

Regulatory Update – CAFII Board of Directors and Executive Operations Committee, May 25, 2018

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Federal/National

Financial Consumer Agency of Canada (FCAC)

FCAC Report Outlines Best Practices For Consumer Protection

The Financial Consumer Agency of Canada (FCAC) has found a lack of consumer protection around unfair treatment, according to its report on best practices in financial consumer protection which was released in May.

While FCAC found Canada's overall federal financial consumer protection framework to be strong, it noted areas that could be strengthened, including addressing consumer protection in legislation, better supporting the supervisory and enforcement work of the agency with additional tools, and introducing targeted measures to better empower and protect consumers.

For example, the report notes that, according to the G20 High-Level Principles, financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers. Yet, no provincial consumer protection laws mandate that consumers be treated "fairly," in particular, says the report.

However, it also notes that the Autorité des marchés financiers is currently considering including fair treatment as an integral part of governance for provincially regulated financial service institutions offering credit.

Also, The Bank Act prohibits specific practices such as coercive tied selling or charging for products or services without express consumer consent. However, "there are currently no provisions requiring fair treatment of consumers or prohibiting unfair treatment," says the report.

In March, FCAC released findings from a review of business practices across Canada's big banks, following media reports last year of questionable sales tactics. That report said the banks had insufficient controls in place to mitigate against risks of mis-selling.

The report on best practices comes in response to a request from the Minister of Finance that FCAC engage with provincial and territorial regulators and other key stakeholders to identify best practices in financial consumer protection in place across the country. Findings from the report will help inform the government's work on a new financial consumer protection framework.

The scope of FCAC's review focused on consumer protection measures that apply to financial products and services, such as credit products and deposit products. In parallel, FCAC assessed international best practices and the current federal framework.

The FCAC's full report is published on its website.

Canadian Life and Health Insurance Association (CLHIA)

CLHIA Delays New Compensation Disclosure Guideline By Six Months

On February 5/18, CLHIA announced that, in response to feedback from the advisor community, it was postponing the implementation of its new Guideline G19, Compensation Disclosure in Group Benefits and Group Retirement Services, **by six months** for new contracts to January 1, 2019.

"Advisors are valuable partners in delivering group benefits and retirement services to Canadians and their views on the new proposed standards and how to implement them are key. Consultations began earlier this year and we are listening to their views. That is why we took the immediate step of pushing back the implementation date," said Stephen Frank, CLHIA President and CEO.

The CLHIA media release noted that the Association was currently on a cross-country tour, meeting with advisors to explain the new Guideline and gather their views and recommendations on how best to implement G19. Further, the CLHIA was creating an advisory committee of advisors and insurers to provide their guidance. "We need the help of advisors to ensure successful implementation and we are committed to partnering with them on the new standards," said Frank.

CLHIA Ignoring Views on New Guideline G-19 Says Newly Formed Advisors Group

Rob Taylor of the newly formed National Coalition of Benefit Advisors (NCBA) says its pleas to CLHIA on the Association's new *Guideline G19, Compensation Disclosure in Group Benefits and Group Retirement Services* have mainly fallen on deaf ears.

"If you look at any industry, when one side of the table decides they want to get together on their own and try to impact all other stakeholders, we start to question what the actual intent is," he says. "We don't really think, deep down, that this is all about the consumer. It's about 'can we make more money and have access to more of the market' – that is what CLHIA is governed by."

In response, Taylor joined with group benefits advisors from across Canada to form NCBA earlier this year. Their primary mission is to provide a voice for their profession, thus acting as a counterpoint to the insurance providers. In his opinion, the role of the advisor is crucial in acting as a buffer between huge conglomerates and plan sponsors. And for that reason, he is skeptical of the insurers' reasoning for G-19.

"Does it mean they want to go direct – who knows? What I do know is that when other jurisdictions around the world tried to do the same thing, it failed miserably and the consumer was harmed by increased costs and less stewardship and protection," he says.

Speaking to Life-Health Professional, Lyne Duhaime, SVP, Quebec Affairs and President, ACCAP-Quebec, was adamant that advisor support was crucial to the successful roll-out of G-19. To achieve that, the CLHIA would hold a number of consultation meetings across Canada to gauge opinion on this issue. Taylor was present at one such meeting in Vancouver, but in his opinion, the important decisions had already been made by the insurers.

“What we know for a fact is the CLHIA is not consulting with anyone,” Taylor says. “What they are doing is rolling out town hall sessions on implementation. These are not feedback sessions and it is very disingenuous for CLHIA to ever mention that they are embarking on a feedback tour.” Rather than offering critique of G-19, Taylor wants advisors to have a proper seat at the table. In his view, the entire process has been massively flawed and lacking in transparency, which is bad news for brokers, but also for those buying group benefits.

“Insurers can put themselves at an advantaged position where a uniformed consumer might think going direct to an insurer might save them money, and an insurer could imply that,” he says. “If an insurer is going to create a cost structure that is cheaper, it would mean clients who have intermediaries are likely going to subsidize the insurer delivering it cheaper.”

Alberta

Alberta Treasury Board and Finance; and Alberta Insurance Council

Industry Will Be Consulted On Single Financial Services Regulator Proposal

During a panel presentation at the May 2-4/18 CLHIA Conference in Calgary, David Sorensen, the province’s Deputy Superintendent of Insurance at Alberta Treasury Board and Finance, advised that his province’s exploration of creating a single financial services regulator was still in its early stages; nothing had yet been decided; and industry would be consulted on this proposal. He did not provide a timeline for the rollout and advancement of the proposal.

Shedding more light on the situation, in a subsequent provincial insurance councils panel presentation at the same conference, Joanne Abram, CEO of the Alberta Insurance Council, said that the anticipated timeline for bringing the proposal to fruition was aggressive, with a short industry consultation period later this year before an early 2019 implementation date.

Québec

AMF

AMF To Seek Industry Input In Updating Sound Commercial Practices Guideline

During a panel presentation at the May 2-4/18 CLHIA Conference in Calgary, Louise Gauthier, Director, Distribution Practices at the AMF advised since the regulator’s Sound Commercial Practices Guideline (the AMF’s version of a Fair Treatment of Consumers Guideline) had not been updated since its introduction in 2013; the time was now ripe to do so and that would occur later this year. There will be a four to five week consultation period with industry stakeholders on the Guideline, she indicated, likely during the summer months.

Ms. Gauthier also indicated that if Bill 141 and Bill 150 are adopted in the National Assembly, there will be several years of work ahead for the AMF in drafting regulatory rules to support the legislation.

AMF Seeking Candidate Nominees For Distribution Practices Advisory Committee

On May 25/18, the AMF announced that it was seeking candidates to serve on an advisory committee that will examine the practices of representatives pursuing activities under the Act respecting the distribution of financial products and services (the “Distribution Act”).

The Distribution Practices Advisory Committee will serve as a forum between the AMF and industry stakeholders involved in the distribution of financial products and services covered by the Distribution Act to gain practical insight into their field, foster an open dialogue with the industry, and help the AMF achieve its objectives, in particular by allowing it to develop a modern, responsive framework based on best practices.

The Committee’s core mandate will be to examine topics proposed by the AMF pertaining in particular to product and service distribution practices in insurance and financial planning. Members will be invited to share their practical experience, concerns and advice on industry-related issues. They will also be called on to provide information, suggestions, focus areas and constructive solutions, in particular to help develop, interpret and implement the AMF’s related framework (including regulations, notices, directives, guidelines and support).

The Committee will be composed of up to 15 outside experts from sectors related to the distribution of financial products and services in Québec, including damage insurance, insurance of persons, financial planning and claims adjustment, and whose activities are governed by the Distribution Act.

To ensure the best possible input into the work of the Committee, members are expected to have relevant experience in their respective fields and a solid understanding of the regulations applicable to financial products and services covered by the Distribution Act. All members must be active within the industry. A candidate’s multi-sector practice will be an asset. Insofar as possible, the AMF will consider certain diversity criteria, including gender representation, experience and competency, when selecting Committee members.

Committee members will be appointed for an initial two-year term, which may be extended in accordance with conditions to be determined by the AMF. Committee meetings will be planned in co-operation with members and take place three to six times annually. The frequency and duration of meetings may vary based on topical issues, initiatives or ongoing developments. Members will not be remunerated for their participation in the Committee.

The AMF has provided on its website a related “Call For Candidates” background document; and the deadline for applications is June 15, 2018.

AMF Calls For Candidates For Technological Innovation Advisory Committee

On May 16/18, the AMF) announced that it was seeking candidates for new positions and one vacant position on its Technological Innovation Advisory Committee (TIAC).

“The TIAC, which currently has 14 members, serves as a forum to gain practical insight into technological innovation in the financial services and products industry and maintain an open dialogue between stakeholders and the AMF,” said the regulator. It is made up of outside experts from various areas and professions related to technological innovation in the financial sector, and AMF representatives.

TIAC members are appointed for an initial two-year term. The term may be extended under certain conditions. Those interested in applying are invited to read the Information Sheet and submit their application in writing to the AMF. The deadline for submitting an application is June 5, 2018.

New Brunswick

Financial Consumer Services Commission of New Brunswick

FCNB “Well Advanced” In Developing RIA Licensing Regime For New Brunswick

In a CAFII liaison meeting with FCNB on May 14/18, Angela Mazerolle, Superintendent of Insurance, and David Weir, Deputy Director of Insurance, advised that there was serious interest in implementing a Restricted Insurance Agent (RIA) regime in New Brunswick, and that this initiative was already “well advanced.”

Because it would need to be implemented after the Fall 2018 provincial election, the launch of an RIA regime is probably at least a year away, they indicated.

It was noted that unlike is the case in the three Western Canada jurisdictions that have an RIA regime, there are no plans to introduce an Insurance Council regulatory structure in New Brunswick. More specifically, New Brunswick intends to license “incidental sales of insurance” through an RIA regime; and will not reinvent the wheel, but rather look at other jurisdictions with such a regime already in place, with Manitoba being specifically mentioned. This would require some “bare bones” legislative amendments, with more specific framework details coming in the form of regulations that will be drafted by the Superintendent of Insurance, CAFII was advised.

Prince Edward Island

Superintendent Expresses Concern About Alleged Use Of Credit Scores In Claims Adjudication

The matter outlined in the article below was raised by PEI Superintendent of Insurance Robert Bradley as a matter of serious concern to him, in a May 16/18 liaison meeting with CAFII in Charlottetown. The following synopsis of a Canadian Underwriter article on the matter is provided as relevant background.

A major Ontario auto insurer is facing a lawsuit over allegedly using credit scores in adjusting accident benefits claims. The proposed class-action lawsuit, filed April 10 in Federal Court, is on behalf of all Canadians who made auto claims with The Personal Insurance Company after Jan. 18, 2012 “and who had their credit score information accessed by The Personal or its agents.”

The insurer will be filing a statement of defence “in due course,” a spokesperson for Desjardins General Insurance Group Inc., The Personal’s parent company, told Canadian Underwriter Tuesday. DGIG was the top Ontario private passenger auto underwriter in 2016, with \$1.85 billion in direct premiums written and 17.9% market share, according to Canadian Underwriter’s 2017 Statistical Guide.

Allegations that The Personal accessed credit scores of accident benefits claimants have not been proven in court. The statement of claim asserts that The Personal does not have a “direct business need” for credit scores from accident benefits claimants and is in violation of the federal Personal Information Protection and Electronic Documents Act.

“The Personal respects and values the privacy of its customers but given the pending litigation, we cannot comment any further on the action,” the Desjardins spokesperson wrote to Canadian Underwriter.

Lawyers with Waddell Phillips Professional Corporation, the law firm representing plaintiff auto claimants, are working on “court materials to support the motion for certification,” lawyer Margaret Waddell said Tuesday in an interview. Waddell Phillips is aiming towards having the motion for certification heard “hopefully before” the end of 2018, Waddell added. “That’s a pretty aggressive schedule for this kind of litigation, but the Federal Court moves very quickly,” she noted.

There is no indication right now how many people may be included in the class, Waddell said.

The representative plaintiff is Kalevi Haikola. After an auto accident in 2012, in which he was injured, Haikola made a claim with The Personal. It is alleged in the statement of claim that Haikola was asked to give consent for The Personal to get a FICO score. That score is described by data analytics provider Fair Isaac Corporation as one that is derived by running data from credit reporting agencies through a scoring models developed by FICO.

In 2014, Haikola a filed formal complaint with the federal Office of the Privacy Commissioner.

In an OPC report released in October, 2017, which did not name The Personal, the Office of the Privacy Commissioner said the use of credit scores in adjusting an auto insurance claim “is not something that a reasonable person would consider to be appropriate.”

The insurer that was subject to the 2014 complaint to the privacy commissioner had argued that “it has a direct business need for credit scores in order to detect and prevent fraud, and to control costs and clients’ premiums,” the Office of the Privacy Commissioner added at the time.

International

Australia

[Australian Banking Royal Commission Reveals Malpractice That Has Ruined Lives: The Guardian](#)

The following is a synopsis of an article on the Australian banking Royal Commission published in The Guardian on April 19/18.

What is the royal commission?

The banking royal commission was established in late December 2017, after years of public pressure from whistleblowers, consumer groups, the Greens, Labor, and some Nationals MPs.

Its first public hearings began on 13 March 2018, and they will run at irregular intervals through 2018. The royal commission has been asked to investigate whether any of Australia's financial services entities have engaged in misconduct, and if criminal or other legal proceedings should be referred to the commonwealth.

It's also been asked to consider if sufficient mechanisms are in place to compensate victims.

What have we found out so far?

We've heard evidence of appalling behaviour by Australia's major banks and financial planners from the past decade, including alleged bribery, forged documents, repeated failure to verify customers' living expenses before lending them money, and mis-selling insurance to people who can't afford it.

In this week's hearings, AMP admitted to lying to regulators, and the Commonwealth Bank admitted some of its financial planners have been charging fees to clients who have died. AMP's chief executive became the first high profile casualty of the commission announcing he was standing down from the company with immediate effect.

Which banks are involved ?

The so-called big four banks – Commonwealth Bank, Westpac, ANZ, National Australia Bank – are being looked at. They comprise four of the five largest companies in Australia by market value, holding an inordinate amount of power over the financial system.

Other companies including AMP, BT Financial, Aussie Home Loans, and St George, and a number of small car finance companies will also be called, and more financial institutions will be asked to appear as the year rolls on.

Has your financial future been destroyed by a bank?

Last year, the Commonwealth Bank, which is the largest company in the country, posted a full-year cash profit of \$9.8bn, up 4.6%. It was followed by Westpac (full-year profit \$8.1bn, up 3%), ANZ (\$6.4bn, up 12%), and NAB (\$6.6bn, up 2.5%).

Australia's seven largest authorized deposit-taking institutions (including the big four) hold roughly \$4.6 trillion in assets – around two and a half times the size of Australia's \$1.8 trillion economy, as measured by nominal GDP.

What is the problem with their financial advice?

The banks discovered long ago it was highly profitable to sell their customers financial advice and financial products. If they could charge customers for financial advice, and if that "advice" consisted of purchasing their financial products, then they would enjoy a profitable feedback loop.

The business model was called "vertical integration".

Earlier this year, the corporate regulator published a report scrutinizing the practice: “Vertically integrated institutions and conflicts of interest.”

It looked at the quality of financial advice being offered by the two largest financial advice licensees owned or controlled by the Commonwealth Bank, ANZ Banking Group, Westpac, National Australia Bank and AMP.

It found their financial advisers had failed to comply with the best interests of customers in 75% of advice files reviewed.

It concluded there was an “inherent” conflict of interest arising from banks providing personal financial advice to retail clients while also selling them financial products.

How has this affected customers?

It’s not just poor financial advice that’s affected bank customers. The poor advice has combined with reprehensible behaviour by bank employees.

Since 1 July 2010, almost \$250 million in remediation has had to be paid to almost 540,000 consumers by financial services entities for poor conduct in connection with home loans.

The poor conduct included fraudulent documentation, processing or administration errors, and breaches of responsible lending obligations.

Since 1 July 2010, almost \$90 million in remediation has been paid to almost 17,000 consumers by financial services entities as a result of poor conduct in connection with car loans.

Over \$11 million in remediation has been paid to over 34,000 consumers by financial services entities for breaching responsible lending obligations in connection with credit cards.

Over \$128 million has been paid in remediation to consumers by financial services entities as a result of poor conduct in connection with add-on insurance.

Aren’t some banks already embroiled in scandal?

They’re involved in multiple scandals.

In August last year, the Australian Transaction Reports and Analysis Centre (Austrac) announced it was suing the Commonwealth Bank for 53,700 breaches of money laundering and counter-terrorism financing laws after the bank failed to report properly on \$77 million worth of suspicious transactions through its intelligent deposit ATMs over a number of years.

In November, the federal court imposed pecuniary penalties of \$10 million each on ANZ and NAB for attempting to manipulate the bank bill swap rate.

What is the reaction so far to the royal commission?

The Turnbull government realized this week how bad the situation is.

After AMP executive Anthony Regan admitted that AMP had lied repeatedly to the corporate regulator, the treasurer, Scott Morrison, warned wrongdoers could face jail. "That's how serious these things are," he said this week.

The former Nationals leader Barnaby Joyce admitted he was personally wrong to have argued against a royal commission.

The Nationals senator John Williams said he was concerned the inquiry had been given too little time to unearth wrongdoing, and if it needed an extension of time it should be given it. The finance minister, Mathias Cormann, made a similar argument.

But the government has also tried to take credit for the royal commission, saying it established it, and if it wasn't for the government, the terms of reference wouldn't be so robust.

But wasn't it the Liberals and Nationals who were so opposed to the commission?

Yes. The Coalition had to be dragged kicking and screaming to establish the royal commission.

For years, they rejected calls by the Greens and Labor to establish the commission, and when Malcolm Turnbull finally relented in November he presented the backdown as a "regrettable but necessary" step to deal with mounting political pressure and uncertainty for the industry.

He made the decision in the face of open revolt from some Nationals MPs and senators who had joined the push by the Greens and Labor to set up a banking commission of inquiry.

After Turnbull's announcement, Labor said it was "unforgivable" that the government had fought for 18 months against the opposition's calls for a royal commission, and noted that the prime minister had ruled out a royal commission just 48 hours earlier.

The Greens leader, Richard Di Natale, reminded voters that the Greens had been the first party to propose a royal commission "several years ago" and the idea had been consistently voted down by Labor, the Liberals and Nationals.

So what happens next?

The royal commission will run through the rest of this year. An interim report is due in September, and a final report is due in February 2019.

But there's a lot of time between now and then. It may have its time extended. It may have its terms of reference changed. It depends on the politics.