

To: SPECIAL JOINT COMMITTEE ON THE CONSTITUTION OF CANADA

From: CANADIAN LIFE INSURANCE ASSOCIATION

While we have no formal brief to present to your Committee we would like to have you give consideration to the attached letter from our Chairman to the Minister of Justice.

Who We Are

The Canadian Life Insurance Association is a voluntary trade association. Established in 1894, it is the oldest organization of life insurance companies on the North American continent. Membership includes 127 Canadian, American, British and other European companies operating in Canada.

Members of the Association provide about 99 percent of the life insurance presently in force in Canada. They also have been chosen as the funding agencies for more than 70% of the private pension plans in Canada, covering approximately 13 percent of the members of private pension plans. Such pension plans range in size from very small to very large, but as is evident from the figures, the great majority have been established for employers of modest size.

November 21, 1980

THE CANADIAN LIFE INSURANCE ASSOCIATION

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OFFICE OF
THE CHAIRMAN

November 21, 1980

The Honourable Jean Chrétien
Minister of Justice
438N Centre Block
Parliament Buildings
Ottawa, Ontario
K1A 0H8

Dear Mr. Minister:

Constitutional Reform

I wish to draw your attention to a concern which the life insurance companies in Canada have with respect to Section 15(1) of the Canadian Charter of Rights and Freedoms contained in the proposed Constitution Act, 1980. Section 15(1) reads as follows:

"Everyone has the right to equality before the law and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex."

Our primary concern is that this Section might be construed as prohibiting life insurance companies from charging their customers different premiums based on age and sex. In addition, there are some other situations in the design and marketing of a life insurance company's products and in the design of employee benefit plans in which differentiation on the basis of age and sex is generally considered to be acceptable. We are concerned that the Section might be interpreted as prohibiting these.

The prohibitions against discrimination on the basis of race, national or ethnic origin, colour or religion pose no problems for life insurance companies because life insurance company products and employee benefit plans do not differentiate on these bases. A few life insurance companies do, however, limit their market to specific religious groups.

We appreciate that Section 1 of the proposed Act makes the guarantees of rights and freedoms set out in the Canadian Charter of Rights and Freedoms

"... subject ... to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

The intention, we understand, is to have the limits spelled out in the law and to have the courts act as the final arbiter of the reasonableness of such limits.

We have some concern that Section 1 might not provide sufficient support for the introduction of legislation permitting life insurance premiums to vary on the basis of age and sex. Could legislation permitting unrestricted variations on the basis of age, for example, be justified on the grounds that it is a "reasonable limit" on the prohibition against discrimination because of age? Would the courts uphold such legislation as being consistent with the Charter?

In any event, when it comes to the regulation of life insurance products and of the design of employee benefit plans, we doubt that it is either desirable or practical to require specific legislative authority for every instance of differentiation on the basis of age or sex that is judged reasonable and proper. Such an approach would require much detailed, technical legislation and could prove an unduly cumbersome, restrictive and uncertain framework for life insurance company operations.

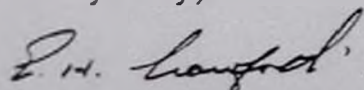
I would note, in passing, that the proposed legislation would seem to involve a significant transfer of regulatory authority from the provinces to the federal government in the fields of life insurance legislation and labour law.

I will not attempt in this letter to identify and to justify all of the situations in which variation on the basis of age and sex seem to us appropriate. We would, of course, be willing to provide a detailed submission if requested. I would like to suggest, however, that in a private, voluntary life insurance market the need to vary premiums by age is almost self-evident. The appropriateness of varying premiums by sex is more contentious but, we think, well founded. Variation in life insurance premiums on these bases is not prohibited at present in any jurisdiction in Canada, or anywhere else that we are aware of.

We believe that the life insurance industry's practice of varying the premiums for its products by age and sex does in fact result in individuals being treated equally before the law. It means that each individual is fairly assessed his or her share of the total of the risks being assumed by the life insurance company. To do otherwise would be to require insurers to structure their premiums so that some individuals would subsidize the insurance costs of others, provided the subsidizers choose to buy insurance at all. There is, of course, no legal obligation upon anyone to buy insurance and bear such subsidies should they feel the premiums are not fair to them.

In the press of the constitutional debate, when many larger issues will undoubtedly demand attention, we fear that this matter may receive only cursory attention. It is a matter of utmost importance to life insurance companies in Canada, and we urge that it be given due consideration.

Yours very truly,



E.H. Crawford
Chairman

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