

February 23, 2015

Mr. J.M. Hall  
Senior Crown Counsel  
Legislative Services  
Ministry of Justice and Attorney General  
601 – 1919 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H2

Dear Mr. Hall:

**Re: CAFII Feedback On Bill 177, The Insurance Act (Saskatchewan)**

CAFII appreciates being included in the consultation on Bill 177 and our feedback on the draft legislation is provided below.

As you know, CAFII members are significant incidental sellers of insurance across Canada and are licensed as Restricted Insurance Agents under the existing ISI regimes in Saskatchewan and Alberta (and shortly in Manitoba). It is our view that the current restricted licensing regime in Saskatchewan (and Alberta) is working well and we are puzzled by many of the proposed new license requirements in Bill 177, as it appears that they will have the effect of superseding the existing ISI regime.

We are also concerned that prior to December 8, 2014 when Bill 177 was released following Second Reading in the legislature, industry stakeholders had not been made aware of the proposed changes. After careful review of the Bill, our overall assessment is that it contains a number of significant, unexpected changes that will have a major impact upon the industry and limit consumer choice. Therefore, CAFII strongly recommends that in consultation with the industry Bill 177 be carefully reviewed and revised before the legislation advances further.

**Section-by-Section Feedback**

**Part I: Short Title and Interpretation**

- **1-2(1), Interpretation:** Bill 177's proposed new definition of "insurance agent" is particularly problematic. The new definition captures persons who, under Saskatchewan's existing framework, are not considered to be insurance agents, including employees of Restricted Insurance Agents (RIAs) and salaried head office employees who are only enrolling customers in group plans. It is our view that, at least for deposit-taking institutions, holding an RIA license should be sufficient regulation, and employees of RIAs need not be individually licensed. Each RIA takes full responsibility for compliance with the regulatory regime in place.

CAFII therefore recommends that clause 1-2(i) be removed from the definition of "insurance agent". This amendment would produce harmonization with eight other Canadian jurisdictions and maintain the exemption from licensure for head office employees which currently exists in the Saskatchewan and Manitoba RIA regimes.

- **1-2(2), Interpretation:** If Saskatchewan chooses to maintain the draft definition of “insurance agent” in 1-2(1), 1-2(2) would then need to include the following exemptions:
  - Employees of RIAs; and
  - Employees who enrol individuals in group insurance plans, including benefit plans.

## Part V: Insurance Intermediaries and Insurance Councils

We recommend that the provisions related to Third Party Administrator<sup>1</sup> (TPA) licensing be removed entirely, since risks relating to a TPA are entirely borne by the Restricted Insurance Agent or the insurer, entities that are already heavily regulated. Further, where the RIA is a deposit-taking institution or contracted with an insurer, TPAs operate under outsourcing contracts which are subject to OSFI Guideline B-10 *Outsourcing of Business Activities, Functions and Processes*. Additional legislative or regulatory requirements are unlikely to improve consumer protection and will instead add cost and complexity to doing business in Saskatchewan and may lead to higher prices for consumers.

- **5-5(1) and 5-5(2), Insurer’s Representative’s Licence Required:** As per our comments on 1-2(1) above, we are concerned that these provisions may effectively eliminate the “head office exemption” that currently exists in Saskatchewan and Manitoba for RIA licensees and individuals who enrol customers in group insurance plans.
- **5-5(1), Insurer’s Representative’s Licence Required:** This clause contains what appears to be a typographical error. It currently reads *“No insurer shall employ as an employee an individual to carry on an insurance agent’s activities unless the individual holds a valid insurer’s representative’s license.”*

We believe that this clause is actually intended to say *“No insurer shall employ as an employee an individual to carry on an insurance representative’s activities unless the individual holds a valid insurer’s representative’s license or an insurance agent’s license.”*

Taken as it currently stands, this clause will require that all insurance agents hold both an insurance agent’s license and an insurance representative’s license. As per the definition of insurer’s representative set out in 5-1, this is a specialized role that may only include a single activity from among those associated with an insurance agent.

- **5-11(f)(g), Application For Licence:** If a licensing requirement for TPAs is introduced, we are opposed to the requirement that the TPA Agreement between the applicant and the insurer must accompany the application for a TPA license for the following reasons:
  - (i) such Agreements are proprietary and confidential to the contracting parties;
  - (ii) in some cases, an Agreement may not be finalized until the parties are certain that they can obtain the required license; and

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<sup>1</sup> The term “third party administrator” is used extensively throughout the Bill but is not defined anywhere.

(iii) the Licence Application Form typically covers all of the key Agreement-related aspects about which the Superintendent would want assurance.

- **5-12, Superintendent May Require Other Information:** We are also opposed to the terminology “any other information and material”. This wording should be narrowed to limit the Superintendent’s powers to requiring submission of information and material related to the sale of insurance and/or activities related to the intermediary’s license.
- **5-18(3), Recommendations for Insurance Agents and Insurer’s Representatives – Life Insurance:** This clause appears to contain a drafting error and we believe it should read; *“the applicant for an insurance agent license or insurance agent is: . . .”*
- **5-18(4-6), Recommendations for Insurance Agents and Insurer’s Representatives – Life Insurance:** Section 5-18(4) specifically prohibits a licensed insurance agent acting for more than one insurance company. Section 5-18(5) provides exemptions based on “prescribed requirements” but that provision seems to be negated by 5-18(6). (See excerpted sections below.)

*5-18(4) Subject to subsection (5), a holder of an insurance agent’s licence for life insurance may act as an insurance agent only for the licensed life company that recommended that the holder be issued an insurance agent’s licence.*

*5-18(5) A holder of an insurance agent’s licence for life insurance may act as an insurance agent for a licensed life company that did not recommend that the holder be issued an insurance agent’s licence if the holder meets the prescribed requirements.*

*5-18(6) A holder of a valid insurance agent’s licence for life insurance that has been issued on the recommendation of a licensed life company must not be issued another insurance agent’s licence for life insurance to represent a different licensed life company.*

In keeping with the exemption that currently exists in Saskatchewan, Alberta, and Manitoba, we recommend that these clauses be amended so that where an insurance agent meets certain prescribed requirements - which should be specifically set out in Bill 177 - the agent may act on behalf of more than one life insurer under a single license. This is particularly imperative to allow RIAs and other licensed intermediaries that operate call/contact centres to distribute insurance products in multiple provinces for various insurers.

**5-79(b, c), Recommendations for Restricted Licensee – Life Insurance:** For reasons similar to our comments on 5-18 (4-6), we oppose the restrictions proposed in 5-79(b) and (c) – limiting insurance sales to being made solely on behalf of the sponsoring insurer and limiting an RIA licence to one insurer. This would require a financial institution to place all of its creditor’s group insurance business with one insurer. Financial institutions may sell multiple insurance products related to multiple lending products and as part of their risk management strategy may choose to use more than one insurer. Therefore, limiting an RIA licence to one insurer would not be prudent for the financial institution or beneficial to consumers. We therefore recommend that 5-79 (b) and (c) be removed from the Bill.

- **5-38, Representative’s Duty of Disclosure:** We ask that the requirement to disclose “in writing” to the insured be amended to make provision for alternate distribution channels such as call/contact centres where disclosure is provided in recorded calls.

## Part VIII: Contracts of Insurance: Life Insurance

- **8-98 and 8-155, Interpretation of Division:** The definitions of “Group Life Insured” in the Life section and “Group Person Insured” in the Accident & Sickness section omit the exclusion for dependants found in the Alberta Insurance Act. Left unchanged, this would change the fundamental nature of group insurance. That is, all rights flow through the primary person, and not to any dependants under the contract.

**Saskatchewan 8-98:** *“group life insured” means a person whose life is insured under a contract of group insurance;*

**Saskatchewan 8-155:** *“group person insured” means a person whose life or well-being or both are insured under a contract of group insurance;*

Aside from what is mentioned above, insurer computer systems cannot support an extension of rights to dependants. As well, enrolment and customer service would become incredibly complicated if these definitions remain unchanged.

We recommend that this issue be addressed by adopting the parallel provisions in the Alberta Insurance Act as set out below.

**Alberta 637(j):** *“group life insured” means a person (the “primary person”) whose life is insured under a contract of group insurance, but does not include a person whose life is insured under the contract as a person dependent on or related to the primary person;*

**Alberta 695(j):** *“group person insured” means a person (the “primary person”) whose life or well-being, or both, are insured under a contract of group insurance, but does not include a person whose life or well-being, or both, are insured under the contract as a person dependent on or related to the primary person;*

- **8-155 and 1-2.** The definitions of “Group Insurance” found in 8-155 and in 1-2 are inconsistent in that the definition in 1-2 includes creditor’s group insurance and family insurance. As a result, 1-2 should be revised to match 8-155 which excludes those two forms of group insurance and closely parallels Alberta’s definition below:

**Saskatchewan 8-155:** *“group insurance” means insurance, other than creditor’s group insurance and family insurance, under which the lives or well-being, or both, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;*

**Saskatchewan 1-2:** *“group insurance” means insurance in which the lives, well-being or employment of individuals who enroll in the insurance are insured severally under a single contract of insurance between: (a) an insurer; and (b) an employer, creditor or other person;*

**Alberta 637(i):** “group insurance” means insurance, other than creditor’s group insurance and family insurance, under which the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person.

- **8-102 and 8-158, Application of Division – Group Insurance:** If the definition of “group insurance” in 1-2 is addressed such that the definitions found in 8-155 and 1-2 are consistent, then parallel amendments in 8-102 and 8-158 re: debtor insured’s are necessary. If these adjustments are not made, then the laws of the jurisdiction where the contract was made will prevail. For creditor’s group insurance, this is most often Ontario but it could theoretically be any province or territory.
- **8-103 and 8-159, Issuance of Policy:** These clauses are missing the consumer privacy exemption found in Alberta and British Columbia insurance legislation, e.g.

*Alberta 642(8): Access to the documents described in subsections (5)(b) and (6)(b) does not extend to:*

*(a) information contained in those documents that would reveal personal information, as defined in the Personal Information Protection Act, about a person without that person’s consent, other than information about*

*(i) the group life insured or debtor insured in respect of whom the claim is made, or*

*(ii) the person who requests the information, or*

*(b) information prescribed by the regulations.*

- **8-105, Particulars in Group and Creditor’s Group Policy:** The Life section (but not the Accident & Sickness section) includes the following requirement: *(h) a description of any restrictions or exclusions of coverage under the contract.* The intent of the word “restrictions” is unclear. To achieve consistency between the Life & Health and Accident & Sickness sections, and to harmonize with other provinces, we recommend that this requirement be deleted.
- **8-114, Failure to Disclose:** This Life Insurance provision uses the word “insurance” instead of “addition, increase or change”. We believe that this was not intended, as it would allow the insurer to void the entire contract and not just the “addition, increase or change”. (Meanwhile, the parallel Accident & Sickness-related provision in 8-174, is consistent with Alberta.) See parallel provision in the Alberta Act, as set out below.

**Saskatchewan 8-114(3)(b):** *if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change mentioned in subsection 8-113(3) with respect to the person, the insurance with respect to that person is voidable by the insurer.*

**Alberta 653(3)(b):** *(c) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change referred to in section 652(3) in respect of the person, the addition, increase or change in respect of that person is voidable by the insurer.*

- **8-133 and 8-191, Enforcement of Right Re Creditor’s Group Insurance:** Bill 177 uses the original Alberta wording of 672(3), rather than the updated Alberta provision from December 2013 as set out below.

Based on the current wording, a creditor would only be able to pay money in excess of the debt owing to the estate of a debtor insured. As a debtor insured does not have the right to name a beneficiary, these monies would then be subject to estate law and taxation, instead of being paid directly to the person who is jointly liable for the debt. It is critically important to CAFII members and other distributors of creditor's group insurance that Bill 177 be updated to reflect the current Alberta provision.

**Saskatchewan 8-133(3)** *If the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to that debtor insured.*

**Current Alberta 672(3):** *If satisfactory evidence is provided to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to the debtor insured or to a debtor who is jointly liable for the debt with the debtor insured.*

- **8-165:** We note that this Accident & Sickness section omits the standard exemptions found in other provinces for creditor's group insurance and group insurance. This appears to be a drafting error which would be corrected by adopting the parallel Alberta provision as set out below:

**Saskatchewan: Exclusions, exceptions or reductions 8-165(1):** *Subject to section 8-166 and except as otherwise provided in this section, . . . (4) This section does not apply to a contract made by a fraternal society.*

**Alberta: Exceptions or reductions 704(1):** *Subject to section 705 and except as otherwise provided in this section, . . . (5) This section does not apply to a contract (a) of group insurance, (b) of creditor's group insurance, or (c) made by a fraternal society.*

## Conclusion

We once again thank you for inviting CAFII to submit comments on Bill 177. As mentioned at the outset, we were surprised and are somewhat alarmed by some of the changes being proposed. We would appreciate an opportunity to meet with you for further discussion before any next steps are taken with the draft legislation. We are confident that through consultation and further dialogue our concerns can be addressed while maintaining the protection you seek for consumers.

We would be prepared to meet in-person in Regina or by conference call, as you prefer. Please contact Brendan Wycks, our Executive Director, at [brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com) or 647-218-8243 to arrange a meeting at a mutually convenient time.

Sincerely,



Greg Grant, MBA, FLMI, ACS  
Board Secretary and Chair, Executive Operations Committee  
Canadian Association of Financial Institutions in Insurance

cc: Janette L. Seibel, Lawyer, Financial and Consumer Affairs Authority of Saskatchewan

## ABOUT CAFII

The Canadian Association of Financial Institutions in Insurance (CAFII) is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. CAFII was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. CAFII members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. CAFII's full members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express, Assurant Solutions, Canadian Premier Life Insurance Company, and The CUMIS Group Ltd.

In addition, CAFII has 10 Associates that support the role of financial institutions in insurance.

CAFII members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as its members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. CAFII works with government and regulators (primarily provincial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.