the annuity are irrevocably made to the injured party, and the at-fault party or their insurer must remain liable for the payments set out in the annuity policy. It could also be a life annuity from an insurer to fund payments in accordance with the settlement agreement the parties reached to put an end to the litigation.

2.6.5 Segregated funds

An individual variable insurance contract (IVIC) is in fact an individual annuity contract related to segregated funds. It means that premiums paid are invested in segregated funds managed by the life insurance company. The value of the policy will vary over time based on the value of the investments. The investments are owned by the insurance company, which credits values to the policy if the underlying funds grow in value. The values can go down if the market goes down and the money being paid out of the policy can vary, which is why they are called variable.

However, it is important to know that segregated funds are also available through group annuity contracts. These policies guarantee to pay at least 75% of what the policyholder paid to the plan before age 75, on death or maturity, even if the investments are worth less.¹⁴⁵

The parties to the policy are the same as for an annuity.

Policies are established when the application for the policy is accepted by the insurer and the first payment is received along with any other opening requirements needed by the insurer.

The details of an IVIC can be complex. They are governed by insurance legislation, not securities law. Instead of a prospectus, disclosure regulations require that insurers provide a stipulated collection of information about the policy at the point of sale, in a language that is reader-friendly,

144. This principle was established in a 1966 Supreme Court of Canada decision in *R. v Jennings* (1966), 57 D.L.R.(2d) 644.

145. Such guarantee is specified in the policy.

before a policy for an IVIC is accepted.¹⁴⁶ This is called an information folder. Specimens of the information folder must even be filed with some provincial insurance regulator before any applications may be accepted, and be kept up to date.¹⁴⁷ Other documents must also be remitted by the life insurance agent (at the point of sale) to the client, such as the Fund Facts and the Key Facts.¹⁴⁸ They are often inside the information folder. A copy of the application form must also be remitted to the client.

The Canadian Life and Health Insurance Association (CLHIA) is an association of 99% of all insurers conducting business in Canada. It has prepared a series of 18 Guidelines, on a wide variety of topics, for the guidance of its members to promote consistent practices and standards for the life and health industry. Guideline G2¹⁴⁹ discusses IVICs relating to segregated funds.

Guideline G2, which sets out the requirements for an information folder, is a regulatory requirement in Ontario.¹⁵⁰

The CLHIA website provides the following information on the Guideline G2:

The CLHIA *Guideline G2—Individual Variable Insurance Policies Relating to Segregated Funds*, establishes industry standards including standards for:

- Advertising disclosure;
- Pre-sale disclosure requirements;
- Policy disclosure, including minimum contractual terms;
- Policyholder rights;
- Audit and accounting requirements;
- Investment disclosure;
- Minimum investments standards;
- Corporate governance of segregated funds;
- Partitioning of assets held in segregated funds;
- Closing of segregated funds; and

146. Canadian Life and Health Insurance Association. *Guideline G2—Individual variable insurance contracts relating to segregated funds*. [online]. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G2.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/$file/Guideline_G2.pdf)

147. Except for Ontario and Alberta, the Canadian insurance regulators do not require insurers to file their IVIC documentation when it has been verified by the CLHIA.

148. Canadian Life and Health Insurance Association. *Guideline G2—Individual variable insurance contracts relating to segregated funds*. [online]. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G2.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/$file/Guideline_G2.pdf)

149. Canadian Life and Health Insurance Association. *Guideline G2—Individual variable insurance contracts relating to segregated funds*. [online]. [Consulted July 21, 2017].

150. Insurance Act, RSO 1990, c I.8, s. 109 to 112 and Variable Insurance Contracts, O Reg 132/97.

- Fundamental changes to and merger of segregated funds.

Note, however, that segregated funds are also available through group annuity contracts. In that case, CLHIA's Guideline G2 does not apply and there is no guarantee for segregated funds purchased under a group annuity contract.¹⁵¹

2.6.6 Pension products and other group annuity products

Group annuity contracts are governed by the relevant insurance and income tax legislation, as well as by CLHIA's Guideline G12 entitled Capital Accumulation Plans.

Pension funds capitalized as group annuities contracts are not only governed by the relevant provincial or territorial Insurance and Income Tax Acts (and also by CLHIA's Guideline G12 (for defined contribution plans), but also and primarily by the relevant Pension Benefits Act.¹⁵²

There is a pension regulator for each province, except Prince Edward Island, which does not have pension benefits legislation. For Yukon, Northwest Territories and Nunavut as well as businesses that are within the legislative authority of the Parliament of Canada, the pension regulator is the Office of Superintendent of Financial Institutions (OSFI).¹⁵³

There are two principal types of pension benefits plans under the relevant pension legislation: defined benefit pension plans (DBPP) and defined contribution plans (DCPP).

2.6.6.1 Defined benefit pension plan (DBPP)

A pension plan where the pensioner's entitlement is defined based on a formula in relation to income earned during the employment period, and years of service, and not based on the financial performance of the plan.

2.6.6.2 Defined contribution pension plan (DCPP)

A pension plan where benefits are payable and determined by members and/or employer contributions and investment performance within the plan on those contributions. The employee typically can select the investment choices his funds are invested in from a range of options offered to plan members.

151. See: [https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G2.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/resources/Guidelines/$file/Guideline_G2.pdf)

152. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp); Pension Benefits Division Act, SC 1992, c 46, Sch II; Pension Benefits Standards Act, RSBC 1996, c 352; Employment Pension Plans Act, SA 2012, c E-8.1; Pension Benefits Act, 1992, SS 1992, c P-6.001; Pension Benefits Act, The, CCSM c P32; Pension Benefits Act, RSO 1990, c P.8; Pension Benefits Act, SNB 1987, c P-5.1; Pension Benefits Act, RSNS 1989, c 340; Pension Benefits Act, 1997, SNL 1996, c P-4.01.

153. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp), s. 4(4).

2.6.6.3 Pooled registered pension plan (PRPP)¹⁵⁴

PPRPs are a new kind of proposed pension plan for individuals who are self-employed or do not have access to an employer-sponsored pension plan. The pooling of contributions for administration and investment by professional fund managers is intended to facilitate lower costs through economies of scale. To provide such pension plans to self-employed individuals, new legislation will need to be enacted in every jurisdiction.

2.7 Other products

Tax-free saving accounts (TFSA), registered retirement saving plans (RRSP), registered retirement income funds (RRIF), locked-in retirement accounts (LIRA) and life income funds (LIF) are products that can be offered through group or individual contracts.

However, deferred profit-sharing plans (DPSP) are group products.

Listed below are specific products that agents may come across in the course of their practice. These products may involve an insurer as the provider, or they may involve insurance policies that serve as vehicles for investment, tax planning, succession planning or retirement planning. Such products have been created by modifications to the federal *Income Tax Act* which have created tax incentives designed to encourage Canadians to save and prepare financially for retirement. Such products may be offered by insurers and are subject to specific legislation.

2.7.1 Deferred profit-sharing plan (DPSP)¹⁵⁵

A deferred profit-sharing plan (DPSP) is a retirement savings vehicle that permits employers to distribute some of the company's profits to a plan for the benefit of some or all employees. Only the employer contributes, and the terms and conditions set by the employer can be very flexible. As with many other employer contributions to retirement plans, contributions vest after two years, and can be recovered by employees when they leave employment and transferred to another DPSP, an RRSP or another pension plan.

When arranged through a life insurance company, it is set up through a group annuity contract.

154. Pooled Registered Pension Plans Act, SC 2012, c 16. See also: Pooled Registered Pension Plans Act, SA 2013, c P-18.5 [Not yet in force]; Pooled Registered Pension Plans (Saskatchewan) Act, The, SS 2013, c P-16.101; Voluntary Retirement Savings Plans Act, CQLR c R-17.0.1.

155. Income Tax Act, SRC 1985, c 1 (5th suppl.), s 147.

2.7.2 Tax-free savings account (TFSA)¹⁵⁶

The federal (and provincial) government wants to assist citizens to save for their own needs, including retirement. There are limits to how much money can be deposited each year (\$5,000 annually for 2009-2012, \$5,500 in 2013 and 2014, \$10,000 in 2015 and \$5,500 in 2016), but unused deposit room is carried forward, so lump sum catch-up deposits are possible.

The deposits are not tax deductible, but any income or growth earned in the account on qualified investments is not taxed as it grows, and withdrawals are also tax free. Contribution to a spouse's plan is permitted, and re-contribution to a plan is permitted after funds have been withdrawn.

The holder of a tax-free savings account (TFSA) can also designate a beneficiary of the account upon their death. If the beneficiary is the married spouse of the deceased, or qualifies under the provincial law where they reside as a spouse, ownership of the account can be transferred to the survivor and they are called a "successor" plan holder. They can also move the funds into their own TFSA. If the beneficiary is not a spouse, the funds are simply received as a distribution that bypasses the deceased plan holder's estate.

When contracted through a life insurance company, it may be set-up through a group or an individual annuity contract.

2.7.3 Registered retirement savings plans (RRSP)

Registered retirement savings plans (RRSP) have flexibility for unrestricted withdrawal at any time, subject to withholding tax which may require increases with the amount withdrawn. Re-contribution is not permitted.

2.7.4 Registered retirement income fund (RRIF)

A registered retirement income fund (RRIF) can be described as a retirement income payout plan with the greatest opportunity for income deferral through minimized withdrawals. No withdrawals necessary until age 71. Also provides the most flexibility for maximum, unrestricted withdrawals, again subject to withholding tax.

2.7.5 Locked-in retirement account (LIRA)

A locked-in retirement account (LIRA) is another type of registered retirement savings plan containing funds transferred from a pension plan. Plan holders are generally unable to withdraw any amounts before age 55. "Locking in" then limits any withdrawals so that the plan can be expected to provide a predictable but not guaranteed income until age 90. From a tax point of view, a LIRA is a RRSP, for which additional rules flowing from pension benefits legislation apply.

156. Income Tax Act, SRC 1985, c 1 (5th suppl.), s 146.2.

2.7.6 Life income fund (LIF)

A life income fund (LIF) is a type of retirement plan investors may transfer their pension into if they leave a pension plan. Minimum and maximum income amounts each year in retirement are subject to the pension laws of the province that apply to the LIF and the amounts in the plan. From a tax point of view, a LIF is a RRIF, for which additional rules flowing from pension benefits legislation apply.



CHAPTER 3

LIFE INSURANCE, ACCIDENT & SICKNESS INSURANCE AND ANNUITY CLAIMS-PAYMENT OF PROCEEDS

Competency component

- Integrate into practice the legal aspects of insurance and annuity contracts.

Competency sub-components

- Integrate into practice the rules relating to beneficiary designation and exemption from seizure of benefits;
- Contextualize the rules relating to claims and the payment of benefits.

3

LIFE INSURANCE, ACCIDENT & SICKNESS INSURANCE AND ANNUITY CLAIMS-PAYMENT OF PROCEEDS

3.1 Rules pertaining to claims and payment of benefits

When a life insurance policy matures, or when the life insured dies, a claimant must satisfy certain requirements for the insurer to pay the benefit. The claimant must:

- Provide satisfactory evidence that the life insured has died;
- Prove their entitlement to claim the benefit.

The role of the agent in the claims process will depend on the insurance company or companies involved. No claims process is identical and the agent must therefore be familiar with the claims process for the different insurers.

The purpose of this Chapter is to summarize the claims process and make agents aware of the pitfalls of the claims process. If the agent has not asked all the correct questions and gathered all the correct information in the application process, then the claim could be contestable. An agent will want to avoid this taking place.

3.1.1 Claimant

The claimant may be the insured, the insured's estate, or one or more designated beneficiaries (either a primary or contingent beneficiary). An assignee of the insurance policy or the death benefit may also make a claim to the insurer.

It is possible for a creditor to make a claim under specific situations. A Court order may allow an individual to claim the insurance benefit, for example where money is owed for spousal or child support. The insurer must take care that any benefits payable are made to the estate or to the beneficiary or beneficiaries. In the event of a dispute, the insurer may pay the benefit into Court.¹⁵⁷ More detail on payment into Court can be found later in this Chapter.

157. Insurance Act, RSO 1990, c I-8, s. 214; Insurance Act, RSBC 2012, c 1, s. 82; Insurance Act, RSA 2000, c I-3, s. 684; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 176; The Insurance Act, CCSM, c 140, s. 192; Insurance Act, RSNB 1973, c I-12, s. 176; Insurance Act, RSPEI 1988, c I-4, s. 163; Insurance Act, RSNS 1989, c 231, s. 217; Life Insurance Act, RSNL 1990, c L-14, s. 46; Insurance Act, RSNWT 1988, c I-4, s. 113; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 113; Insurance Act, RSY 2002, c 119, s. 120.

3.1.2 Insurer's records

Policyholders are encouraged to consider making a beneficiary designation and to file it with their insurer. Where a designation is not filed with the insurer, it can still be valid against a person other than the insurer (with the exception of making an irrevocable designation). Insurers will pay benefits based on the most recent beneficiary designation they have on file, or to the estate if there is no beneficiary designation and are protected if they do so.¹⁵⁸

As discussed in the previous Chapter, designations may also be found in a policyholder's will. Where this has occurred, the most recent beneficiary or beneficiaries filed with the insurer may not be the claimant(s).

3.1.3 Notice of claim

When the insured person dies, the insurer usually receives notice of death from the agent, the estate executor or trustee, a beneficiary or the employer.

The insurer often relies on the agent to locate the named beneficiary and help them complete the claim form. Many agents know who the named beneficiary is because the beneficiary is often one of the policyholder's family member, or a known friend, business partner, or charity. But sometimes it is a challenge to locate beneficiaries if there is little or no information about them. Sometimes the insurer and the agent have had little contact with the policyholder and do not know about a death or, if made aware of the insured person's death, do not know how to contact the beneficiary. The beneficiary may not be aware they are the beneficiary.

If the insured person is also the policyholder, on his death, his executors and family members may only learn about the existence of a life insurance policy when sorting through the deceased's papers. It is rare but possible that the insurer that issued the policy is no longer carrying on business, and a search must be made to determine which insurer took over that insurer's business (policies). CLHIA is a useful resource in these circumstances.

Upon receiving a reliable notice of death, the insurer will record it so no more premiums are charged, and will wait to receive a claim. The insurer is not required to notify the beneficiaries upon death but the insurer will contact the agent if the deceased used one.

A life insurance policy may set out a time limit in which a claim must be made. But provincial and territorial insurance and limitation period legislation govern when a person makes a claim after the deadline indicated in the insurance policy. This legislation varies depending on the province or

158. Insurance Act, RSO 1990, c I-8, s. 207(1); Insurance Act, RSBC 2012, c 1, s. 77(1); Insurance Act, RSA 2000, c I-3, s. 678(1); Saskatchewan Insurance Act, RSS 1978, c S-26, s. 170(1); The Insurance Act, CCSM, c 140, s. 185(1); Insurance Act, RSNB 1973, c I-12, s. 169(1); Insurance Act, RSPEI 1988, c I-4, s. 156(1); Insurance Act, RSNS 1989, c 231, s. 210; Life Insurance Act, RSNL 1990, c L-14, s. 39(1); Insurance Act, RSNWT 1988, c I-4, s. 106(1); Insurance Act, RSNWT 1988 (Nu), c I-4, s. 106; Insurance Act, RSY 2002, c 119, s. 113.

territory. Some insurance policies indicate the applicable statutory time limits for making a claim and the proof of loss that must be submitted.¹⁵⁹

However, Courts may be inclined to grant the beneficiary or the estate executor some relief from the limits under an insurance policy where it appears fair to do so.¹⁶⁰ This is a different matter from the general running of limitation periods to commence litigation, including litigation to claim a benefit denied by an insurer.¹⁶¹

In some jurisdictions, some type of benefits may become unclaimed property, and the insurer may be required to remit those benefits to the government.¹⁶²

3.1.4 Proof of claim

The agent's role in the proof of a claim is an important one. Much of the information needed to prove the claim must concur with the information gathered by the agent during the application process.

3.1.4.1 Documents required

A beneficiary must complete a claim form. Agents can obtain the claim forms from the insurer. A beneficiary, the estate executor or the estate trustee may also obtain the form directly from the insurer. Once the insurer receives the completed form with the information it requires, it will assess whether a claim is payable and, if payable, pay the person making the claim if that person is entitled to it.

To satisfy the terms of a life policy, a claimant will need to establish that the identity of the person who died is the same as the life insured under the policy. They will need to provide proof:

- That the insured person has died;
- Of the insured person's age;
- That claimant has a right to receive the benefit;
- Of the claimant's name, age and identity.

159. Insurance Act, RSBC 2012, c 1, s. 76; Insurance Act, RSA 2000, c I-3, s. 677; The Insurance Act, CCSM, c 140, s. 184; Insurance Act, RSNB 1973, c I-12, s. 168; Insurance Act, RSPEI 1988, c I-4, s. 155; Insurance Act, RSNS 1989, c 231, s. 209; Insurance Act, RSNWT 1988, c I-4, s. 105; Insurance Act, RSNWT 1988 (Nu), c I-4, s. 105; Insurance Act, RSY 2002, c 119, s. 112.

160. David Norwood and John P. Weir. *Norwood on Life Insurance in Canada*, 3rd Ed., Toronto, Carswell, 2002. p. 333 to 340.

161. Limitation Act, SBC 2012, c 13; Limitations Act, RSA 2000, c L-12; Limitations Act, The, SS 2004, c L-16.1; Limitation of Actions Act, The, CCSM c L150; Limitations Act, 2002, SO 2002, c 24, Sch B; Limitation of Actions Act, SNB 2009, c L-8.5; Limitation of Actions Act, SNS 2014, c 35; Statute of Limitations, RSPEI 1988, c S-7; Limitations Act, SNL 1995, c L-16.1; Limitation of Actions Act, RSY 2002, c 139; Limitation of Actions Act, RSNWT 1988, c L-8; Limitation of Actions Act, RSNWT (Nu) 1988, c L-8.

162. Unclaimed Property Act, SBC 1999, c 48 and Unclaimed Personal Property and Vested Property Act, SA 2007, c U-1.5.

Death is usually confirmed with a funeral director's declaration of death or a provincial death certificate. If the insured person died in suspicious circumstances, the insurer may require more evidence. For example, if an insured person died overseas in a country where proof of death is questionable, there may be more evidence needed.

3.1.4.2 Probate

While insurers do not require probate in all cases¹⁶³, they must receive sufficient evidence of the parties' right to receive payment.

3.1.4.3 Proof of age

Proof of age is usually established when applying for insurance and premiums are usually adjusted based on the "true age" of the life insured. If the age was satisfactorily established by the agent when the policy was issued or while the life insured was still alive, the insurer will use age indicated in the file when a claim is made, without requiring proof. Note that for term coverage, proof of a life insured's age may be critical since the insurance policy states that coverage expires at a certain age.

3.1.4.4 Proof of identity

Where there is a named beneficiary, the insurer will seek satisfactory proof of identity; for example, individuals with common names might face additional hurdles to establish their entitlement. A beneficiary who has changed her name, for example following marriage, will have to provide appropriate documentation. Beneficiaries are sometimes described in terms of a relationship, such as "children," and sometimes a representative status, e.g., Court-appointed trustee, executor, and guardian of minor's property. These claimants will have to establish their qualification by means of additional documentary evidence, e.g. verification by a third party (possibly the agent) or a copy of a Court order appointing them.

3.1.4.5 Accidental vs. natural causes

Most life insurance policies have very few restrictions or limitations about the cause of death. However, if they do have limitations and restrictions, then the insurer or the agent may investigate to determine if they apply or not. One typical limitation is suicide. If a policy states that the death benefit is not payable when death is caused by or related to suicide within a set period of time, often two years of the policy being continuously in force or after reinstatement, the insurer may require more detailed proof of death to rule out or confirm suicide. The insurer may also require additional proof of death if the policy has specific exclusions for certain events. For example, a policy may have an exclusion if death is associated with an activity like scuba diving or heli-skiing.

163. *Rozon Estate v. Transamerica Life Insurance Co. of Canada*, 1999 Carswell Ont 4391 (Ont. C.A.). See also: David NORWOOD and John P. WEIR, *Norwood on Life Law Insurance in Canada*, 3rd Ed., Toronto, Carswell, 2002, pp. 322 and 323.

Other policies may only pay when death is associated with an accident. These are called accidental death policies. The insurer will need to receive proof that death was associated with an accident and not excluded under the exclusions in those policies.

In such cases, the insurer may require a more detailed physician's statement of death, or even a coroner's autopsy or toxicology report.

Policies that provide an additional benefit where the death is an accident typically require that for the death to be accidental it must be occasioned solely through violent, external and accidental means. It has also been examined by Courts and has evolved through case law to have a rather different meaning than simply motor vehicle accidents, drowning and the likes.

For example, the Ontario Court of Appeal had to determine if accidental benefits should be paid to an insured who was bitten by a mosquito carrying the West Nile virus and became a paraplegic.¹⁶⁴ The Court considered it an accident as defined by the insurance policy and allowed the insured to obtain compensation.

EXAMPLE

Luis was pronounced dead at the scene of a serious motorcycle accident. Forensic and witness evidence gathered at the scene established that his vehicle had very gradually veered to the right, but travelled at the same speed until collision, with no evidence of braking or turning. The coroner ordered an autopsy because his death was unexplained and apparently an accident. Suicide was ruled out and it was determined that Luis died of natural causes because he suffered a sudden, massive heart attack while driving. He therefore died before the motorcycle accident. His life insurance paid a benefit, but his beneficiary was not entitled to the additional accidental death benefit.

3.2 Disappearance and presumption of death

Although it does not happen often, insured persons sometimes go missing. If they have disappeared and remain missing for seven years or more,¹⁶⁵ interested parties, most often the family, can ask a Court to declare them dead, and upon an application filed by an interested person (i.e. a beneficiary), a Court may make an order declaring that such person has died. They usually do this to obtain life insurance proceeds.

164. Kolbuc v. ACE INA Insurance, 2007 ONCA 364 (CanLII).

165. Insurance Act, RSBC 2012, c 1, s. 76, 78, 79, 80 and 81; Insurance Act, RSA 2000, c I-3, s. 680 and 683; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 172 and 175; Insurance Act, The, CCSM c I40, s. 187 and 191; Insurance Act, RSO 1990, c I.8, s. 209 and 213; Insurance Act, RSNB 1973, c I-12, s. 175; Insurance Act, RSNS 1989, c 231, s. 212 and 216; Insurance Act, RSPEI 1988, c I-4, s. 162; Life Insurance Act, RSNL 1990, c L-14, s. 41; Insurance Act, RSY 2002, c 119, s. 115 and 119; Insurance Act, RSNWT 1988, c I-4, s. 108 and 112; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 108 and 112.

The timing of the death is important to establish. If a policy has lapsed due to non-payment of premiums since the insured person disappeared, the insurer will require proof that the insured person's death occurred while the policy was in force.

EXAMPLE

Namita was flying to Europe on holiday. Her plane was destroyed by an explosion 35,000 feet in the air over the Atlantic and very little was recoverable by search teams. Unfortunately, there was no trace of Namita; however, the airline's records confirmed that she had cleared the gate and boarded the plane. A judge had no difficulty concluding that Namita died the day the plane crash occurred. Since she was declared dead by a court, her life insurance policy benefit became payable as of the date of the plane crash.

3.2.1 Death of two or more people

Where two or more people pass away, the time and sequence of deaths may also be important in order to establish who may be entitled to the insurance proceeds.

Joint life insurance policies insure more than one person and pay upon the death of either the first or the second insured person.¹⁶⁶ If the joint insured persons die in an accident where it is not possible to prove who died first or last, the policy may state who is presumed to have died first.

This may also arise when it is necessary to determine whether a beneficiary outlived or predeceased the life insured.¹⁶⁷

EXAMPLE

Peter was staying over at his mother Magda's house. They had separate rooms on the second floor. In the middle of the night, the furnace malfunctioned, filling the house with carbon monoxide. In the morning, both Peter and Magda were found dead in their beds. Based on medical testimony at the inquest, the judge was able to conclude that Peter, although younger, had probably died first, as he was a smoker and had respiratory problems, leading to more rapid breathing than his mother, who was fit and healthy despite her age. Peter and his sister were joint beneficiaries of Magda's life

166. Insurance Act, RSBC 2012, c 1, s. 83; Insurance Act, RSA 2000, c I-3, s. 685; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 177; Insurance Act, The, CCSM c I40, s. 193; Insurance Act, RSO 1990, c I.8, s. 215; Insurance Act, RSNB 1973, c I-12, s. 177; Insurance Act, RSNS 1989, c 231, s. 218; Insurance Act, RSPEI 1988, c I-4, s. 164; Life Insurance Act, RSNL 1990, c L-14, s. 47; Insurance Act, RSY 2002, c 119, s. 121; Insurance Act, RSNWT 1988, c I-4, s. 114; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 114.

167. *Ibid.*

insurance; since he predeceased Magda, his sister inherited the entire death benefit. If Peter had been found to have outlived his mother, he would have been entitled to his half-share of her insurance which would have been dealt with through his estate.



3.3 Payment into Court

In cases like the example above, the insurer may have no need to dispute that the insurance benefit is payable, since there is conclusive evidence that the life insured has died. However, the insurer may have trouble determining who the beneficiaries are. In such cases, a provision in provincial and territorial insurance legislation allows the insurer to pay the benefit into Court.¹⁶⁸ This releases the insurer from liability, and allows for the resolution of the conflicting claims to be dealt with by a system designed to deal with reviewing evidence and claims adjudication.

Where money is payable to a minor, as discussed in Chapter 2, some provincial statutes may require payment into Court to protect the minor's funds.¹⁶⁹

3.4 Proceeds on deposit and payout options

Life insurance policies may provide several options for the payment of a death benefit. These are usually referred to as policy settlement options, and the same form that the beneficiary claimant is asked to complete in order to establish their right to the death benefit may also ask them which payment option they prefer to receive. Agents are often involved in giving clients advice in this regard, but it is also common for the insurer to be instructed to send the cheque to the

168. Insurance Act, RSO 1990, c I.8, s. 214; Insurance Act, RSBC 2012, c 1, s. 82; Insurance Act, RSA 2000, c I-3, ss. 536, 684, 738; Saskatchewan Insurance Act, RSS 1978, c S-26, ss. 116, 176, 220, 254; The Insurance Act, CCSM c 140, ss. 192, 230, 258; Insurance Act, RSNB 1973, c I-12, ss. 106 (1), 182, 215 (2); Insurance Act, RSPEI 1988, c I-4, ss. 38, 62; Insurance Act, RSNS 1989, c 231, ss. 27, 94, 95, 217; Life Insurance Act, RSNL 1990, c L-14, ss. 52 (2) (3); Insurance Act, RSNWT 1988, c I-4, ss. 58, 113;, 151 (7); Insurance Act, RSNWT 1988 (Nu) c I-4, ss. 58, 113., 151 (7); Insurance Act, RSY 2002, c 119, s. 120.

169. Insurance Act, RSO 1990, c I.8, s. 214; Insurance Act, RSBC 2012, c 1, s. 82; Insurance Act, RSA 2000, c I-3, s. 684; Saskatchewan Insurance Act, RSS 1978, c S-26, s. 176; The Insurance Act, CCSM c 140, s. 192; Insurance Act, RSNB 1973, c I-12, s. 176; Insurance Act, RSPEI 1988, c I-4, s. 163; Insurance Act, RSNS 1989, c 231, s. 217; Life Insurance Act, RSNL 1990, c L-14, s. 46; Insurance Act, RSNWT 1988, c I-4, s. 113; Insurance Act, RSNWT 1988 (Nu) c I-4, s. 113; Insurance Act, RSY 2002, c 119, s. 120.

estate lawyer, the estate executor or the beneficiaries. One of these individuals or their legal representative will have complete control over the disposition of the benefit.¹⁷⁰

The discussion on such payout options does not apply to retirement products which may be subject to specific transfer or payout rules which require that amounts be transferred to specific retirement products. Insurers who transfer any amounts which are “locked-in” for retirement purposes must limit transfer options to those entitled under applicable legislation. Agents should be aware of such payout option limitations to be able to guide clients effectively.

The most common settlement option is for the insurer to issue a lump-sum cheque to the named beneficiary or to the estate executor, who may deposit the funds with whichever financial institution the beneficiary or the estate executor prefers.

3.5 Time to pay claim

The insurer is obligated by provincial and territorial insurance law to pay a claim within 30 days of receiving evidence that satisfies that the claim is payable.¹⁷¹

While under the terms of the policy there is no entitlement to interest on an unpaid claim, in practice many insurers pay interest for at least some of the time after death and before the benefit is paid.

The death benefit under a segregated fund (individual variable insurance contract (IVIC)) must be calculated after death. The death benefits under these contracts can go up or down in value depending on market performance and other variable factors.

170. Insurance Act, RSBC 2012, c 1, s. 65(1) (life insurance), 124(1) (accident & sickness insurance); Insurance Act, RSA 2000, c I-3, s. 666(1) (life insurance), 731(1) (accident & sickness insurance); The Saskatchewan Insurance Act, RSS 1978, c S-26, s.158(1) (life insurance), 251(1) (accident & sickness insurance); Insurance Act, The, CCSM c I40, s. 173(1) (life insurance), 228(1) (accident & sickness insurance); Insurance Act, RSO 1990, c I.8, s. 196(1) (life insurance), 317(1) (accident & sickness insurance); Insurance Act, RSNB 1973, c I-12, s.157(1) (life insurance), 211(1) (accident & sickness insurance); Insurance Act, RSNS 1989, c 231, s.198(1) (life insurance), 91(1) (accident & sickness insurance); Insurance Act, RSPEI 1988, c I-4, s. 144(1) (life insurance), 200(1) (accident & sickness insurance); Life Insurance Act, RSNL 1990, c L-14, s. 27(1); Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 29(1); Insurance Act, RSY 2002, c 119, s. 101(1) (life insurance), 201(1) (accident and sickness insurance); Insurance Act, RSNWT 1988, c I-4, s. 94(1) (life insurance), 194(1) (accident and sickness insurance); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 94(1) (life insurance), 194(1) (accident and sickness insurance).

171. For life insurance, the delay is 30 days, see for instance s. 203 of the *Insurance Act* (Ontario) and David NORWOOD and John P. WEIR, *Norwood on Life Insurance Law in Canada*, 3rd ed., Toronto, pp. 318 to 322. For individual accident and sickness insurance, the delay is 60 days (see for instance s. 300 par. 10 of the *Insurance Act* (Ontario)). For group accident and sickness insurance, the time for payment will be that indicated in the group insurance contract, since the insurance legislation of the various jurisdictions does not specify the time for payment (see Richard HAYLES, *Disability Insurance: Canadian Law and Business Practice*, Toronto, Carswell, 1998, pp. 265 to 267). In Quebec, under art. 2436 of the *Civil Code of Québec*, the insurer must pay the life insurance benefits within 30 days after receipt of the required proof of loss, and for accident and sickness insurance the delay is 60 days following the receipt of the required proof of loss (except for disability insurance for which the delay is 30 days, see for instance s. 300 par. 11 of the *Insurance Act* (Ontario)).

3.6 Denial of claim

As discussed previously in Chapter 2, there are at least three reasons why an insurer may refuse to pay a death benefit claim, even to a properly identified beneficiary. These reasons are:

- Fraud, or more accurately, insurance fraud;
- Payment of a death benefit which is against public order;
- Lapse (default of payment) of the insurance policy.

During the application process, the agent must check the information provided by the applicant for any possible fraudulent information.

A fourth motive could be that the claim was not made in a timely fashion according to applicable provincial legislation. In that case, an insurer could invoke the limitation period.¹⁷²

3.6.1 Payment contrary to public order

When a beneficiary causes the death of the life insured, it is considered a violation of community standards or “public order,” enabling the insurer to refuse payment. Note that it does not matter if the beneficiary intended to enrich themselves through the death of the life insured; such beneficiary might not even know they were a beneficiary. However, since it would be unfair to allow them to benefit from their wrongdoing, the insurer is entitled by law not to perform its obligations under the insurance contract.¹⁷³

EXAMPLE

Amit and Mary have been dating for two years when Amit decides to purchase life insurance on Mary’s life. After a bitter argument, Amit pushes Mary off a cliff and Mary does not survive the fall. Amit is found guilty of first-degree murder and the insurer is entitled not to pay any benefits to Amit as such payments would be contrary to public order.

172. Insurance Act, RSBC 2012, c 1, s. 6, 23, 42 and 76 (life insurance), s. 98, 99 and 104 (accident & sickness); Insurance Regulation, BC Reg 403/2012, s. 4; Insurance Act, RSA 2000, c I-3, 526, 527, 643(2)g) and 644(h), 677 (life), 708(1) (accident & sickness); Fair Practices Regulation, Alta Reg 128/2001, s. 5.3; The Saskatchewan Insurance Act, RSS 1978, c S-26, Limitations Act, The, SS 2004, c L-16.1, s. 5; Insurance Act, The, CCSM c I40, s. 152, 153, 154 and 184 (life), s. 207, 209 and 230.3 (accident & sickness); Insurance Act, RSO 1990, c I.8, s. 175, 176 and 177 (life), s. 294, 296 and 298 (accident & sickness); Insurance Act, RSNB 1973, c I-12, s. 194(12) (accident & sickness); Limitation of Actions Act, SNB 2009, c L-8.5, s. 5; Insurance Act, RSNS 1989, c 231, s. 103(12) (accident & sickness), s. 209 (life); Insurance Act, RSPEI 1988, c I-4, s. 14, s. 155 (life), s. 183(12) (accident & sickness); Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 12(12); Limitations Act, SNL 1995, c L-16.1, s. 5; Insurance Act, RSY 2002, c 119, s. 112 (life), 184(12) (accident & sickness); Insurance Act, RSNWT 1988, c I-4, s. 105 (life), 177(12) (accident & sickness); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 105 (life), 177(12) (accident & sickness).

173. David Norwood and John P. Weir. *Norwood on Life Insurance in Canada*, 3rd Ed., Toronto, Carswell, 2002. p. 435 to 441.

3.7 Accident and sickness claims

There are different benefits payable under accident and sickness policies. The claims could be for accidental injury or dismemberment or for accidental death, disability, or critical illness.

Generally, for certain accidental injuries, it can be difficult to gather the information to submit a claim if the insured person is too injured to fill out the claim form. To help protect the insured person in this type of situation, there are provisions in provincial and territorial insurance law that give relief for imperfect compliance with the claims process.

3.7.1 Accident death and dismemberment claims

Under an accidental death and dismemberment coverage, a policyholder can name a beneficiary.¹⁷⁴ For accidental injury that causes loss, for example, of use of limbs, the payment usually goes to the policyholder who is usually also the insured person. For loss of life due to accident, the payment usually goes to a named beneficiary or, if none, to the policyholder or their estate.

3.7.1.1 Documents required

Similar to life insurance, the insurer will provide the insured with the necessary forms required to support a claim. Detailed medical evidence from a physician may be necessary to substantiate a claim.

3.7.2 Disability claims

The inability to work, to work full-time or to continue in the same job may be caused by an accident or illness. It is also commonly caused by mental or psychological conditions, such as depression or anxiety. Short or long-term individual or group disability insurance can help protect against the risk of being unable to work.

The claimant must satisfy the insurer that they meet the definition of disability set out in the policy. The disability may be caused by accident or illness.

Disability insurance is not unemployment insurance. Being unable to find a job is not a relevant factor under a disability insurance policy.¹⁷⁵

174. Insurance Act, RSBC 2012, c 1, s. 92 and 117; Insurance Act, RSA 2000, c I-3, s. 695 and 724; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 226 and 247; Insurance Act, The, CCSM c I40, s. 203 and 224; Insurance Act, RSO 1990, c I.8, s. 290 and 313; Insurance Act, RSNB 1973, c I-12, s. 186 and 207; Insurance Act, RSNS 1989, c 231, s. 64 and 87; Insurance Act, RSPEI 1988, c I-4, s. 174 and 196; Accident and Sickness Insurance Act, RSNL 1990, c A-2, s. 2 and 25; Insurance Act, RSY 2002, c 119, s. 174 and 197; Insurance Act, RSNWT 1988, c I-4, s. 167 and 190; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 167 and 190.

175. *Blanchard v. Canadian Indemnity Co.*, [1990] I.L.R. 1-2591 (P.E.I. C.A.); *Green v. Mutual of Omaha Insurance Co.*, (1983) 61 N.S.R. (2d) 352 (N.S. T.D.); *McCulloch v. Calgary (City)*, (1985) 62 A.R. 209 (Alta. Q.B.).

3.7.2.1 Documents required

From a legal standpoint, a claimant must provide evidence to the insurer that a claim is valid. The production of such evidence obligates the insurer to pay the claim.

The definitions of “disabled” vary considerably among different policies. Therefore, the documentation required to support a claim will need to match the benefit requirements stated in the insurance policy.

The insurer will tell the claimant what it needs to assess a claim. Usually the claimant must complete a statement and have their doctor provide an attending physician’s statement (APS). The doctor will be asked to state when the person’s condition started. This is important because this insurance has a waiting (or elimination) period. The insurer may use the date given by the doctor to determine when the waiting period began.

The person who may receive the disability payments can vary depending on who owns the policy and who has been named as beneficiary. Payments are made to the insured, which may be the life insured or another party, such as their employer. As noted, payment of a benefit will require proving the existence of a “disability” as defined in the insurance policy. The sequence is as follows:

- A period of total disability may be required before partial disability benefits are available;
- In this situation, the waiting period must elapse before benefits are payable;
- Proof the insured person is no longer able to perform the duties or activities of their occupation is required;
- Periodic assessment of whether the claimant is still disabled; and
- Assessment that a claimant has recovered and whether they remain permanently, totally or partially disabled (if that situation is covered).

Financial evidence may be required to support a claim for lost income and lost income potential due to a disability.

3.7.2.2 Medical and other examinations

Claims are based on medical evidence, from a family doctor or a specialist if required. There may also be additional medical evidence requested by the insurer, as they seek to better understand and verify the nature and extent of an individual’s disability. Since claimants are expected to reasonably assist in their rehabilitation, the insurer may give them the opportunity to consult other specialists, which it will pay for.

Critical illness insurance provides a lump-sum payment should the insured become seriously ill.

A claim is made if a licenced physician specializing in the determined illness diagnoses the insured with that illness or disease and it is covered by the insurance policy.

Generally, a lump-sum benefit payment will be made to the insured 30 days after the claim has been approved.

Once the claim is paid, the critical illness insurance policy ceases.

If the insured dies for a reason not covered by the critical illness policy, the premiums paid may be refunded to the named beneficiary.

3.8 Segregated funds and annuities

When the life insured under an annuity contract dies, the beneficiary or the estate is usually entitled to a death benefit. However, it is not the case when the annuity contract was an immediate life annuity contract that has begun to pay benefits to the annuity grantee that had no guarantee period, or with a guarantee period that has passed.

Where a death benefit is owed by the insurer to the beneficiary or to the estate, our comments regarding the proof of claim under Section 3.1.4 apply.

As discussed in Chapter 2, immediate or payout annuities may be purchased with a guarantee period. This means that if the person whose life is insured dies before the insurer has made a stipulated number of payments, the insurer remains obligated to continue payments. This is the guarantee. The annuity grantee (if not the same person as the annuitant) may receive the remaining payments, or in some cases, they may agree with the insurer to terminate the contract early and accept a commuted amount in the settlement of the policy.

Now, amounts accrued in an annuity contract (segregated funds or GIAs) for pension purposes are generally referred to as “locked-in” as applicable legislation imposes important restrictions on the transfer of such amounts. Amounts accumulated in a pension plan may only be transferred in accordance with applicable legislation to the following:

- A LIRA;
- Another pension plan;
- For the purchase of an immediate life annuity or a deferred life annuity;
- A LIF.

3.8.1 Death before retirement

When a person receives a pension under a pension plan and his or her spouse is also eligible under the same plan, if the person dies, the benefits will become payable to the spouse, even if the spouse was not the designated beneficiary.¹⁷⁶ The spouse may be able to roll it into his own locked-in plan. If there were no eligible spouse, the pension benefit will become payable to the named beneficiary. If there is no named beneficiary, the pension amount will be payable to the estate of the pensioner.¹⁷⁷

3.8.2 Death after retirement

If the pensioner had an eligible spouse, the spouse may be entitled to a survivor's death benefit, usually a reduced amount of the pension that was paid to the pensioner.¹⁷⁸ If there is no eligible spouse, a commuted lump-sum representing the remaining payments in any applicable guarantee period will be payable to the named beneficiary. If there is no named beneficiary, it would be paid to the estate of the pensioner.

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176. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp), s.2(1) "survivor" and 23; Pension Benefits Division Act, SC 1992, c 46, Sch II; Pension Benefits Standards Act, RSBC 1996, c 352, s.1(1) "spouse" and 34; Employment Pension Plans Act, SA 2012, c E-8.1, s.1(3) and 89; Pension Benefits Act, 1992, SS 1992, c P-6.001, s.2(1)ff) and 33; Pension Benefits Act, The, CCSM c P32, s.1(1) "common-law partner", 21(26); Pension Benefits Act, RSO 1990, c P.8, s.1(1) "spouse" and 48; Pension Benefits Act, SNB 1987, c P-5.1, s.1 "common-law partner" and "spouse", 1(2) and 43.1; Pension Benefits Act, RSNS 1989, c 340, s.2ga) and aj) and 56; Pension Benefits Act, 1997, SNL 1996, c P-4.01, s.2(c.1) and ff) and 41.
177. Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp), s. 16.2(2) and 23(1.1); Pension Benefits Standards Act, RSBC 1996, c 352, s. 34(1)(2); Employment Pension Plans Act, SA 2012, c E-8.1, s. 57(6), 89(1)(4) and 90(7); Pension Benefits Act, 1992, SS 1992, c P-6.001, s. 33(5); Pension Benefits Act, The, CCSM c P32, s. 21(26); Pension Benefits Act, RSO 1990, c P.8, s. 48(6)(7)(8.1); Pension Benefits Act, SNB 1987, c P-5.1, s. 43.1; Pension Benefits Act, RSNS 1989, c 340, s. 56(4); Pension Benefits Act, 1997, SNL 1996, c P-4.01, s. 41.
178. Determined in accordance with the Pension plan documentation. See also: Pension Benefits Standards Act, 1985, RSC 1985, c 32 (2nd Supp), s.2(1) "survivor" and 22; Pension Benefits Division Act, SC 1992, c 46, Sch II; Pension Benefits Standards Act, RSBC 1996, c 352, s.1(1) "spouse" and 35; Employment Pension Plans Act, SA 2012, c E-8.1, s.1(3) and 90; Pension Benefits Act, 1992, SS 1992, c P-6.001, s.2(1)ff) and 34; Pension Benefits Act, The, CCSM c P32, s.1(1) "common-law partner" and 23(2); Pension Benefits Act, RSO 1990, c P.8, s.1(1) "spouse" and 44 and 48; Pension Benefits Act, SNB 1987, c P-5.1 (s.1 "common-law partner" and "spouse", 1(2) and 41(3); Pension Benefits Act, RSNS 1989, c 340, s.2ga) and aj) and 52; Pension Benefits Act, 1997, SNL 1996, c P-4.01, s.2(c.1) and ff) and 45.



CHAPTER 4

RULES AND PRINCIPLES GOVERNING THE ACTIVITIES OF LIFE INSURANCE AGENTS AND ACCIDENT & SICKNESS INSURANCE AGENTS

Competency component

- Integrate into practice the rules governing the activities of life insurance agents.

Competency sub-components

- Explain the role of the organizations that protect clients;
- Integrate into practice the obligations and responsibilities of life insurance agents.

4

RULES AND PRINCIPLES GOVERNING THE ACTIVITIES OF LIFE INSURANCE AGENTS AND ACCIDENT & SICKNESS INSURANCE AGENTS

Ethics and abiding with the rules of professional practice are fundamental to licenced insurance agents. A common objective of insurance regulators is to provide regulatory services that protect the public interest and enhance public confidence in the sectors they regulate. High ethical standards are critical to maintaining the public's trust in the insurance industry and in the profession of insurance agent.

Trust and ethical behaviour are viewed by clients as important characteristics in their relationship with a life insurance agent. Demonstrating ethical behaviour and providing practical advice help build a trusting agent-client relationship. Ethical conduct includes the following:

- Dealing with conflicts of interest;
- Client needs analysis;
- Selling ethically;
- Meeting fiduciary obligations;
- Complying with statutes, regulations and codes of conduct.

Sanctions for non-compliance with the principles and rules that apply to licenced insurance agents can include important monetary penalties and the revocation of the agent's licence.

The following Sections define important concepts which must be understood and applied by all insurance agents:

- Role of the organizations that protect clients;
- Main responsibilities of a life insurance agent;
- Licencing process and regulations.

The examples provided in the Sections below demonstrate factual situations which illustrate the concepts and allow future licenced agents to familiarize themselves with the high standards expressed as principles and rules which are expected when carrying out their business.

4.1 Role of the organizations that protect clients

This Section identifies the primary regulatory authorities overseeing life insurance agents, and other relevant client protection organizations. It also outlines the regulatory framework regarding the conduct of life insurance agents (and of accident and sickness insurance agents) in Canada, which now increasingly focuses on proactive rather than reactive supervision.

4.1.1 Provincial and territorial regulatory authorities

The federal, provincial and territorial governments legislate and enact regulations for insurance companies. However, federal supervision under the *Insurance Companies Act*, as well as by the Office of the Superintendent of Financial Institutions (OSFI), is primarily “to determine the financial soundness” of the federally incorporated life insurance companies, while the provinces and territories are responsible not only “to determine the financial soundness” of the provincially or territorially incorporated life insurance companies (as the case may be), but also for licencing insurance agents and regulating “the licencing of insurers operating within their jurisdictions as well as the marketing of insurance products.”¹⁷⁹

The provinces and territories are also responsible for regulating market conduct. According to the Canadian Council of Insurance Regulators (CCIR):

Market conduct encompasses any product or service relationship between the insurance industry, insurers, agents and individuals alike, and the public. It is influenced by many factors including: laws, established best practices, codes of conduct, and client expectations.¹⁸⁰

One priority is risk-based regulation which directs the regulators’ efforts toward issues which could have negative impacts on clients. The CCIR affirms that “a risk-based approach could be used to focus regulatory attention on insurers where indicators suggest there is a high risk of non-compliance with the legislation rather than giving every insurer equal weight and examining them all.”¹⁸¹ In other words, breaches of compliance systematically generate an increased supervision by regulators.

179. Government of Canada. Office of the Superintendent of Financial Institutions. [online]. Revised October 23, 2014. [Cited July 21, 2017]. See: <http://www.osfi-bsif.gc.ca/eng/wt-ow/Pages/wwr-er.aspx>

180. Canadian Council of Insurance Regulators (CCIR) Risk-Based Market Conduct Regulation Committee. *An Approach to Risk-Based Market Conduct Regulation*. [online]. Revised October 2008. [Consulted July 21, 2017]. http://www.ccir-ccrra.org/en/init/rbmc/Approach_to_RbMC_FinalDoc_Oct10.pdf

181. *Ibid.*

Regulatory authorities have a mandate to ensure fair, responsible and professional conduct by life insurance agents. They fulfill their mandate by setting expectations and requirements for regulating the conduct of life insurance agents toward clients, including:

- Promoting transparency to clients;
- Taking enforcement actions against breaches of conduct;
- Equipping clients with financial knowledge and skills (understanding financial concepts and terminology);
- Giving clients access to independent complaint resolution avenues, such as the OmbudService for Life and Health Insurance.

4.1.2 Provincial and territorial insurance regulators

There are ten provincial and three territorial regulators responsible for the regulation of agents and agencies.¹⁸²

As mentioned previously, OSFI is not responsible for the licencing, regulating and supervision of an insurance agent's practice.

4.1.2.1 British Columbia

In British Columbia, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by the Insurance Council of British Columbia,¹⁸³ while the Financial Institution Commission of British Columbia¹⁸⁴ issues business authorizations to insurance companies.

Life insurance agents and accident & sickness insurance agents are governed by the *Financial Institutions Act*,¹⁸⁵ the *Rules* of the Insurance Council of British Columbia¹⁸⁶ and the *Code of Conduct* of the Insurance Council of British Columbia.¹⁸⁷ There is no specific Chapter regarding

182. For individual links to the regulatory authorities websites, consult <http://www.cisro-ocra.com/>

183. For more information, consult: <http://www.insurancecouncilofbc.com/PublicWeb/Home.html>

184. For more information, consult: <http://www.fic.gov.bc.ca/>

185. Financial Institutions Act, RSBC 1996, c 141, ss. 74.1 to 80.3 and 168 to 180, the relevant regulations taken under this Act are the following: Prescribed Classes of Insurance for Insurance Licences Regulation, BC Reg. 574/2004; Insurance Licensing Exemptions Regulation, BC Reg. 328/90; Classes of Insurance Regulation, BC Reg. 204/2011; Marketing of Financial Products Regulation, BC Reg. 573/2004; Insurance Contracts (Life Insurance Replacement) Regulation, BC Reg. 327/90; Insurance Regulation, BC Reg. 403/2012; Administrative Penalties Regulation, BC Reg 22/2013.

186. For more information, consult: <https://www.insurancecouncilofbc.com/PublicWeb/RedirectFormLink.aspx?FormNumber=80>

187. For more information, consult: <https://www.insurancecouncilofbc.com/Downloads/General/Code%20of%20Conduct3.pdf>

agents in the *Insurance Act*.¹⁸⁸ However, The *Financial Institutions Act* contains certain relevant provisions relating to insurance agents.¹⁸⁹

4.1.2.2 Alberta

In Alberta, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by the Alberta Insurance Council,¹⁹⁰ while the Superintendent of Insurance of Alberta¹⁹¹ licences the insurance companies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*¹⁹² and the *Life Insurance Council Code of Conduct*.¹⁹³

4.1.2.3 Saskatchewan

In Saskatchewan, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by the Life Insurance Council of Saskatchewan,¹⁹⁴ while Saskatchewan's Financial and Consumer Affairs Authority (Insurance and Real Estate Division)¹⁹⁵ licences the insurance companies.

188. Insurance Act, RSBC 2012, c 1. There is one relevant regulation under the Insurance Act (Insurance Regulation, BC Reg 403/2012), which contains some definitions and provisions on the rights of policyholders when an irrevocable beneficiary designation is made.

189. Financial Institutions Act, RSBC 1996, c 141, ss. 79 (rebate of premiums), 94 (coercive tied selling), 168 to 180 (insurance agents and adjusters), 252 (offences), 253 (penalties) and 253.1 (administrative penalties).

190. For more information, consult: <http://www.abccouncil.ab.ca/>

191. For more information, consult: <http://www.finance.alberta.ca/business/insurance/>

192. Insurance Act, RSA 2000, c I-3, ss. 451 to 511.2. The relevant regulations under this Act are the following: Certificate Expiry, Penalties and Fees Regulation, Alta. Reg. 125/2001; Classes of Insurance Regulation, Alta. Reg. 144/2011; Enforcement and Administration Regulation, Alta Reg 129/2001; Fair Practices Regulation, Alta. Reg. 128/2001; Insurance Agents and Adjusters Regulation, Alta. Reg. 122/2001; Insurance Councils Regulation, Alta Reg 126/2001; Miscellaneous Provisions Regulation, Alta Reg 120/2001; Replacement of Life Insurance Contracts Regulation, Alta. Reg. 127/2001.

193. For more information, consult: <http://www.abccouncil.ab.ca/wp-content/uploads/2010-LIFE-CODE-BM.pdf>

See also the Life Insurance Council Bylaws:

<https://www.skccouncil.sk.ca/download%20files/LICS%20Bylaws%20-%20current.pdf> and the *Life Insurance Replacement Declaration* at <https://www.skccouncil.sk.ca/lifidislosure.htm>

194. For more information, consult: <https://www.skccouncil.sk.ca/>

195. For more information, consult: <http://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/insurance-companies>

Life insurance agents and accident & sickness insurance agents are governed by *The Saskatchewan Insurance Act*¹⁹⁶, the Life Insurance Council Guidance Notes¹⁹⁷ and the Life Insurance Council Bylaws.¹⁹⁸

In Saskatchewan, in order to be allowed to distribute segregated funds, a life insurance agent must have completed a course recognized by the Life Insurance Council of Saskatchewan. If a life insurance agent is not allowed to sell segregated funds, a restriction will appear on his licence.¹⁹⁹

4.1.2.4 Manitoba

In Manitoba, life insurance agents and accident & sickness insurance agents are licenced by the Insurance Council of Manitoba,²⁰⁰ while the ministry of Finance (Financial Institutions Branch)²⁰¹ licences the insurance companies. There is no licence for corporate agencies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*,²⁰² the *Insurance Agents and Adjusters Regulation* 389/87, the Life Insurance Agents and Accident and Sickness Insurance Agents Licencing Rules and by the *Life Insurance and Accident and Sickness Agent's Code of Conduct*.²⁰³

196. Saskatchewan Insurance Act, RRS 1978, c S-26, ss 416 to 462. The relevant regulations under this Act are the following: Saskatchewan Insurance Councils Regulations, The, RRS c S-26 Reg 2; Saskatchewan Insurance Regulations, 2003, RRS c S-26 Reg 8.

197. Insurance Councils of Saskatchewan. *Guidance Note #1 – Individual variable insurance contracts (IVICS)*. [online]. Revised December 11, 2007. [Consulted July 21, 2017]. [https://www.skouncil.sk.ca/download%20files/Guidance%20Note%20IVIC%20\(Dec%2011%202007\).pdf](https://www.skouncil.sk.ca/download%20files/Guidance%20Note%20IVIC%20(Dec%2011%202007).pdf) Insurance Councils of Saskatchewan. *Guidance Note #2 – Entering into a business transaction with a client*. [online]. Revised May 13, 2011. [Consulted July 21, 2017]. <https://www.skouncil.sk.ca/download%20files/LIC%20Guidance%20Note%202%20-%20Entering%20into%20a%20business%20transaction%20with%20a%20client.pdf>

198. The Life Insurance Council Bylaws include 10 bylaws (including Bylaw 8 (Misconduct), Bylaw 9 (Incompetence) and Bylaw 10 (Discipline Process), and some relevant Schedules and Appendix, such as the Supervision Certificates Appendix and the Replacement (LIRD) Appendix.

199. For more information, consult: <https://www.skouncil.sk.ca/RIA%20Info.htm>

200. For more information, consult: <http://www.icm.mb.ca/>
See also the Conflict of Interest Guidelines for Additional Occupations at <http://www.icm.mb.ca/licensing-info33/44-licensing-info/general9/104-conflict-of-interest-guidelines-for-additional-occupations>

201. For more information, consult: <http://www.gov.mb.ca/firb/insurance.html>

202. The Insurance Act, CCSM c I40 (see Part XV of the Act which is entitled “Agents, Brokers and Adjusters.” See also the Insurance Agents and Adjusters Regulation, Man. Reg. 389/87 R. Other relevant regulations are: Classes of Insurance Regulation, Man Reg 221/2014; Insurance (General Matters) Regulation, Man Reg 220/2014; Insurance Agents and Adjusters Fees Regulation, Man Reg 73/93; Insurance Councils Regulation, Man Reg 227/91.

203. For more information, consult: <http://www.icm.mb.ca/files/Licensing%20Info/LifeA&SCodeofConduct.pdf>

4.1.2.5 Ontario

In Ontario, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by the Financial Services Commission of Ontario (FSCO),²⁰⁴ which also regulates insurers.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*²⁰⁵ and by the *Agents regulation*,²⁰⁶ the *Replacement of Life Insurance Contracts regulation*,²⁰⁷ the *Unfair or Deceptive Acts or Practices regulation*,²⁰⁸ the *Variable Insurance Contracts regulation*²⁰⁹, the *Administrative Penalties regulation*²¹⁰, and the *Code of Ethics for Life Insurance Agents in Ontario* (which does not have legal effects, unlike the Code of Conducts in British Columbia, Alberta and Manitoba).²¹¹

Other regulations have come into force on July 1, 2016.²¹²

4.1.2.6 Québec

In Québec, life insurance agents, accident & sickness insurance agents, insurance brokers and independent agencies are licenced by the *Autorité des marchés financiers* (AMF),²¹³ which also regulates insurers.

However, the discipline of life insurance agents and, accident & sickness insurance agents is the responsibility of the *Chambre de la sécurité financière* (CSF), while the AMF is responsible for the supervision and discipline of corporate agencies (firms and independent partnerships).²¹⁴

Life insurance agents and accident & sickness insurance agents are governed by *An Act respecting the distribution of financial products and services*,²¹⁵ by the *Regulation respecting firms, independent representatives and independent partnerships*,²¹⁶ the *Code of ethics of the Chambre de la sécurité financière*,²¹⁷ the *Regulation respecting the issuance and renewal of representatives' certificates*,²¹⁸

204. For more information, consult: <https://www.fSCO.gov.on.ca/en/Pages/default.aspx>

205. Insurance Act, RSO 1990, c I.8, ss. 393 to 407.1.

206. O. Reg. 347/04.

207. RRO 1990, Reg. 674.

208. O. Reg. 7/00.

209. O. Reg. 132/97.

210. Administrative Penalties, O Reg 408/12.

211. For more information, consult: https://www.fSCO.gov.on.ca/en/insurance/lifehealthbulletins/archives/pages/lh-03_95.aspx This code of ethics is not a legal document.

212. Accident and Sickness Insurance - Application of Part VII of the Act, O Reg 279/15; Accident and Sickness Insurance - General, O Reg 281/15.

213. For more information, consult: <https://lautorite.qc.ca/en/professionals/>

214. For more information, consult: <http://www.chambresf.com/en/>

215. RSQ, c D-9.2.

216. An Act Respecting the Distribution of Financial Products and Services, CQLR, c D-9.2, r. 2.

217. *Ibid.*, r. 3.

218. *Ibid.*, r. 7.

the *Regulation respecting the pursuit of activities as a representative*,²¹⁹ the *Regulation of the Chambre de la sécurité financière respecting compulsory professional development*,²²⁰ the *Regulation respecting the registration of firms, representatives and independent partnerships*,²²¹ the *Regulation respecting information to be provided to consumers*²²² and the *Regulation respecting the keeping and preservation of books and registers*.²²³

4.1.2.7 New Brunswick

In New Brunswick, life insurance agents and accident & sickness insurance agents are licenced by the Financial and Consumer Services Commission,²²⁴ which also licences insurance companies. There is no licence for corporate agencies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²²⁵

4.1.2.8 Nova Scotia

In Nova Scotia, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by The Office of the Superintendent of Insurance,²²⁶ which also licences insurance companies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²²⁷

4.1.2.9 Prince Edward Island

In Prince Edward Island, life insurance agents and accident & sickness insurance agents are licenced by the Superintendent of Insurance,²²⁸ which also licences insurance companies. There is no licence for corporate agencies. Non-resident corporate agencies are required to register under the Extra-Provincial Corporations Registration Act.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²²⁹

219. *Ibid.*, r. 10.

220. *Ibid.*, r. 13.1.

221. *Ibid.*, r. 15.

222. *Ibid.*, r. 18.

223. *Ibid.*, r. 19.

224. For more information, consult: <http://www.fcnb.ca/industry-insurance.html>

225. Insurance Act, RSNB 1973, c I-12, s. 351 to 370; Life Insurance Agent Licensing Regulation, NB Reg 2003-36; Agents and Brokers Regulation, NB Reg 1995-5; Classes of Insurance Regulation, NB Reg 2012-52.

226. For more information, consult: <http://www.novascotia.ca/finance/en/home/insurance/default.aspx>

227. Insurance Act, RSNS 1989, c 231, ss. 36 to 52; Insurance Agents Licensing Regulations, NS Reg. 81/93.

228. For more information, consult: <http://www.gov.pe.ca/jps/index.php3?number=1053687>

229. Insurance Act, RSPEI 1988, c I-4, ss. 345 to 377; Insurance Agents Regulations, PEI Reg EC248/05; Prohibited Underwriting Practices Regulations, PEI Reg. EC697/03.

4.1.2.10 Newfoundland and Labrador

In Newfoundland and Labrador, life insurance agents, accident & sickness insurance agents and corporate agencies are licenced by the Superintendent of Insurance (Service NL, Financial Services Regulation Division),²³⁰ which also licences insurance companies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Adjusters, Agents and Brokers Act*.²³¹ The *Insurance Companies Act*²³², the *Insurance Contracts Act*²³³, the *Life Insurance Act*²³⁴ and the *Accident and Sickness Insurance Act*²³⁵ are equally relevant.

4.1.2.11 Yukon

In Yukon, life insurance agents and accident & sickness insurance agents are licenced by The Office of the Superintendent of Insurance,²³⁶ which also licences insurance companies. There is no licence for corporate agencies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²³⁷

4.1.2.12 Northwest Territories

In the Northwest Territories, life insurance agents and accident & sickness insurance agents are licenced by the Office of the Superintendent of Insurance, which also licences insurance companies. There is no licence for corporate agencies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²³⁸

230. For more information, consult: <http://www.servicenl.gov.nl.ca/departement/branches/divisions/fsr.html>

231. Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c. I-9; Insurance Adjusters, Agents and Brokers Regulations, CNLR 989/96.

232. Insurance Companies Act, RSNL 1990, c I-10.

233. Insurance Contracts Act, RSNL 1990, c I-12.

234. Life Insurance Act, RSNL 1990, c L-14.

235. Accident and Sickness Insurance Act, RSNL 1990, c A-2.

236. For more information, consult: <http://www.community.gov.yk.ca/consumer/insuranceact.html>

237. Insurance Act, RSY 2002, c 119, ss. 233 to 253; Insurance Regulations, YCO 1977/235.

238. Insurance Act, RSNWT 1988, c I-4, ss. 212 to 238; Insurance Regulations, RRNWT 1990, c I-3.

4.1.2.13 Nunavut

Since April 1, 2013, the Government of Nunavut administers its powers under the *Insurance Act* itself.²³⁹ This is done through the Office of the Superintendent of Insurance of Nunavut.²⁴⁰ Prior to that date, the Nunavut *Insurance Act* was administered by the Office of the Superintendent of Insurance of the Northwest Territories. There is no licence for corporate agencies.

Life insurance agents and accident & sickness insurance agents are governed by the *Insurance Act*.²⁴¹

4.1.3 Canadian Insurance Services Regulatory Organizations (CISRO)

The Canadian Insurance Services Regulatory Organizations (CISRO) defines itself as “an inter-jurisdictional group of regulating authorities who are dedicated to developing consistent standards of qualifications and practice for insurance intermediaries dealing in insurance of persons and property”.²⁴²

The principal responsibility of the members of CISRO is to administer the regulatory system, applicable to insurance intermediaries, under their authority. Although CISRO members cannot enact legislation, they are key advisors to their governments on regulatory issues related to insurance intermediaries.

The CISRO website includes a link to disciplinary actions taken by insurance regulators. This provides transparency to both the industry and clients.²⁴³ The regulatory authorities also work with other authorities and agencies through the Joint Forum of Financial Market Regulators, and maintain constructive dialogue with client associations on issues confronting the life insurance buying public.

4.1.4 Other authorities providing client protection

There are a number of other authorities that protect the client. Those most relevant to the activities of a life insurance agent are discussed below in the following order:

- Office of the Privacy Commissioner of Canada;
- Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
- Assuris;

239. For more information, consult: <http://www.gov.nu.ca/sites/default/files/files/Finance/Insurance/Insurance%20act%20as%20of%20Jan%2013%2C%202014.pdf>

240. For more information, consult: <http://www.gov.nu.ca/finance/information/insurance>

241. Insurance Act, RSNWT 1988 (Nu.), c I-4, ss. 212 to 238; Insurance Regulations, RRNWT (Nu) 1990, c I-3

242. Canadian Insurance Services Regulatory Organizations. *About CISRO*. [online]. [Cited July 21, 2017]. <http://www.cisro-ocra.com/>

243. For information on the disciplinary actions by insurance regulators, consult: <http://decisions.cisro-ocra.com/ins/en/nav.do>

- OmbudService for Life and Health Insurance (OLHI);
- Canadian Council of Insurance Regulators (CCIR).

4.1.4.1 Office of the Privacy Commissioner of Canada

The mandate and mission of the Office of the Privacy Commissioner of Canada is to administer enforcement of the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), Canada's private sector privacy legislation, and to "protect and promote the privacy rights of individuals."²⁴⁴

Life insurance agents operating in British Columbia, Alberta and Québec are subject to their own provinces' personal information protection act. Agents should recognize that they have a responsibility to keep client information confidential and to secure that information.²⁴⁵

EXAMPLE

Nancy, a licenced life insurance agent in Manitoba, kept her client files in an unlocked cabinet in her office or on her computer, which had her password taped to the keyboard. Her office was broken into, her files rifled and her computer stolen. Nancy did not comply with PIPEDA. She should have made sure the files were kept in a secure place.

4.1.4.2 Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

The mandate of Canada's Financial Transactions and Reports Analysis Centre (FINTRAC)²⁴⁶ is to help protect the integrity of the Canadian financial system by ensuring life insurance agents and other entities comply with Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and related regulations. Life insurance agents have a responsibility for reporting suspicious transactions and terrorist property.

244. Office of the Privacy Commissioner of Canada. *About the OPC* [online]. Revised September 12, 2016 [Cited July 21, 2017].

https://www.priv.gc.ca/au-ans/mm_e.asp

245. Personal Information Protection and Electronic Documents Act (PIPEDA), which governs the information-handling practices of private-sector organizations everywhere in Canada except British Columbia, Alberta and Québec, and except in the health-care sector of Ontario, New Brunswick and Newfoundland and Labrador. (Comparable laws apply to organizations conducting business wholly within those jurisdictions.) Even in those provinces, PIPEDA continues to apply to the federally regulated private sector, such as telecommunications, banking and transportation, as well as interprovincial and international transactions. For more information, consult: https://www.priv.gc.ca/faqs/index_e.asp

246. For more information, consult: <http://www.fintrac.gc.ca/intro-eng.asp>

The agent's role under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to focus on the four following areas:

- Ascertaining each client's identity;
- Third-party determination;
- Determination of the purpose;
- Obligation to report suspicious transactions.

Ascertaining each client's identity

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,²⁴⁷ the *Proceeds of Crime (Money Laundering) Regulations*²⁴⁸ and FINTRAC's Guidelines,²⁴⁹ the life insurance agent is required to ascertain the identity of a client purchasing an immediate or deferred annuity, or a life insurance policy that is not an exempt policy,²⁵⁰ and toward which the client is able to pay \$10,000 or more over the duration of the annuity or policy, regardless of the method of payment. Exempted products consist of individual or group registered retirement income plans (RRSP, RRIF, LIRA, LIF, DPSP, RPP and TFSA), exempt life insurance policies²⁵¹ and health or accident insurance policies that do not provide a cash surrender value. The agent must keep a record of the information collected under these laws in the client information record.

Even though the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* does not require that a client's identity be ascertained for some products, the insurer, which also has obligations under the Act, may nonetheless require that the insurance agent ascertain the client's identity. In addition, ascertaining a client's identity can serve to ensure that the client's age has been correctly reported or that the insurer has complied with its obligations under the *Foreign Account Tax Compliance Act* (FATCA), an American law that counters tax evasion among American citizens and residents who hold accounts outside the United States.²⁵²

This means that for non-registered plans, the agent is required to ascertain the client's identity in person based on an identification document bearing a unique identifier number issued by a provincial, territorial or federal government. The agent must do this for each holder, owner and joint holder. Identity can be proven with the originals of the following common identification documents:

- Birth certificate;
- Driver's licence;

247. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17.

248. *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184.

249. For more information, consult: <http://www.fintrac.gc.ca/guidance-directives/1-eng.asp>

250. *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, ss. 62(2) and 19(1).

251. *Income Tax Regulations*, CRC, c 945, s. 306.

252. On February 5, 2014, Canada and the United States signed an intergovernmental agreement under the Convention Between Canada and the United States of America With Respect to Taxes on Income and on Capital that enhances the exchange of tax information and incorporates FATCA provisions into Canada's legislative framework. For more information, consult: <http://www.fin.gc.ca/treaties-conventions/notices/fatca-eng.asp>

- Passport;
- Permanent resident card;
- Certificate of Indian Status;
- Record of Landing.

An insurance agent can use an individual's provincial health card, but only if it is not prohibited by provincial or territorial legislation. For example, you cannot use an individual's provincial health card from Ontario, Manitoba, Nova Scotia or Prince Edward Island, since health cards cannot be used for this purpose in these provinces.

In theory, the insurance agent may use a social insurance card to verify the identity of a client. However a social insurance number may not be used in a declaration made to FINTRAC. As such, in practice, most insurers refuse that insurance agents use a social insurance card to verify the identity of a client.²⁵³ Also consider that the social insurance number is already required by most insurance of persons contracts to comply with the tax obligations related to such products.

Requirements also apply to large cash transactions, such as a single deposit of \$10,000 or more, or two or more \$10,000 deposits within a 24-hour period. Insurers, however, rarely accept cash payments.

When a client purchasing a policy makes a deposit of \$100,000 or more, in any payment form, the agent must check whether the client is a politically exposed foreign person. The agent has 14 days after the transaction to report this type of client. Generally, a politically exposed foreign person is someone who has held a government or legal position in a foreign country, or is the spouse or a close family member of this individual. Insurance forms contain information on this subject.

For individual or group insurance, the agent must also ascertain the client's identity if the client is a corporation or another type of entity. This type of client must provide acceptable proof of identity, such as a certificate of corporate status and the names of the directors. The client must provide the name, date of birth and information on the authorized signatories of the corporation, partnership, not-for-profit organization or unincorporated entity, including estates and trusts.

For an entity other than an estate or trust, the client must provide the names of all individuals who own a share of it along with the home address and professional details on individuals who control 25% or more of the entity. If this individual is also an entity, the agent must obtain additional information. Insurance forms normally list what information to request.

When the client is a legal person (company) or another form of entity, the insurance agent must also confirm and retain the information on the ultimate beneficiaries of the entity, or, in other words, the identity of the individuals who ultimately control the legal person or other form of entity, which cannot be another legal person or entity.

253. The Privacy Commissioner (<http://www.priv.gc.ca>) has published useful information on the use of S.I.N.s. See: <https://www.priv.gc.ca/en/privacy-topics/identity-and-privacy/social-insurance-numbers/protecting-your-social-insurance-number/>

Third-party determination

The agent must be absolutely certain that the individual named in the identification documents is the same individual who is submitting the application. If the applicant is acting on behalf of a third party (especially when there is a power of attorney or a nominee), then a third-party determination must be made. A third party is an individual or entity who gives instructions regarding the policy. If this is the case, the insurance agent must keep a third-party determination record on this other individual, specifying:²⁵⁴

- (a) If the third party is an individual, the individual's name, address, date of birth and nature of his principal business or occupation;
- (b) If the third party is an entity, its name, address and nature of its principal business, whereas if the third party is a corporation, its incorporation number and place of incorporation; and
- (c) The nature of the relationship between the third party and the client.

If the insurance agent is unable to determine whether the client is acting on behalf of a third party, but has reasonable grounds to suspect that this is the case, the individual or entity must keep a document that:

- (a) Indicates whether, according to the client, the transaction is being conducted on behalf of a third party; and
- (b) Describes the reasonable grounds to suspect that the client is acting on behalf of a third party.

Determination of the purpose

As of February 1, 2014, the client must indicate the purpose of the product they are purchasing and to what end it will be used.²⁵⁵

Obligation to report suspicious transactions

All conducted or attempted suspicious transactions must be reported to FINTRAC within 30 days after the agent's first suspicion. If an agent suspects that a transaction (or group of transactions) constitute money laundering or be used to finance terrorist activities, the agent must report the transaction (or group of transactions).

254. Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184, ss. 10(2) and 52(1).

255. Financial Transactions and Reports Analysis Centre of Canada. *Guideline 4 – Implementation of a compliance regime*. [online]. Revised June 2017. [Consulted July 21, 2017].
<http://www.fintrac.gc.ca/guidance-directives/1-eng.asp>

These are some suspicious transaction indicators that an agent is most likely to notice:

- The client refuses to provide the required identification documents, wishes to establish his or her identity through means other than identification documents or excessively delays submitting company documents;
- The client is accompanied and monitored, is withdrawn or nervous, or explains himself or herself in an unusual manner;
- The client demonstrates unusual curiosity about internal controls or unusual knowledge of legislation on suspicious transaction reporting;
- The client deposits third-party cheques for high amounts;
- The client is more interested in the consequences of a product's termination than its long-term advantages;
- The transaction is unnecessarily complex for its purpose;
- The transaction does not seem to fit with the client's apparent financial situation or usual activities; and
- The client provides a P.O. Box in an area where P.O. Boxes are not typically used to receive regular mail (Cities, metropolitan areas, etc.).

Non-compliance with this requirement can lead to serious criminal charges. Suspicious transaction reports are confidential. The agent is protected against any legal action if he or she submits a suspicious transaction report in good faith.²⁵⁶

4.1.4.3 Assuris

Assuris is a “not-for-profit organization that protects Canadian policyholders if their life insurance company should fail.”²⁵⁷ Life insurance agents must understand what would happen if an insurance company became insolvent. The insured is automatically covered under Assuris because all federally regulated insurers, and most provincially regulated companies, must be part of Assuris. If a company were to fail, the insurer's primary regulator would appoint a liquidator. It would first attempt to transfer the policies to other insurance companies. If the liquidator had to reduce benefits, Assuris protection would apply.

The levels of protection, summarized here in Table 4.1, should address any client concerns.

256. Financial Transactions and Reports Analysis Centre of Canada. *Guideline 4 – Implementation of a compliance regime*. [online]. Revised June 2017. [Consulted July 21, 2017].

<http://www.fintrac.gc.ca/guidance-directives/1-eng.asp>

257. Assuris. *Protecting your life insurance*. [online]. Revised 2011. [Cited July 21, 2017].

http://www.assuris.ca/Client/Assuris/Assuris_LP4W_LND_WebStation.nsf/welcome_en.html?ReadForm

TABLE 4.1**Assuris' protection**

BENEFITS	ASSURIS PROTECTION	ADDITIONAL INFORMATION
Death benefit	\$200,000	or 85% of promised benefits, whichever is higher ²⁵⁸
Health expense	\$60,000	
Monthly income	\$2,000/month	
Cash value	\$60,000	
Accumulated value	100% up to \$100,000	No additional coverage

4.1.4.4 OmbudService for Life and Health Insurance (OLHI)

The OmbudService for Life and Health Insurance (OLHI) is a national independent complaint resolution organization providing clients with assistance to their enquiries and complaints pertaining to Canadian life and health insurance products and services. In certain circumstances, OLHI may direct life insurance agent related complaints to the appropriate insurers.²⁵⁹

4.1.4.5 Canadian Council of Insurance Regulators (CCIR)

Similarly to CISRO, the Canadian Council of Insurance Regulators (CCIR) is an inter jurisdictional association of insurance regulators. The mandate is “to facilitate and promote an efficient and effective insurance regulatory system in Canada to serve the public interest.”²⁶⁰

Under the supervision of the CCIR, Canadian insurance regulators have adopted a framework aimed at prioritizing the most important issues “based on their potential impact (risk) to the achievement of desired regulatory outcomes.”²⁶¹

In managing key risks to clients, the regulatory authorities' priorities are being directed at:

- Strengthening the foundation of market conduct;
- Implementing an enhanced market conduct supervisory framework;

258. Assuris. *Protecting your life insurance*. [online]. Revised 2014. [Document cited July 21, 2017]. http://www.assuris.ca/Client/Assuris/Assuris_LP4W_LND_WebStation.nsf/page/Brochure!OpenDocument&audience=policyholder

259. For more information, consult: <http://www.olhi.ca/complaints/our-process/>

260. Canadian Council of Insurance Regulators. *About CCIR* [online]. [Cited July 21, 2017]. <https://www.ccir-ccra.org/en/about/>

261. Canadian Council of Insurance Regulators. *An approach to risk-based market conduct regulation*. [online]. Revised October 2008. [Cited July 21, 2017]. http://www.ccir-ccra.org/en/init/rbmc/Approach_to_RbMC_FinalDoc_Oct10.pdf

- Making the supervision of insurance intermediaries more effective;
- Assisting clients through targeted financial education programs, such as fraud alerts and client information portals.

As indicated by the Canadian Council of Insurance Regulators (CCIR), the framework includes “both micro-level outcomes that are within the control of individual firms or intermediaries and broader systemic level outcomes that can only be achieved through the collective actions of the entire industry.”²⁶² In other words, companies or intermediaries may have an impact in their regions or on their respective customers, but a larger impact can be generated by the adoption of measures or regulations that apply to the entire industry.

4.1.5 Professional associations

There are also a number of organizations that encourage the professionalism of life insurance agents. These include the Canadian Life and Health Insurance Association (CLHIA),²⁶³ Advocis,²⁶⁴ the Independent Financial Brokers of Canada (IFB),²⁶⁵ the Canadian Association of Independent Life Brokerage Agencies (CAILBA),²⁶⁶ and the Financial Planners Standards Council (FPSC).²⁶⁷ These promote the obtaining of professional qualifications, continuous professional development, ethical behaviour within the industry and fair treatment of clients.

4.1.6 International Association of Insurance Supervisors (IAIS)

The International Association of Insurance Supervisors (IAIS),²⁶⁸ representing insurance regulators of more than 200 jurisdictions in nearly 140 countries, has adopted 26 Insurance Core Principles (ICP) with a view to promoting effective and providing globally consistent supervision of the insurance industry and contributing to global financial stability.”²⁶⁹

It is a strategic initiative of CISRO and the Canadian Council of Insurance Regulators (CCIR) to “ensure that the Canadian regulatory system meets all internationally agreed upon standards as well as to keep informed on emerging issues that may be identified outside Canada.”²⁷⁰

262. *Ibid.*

263. For more information, consult: http://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/index.html?readform

264. For more information, consult: <http://www.advocis.ca/home.html>

265. For more information, consult: <http://www.ifbc.ca/>

266. For more information, consult: <http://cailba.com/>

267. For more information, consult: <http://www.fpsc.ca/>

268. For more information, consult: <http://www.iaisweb.org/>

269. International Association of Insurance Supervisors [online]. [Cited July 21, 2017]. <https://www.finma.ch/en/finma/international-activities/policy-and-regulation/iais/>

270. Canadian Council of Insurance Regulators. [online]. [Cited July 21, 2017]. <https://www.ccir-ccra.org/en/about/Default.asp>

4.1.6.1 Insurance core principles (ICP) 18 and 19 of the IAIS

Insurance core principle (ICP) 18, entitled “Intermediaries,” covers the supervision of life insurance agents, and ICP 19, entitled Conduct of business, the activities and behaviour of life insurance agents. The rules emphasized in these ICPs are for the most part reflected in the existing codes of conduct of most of the regulatory authorities and insurance companies with the view to protecting clients and supporting their best interests.

4.2 Main responsibilities of life insurance agents

This Section identifies the main responsibilities of life insurance agents and how they are required to work within a business conduct framework that adheres to the provincial insurance acts and the codes of conduct required by regulators, insurers and industry associations.

Ethics and professional practices should always be at the core of the activities of the insurance agent. Obtaining an insurance licence is a privilege which requires that all agents respect and apply the principles and rules which are imposed by applicable legislation, codes of conduct, and contractual documents. It is fundamental for agents to always be aware that ethics and sound professional practices are not only an obligation but that any form of non-compliance can lead to stiff penalties,²⁷¹ which include applicable monetary penalties and even the revocation of an agent’s licence.

The Insurance Council of British Columbia code has the following introduction:

The strength of the insurance industry is based, in part, on industry members providing advice and services to the public in a competent and professional manner. The underlying principle of all insurance business is utmost good faith. To command the confidence and respect of the public, the insurance industry must maintain a reputation for integrity, competence and good faith.²⁷²

This introduction is a reflection of principles and rules set out in all the other codes of conduct across Canada. Principles generally motivate or encourage certain behaviour such as the obligation to “act in good faith.” Rules prohibit or sanction behaviour such as the prohibition against forgery.

271. See as an example: Administrative Penalties, O. Reg. 408/12:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_120408_e.htm

272. Insurance Council of British Columbia, *Code of Conduct*. [online]. Revised March 1, 2005. [Cited July 21, 2017]. <https://www.insurancecouncilofbc.com/Downloads/General/Code%20of%20Conduct%2013Sep2016.pdf>

Table 4.2 sets out the differences between principles and rules under the Ontario Insurance Act Regulations:²⁷³

TABLE 4.2

Differences between principles and rules

PRINCIPLES REQUIRED OF AN AGENT
An applicant for a licence shall be granted a licence if the Superintendent is satisfied that the applicant is of good character and reputation.
An applicant for a licence shall be granted a licence if the Superintendent is satisfied that the applicant is not engaged in any business or occupation that would jeopardize the applicant's integrity, independence or competence as an agent.
An applicant for a licence shall be granted a licence if the Superintendent is satisfied that the applicant intends to hold himself, herself or itself out publicly and carry on business in good faith as an agent.
RULES IMPOSED UPON AN AGENT
An agent who holds a life insurance licence shall not offer inducements, or use coercion or undue influence in order to control, direct or secure insurance.
An agent who holds a life insurance licence shall not make a false or misleading statement or representation in the solicitation or registration of insurance.
An agent who holds a life insurance licence shall not coerce or propose, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract.

An agent's conduct, practices and decisions can be guided by the following principles and rules:

- Acting in good faith;
- Managing conflicts of interest properly;
- Refraining from unfair or deceptive practices;
- Making full disclosure;
- Acting in compliance of regulation;
- Handling complaints in a timely and fair manner.

273. Insurance Act, Ontario Regulation 347/04, Agents, O. Reg. 347/04, ss. 4, 17.

4.2.1 Acting in good faith

Acting in good faith or in a manner that is consistent with the client's best interests is a fundamental aspect of an agent's business conduct, as well as a key element in the guiding principles of applicable codes of conduct and ethics, whether mandatory or voluntary. The components of acting in good faith are:

- Duty of care;
- Integrity;
- Competence.

4.2.1.1 Duty of care

It is the responsibility and obligation of life insurance agents to avoid careless acts or omissions. The *Code of Conduct* from the Life Insurance Council of Alberta states under *Duty of Care* that "the client's interests take priority over the interests of the agent."²⁷⁴

EXAMPLE

After meeting with a client and completing the life application, Erica, a life insurance agent, was in a rush to leave on a long weekend trip. She locked the application and initial premium in her desk drawer. However, she forgot to submit the application after the long weekend. It was not until a few weeks later when the client enquired about the status of the application that she remembered it was still inside the drawer. Erica's action did not meet the standard of care expected of an agent as she did not put her client's interests first.



4.2.1.2 Integrity

It is essential that life insurance agents act with integrity. These relate to qualities such as:

- Being honest, trustworthy and fair;
- Being reliable, dependable and respectful.

274. Alberta Insurance Council. Life Insurance Council – Code of Conduct, s.5. See also: Code of Conduct (British Columbia), s. 7; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 2, 4 and 5.

The Insurance Council of Manitoba's *Code of Conduct* confirms that if personal integrity is missing, there is little an agent can do to compensate for its absence or to repair the damage to his reputation.²⁷⁵

EXAMPLE

Felicity, an insurance agent, helped a client apply for a multi-million dollar permanent policy and collected the \$100,000 annual premium with the application. Felicity believed that the permanent policy was not suitable for the client's needs (without discussing it with her client) but proceeded with the application at the client's request, as she was only interested in the commission she would receive from the insurer. Through her behaviour, Felicity demonstrated a lack of integrity.

4.2.1.3 Competence

The codes of conduct stipulate that life insurance agents should only carry out business in respect to the products and services for which they have the required competence. If an agent encounters a situation where his knowledge and skills may not be sufficient to make a well-founded recommendation, then the agent has an ethical duty to either ask for technical assistance from a colleague or refer the client to someone who can provide the assistance. As the Insurance Council of British Columbia affirms, "incompetent conduct can result in significant prejudice to clients and insurers."²⁷⁶

EXAMPLE

Sandra, a life insurance agent, does not have experience in annuity products. She tells Amel, a prospective client, that she could prepare a customized proposal for a back-to-back insured annuity. This strategy, she says, will increase the client's guaranteed stream of income at retirement while minimizing the tax payable. Sandra has committed to provide information on a complex transaction without understanding what is involved. Sandra should

275. Insurance Council of Manitoba. *Life Insurance and Accident and Sickness Agents' Code of Conduct*. [online]. Revised March 2009. [Consulted July 21, 2017].

See also: Code of Conduct (British Columbia), s. 3; Code of Conduct (Alberta), s. 1; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan).
<http://www.icm.mb.ca/files/Licensing%20Info/LifeA&SCodeofConduct.pdf>

276. Insurance Council of British Columbia. *Code of Conduct*. [online]. Revised March 1, 2005. [Cited July 21, 2017].
<https://www.insurancecouncilofbc.com/PublicWeb/CodeofConduct.html>

See also: Code of Conduct (Alberta), s. 3; Life Insurance Council Bylaws, Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 4.

have simply told Amel that she would obtain the technical assistance needed from colleagues in her agency. Together, they could have prepared a proposal that would have met the needs expressed by the client.



The combination of care, integrity and competence (often referred to as acting in good faith) will not only help build the life agent's reputation, but it will also achieve the marketplace outcome, clearly stated by the regulatory authorities, that clients be treated fairly.

4.2.2 Managing conflicts of interest

A conflict of interest is a situation in which a life insurance agent is motivated to take action by an interest other than that of the client. Placing the interests of a client second to the agent's interest is contrary to the expectation of all regulatory authorities that clients be treated fairly.

Before clients agree on an insurance contract or receive advice from a life insurance agent, any potential conflicts of interest, whether such conflict is real or apprehended, must be disclosed and managed appropriately. The CCIR and CISRO require that agents address the following principles:²⁷⁷

- Priority of client's interest;
- Disclosure of conflicts or potential conflicts of interest;
- Product suitability.

To comply with these three principles, regulatory authorities have set them out in their respective codes of conducts, as illustrated below.

4.2.2.1 Priority of client's interest

The interests of the client must be placed ahead of those of the life insurance agent.

According to the Insurance Council of Manitoba's *Code of Conduct*, a life insurance agent must:

- Not knowingly prejudice the interests of a client for personal gain;
- Not take advantage of a client's or an insured's inexperience or ill health.²⁷⁸

277. Canadian Council of Insurance Regulators. *Review of implementation of the three principles for managing conflicts of interest*. [online]. Revised December 2008. [Cited July 21, 2017]. https://www.ccir-ccra.org/en/init/iprc/iprc_review_dec_08.pdf

278. Insurance Council of Manitoba. *Life Insurance and Accident and Sickness Agents' Code of Conduct*. [online]. Revised March 2009. [Cited June 19, 2014]. <http://www.icm.mb.ca/files/Licensing%20Info/LifeA&SCodeofConduct.pdf> See also: Code of Conduct (British Columbia), s. 7; Code of Conduct (Alberta), s. 7; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan).

 EXAMPLE

Martha, a group insurance agent, is married to Roberto, VP of Group Insurance Sales at a prominent Life insurance company. Though she acts as agent for several Life Insurance companies, she often feels compelled to recommend Roberto's employer, as she knows that sales for Roberto's company may affect Roberto's performance bonus. In such a situation, Martha is in a conflict of interest.

4.2.2.2 Disclosure of conflicts or potential conflicts of interest

The Insurance Council of Manitoba's *Code of Conduct* states that an agent must "openly" disclose any conflict of interest and that agents must not place themselves in one, unless the client approves of the intended conduct.²⁷⁹

 EXAMPLE

Patrick is a life insurance agent and is also the majority owner of Cuppies, the most successful cupcake shop in town. Sal intends to open a similar shop across the street from Cuppies and wants to obtain insurance on the life of his pastry chef. To do so, he contacts Patrick, whom he only knows as an insurance agent. At their first meeting, Patrick must disclose his majority stake in Cuppies.

4.2.2.3 Product suitability

Agents are expected to follow appropriate client needs-based sales practices to make the most suitable recommendations for prospective client. The recommended product must be suitable to the needs of the client. The client's insurance needs analysis must also show that the agent has understood the client's needs and that he puts the client's interests first.

According to the Alberta *Code of Conduct*, a life insurance agent must:

- Perform a client needs analysis, gathering all the necessary facts required to assess them;
- Recommend the products that meet the client's needs;
- Explain and document the product(s) recommended.²⁸⁰

279. Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 7. See also: Code of Conduct (British Columbia), s. 7; Code of Conduct (Alberta), s. 7; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan).

280. Alberta Insurance Council. *Life Insurance Council – Code of Conduct*, s. 3 and 5. [online]. Revised May 2011. [Cited July 21, 2017]. <http://www.abccouncil.ab.ca/wp-content/uploads/2010-LIFE-CODE-BM.pdf>
See also: Code of Conduct (British Columbia), s. 4 and 5; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 2 and 7.

Best practices for determining product suitability during a typical individual life insurance sales process with a client have been developed collaboratively by industry associations.²⁸¹ They are listed below in sequence:

- Disclosure to client;
- Client expectations;
- Fact finding;
- Needs assessment;
- Recommendations and advice;
- Product information.

4.2.2.4 Avoiding conflict-of-interest occupations

Generally, it is a licencing requirement that the agent not be engaged in any business or occupation that would jeopardize the applicant's integrity, independence or competence.

Regulatory authorities can restrict certain types of additional employment for life insurance agents. For example, restrictions exist on the licencing of clergymen, liquor store employees or police officers. Historically, provincial legislation had provided for a list of restricted occupations with regards to selling life insurance. However, regulators have moved away from this approach to provide for a broader restriction, which is as follows: "the individual must not be in a position to use coercion or undue influence in order to control, direct or secure insurance business."²⁸²

EXAMPLE

Justin works part-time as an independent insurance agent. He is also enrolled as a student to complete the education and training courses required to become a police officer. Following completion of his police officer training, Justin is surprised to learn that employment as a police officer may be incompatible with the activities of an insurance agent. After checking with his provincial regulator, he is told that he may not simultaneously act as an insurance agent and be employed as a police officer, as the latter carries the possibility of exercising undue influence or even coercion when securing insurance business.

281. Canadian Life and Health Insurance Association. *The Approach: Serving the client through needs-based sales practices*. [online]. Revised November, 2016. [Consulted July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Financial+Advisors/\\$file/The_Approach_RefDoc_EN.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Financial+Advisors/$file/The_Approach_RefDoc_EN.pdf)

282. Alberta Insurance Agents and Adjusters Regulation, Alta Reg 122/2001. s 5(1)f)

4.2.3 Refraining from unfair or deceptive practices

Provincial and territorial regulatory authorities define and prohibit certain practices that are unfair, misleading or deceptive. Below are some of the most common prohibited practices that can occur, which are set out for the most part in codes of conduct, as well as in insurance acts and industry guidelines.

4.2.3.1 Tied selling

Tied selling involves making a purchase of one product conditional on the purchase of another. This practice is prohibited as the transaction provides more benefit to the agent than to the client.²⁸³

According to the *Life insurance and accident and sickness insurance agents' Code of Conduct* of Manitoba, "it is an unfair or deceptive act or practice for an agent or broker to assist in or engage in the practice of tied selling."²⁸⁴

EXAMPLE

Annick, a life insurance agent representing a single insurer, tells Gary, her client, that he qualifies for a registered retirement savings plan (RRSP) loan. However, Annick tells Gary the loan is conditional on Gary transferring his current RRSPs into products offered by the life insurance company that Annick represents. This is not true and therefore deceptive, but Gary trusts Annick and does as she suggests. Annick should never have made one transaction conditional on the purchase of another product or service. This is unethical behaviour as she is the only person to benefit from the transaction.

283. See the following as an example, Insurance Act, RSA 2000, c I-3, s. 509. See also: Fair Practices Regulation, Alta Reg 128/2001, s. 4.

284. Insurance Council of Manitoba. *Life Insurance and Accident and Sickness Agents' Code of Conduct*. [online]. Revised March 2009. [Cited July 21, 2017]. <http://www.icm.mb.ca/files/Licensing%20Info/LifeA&SCodeofConduct.pdf>

4.2.3.2 Churning and twisting

Churning occurs when an agent encourages a client to give up one product for another (usually from the same insurer) in order for the agent to benefit from the commission.²⁸⁵ This is a prohibited practice and, according to CLHIA Guidelines, an “unacceptable sales practice.”²⁸⁶

EXAMPLE

Christine replaced an agent who had retired. In order to take advantage of her new clients for her own benefit, she advised one of them that he should buy a term annuity with his existing registered retirement savings plan (RRSP) to provide income, and reinvest the portion he did not need in an individual variable insurance contract (IVIC). Christine earned a commission on both the purchase of the annuity and the investment in the IVIC. A relative of the client discovered what had happened and complained to the insurer, who terminated Christine’s contract. The client subsequently sued Christine and the insurer.

Twisting is when an agent persuades a client to terminate a policy in view of replacing it with another one (generally from a different insurer).²⁸⁷ The sale does not always benefit the client; often, important information on the full consequences (financial loss) of terminating their policy is withheld by the agent. The agent profits from the commission that the new sale generates. According to the Independent Financial Brokers of Canada’s (IFBC) code of ethics, an agent “must not recommend the replacement of any insurance policy unless he/she believes that such a replacement is in the best interest of the client.”²⁸⁸

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285. Financial Institutions Act, RSBC 1996, c 141, s. 177b); Insurance Act, RSA 2000, c I-3, s. 509; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 445; Insurance Act, The, CCSM c I40, s. 113; Agents, O Reg 347/04, s. 17; Unfair or Deceptive Acts or Practices, O Reg 7/00, s. 1(6); Insurance Act, RSNB 1973, c I-12, s. 369.1f); Insurance Act, RSNS 1989, c 231, s. 43; Insurance Act, RSPEI 1988, c I-4, s. 376(1); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(6)(8); Insurance Act, RSY 2002, c 119, s. 249; Insurance Act, RSNWT 1988, c I-4, s. 239; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 239.
286. Canadian Life and Health Insurance Association. *Guideline 8 – Advisor suitability: Screening, Monitoring and Reporting*. [online]. [Revised 2014] [Cited October 4, 2017]. [https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/\\$file/Guideline_G8.pdf](https://www.clhia.ca/domino/html/clhia/clhia_lp4w_Ind_webstation.nsf/resources/Guidelines/$file/Guideline_G8.pdf)
287. See: Insurance Act, The, CCSM c I40, s. 378(12).
288. Independent Financial Brokers of Canada, *Code of Ethics of Independent Financial Brokers of Canada*. [online]. [Cited July 21, 2017]. <http://www.ifbc.ca/information/code-of-ethics-statement-of-principles>

EXAMPLE 1

Alexi's life insurance agent recommends that he replace his policy with a new one with a larger death benefit from another insurance company. He omitted to explain to Alexi that there are tax consequences in cancelling the current policy, which has a substantial cash value, assuming a new one will be issued. Furthermore, he neglects to inform Alexi about the new two-year incontestability clause and the new two-year suicide clause.

EXAMPLE 2

Shabbir had a three-year deferred annuity contract with one insurance company. An agent, licenced by a competing insurance company, told Shabbir to surrender that annuity and purchase one his company offered, which currently offered better rates and more stability. Shabbir was not told that the products were different, that there are exit fees or that the replacement product had higher investment risk.

4.2.3.3 Premium rebating

Premium rebating involves an agent giving back or rebating a portion of the premiums. The Insurance Act of Ontario describes premium rebating as an “unfair or deceptive act or practice” when:

A person pays, allows or gives, directly or indirectly, a rebate of all or part of the premium stipulated by a policy to a person insured or applying for insurance (...).²⁸⁹

EXAMPLE

Irving met with his client's son Steven, to sell him a life insurance policy. Since Steven was reluctant to sign, Irving offered to pay the first premium. In effect, Irving was offering a rebate. Irving should not offer to pay the first premium as an incentive for clients to purchase.

289. Unfair or Deceptive Acts or Practices, O Reg 7/00, s. 1(7)(8) and 2(1). See also: Financial Institutions Act, RSBC 1996, c 141, s. 79; Marketing of Financial Products Regulation, BC Reg 573/2004, s. 2; Insurance Act, RSA 2000, c I-3, s. 500 and 501; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan), subsection (1)(e); Insurance Act, The, CCSM c I40, s. 378(3)(4)(5); Insurance Act, RSNB 1973, c I-12, s. 368(5), 369.1g) and h); Insurance Act, RSNS 1989, c 231, s. 40; Insurance Act, RSPEI 1988, c I-4, s. 377; Insurance Companies Act, RSNL 1990, c I-10, s. 96; Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(5); Insurance Act, RSY 2002, c 119, s. 244(2); Insurance Act, RSNWT 1988, c I-4, s. 231(2); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 231(2).

4.2.3.4 Trafficking in insurance

Trafficking in insurance occurs when an agent acts as an intermediary between a policyholder who wishes to sell a policy (give up or absolute assignment) and a potential buyer.²⁹⁰ A policyholder might sell his policy to a third party because the beneficiaries have died or he has enough wealth to “self-insure” without paying further premiums. The insurance policies are usually universal life (UL) or whole life but may also include term insurance. Trafficking in insurance is prohibited in some jurisdictions, such as Newfoundland and Labrador.²⁹¹ As set out in the *Insurance Companies Act* of Newfoundland and Labrador:

A 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 life insurance policies or who traffic or trades life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or another person, is guilty of an offence.²⁹²

However, even in the jurisdiction where it is not prohibited, such conduct is discouraged by the industry. Several insurers have a policy against that practice and might terminate the relationship with a life insurance agent participating in it.

EXAMPLE

Jamie, an insurance agent who is also registered as a mutual fund salesperson, arranged the sale of viatical settlements (insurance policies assigned by terminally ill individuals to a corporation) to his clients. He is required to place all business through his employer, which he did not do, and made profit on the sales. This is an unethical and even illegal practice in some jurisdictions.



290. For more information, consult: <https://www.fSCO.gov.on.ca/en/about/warning-notices/Pages/warning-trafficking-life-insurance-09-12-2014.aspx>

291. Insurance Act, RSBC 2012, c 1, s. 152; Insurance Act, RSA 2000, c I-3, s. 784; The Insurance Act, CCSM c 140, s. 90; Insurance Act, RSO 1990, c I-8, s. 115; Insurance Act, RSPEI 1988, c I-4, s. 73; Insurance Companies Act, RSNL 1990, c I-10, s. 89; Insurance Act, RSY 2002, c 119, s. 41; Insurance Act, RSNWT 1988, c I-4, s. 32; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 32.

292. Queen’s printer (Newfoundland and Labrador). *Insurance Companies Act*. [online]. Revised 2010. [Cited July 21, 2017]. <http://www.assembly.nl.ca/legislation/sr/statutes/i10.htm>

4.2.3.5 Inducing to insure

An agent cannot use a gift or offer of payment to convince a client to purchase insurance. This is known as inducing an individual to insure and is a prohibited practice as set out in a number of regulatory documents such as the Prince Edward Island *Insurance Act* (s. 376).²⁹³

EXAMPLE 1

Lorraine is negotiating with a company's vice president to set up a group insurance plan. She learns that another agent has approached the person. She buys the vice-president a case of very expensive wine in the hope that he will agree to do business with her. Lorraine should not try to encourage the vice president to do business with her because of the gift she has offered.

EXAMPLE 2

Nadia offers Silvano, a potential client, a discount on a policy benefit. She recommends adding a term rider free of charge if he buys a permanent life insurance policy. This is prohibited. Nadia should not try to induce a client into buying insurance by offering riders free of charge.

4.2.3.6 Fronting

Fronting is allowing another person to solicit business and submit it to an insurer under another agent's name who has not seen or does not know the client at all.

The Financial Services Commission of Ontario (FSCO) defines “fronting” as situations in which an agent holds a licence but chooses to have another agent who did not actually complete the transaction sign as the agent of record, or where an unlicensed person arranges the business and has a licenced person sign on their behalf.²⁹⁴

293. Legislative Counsel Office (Prince Edward Island). *Insurance Act*. [online]. Revised December, 2012. [Consulted July 21, 2017]. <http://www.gov.pe.ca/law/statutes/pdf/i-04.pdf>

See also: Financial Institutions Act, RSBC 1996, c 141, s. 177(a)(c); Insurance Act, RSA 2000, c I-3, s. 509; The Saskatchewan Insurance Act, RSS 1978, c S-26, s. 444; Insurance Act, CPLM c I40, s. 113; Agents, Ontario Regulations 347/04, s. 17; Unfair or Deceptive Practices, Ontario Regulations 7/00, s.1(6)(7); Insurance Act, LRN-B 1973, c I-12, s. 369.1f) and g); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(7); Insurance Act, LRY 2002, c 119, s. 249; Insurance Act, LRTN-O 1988, c I-4, s. 239; Insurance Act, LRTN-O (Nu) 1988, c I-4, s. 239.

294. Financial Services Commission of Ontario. Revised June 1999 [On-line] (Cited July 21, 2017). See: https://www.fSCO.gov.on.ca/en/insurance/lifehealthbulletins/Archives/Pages/lh-01_99.aspx

See also: Code of Conduct (British Columbia), s. 4; Code of Conduct (Alberta), s. 2; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 4.

Last year, following separate advisory board hearings, five agents had their licences revoked as a result of one agent writing insurance policies through the use of other agents “fronting” on his behalf. More recently, an agent was charged with and pleaded guilty to paying commissions to an unlicensed person. The agent did the business transaction in her name, persons she had not met, and split the commissions with an unlicensed person who had actually completed the transaction.

It is unwise and inappropriate for an agent to “front” business generated by someone else. Agents should not allow themselves to be used by someone else. Not only is fronting improper from a consumer standpoint, but if something goes wrong, it is the agent who will be held accountable. Agents who have participated in such arrangements in the past have not only lost their licences, but have also frequently been left with substantial chargebacks.

EXAMPLE

Donald, the manager of the local office of an insurance company, recruits Abner to become a life insurance agent. Abner has not yet successfully completed the licencing examinations, so he is not licenced. However, he has approached a relative to buy a term policy and has brought the completed application and cheque for the first premium to Donald. Donald signs as agent of record and splits the commission with Abner. Donald should never have employed Abner without the approved licence nor signed him as agent of record, and Abner should not have approached potential clients until he had obtained his licence. Donald risks having his licence revoked and Abner risks never being able to obtain his.



4.2.3.7 Unnecessary delay in delivering policies

The life insurance agent must not hold or retain documents intended for delivery to the client. According to the Insurance Council of British Columbia’s *Code of Conduct*, an agent “must deliver insurance policies or evidence of insurance coverage within a reasonable time” in order to be seen to protect clients’ interests.²⁹⁵

295. Insurance Council of British Columbia. *Code of Conduct*. s. 5 and 7, [online]. Revised March 1, 2005. [Consulted July 21, 2017].
<https://www.insurancecouncilofbc.com/Downloads/General/Code%20of%20Conduct%2013Sep2016.pdf> See also: Code of Conduct (Alberta), s. 3 and 5; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 1, 4 and 7.

EXAMPLE

Kenneth received a policy for delivery to a client the afternoon before he went on vacation. He decided to delay the delivery until after his return several weeks later. He arrived at his client's home to learn the client had died a week earlier. The estate's executors took legal action against Kenneth as this unnecessary delay incurred very serious consequences.

4.2.3.8 Misrepresentation

A number of regulatory documents stipulate that it is a violation for any life insurance agent to make, issue, or circulate any illustration or sales material, or to make any statement that is false, misleading or deceptive.

This is described as an “unfair or deceptive act or practice” in the *Insurance Act* of Ontario when:

Any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, terms, benefits or advantages of any policy or contract of insurance issued or to be issued.

Any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued.²⁹⁶

EXAMPLE

John, a life insurance agent, sends a newsletter to his clients stating that ABC Life Co. insurance products have a 100% guarantee on all life payments: “No questions asked!” The insurer was never made aware of this newsletter or its content. Years later, a claim made by the beneficiary of a life policy issued by ABC Life Co. is refused. The policy had been issued through the agency of John. The beneficiary sues John for the full amount of the death benefit on the grounds of misrepresentation, using the newsletter as evidence.

296. Service Ontario. *Unfair or deceptive acts or practices*, O Reg 7/00, s. 1, [online]. Revised June 11, 2014. [Cited July 21, 2017]. http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_000007_e.htm See also: Financial Institutions Act, RSBC 1996, c 141, s. 177(b); Code of Conduct (British Columbia), s. 1, 2, 3, 7, 8 and 10; Insurance Act, RSA 2000, c I-3, s. 507 and 509; Code of Conduct (Alberta), s. 1, 2, 3, 5, 6, 8 and 10; The Saskatchewan Insurance Act, RSS 1978, c S-26, s., 445; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan) and Bylaw 9 – Incompetence; Insurance Act, The, CCSM c I40, s., s. 113; Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 1, 4 and 7; Insurance Act, RSO 1990, c I.8, s. 395; Agents, O Reg 347/04, s. 17; Insurance Act, RSNB 1973, c I-12, s. 369.1; Insurance Act, RSNS 1989, c 231, s. 42; Insurance Act, RSPEI 1988, c I-4, s. 376(2); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(5)(7); Insurance Act, RSY 2002, c 119, s. 239 and 245; Insurance Act, RSNWT 1988, c I-4, s. 239; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 239.

4.2.3.9 Misappropriating client funds (commingling of funds)

Taking money or other property received from the client for a specific purpose and fraudulently misapplying it to another purpose is considered a deceptive practice and is illegal. The Alberta Insurance Council *Code of Conduct* states the following:

Where an agent collects or receives funds on behalf of an insurer they must:

- Not encumber the funds without the prior consent of the insurer;
- Not use or apply the funds for purposes other than as described in the agreement with the insurer or the client;
- Pay to the insurer all funds collected or received.²⁹⁷

EXAMPLE

Joe, a life insurance agent, asks two of his clients to make their cheques payable to him for transmission to the insurer concerned. The first cheque is for investing into a tax-free savings account (TFSA) and the second cheque is for repaying a loan against a whole life policy. A few days later, Joe informs his clients that the funds have been sent to the insurer when, in fact, he deposited the money into his own bank account. Joe was subsequently arrested by police and convicted of theft over \$5,000 under the *Criminal Code*.²⁹⁸ Evidence of misappropriation of client funds is sufficient to support a finding that Joe should be prevented from being licenced as a life agent.

A number of insurance companies have a no-cash policy in regard to premium payments with an application. They require a cheque drawn on the client's account. Cash makes record-keeping more complicated. Moreover, cash opens the agent up to claims of wrongdoing if the insured asserts he paid the agent more than he actually did. An agent should never deposit money in his own account, even if the intention is to issue a cheque from that account to an insurer. Insurers generally include in their contracts strict rules regarding third-party payments for premiums.

297. Alberta Insurance Council. *Life Insurance Council – Code of Conduct*, s. 1, 2, 3, 4, 5, 6, 8 and 10. [online]. Revised May, 2011. [Cited July 21, 2017]. <http://www.abccouncil.ab.ca/wp-content/uploads/2010-LIFE-CODE-BM.pdf> See also: Code of Conduct (British Columbia), s. 3, 4, 5, 6, 7, 8 and 10; Insurance Act, RSA 2000, c I-3, s. 504; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 1, 2, 4 and 7; Insurance Act, RSO 1990, c I.8, s. 394 and 402; Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 30 and 31; Insurance Adjusters, Agents and Brokers Regulations, CNLR 989/96: s. 57 to 68; Insurance Act, RSY 2002, c 119, s. 243(2); Insurance Act, RSNWT 1988, c I-4, s. 230(2); Insurance Act, RSNWT (Nu) 1988, c I-4, s. 230(2).

298. Criminal Code, RSC 1985, c C-46, s. 334.

4.2.3.10 Making a false document (forgery)

Forgery is a criminal offence and involves the agent making a false document and knowingly doing so.²⁹⁹

EXAMPLE

Harry, a life insurance agent, is aware of the terminal illness of one of his wealthy clients, who has never named a beneficiary and who has no family or close relatives. In the month prior to the death of his client, Harry decides to file an application to name as the beneficiary of the policy a mutual friend of his and a client with whom Harry has conspired. Harry forges the signature of his client on the application to give it the appearance of validity. In doing so, Harry commits forgery.

An agent is required to collect sufficient information to determine client identity and ensure all transactions are lawful. Furthermore, false witnessing of signatures and false declarations violate the professional standards set out in the various codes of conducts.

EXAMPLE

Having never met with his client, Alessio signed as a witness to client signatures on a life insurance application and declared that he completed the application in person with his client. Alessio has in effect submitted a false document.

There are extenuating circumstances that may warrant that the documents are couriered to the clients but this requires that only the intended recipient signs for the package and show photo ID at the time. In this case, a postage-paid return envelope is provided for the client to return the documents to the agent/insurer and the client is advised to have “someone” witness the signatures. The witness should not be someone who is connected to the contract or could benefit from the contract.

4.2.3.11 Holding out improperly

Holding out can be described as a way a life insurance agent carries out his business. Any agent who does not comply with either of the requirements mentioned below is said to be holding out improperly.

299. Criminal Code, RSC 1985, c C-46, s. 366. See also: Code of Conduct (British Columbia), s. 3, 4, 5, 6, 7, 8 and 10; Code of Conduct (Alberta), s. 1, 2, 3, 4, 5, 6, 8 and 10; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan) and Bylaw 9 – Incompetence; Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 1, 2, 4 and 7.

According to The Canadian Association of Independent Life Brokerage Agencies (CAILBA), a life insurance agent who holds out properly must:

- Ensure his licence is posted in a publicly visible place;
- Hold out under the name on the licence unless provincial regulation allows otherwise;
- Not mislead as to qualifications or the nature of business being conducted;
- Avoid terms that indicate meaningful specialized training and competency unless the agent has actually achieved the claimed level of training and/or competency;
- Not claim to have “associates” unless there is at least one licenced individual with equal or better qualifications;
- Not hold out as a financial planner unless holding a planning designation recognized by the Financial Planning Standards Council.³⁰⁰

EXAMPLE

Cynthia had new business cards printed with a designation she had not earned. She therefore misled her clients and potential clients into believing she had the qualifications reflected by the designation. Cynthia had therefore been holding out improperly, which is a deceptive practice.

4.2.3.12 Misusing company-provided illustrations

Life agents should present information about a product accurately, honestly, completely and in clear language. Agents must not change illustrations produced for a client by the insurer. Similarly, they should not manipulate software beyond its defined parameters to create an unreasonable expectation.

300. Canadian Association of Independent Life Brokerage Agencies. *CAILBA Producer compliance guidance*. [online]. Revised 2011. [Cited July 21, 2017]. <http://www.bridgeforcefinancial.com/wp-content/uploads/2012/03/Producer-Compliance-Manual-v2Feb2013.pdf>

See also: Code of Conduct (British Columbia), s. 2 and 7; Insurance Act, RSA 2000, c I-3, s. 489; Code of Conduct (Alberta), s. 8; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Insurance Act, The, CCSM c I40, s. 391; Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 4; Agents, O Reg 347/04, s. 17; Insurance Act, RSPEI 1988, c I-4, s. 73(1); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 36.

The *Code of Conduct* for the Insurance Council of Manitoba stipulates that an agent “must not use sales materials or illustrations that are misleading or unnecessarily confusing.”³⁰¹

EXAMPLE

Gary received an illustration for a potential client. The results were not what Gary expected so he modified the illustration, removing the surrender charges the company illustration contained to make it look more appealing. This is a prohibited practice and misinforms the client.

4.2.3.13 Defamation

It is unethical for a life insurance agent to be maliciously critical or derogatory about any colleague, agency or insurer. As the Insurance Council of Alberta sets out in its *Code of Conduct*, it is not proper practice to discredit insurance companies.³⁰²

EXAMPLE

George is upset that another agent, James, acquired one of his potential clients. George sends an email to all his clients making malicious and derogatory comments about James, James’s office manager and the company James represents. This behaviour goes against the ethical standards of a life insurance agent.

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301. Insurance Council of Manitoba. *Life Insurance and Accident and Sickness Agents’ Code of Conduct*, s. 1, 2, 4 and 7. [online]. Revised March 2009. [Consulted July 21, 2017]. <http://www.icm.mb.ca/files/Licensing%20Info/LifeA&SCodeofConduct.pdf> See also: Code of Conduct (British Columbia), s. 10; Insurance Act, RSA 2000, c I-3, s. 507 and 509; Code of Conduct (Alberta), s. 1, 2, 5, 6, 9 and 10; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Insurance Act, The, CCSM c I40, s. 113; Agents, O Reg 347/04, s. 17; Unfair or Deceptive Acts or Practices, O Reg 7/00, s. 1; Insurance Act, RSNB 1973, c I-12, s. 369.1; Insurance Act, RSNS 1989, c 231, s. 42; Insurance Act, RSPEI 1988, c I-4, s. 376(2); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(5)(7); Insurance Act, RSY 2002, c 119, s. 249; Insurance Act, RSNWT 1988, c I-4, s. 232(2) and 239; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 232(2) and 239.
302. Alberta Insurance Council. *Life Insurance Council – Code of Conduct*, s. 6 and 7 [online]. Revised May 2011. [Cited July 21, 2017]. <http://www.abccouncil.ab.ca/wp-content/uploads/2010-LIFE-CODE-BM.pdf> See also: Code of Conduct (British Columbia), s. 8 and 9; Code of Conduct (Alberta), s. 8; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Insurance Act, The, CCSM c I40, s. 113; Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 4; Agents, O Reg 347/04, s. 17; Unfair or Deceptive Acts or Practices, O Reg 7/00, s. 1; Insurance Act, RSNB 1973, c I-12, s. 369.1; Insurance Act, RSPEI 1988, c I-4, s. 376(2); Insurance Act, RSY 2002, c 119, s. 249; Insurance Act, RSNWT 1988, c I-4, s. 239; Insurance Act, RSNWT (Nu) 1988, c I-4, s. 239.

4.2.4 Making proper disclosure

Disclosure of information is an expected regulatory outcome. Disclosure is entrenched in the approach to risk-based market conduct regulation and to reinforce fair treatment of clients.³⁰³ All of the information submitted on a life insurance application can have a direct bearing on whether the policy is issued or rejected.

EXAMPLE

Nabila, an agent, does not disclose to the insurer that Leslie, the applicant, has a pre-existing health condition. Nabila reasons that if this information were disclosed, the insurer would apply a rating and Leslie would decline to proceed with the application and pay the additional premium, leaving her uninsured. Believing that it would be in Leslie's best interest to have the insurance, Nabila completes the application without noting Leslie's pre-existing health condition. Nabila explains to Leslie that omitting this "detail" will keep the premium down and Leslie gratefully signs the application.

Upon Leslie's death, her beneficiaries were expecting the funds needed to pay off the balance owed on Leslie's mortgage. Instead, as a result of the misrepresentation of Leslie's health on her application, the insurer returned the premiums paid, a much lower amount, leaving her beneficiaries with no choice but to sell the house to pay off the mortgage. Nabila should never have omitted this pre-existing health condition as it was dishonest and did not serve the clients' best interests or that of her beneficiaries.

4.2.4.1 Product disclosure

Agents should also provide complete information about the product and how it meets the client's needs, as well as the life agent's business relationships with the insurer.

At a minimum, the following key items should be disclosed in writing:

- Provinces and territories in which the agent is licenced to sell;
- The insurer(s) that the agent represents;
- The nature of the relationship with the insurer(s) represented;
- How the agent is compensated (method of remuneration);
- If the agent may be eligible for additional compensation (cash or non-monetary, such as travel incentives) based on other factors, for example, volume of business placed in specific period;

303. Canadian Council of Insurance Regulators. *An approach to risk-based market conduct regulation*. [online]. Revised October 2008. [Consulted July 21, 2017].
http://www.ccir-ccrra.org/en/init/rbmc/Approach_to_RbMC_FinalDoc_Oct10.pdf

- Any conflicts of interest;
- The fact that the client has the right to ask for more information.³⁰⁴

Regardless of what disclosure is made and how, life insurance agents should have documentation in their client files that provides evidence that the appropriate disclosure has been made.

4.2.4.2 Disclosure about replacement

To fully understand policy replacement disclosure, a life insurance agent should have a basic understanding of:³⁰⁵

- How policies differ;
- Why it might be appropriate to recommend replacement;
- The risks inherent in replacement even where it may be appropriate;
- Existing insurance that may have cash values;
- Negative tax consequences.

When replacement of a life insurance policy is involved, the agent must comply with all pertinent disclosure requirements that are designed to protect the interests of the client.

Canadian regulatory authorities have adopted a harmonized disclosure form regarding policy replacements called the Life Insurance Replacement Declaration (LIRD).³⁰⁶

This document outlines a number of essential elements that the client must be aware of prior to the replacement of a life insurance policy or rider. It helps ensure that the client receives full disclosure of all relevant details required to make an informed decision. A written comparative explanation of

304. Canadian Life and Health Insurance Association (CLHIA). *Reference Document: Advisor Disclosure*. [online]. Revised June 2017. [Cited July 21, 2017]. [https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Financial+Advisors/\\$file/Advisor+Disclosure+Reference+Document+ENG.pdf](https://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Financial+Advisors/$file/Advisor+Disclosure+Reference+Document+ENG.pdf)
See also: Code of Conduct (British Columbia), s. 5 and 7; Code of Conduct (Alberta), s. 3 and 5; Life Insurance Council Bylaws, Bylaw 8 – Misconduct and Bylaw 9 – Incompetence (Saskatchewan); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 1, 2, 4 and 7.

305. These are dealt with in detail in the product-specific modules. See: Financial Institutions Act, RSBC 1996, c 141, s. 177(a); Insurance Contracts (Life Insurance Replacement) Regulation, BC Reg 327/90; Replacement of Life Insurance Contracts Regulation, Alta Reg 127/2001; Life Insurance Council Bylaws, Appendix B: Life Insurance Replacement Declaration (Saskatchewan); Replacement of Life Insurance Policies - Life Insurance Replacement Declaration (Manitoba): <http://www.icm.mb.ca/replacement-of-life-insurance-policies-life-insurance-replacement-declaration>; Replacement of Life Insurance Contracts, RRO 1990, Reg 674; Insurance Act, RSNB 1973, c I-12, s. 369.1; Insurance Act, RSNS 1989, c 231, s. 44; Insurance Act, RSPEI 1988, c I-4, s. 376(2) b); Insurance Adjusters, Agents and Brokers Act, RSNL 1990, c I-9, s. 45(8); Insurance Adjusters, Agents and Brokers Regulations, CNLR 989/96: s. 69 to 77.

306. Canadian Life and Health Insurance Association. *Replacement disclosure: a guide to preparing the written explanation required for the life insurance replacement declaration*. [online]. Revised August 2014. [Consulted July 21, 2017].

the advantages and disadvantages of replacing the life insurance policy must be completed with the LIRD, and copies of the documents provided to the client. Life insurance agents may want to use questions in the declaration to guide their written explanations. Once the agent has completed the declaration, he is expected to go over the written explanation with the client.

EXAMPLE

Roberto, a life insurance agent, is contacted by Anne, a policyholder, who is interested in increasing her life insurance coverage. She has a \$100,000 permanent life insurance policy and wants to use the \$40,000 cash value to buy a \$250,000 permanent life insurance policy. Anne is leaving for vacation in two days and wants Roberto to expedite this replacement as quickly as possible. Roberto knows that replacing an existing life insurance policy with a new one is often not in the policyholder's best interest. However, Anne is in a hurry and Roberto feels that there is not enough time to explain to her all the pros and cons of a replacement. He does not want to risk losing the sale by making Anne impatient. Roberto acted appropriately when he decided to tell Anne that regulations require that he discuss the situation with her further and provide her and the insurance company with a summary of this discussion.

4.2.4.3 Commission sharing

Commission sharing is the payment of a fee, or an exchange of something of value, that is based on a percentage of commission earned on a sale of a life insurance product. Before splitting commissions with another life insurance agent, the agent should ensure that the person is appropriately licenced where necessary, in order to receive the split. Moreover, it is an obligation of the agent to disclose to his client that there has been or will be a commission splitting and provide all relevant details of the commission splitting to his client.³⁰⁷

EXAMPLE

Phytos is a real estate agent. His client Martha has just purchased a beautiful mansion and Phytos recommends that she visit his licenced life insurance agent, Fred, who can help her obtain life insurance to cover her mortgage in the unfortunate event she should pass away. Unbeknownst to Martha, Phytos always recommends Fred because they have a private agreement whereby Phytos receives 50% of the commission owed to Fred from the sale of the life insurance product. Martha purchases the life insurance without full disclosure of the facts.

307. Financial Institutions Act, RSBC 1996, c 141, s. 178; Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 4.

4.2.4.4 Referrals and referral fees

Referral arrangements consist of a fee paid for each lead or prospect, regardless of whether a sale eventually occurs. These payments cannot be contingent upon a sale and cannot be a percentage of the commission earned unless the payment is being made to another licenced individual. The agent should disclose details of referral arrangements to clients. The document setting out licensee responsibilities issued by the Insurance Council of British Columbia confirms this by stating:

Before paying a referral fee, certain conditions must be met:

- Licensees must be satisfied that the person to whom they are paying the referral fee did not engage in any insurance activities with the client. (...)
- Once satisfied the third party did not act as an insurance agent, a written disclosure must be provided to the client stating that the person is being compensated for the referral.³⁰⁸

Any payment of a referral fee when the above conditions are not met will be considered a deceptive practice and may lead to penalties.

This may vary from one jurisdiction to another. The agent should take the time to verify with the relevant regulator before entering into a referral fees agreement.

EXAMPLE

Jonathan has an arrangement with several real estate agents who will refer home buyers to him for life insurance. He pays a flat fee per name referred and the payment is disclosed to the potential client. If Jonathan had not disclosed this to his clients, he would be acting in an unethical way.

In Ontario, the *Insurance Act* does not prohibit referral fees. What it does prohibit is a person or corporation acting as an agent without having a licence or an insurer, agent or broker paying a commission, or anything of value, to a person who is not licensed and is engaging in activities that would require licensing (s. 403 of the *Insurance Act*). As long as the person who provides the referral is not engaging in acts that would require an insurance agent's or insurance broker's licence, that person and the agent may enter into a financial arrangement for referrals (not sharing

308. Insurance Council of British Columbia. *Licensee responsibilities*. [online]. [Cited July 21, 2017]. <http://www.insurancecouncilofbc.com/publicweb/LicenseeResponsibilities.html>. See also: Financial Institutions Act, RSBC 1996, c 141, s. 178; Marketing of Financial Products Regulation, BC Reg 573/2004, s. 4; Code of Conduct (British Columbia), s. 7.3.2 and Appendix Ilii). In Manitoba, no agent shall, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person to prospect for insurance unless that person holds at the time a subsisting insurance agent's licence (Insurance Act, The, CCSM c 140, s. 378(1)).

of commission). The *Insurance Act* does not specifically address or set a value for such referrals, it should be nominal in nature.³⁰⁹

4.2.5 Acting in compliance with regulations and codes of conducts

Agents have a responsibility to act in compliance with the regulations and requirements applicable to them in the various regulatory documents they will read and sign.

Three of the main responsibilities are discussed in the following order:

- Maintain the required liability insurance, errors and omissions (E&O) coverage (or professional liability insurance);
- Document the file;
- Deliver the contract.

4.2.5.1 Maintaining the required liability insurance, errors and omissions (E&O) coverage

Agents are required to have errors and omissions (E&O) coverage. It provides indemnity for negligence, error, or omission (professional liability insurance) and protects life insurance agents from financial losses they may suffer. As FSCO points out in their requirements:

All life insurance agents must have Errors and Omissions (E&O) insurance as specified in Section 17 of Regulation 633 as amended by Regulation 760/94 under the Insurance Act. The E&O insurance is required for selling activities under a life insurance agent's licence and not for selling activities under other licences or registrations.³¹⁰

EXAMPLE 1

Lowenna sues her life insurance agent, Anthony, to recover a financial loss stemming from him having provided incorrect advice. This is an error on Anthony's part and he can claim on his E&O coverage.

309. If the Financial Services Commission of Ontario becomes aware of referral payments that appear inordinately high, this could lead to an investigation to determine whether the payments are for more than simple referrals.

310. Financial Services Commission of Ontario. *Errors & omissions insurance: Requirements for licensed life insurance agents*. [online]. [Cited July 21, 2017].

https://www.fSCO.gov.on.ca/en/insurance/lifehealthbulletins/Archives/Pages/lh-02_95.aspx

See also: Insurance Council of British Columbia, Rule 7(11); Insurance Agents and Adjusters Regulation, Alta Reg 122/2001, s. 33 to 36; Life Insurance Council Bylaws, Schedule A, Part II (Saskatchewan), s. 6; Insurance Agents and Adjusters Regulation, Man Reg 389/87 R, s. 12 and 14; Agents, O Reg 347/04, s. 13.

 EXAMPLE 2

Kensa made a complaint about her life insurance agent, Paul, because he had not informed her of an important issue pertaining to her annuity contract. This was an omission on Paul's part and he will use his E&O coverage to provide indemnity for any financial loss Kensa may incur.

This coverage applies to negligence, errors and omissions, but not to intentional acts, misappropriations, fraud or criminal activities such as forgery.

The agent should maintain uninterrupted E&O coverage in accordance with the requirements of the province or territory in which he sells life insurance or provides service to clients, and, if required, arrange and pay for extended errors and omissions coverage if leaving the business, retiring or selling the practice (run-off insurance).

 EXAMPLE

Elizabeth, a life insurance agent, intends to retire at the end of the year. She intends to maintain her E&O insurance coverage as long as possible. She also intends to negotiate with the person who buys her book of business to accept liability for any claims after she sells it.

4.2.5.2 Documenting the file

In order to mitigate any potential complaints or even lawsuits against an agent, he must keep detailed notes and correspondence of the original transactions, the recommendations made and the client's acceptance/non-acceptance of those recommendations. By doing so, the agent will have the necessary proof readily available to prove he carried out his business correctly. In the event that the agent made an error, the relevant files will show this and the agent will need to take the appropriate steps with his E&O insurer.

 EXAMPLE

Tuan-Anh, a life insurance agent, is contacted by a lawyer representing a client, Jackie, who claims misrepresentation. They are threatening to file a lawsuit against him seeking damages and to go after the removal of his insurance licence. Tuan-Anh will need to have all the files and documents available to help defend his position. Tuan-Anh must also notify his E&O insurer immediately of the situation.

4.2.5.3 Contract delivery

In delivering a contract to the insured, the agent has important duties to perform, which must be carried out accurately and in good faith. An agent should not deliver the policy to the client without verifying and ascertaining any potential change in his health status. An agent must be certain that between the time of signing the contract and delivering it, no change in the health status of the client has occurred. When the insurance policy is delivered (usually within 30 days), the agent must check that the insured is still in good health. If the agent notices that there have been significant changes in the client's insurability since the application was signed, he must not give him the policy and he must have the application updated.

EXAMPLE

Jeff, a life insurance agent, meets with his client Annabelle to have the finalized contract signed. As soon as Annabelle walks into his office he asks if there has been any change in her health since he asked her the initial questions on her health status. Annabelle says no and that the nurse had visited to carry out the routine check. Jeff is satisfied that all is in order and delivers the contract. If Annabelle had said that she had been hiding a pre-existing health condition or recently been diagnosed with an illness then Jeff would have had to submit another application with the up to date information.

4.2.6 Handling complaints in a timely and fair manner

Life insurance agents are required to handle complaints in a timely and fair manner. Agents are obliged to deal with complaints in good faith.³¹¹

4.2.6.1 Definition of complaint

A complaint is defined as an expression of dissatisfaction about the service provided by an agent. It may involve a claim for a financial loss.

4.2.6.2 Ethical complaints

Complaints involving unethical behaviour or alleging violations of codified ethical standards, such as a code of conduct and ethics, should be taken seriously.

311. Code of Conduct (British Columbia), s. 7; Code of Conduct (Alberta), s. 5; Life Insurance Council Bylaws, Bylaw 8 – Misconduct (Saskatchewan), s. (2)(o); Life Insurance and Accident and Sickness Agents Code of Conduct (Manitoba), s. 8.

4.2.6.3 Procedures to follow

The life insurance agent should maintain a complaint log (register) to track complaints, to provide any required reports and to maintain a state of readiness for regulatory and other audits. The complaint log should maintain information in a consistent fashion. At a minimum, it should summarize the following:

- Life insurance agent;
- Instances of complaint, whether written or oral;
- Recipient of complaint;
- Individual handling the complaint;
- Summary of complaint, with details on whether a regulatory authority is involved;
- Whether the complaint was reported to the insurer and/or Managing General Agent (MGA), and the contract information;
- Steps towards resolution;
- Statement of resolution;
- Date of resolution.

4.2.7 Core ethical values

It is important that the life agent keep his business practice and conduct within the principles and the rules of core ethical values, which, as discussed, include:

- Acting in good faith (care, competence and integrity);
- Managing conflicts of interest properly;
- Refraining from unfair or deceptive acts or practices;
- Making proper disclosure;
- Acting in compliance of regulation and codes of conducts;
- Handling complaints in a timely and fair manner.

It is recognized that all industry players, agents included, benefit from enhanced public trust. This trust can be maintained by developing an ethical culture that will provide a framework that motivates and guides appropriate agent decisions.

4.3 Licencing process and regulations

This Section describes the licencing process and regulations for carrying a licence.

4.3.1 Purpose of licencing life insurance agents and agencies

Licencing is an integral part of the legal and regulatory framework. The notion of public order in licencing aims to protect the public against incompetent agents, unfair or deceptive practices and unethical activities. Licencing is fundamental to the regulation and supervision of life insurance agents to adequately protect clients.

Life insurance agents are required by statutory law to hold a life insurance licence for each province or territory where they carry out business. Terminology such as “authorization,” “certification” or “registration,” are sometimes used in place of “licencing” depending on the province or territory. For the purposes of this Chapter, these terms are collectively referred to as “licencing.”

It is the life insurance agent’s responsibility to limit his practice to areas in which he has been trained, educated and above all licenced. An agent should only sell what he is licenced to sell and only in the province or territory in which he is licensed.

4.3.2 Licencing regime

New applicants for a life insurance licence must have completed the Life Licence Qualification Program (LLQP). There are two types:

- Full LLQP;
- LLQP Accident & Sickness (A&S).

The full LLQP combines life insurance and accident and sickness insurance training. The LLQP Accident & Sickness (A&S) covers accident and sickness insurance only. An A&S agent would then be prohibited from selling any other type of insurance, unless he obtains the full licence to do so.

In addition to passing the LLQP, the applicant must submit a fully completed application to the appropriate licencing authority and the application must be approved before a licence is issued.

New applicants must complete all forms honestly and accurately. Any false or misleading statements provided by the applicant may result in licence revocation and administrative penalties.

An applicant may not conduct insurance activities without holding a valid licence.

The applicant must then obtain employment or an agency contract. The difference between agent certification and agency certification is that the first pertains to an individual, while the second pertains to a corporation.

Fully licenced agents are able to sell products which include the following:

- Individual and group life insurance policies;
- Individual and group accident and sickness (including disability) insurance policies;
- Individual and group annuities (including guaranteed investment accounts (GIA), segregated funds and immediate annuities).

4.3.3 Selling to and servicing out-of-province clients

For life insurance agents wanting to sell to clients located in another province or territory of Canada, a reliance model of reciprocal licencing has been created whereby regulatory authorities in other provinces “rely on the requirements of a life agent’s home jurisdiction, with the option to request that an agent meet further requirements specific to the new or host jurisdiction.”³¹²

The model harmonizes application forms, continuing education standards, and errors and omission (E&O) insurance requirements for agents. Provinces and territories are not currently required to introduce any additional licencing requirements.

This more streamlined licencing regime makes it easier for life insurance agents to be licenced in multiple provinces. Clients also benefit by being assured that life agents have met common licencing standards across the country.

4.3.4 Revoking of licence

The regulatory authorities issue the licence and are empowered to suspend or revoke it for any activities they deem inappropriate, unethical or illegal. Regulatory authorities maintain records of agents who have had substantiated complaints, suspensions and revocations of licences. These records are available to clients. An agent who has had a licence suspended may find it extremely difficult to obtain the trust of potential clients. An agent who has had a licence revoked will find it extremely difficult to obtain a licence again.

As stipulated in the *Insurance Act*, Ontario Regulation:

The Superintendent may suspend or revoke a licence on any grounds on which an application for a licence may be refused or if, after due investigation and hearing, it appears to the Superintendent that the licensee,

- (a) has violated any provision of the licence in the licensee’s operations as an agent;
- (b) has made a material misstatement or omission in the application for the licence;

312. Canadian Council of Insurance Regulators. *Reciprocal licensing*. [online]. [Cited July 21, 2017]. http://www.ccir-ccra.org/en/init/reciprocal_licensing/reciprocallicensing.asp

- (c) has been guilty of a fraudulent act or practice; or
- (d) has demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence has been granted.³¹³

4.3.5 Other products and services for which a licence or registration is required (not exhaustive)

The selling of the products and services below require an agent to be licenced in:

- Property and casualty insurance;
- Securities, including exchange-traded funds (ETF) or mutual funds;
- Mortgage brokering.

4.3.5.1 Property and casualty insurance

To sell property and casualty insurance, a life insurance agent is required by law to hold a separate and distinct insurance licence.

4.3.5.2 Securities, including exchange-traded funds (ETF) or mutual funds

To sell securities such as stocks, bonds, options, commodities, ETFs or mutual funds, a life insurance agent must have a licence from the relevant securities' regulatory or self-regulatory organization. Each type of security typically has its own licence or separate registration.

4.3.5.3 Mortgage brokering

A life insurance agent wanting to engage in a mortgage brokerage or to act as a mortgage broker must be licensed by the proper authority. Mortgage brokerage licences are issued by mortgage broker regulators, which vary from province to province.

If a life agent is carrying out mortgage referrals, he should ensure compliance with legislation regulating mortgage brokers. Typically, a life agent does not need a mortgage brokerage licence to give referrals that provide limited information about a borrower to a potential lender (and vice versa) if the information provided is appropriate.

313. Insurance Act O. Reg. 347/04, s. 8.

4.3.6 Other products and services for which no licence is required

Conversely to the products and services above, the following are subject to certain exceptions as described below.

4.3.6.1 Acting as a deposit broker

Acting as a deposit broker for banks or other deposit-taking institutions in Canada does not require a licence. At present, no regulatory authorities oversee the activities of these brokers.

4.3.6.2 Acting as a financial planner

Although a licensed life insurance agent does not need a licence to advise clients on their financial situation and may even feel competent enough to provide financial advice in areas other than life insurance, it would be misleading for a life agent to refer to themselves as a financial planner. However, licensed life insurance agents must be careful when referring to themselves as such, since each jurisdiction might have different rules regarding the use of that title or similar titles, such as financial advisor.³¹⁴

314. Regulation respecting titles similar to the title of financial planner, CQLR c D-9.2, r. 20.



CONCLUSION

As seen in this Module, insurance agents are subject to various ethical and professional practice obligations, which are imposed by applicable legislation, codes of conduct, contracts, etc. Ethics and abiding by the rules of professional practice are fundamental to licenced insurance agents and essential in achieving the common objective of insurance regulators to promote professional excellence for the ultimate benefit of the public. High ethical standards are critical to maintaining the public's trust in the insurance industry and in the profession of insurance agent. Sanctions for non-compliance with the principles and rules that apply to licensed insurance agents can include important monetary penalties and revocation of the agent's licence.

The insurance industry is heavily regulated and insurance agents cannot be expected to know all legal aspects in intricate detail. Nonetheless, it is very important that insurance agents be familiar with legal aspects and be able to guide clients in the insurance process. Agents should never hesitate to refer clients to other professional (such as lawyers, accountants and tax specialists) advisors when questions from clients are outside the scope of their insurance practice.

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www.fin.gov.nt.ca

Changes to the administration of insurance in Nunavut.
<http://www.fin.gov.nt.ca/taxation/insurance/documents/2013OSINU-ChangestoAdminofInsuranceMarch2013.pdf>

Office of the Superintendent of Insurance.
<http://www.fin.gov.nt.ca/taxation/insurance/>

NOVA SCOTIA

www.novascotia.ca

Insurance.
<http://www.novascotia.ca/finance/en/home/insurance/default.aspx>

OFFICE OF THE PRIVACY COMMISSIONER OF CANADA

www.priv.gc.ca

Information about social insurance numbers.

<https://www.priv.gc.ca/en/privacy-topics/identity-and-privacy/social-insurance-numbers/>

Frequently asked questions.

https://www.priv.gc.ca/faqs/index_e.asp

Mandate and mission.

https://www.priv.gc.ca/au-ans/mm_e.asp

HTTPS://WWW.PRIV.GC.CA/EN/PRIVACY-TOPICS/PARLIAMENT OF CANADA

www.parl.gc.ca

How Canadians govern themselves.

http://www.parl.gc.ca/about/parliament/senatoreugeneforse/parliament/book/chapter_3-e.html

Our country, our parliament.

http://www.parl.gc.ca/About/Parliament/Education/OurCountryOurParliament/html_booklet/division-powers-e.html

PIPEDA

www.priv.gc.ca

A guide for businesses and organizations, your privacy responsibilities.

http://www.priv.gc.ca/information/guide_e.pdf

QUEEN'S PRINTER (NEWFOUNDLAND AND LABRADOR)

www.assembly.nl.ca

Insurance Companies Act.

<http://www.assembly.nl.ca/legislation/sr/statutes/i10.htm>

SERVICE CANADA

www.servicecanada.gc.ca

Canada Pension Plan.

<https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>

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<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

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SERVICE ONTARIO

www.e-laws.gov.on.ca

Insurance Act.

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Unfair or deceptive acts or practices.

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_000007_e.htm

SUN LIFE FINANCIAL

www.sunlife.ca

Investor/stranger owned life insurance - industry on alert.

https://www.sunlife.ca/slfas/Resources/Compliance/Industry+on+alert?vgnLocale=en_CA

UNIFORM LAW CONFERENCE OF CANADA

www.ulcc.ca

What we do.

<http://www.ulcc.ca/en/about-us-en-gb-1/what-we-do>

YUKON GOVERNMENT

www.community.gov.yk.ca

Insurance Act.

<http://www.community.gov.yk.ca/consumer/insuranceact.html>

OTHER REFERENCES

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<https://www.ab.bluecross.ca/dbl/publications.html>

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<http://www2.gov.bc.ca/gov/content/health/health-drug-coverage/pharmacare-for-bc-residents>

Manitoba:

<http://www.gov.mb.ca/health/pharmacare/>

New Brunswick:

<http://www2.gnb.ca/content/gnb/en/departments/health/MedicarePrescriptionDrugPlan.html>

Newfoundland and Labrador:

<http://www.health.gov.nl.ca/health/prescription/>

Nova Scotia:

<http://novascotia.ca/dhw/pharmacare/>

Northwest Territories:

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Nunavut:

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Ontario:

<http://www.health.gov.on.ca/en/public/programs/drugs/programs/programs.aspx>

Prince Edward Island:

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Saskatchewan:

<https://www.saskatchewan.ca/residents/health/prescription-drug-plans-and-health-coverage>

Yukon:

<http://www.hss.gov.yk.ca/pharmacare.php>

Health Canada:

<http://www.hc-sc.gc.ca/hcs-sss/pharma/acces/ptprog-eng.php>

Other references:

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<http://www.drugcoverage.ca/en-ca/>

