Canadian Life & Health Insurance Association
Association canadienne des compagnies d'assurances de personnes

July 8, 2024

Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 3rd Floor
Toronto ON M7A 2S9

Re: Public consultation on proposed amendments to the Succession Law Reform Act (SLRA) to offer greater clarity to substitute decision makers and financial institutions regarding beneficiary designations for a plan

To Whom It May Concern,

Thank you for the opportunity to provide feedback on the consultation regarding the proposed amendments to the *Succession Law Reform Act* (SLRA). The CLHIA supports amendments to legislation that would allow substitute decision-makers to make a beneficiary designation in an instrument under certain circumstances. This would protect the interests of consumers in the event of incapacity where the designated beneficiary remains the same as originally designated by the consumer.

Who We Are

The CLHIA is a voluntary association whose member companies account for 99 per cent the life and health insurance business in Canada. These insurers are significant contributors to Ontario and its economy. They provide financial security to about 11 million Ontarians and make nearly $50 billion in benefit payments (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits with the remaining 10 per cent going to life insurance beneficiaries). In addition, life and health insurers have more than $350 billion invested in Ontario's economy. A large majority of life and health insurance providers are licensed to operate in Ontario, with sixty-two headquartered in the province.

Amendments to Legislation

The CLHIA supports the proposed amendment to Part III of the SLRA which would explicitly allow substitute decision-makers to make a beneficiary designation in an instrument that is renewing, replacing, converting an instrument or transferring to a similar instrument, provided that the beneficiary remains the same as in the designation made in the original instrument by the incapable person while capable. We agree with the goal of providing greater clarity and guidance to substitute decision-makers and financial institutions as it concerns beneficiary designations. We also support the draft language that has been proposed for this amendment.

However, we are concerned that to achieve the goal intended by these amendments to the SLRA, there will also need to be necessary amendments made to the *Substitute Decisions Act* (SDA). Otherwise, the proposed amendments to the SLRA would result in a contradiction between the terms of the SLRA (once amended as proposed) and the SDA (as it is currently drafted).

The SDA contains the following provision at section 7(2):

> "The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will."

The SDA also indicates that a "will" in the SDA has the same definition as in the SLRA, which includes, amongst others, "any other testamentary disposition". The combined effect of section 7(2) of the SDA and the definition of "will" in the SDA and SLRA is to prohibit an attorney for property from making a testamentary disposition.

Although uncertain at law, it is possible that a beneficiary designation can be considered a testamentary disposition. In such case, it would follow that the proposed amendments to the SLRA would authorize an attorney under a power of attorney for property to make beneficiary designation in certain instances while at the same time the SDA would prohibit it.

Therefore, without corresponding amendments to the SDA, the proposed amendment to the SLRA will result in a contradiction with the SDA. This contradiction would be at odds with the greater goal of providing more clarity and guidance to substitute decision-makers and financial institutions with respect to beneficiary designations.

A Proposed Solution

Section 54(2) of the SLRA expressly excludes from Part III of the SLRA a contract or a designation of a beneficiary to which the *Insurance Act* applies. This consultation contemplates that: "Corresponding amendments may be needed to the *Insurance Act* to clarify that substitute decision makers may do the same in insurance contracts." We recommend that a more straightforward approach is possible.

Currently, the *Insurance Act* governs the designation of a beneficiary for insurance products under the Life and Accident & Sickness Parts of the Act. For non-insurance contracts, the SLRA governs designations in a "plan" as defined in the SLRA. In British Columbia, there are substantially similar provisions in its *Insurance Act* and its *Wills, Estates, and Succession Act.* However, it is the *Power of Attorney Act* of British Columbia which provides substitute decision-makers with the authority to make/maintain a designation in an instrument other than a will.

We recommend amending the SLRA as has been proposed in this consultation and, at the same time, make a corresponding amendment to section 7 of the SDA. We recommend adopting a similar provision to section 20(5) of British Columbia's *Power of Attorney Act*. We have provided proposed language below for the new provision in the SDA:

> 7 (2.1) Despite subsection (2), the person named as attorney may, in an instrument other than a will,
>
> (a) change a beneficiary designation made by the grantor, if the court authorizes the change, or
>
> (b) create a new beneficiary designation, if the designation is made in
>
> (i) an instrument that is renewing, replacing or converting a similar instrument made by the grantor, while capable, and the newly designated beneficiary is the same beneficiary that was designated in the similar instrument, or
>
> (ii) a new instrument that is not renewing, replacing or converting a similar instrument made by the grantor, while capable, and the newly designated beneficiary is the grantor's estate.

Application to Guardians for Property

We note the current intention of the consultation and proposed amendments to the SLRA appears focused on providing the same authority to attorneys and guardians for property to make/maintain beneficiary designations in certain instances.

Therefore, beyond our proposed amendment to section 7 of the SDA dealing with attorneys, we respectfully suggest it is prudent to consider addressing the contradiction which would result between the proposed amendments to the SLRA and section 31 of the SDA which pertains to the authority of guardians of property. We suggest that to achieve the goal of providing clarity for substitute-decision makers, further amendments to the SDA – namely section 31 (Powers of guardian) – may be required along the same lines as those we propose for section 7 of the SDA.

Conclusion

CLHIA is supportive of the proposed amendments to the SLRA. Our proposed additional revision to the SDA is intended to add clarity and help avoid contradiction between the SLRA and SDA. Please let us know if you require any further information. We would be pleased to meet with you to discuss our comments.

Regards,

Giulia Falbo Ahmadi
Vice President and General Counsel, CLHIA