

Regulatory Update – CAFII Executive Operations Committee, March 22, 2019

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Federal/National

Insurance Bureau of Canada (IBC)

IBC Says Regulatory Guidance Should Recognize Broker Independence

When it comes to market conduct in the property and casualty industry, regulations should recognize that brokers are independent, the Insurance Bureau of Canada (IBC) recently asserted in response to the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO)'s September 27/18 release of their "Guidance: Conduct of Insurance Business and Fair Treatment of Customers."

CCIR/CISRO said in the paper that although brokers and agents are often involved in serving customers, it is ultimately the carrier who is responsible for servicing policies and "ensuring that intermediaries have appropriate policies and procedures in place in respect of the policy servicing activities." CCIR and CISRO also state in the document that a carrier should have a duty to report to a regulator any "intermediary with whom they have transacted that may be unsuitable or not duly authorized, which could result in impairing the fair treatment of customers."

Carriers need to "be satisfied that the involved intermediaries are providing information to customers in such a manner that will assist them in making an informed decision," says the Guidance document, which is based on principles rather than hard-and-fast rules.

Ryan Stein, IBC's executive director of auto policy and innovation, said all principles outlined in the document are reasonable but added brokers are independent.

"They want to be independent and we don't think there should be an expectation on insurers to sort of be responsible for the actions of independent brokers," Stein said. "We think for the part of the business that's carrier-based, carriers are primarily responsible for the fair treatment of insureds. But you need to recognize that the brokers have a significant role and they are legally and structurally independent."

Stein said the Guidance paper is significant because of its national scope, and that regulations should be consistent across the country. Most carriers in Canada are national and "they want to see that the regulators are applying their guidance similarly" to one another, Stein said. "When there are different ones in different provinces, it could create confusion on what is expected."

Provincial/Territorial

British Columbia

Insurance Council of British Columbia

Robert Tanaka Departs Insurance Council of BC After 20 Years

In December 2018, Janet Sinclair, Executive Director of the Insurance Council of BC, announced on the Council's website that Robert Tanaka, Deputy Executive Director, had left the Insurance Council's staff executive team after more than 20 years. Mr. Tanaka joined the Insurance Council of BC in 1998 as an investigator, and subsequently assumed progressively more senior positions under then-Executive Director Gerry Matier. Tanaka was well known for his contributions to insurance regulation across Canada; and Ms. Sinclair commented that his knowledge and guidance would be missed.

In early 2019, Ms. Sinclair announced the following changes to her staff executive team at the Insurance Council: Brett Thibault was appointed to the position of Director, Governance and Stakeholder Engagement; and Kandace Hopkins was appointed to the position of Director, Practice and Quality Assurance. Mr. Thibault, a former Chair of the Insurance Council of BC while he worked in the insurance industry, previously held the role of Director, Licensing; and Ms. Hopkins was Council's Manager, Regulatory Services. Both of these roles were created to better support licensees, Ms. Sinclair indicated.

BMO Insurance Representative Appointed To Insurance Council

In December 2018, the Government of BC announced the appointment of 10 new non-voting members to the Insurance Council of BC for a three-year term, including Donna Thorne, a representative from the bancassurance/financial institutions in insurance sector.

Donna Thorne is the Business Development Director for British Columbia of BMO Insurance Company of Canada. In her current role, she provides training advice and marketing support to individual advisors and management teams as well as managing engagement and relationships in multiple distribution channels. Throughout her career she has worked as Sales Director for Transamerica Life Canada; Western Regional Director, Living Benefits for Manulife Financial; and Regional Marketing Consultant for Canada Life. Active in her community, she has served as Institute Chair and Membership Chair for the Vancouver Advocis Chapter. Ms. Thorne holds the Certified Health Insurance Specialist (CHS) and Elder Planning Counselor (EPC) professional designations.

Alberta

Alberta Insurance Council

Warren Martinson Departs Alberta Insurance Council After 16 Years

After 16 years as Director of Legal and Regulatory Affairs at the Alberta Insurance Council (AIC), Warren Martinson left that post in June 2018 to become General Counsel & Corporate Secretary at the Real Estate Council of Alberta (RECA).

Mr. Martinson served in his initial position at RECA for nine months, and then assumed the position of Director of Corporate Services there in February 2019.

Warren's successor as the AIC's Director of Legal and Regulatory Affairs is Zabeda Yaqoob. Ms. Yaqoob was a practising lawyer in the United Kingdom for over 11 years before relocating her practice to Canada in 2016, where she articulated at Foster LLP in Calgary. In the UK, she practised in a number of different areas and subsequently worked for the Government in immigration, family law, and child protection matters. Her focus areas included forced marriages, adult and child trafficking, immigration processes for asylum seekers, and advising child welfare workers on their duties and responsibilities to children and families from abroad. She provided volunteer support to the Afghani community in the United Kingdom to assist them with immigration and asylum matters. Ms. Yaqoob practised immigration and family law with Foster LLP in Calgary from 2016 until early 2019, when she joined the Alberta Insurance staff executive team.

Ontario
Financial Services Regulatory Authority of Ontario (FSRA)

Independent Financial Brokers Implores FSRA To Implement ISI Licensing In Ontario

In its December 2018 submission on Proposed FSRA Rules 2019-001 Assessments and Fees and 2019-001B Fees and Assessments (Interim), the Independent Financial Brokers of Canada (IFB) implores FSRA to introduce some form of licensing for incidental sellers of insurance in Ontario. An excerpt from the IFB submission reads as follows:

We wish to draw attention to Section 6.1, where FSRA identifies “support for regulatory principles” as part of its vision to be an efficient and effective regulator. As FSRA considers its priorities, and potential issues related to the current licensing structure, IFB is restating its position that anyone providing financial advice and/or product recommendations to consumers should be appropriately licensed and regulated. Consumers who purchase any form of insurance should be able to rely on intermediaries who are duly licensed, and subject to similar regulatory oversight. In Ontario, sellers of incidental insurance products, such as credit card disability insurance, mortgage insurance, automobile financing, etc., are not licensed.

Some Canadian jurisdictions have already implemented a licensing regime applicable to the sale of incidental insurance, and we support Ontario doing so, too. Licensure provides consumers with greater protection and recourse in the event of a complaint. Given the large number of consumers who are exposed to the incidental insurance market, we believe this is a gap in the current system in Ontario.

CADRI Implores FSRA To Be Leader In Harmonization of Insurance Licensing

In its January 4/19 submission on Proposed FSRA Rules 2019-001 Assessments and Fees and 2019-001B Fees and Assessments (Interim), the Canadian Association of Direct Relationship Insurers calls upon the Financial Services Regulatory Authority of Ontario (FSRA) to play a leadership role in advancing the harmonization of insurance licensing across Canada. An excerpt from the CADRI submission reads as follows:

Looking exclusively at the qualification criteria of the current licensing regime, CADRI commends Ontario for the simplicity of its approach with one level of licence. We seek to make this a national standard across the country.

Currently each employee or exclusive agent must obtain the appropriate accreditation for each and every jurisdiction they serve. Each province and territory may well have different criteria for accreditation or licensing. Yet, no matter where licensed insurance agents are situated in Canada, their core function is fairly similar.

This current approach to licensing also means that if an agent’s application or renewal for a licence is out of sync among the jurisdictions, an agent may sit idle, unable to answer calls and serve customer inquiries coming from that part of the country.

In our experience, the varying levels of insurance licences among the jurisdictions add administrative layers without necessarily contributing significantly to enhanced consumer protection. CADRI seeks to encourage consistent rules, regulations, processes and administrative practices across the country.

CADRI has in the past called for the harmonization of licensing rules for these agents. Harmonization would mean that regulators across Canada recognize the interjurisdictional licensing regime as one system. Thus, the rules in one jurisdiction would be the same as the next. Consumers and other financial services providers, including the investment industry, have benefited from national practices for some time.

Given that close to 40 percent of Canadians live in Ontario, CADRI calls on FSRA to recognize its leadership role in umbrella organizations such as the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organization (CISRO) and to ensure that its commitment to modernization and innovation permeate its contributions to these groups.

Québec

AMF

AMF Announces Appointees To New Consumer Advisory Committee

On January 10/19, following a call for candidates issued in July 2018, the AMF announced the appointees to its new Financial Products and Services Consumer Advisory Committee.

“Strengthening our role as a local regulator close to its markets is one of the orientations in our 2017-2020 Strategic Plan,” said Louis Morisset, AMF President and Chief Executive Officer. “The Committee’s work will also bring the AMF closer to consumer issues and concerns and enable the AMF to give them greater consideration when assisting consumers, providing oversight and administering laws. The structured dialogue within the Committee, combined with our ongoing dialogue with the industry, will enhance the perspective required by the AMF to continue to ensure a well-functioning financial sector.”

The mandate of the Committee is to present the views of financial consumers to the AMF. The Committee members are drawn from various sectors and professions and have a particular interest in defending and promoting the rights of consumers.

The Committee members are tasked with helping to identify and analyze AMF policies, rules, guidelines and other publications where they are likely to affect financial consumers; making any recommendations they deem useful regarding those publications; and presenting the AMF with their observations and recommendations regarding any topic of concern to financial consumers.

The Committee was created as part of the measures that came into effect on July 13, 2018 with the *Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (S.Q. 2018, c. 23).

The members of the Committee are:

- Francis Barragan. Mtre. Barragan is Corporate Strategy Advisor at Éducaloi
- Brigitte Boutin. Ms. Boutin is a retired lawyer and former Deputy Ombudsman, Banking Services, at the Ombudsman for Banking Services and Investments (OBSI)
- Raymonde Crête. Mtre. Crête is associate professor and Director of the Financial Services Law Research Group (GRDSF) at Laval University’s Faculty of Law
- Willie Gagnon. Mr. Gagnon is Director of the Mouvement d’éducation et de défense des actionnaires (MÉDAC)
- Maryse Guénette. Ms. Guénette is Research and Presentation Director at *Option consommateurs*
- Audrey Létourneau. Mtre. Létourneau is a partner at the law firm LLB Avocats, s.e.n.c.r.l.
- Cynthia Lizotte. Ms. Lizotte is a teacher at Collège de l’Assomption
- Laurence Marget. Ms. Marget is Executive Director of the Groupe de recherche en animation et planification économique (GRAPE) and President of the Coalition des associations de consommateurs du Québec (CACQ)

- Patrick Mignault. Mr. Mignault is associate professor and Vice-Dean of Research and Graduate Studies at Sherbrooke University's Faculty of Law

Nova Scotia

Nova Scotia Superintendent of Insurance

Nova Scotia Endorses CCIR/CISRO's Fair Treatment of Customers Guidance

On December 12/18, Nova Scotia Superintendent of Insurance William Ngu issued Bulletin 04 – 2018 to endorse CCIR/CISRO's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers." Bulletin Insurance 04-2018 reads as follows:

A Fair Treatment of Customers Guidance document was published jointly on September 27, 2018 by the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO). This document is consistent with the International Association of Insurance Supervisors expectations aligning with the Insurance Core Principles, ICP 19. Nova Scotia is an active member of CCIR and CISRO and participated in the development of the guidance.

The Guidance is ensuring a common understanding between Office of the Superintendent of Insurance and its licensees about what it means to treat consumers fairly throughout the life cycle of a financial product. The guidance addresses all insurance activities by marketplace participants which include insurers and intermediaries.

NS Superintendent of Insurance takes its consumer protection mandate seriously, and it believes that treating customers fairly is tantamount to sound business practices. The office expects insurers and intermediaries to adopt the principles and implement policy and procedures in applying the Guidance. We understand that there will be a transitional period for organizations to review the guidance to put additional measures in place. NS is under a memorandum of understanding to participate jointly with CCIR members in collaborative supervision of market conduct. In future, when companies are selected for audit or supervisory review they will be subject to the test of these guidance principles.

New Brunswick

Financial Consumer Services Commission of New Brunswick (FCNB)

FCNB Endorses CCIR/CISRO's Fair Treatment of Customers Guidance

On February 19/19, the Financial Consumer Services Commission of New Brunswick issued its Bulletin Insurance 2019-01 to endorse CCIR/CISRO's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers." Bulletin Insurance 2019-01 reads as follows:

On 27 September 2018, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) jointly published Guidance: Conduct of Insurance Business and Fair Treatment of Customers. The full document can be found on the CCIR website: <https://www.ccir-ccrra.org/Documents/View/3450>.

This Guidance was designed to align with the International Association of Insurance Supervisors (IAIS) Insurance Core Principles 19 (ICP 19). The Pensions and Insurance Division of FCNB actively participated in the design of this Guidance.

The IAIS core principles set requirements for the conduct of the business of insurance that ensures customers are treated fairly. The Guidance establishes that the fair treatment of customers is integral to sound market conduct practices and fundamental to the reputation of every financial institution and consumer confidence in the financial system.

It is the expectation of the Pensions and Insurance Division of FCNB that insurance licensees (Insurers and Intermediaries) will adopt the principles as outlined in the Guidance and ensure that measures are in place to abide by them. These expectations involve the licensee's conduct at all stages of the lifecycle of the product (from design, to sales, to claims process, to the end of the lifetime of the policy).

In 2015, FCNB signed the Memorandum of Understanding and Protocol on Cooperation and the Exchange of Information with other CCIR members. The MOU allows FCNB to collaborate and share information with other regulators when conducting Market Conduct Exams of common licensees. The Guidance principles will be the standard used for all future Market Conduct Exams conducted by the Pensions and Insurance Division of FCNB.

International Basel Committee On Banking Supervision (BCBS)

Canadian Carolyn Rogers Named As Next Secretary General Of Basel Committee

On March 22/19, the Basel Committee on Banking Supervision (BCBS) announced that Carolyn Rogers, former CEO and Superintendent of Insurance at BC's Financial Institutions Commission and currently Assistant Superintendent, Regulation Sector at the Office of the Superintendent of Financial Institutions (OSFI), had been chosen as its next Secretary General.

Ms. Rogers, who will be the first Canadian to take on this role, will begin an initial term of three years with BCBS in August 2019.

BCBS is a global standard-setter for banking regulation and provides a forum for co-operation on banking supervisory matters. It has 45 members comprised of central banks and bank supervisors from 28 jurisdictions. The Secretary General of the BCBS plays a crucial role in directing the work of the Secretariat and supporting the Chair in fulfilling the Committee's mandate to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability.

At OSFI, Rogers is currently responsible for OSFI's policy-related functions, including capital, accounting, and legislation. "I wish Ms. Rogers every success in accepting this new role. She brings with her extensive regulatory and leadership experience that will make her an asset to the BCBS. While this will be a loss for OSFI, it will be a major gain for the BCBS, the international regulatory community, and for Canada," stated Jeremy Rudin, Superintendent of Financial Institutions, in a March 22 announcement.

Australia

Australia Government Promises Sweeping Reform To Address Industry Misconduct

Australia's government is promising action to restore confidence in the financial industry, following a Royal Commission inquiry, which found widespread misconduct by the industry at the expense of customers.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry published its final report in early February, which sets out a series of 76 recommendations for reform to address the pervasive exploitation of the industry's customers.

“Saying sorry and promising not to do it again has not prevented recurrence. The time has come to decide what is to be done in response to what has happened,” the report says, in setting out a series of recommendations that aim to bolster consumer protections; increase accountability and governance standards; enhance the effectiveness of regulators; and improve access to remediation for victims of industry misconduct.

Among other things, the report points to compensation schemes that solely reward sales, the lack of best interest standards, and an absence of accountability for misconduct as some of the core issues identified in the review.

“Rewarding misconduct is wrong. Yet incentive, bonus and commission schemes throughout the financial services industry have measured sales and profit, but not compliance with the law and proper standards,” the report says.

It points out that customers have little to no ability to negotiate the terms of transactions with the industry, due to the huge imbalance in market power and knowledge. The report also highlights the prevalence of conflicts of interest. “The interests of client, intermediary and provider of a product or service are not only different, they are opposed,” it says. “An intermediary who seeks to ‘stand in more than one canoe’ cannot.”

Moreover, it says that efforts to manage those conflicts invariably fail. “Experience shows that conflicts between duty and interest can seldom be managed; self-interest will almost always trump duty,” it says, adding that it heard evidence that conflicts are almost always resolved in favour of the industry, and against clients’ interests.

Additionally, when industry firms violate the law, they are not properly held accountable, the report concludes. “Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished. Misconduct, especially misconduct that yields profit, is not deterred by requiring those who are found to have done wrong to do no more than pay compensation. And wrongdoing is not denounced by issuing a media release,” it says.

In response to the report, Australia’s treasurer, Josh Frydenberg, pledged that the government will take action on all of the report’s recommendations.

“In outlining the government’s response to the Royal Commission, the government’s principal focus is on restoring trust in our financial system and delivering better consumer outcomes, while maintaining the flow of credit and continuing to promote competition,” he said.

The report follows 68 days of public hearings and more than 10,000 public submissions into financial industry conduct.

“My message to the financial sector is that misconduct must end and the interests of consumers must now come first. From today the sector must change, and change forever,” Frydenberg added.

To test whether that happens, the government also pledged to launch an independent inquiry in three years to assess whether industry practices have changed following the Royal Commission and are producing better consumer outcomes.

Research, Thought Leadership, and Innovation Developments

Open Banking A Negative For Canada's Big Six Banks: Moody's Report

The federal government's ongoing exploration of "open banking" is a negative for Canada's Big Six banks, which currently dominate the retail banking business, says a new report from Moody's Investors Service.

Ottawa published a consultation paper on January 11/19 as part of its effort to examine the idea of "open banking" as a way to stoke competition in the highly concentrated Canadian banking business. Open banking allows banking customers to share their financial information with fintech firms and other upstarts to enable them to more easily develop competing products and services.

"The government initiative is credit negative for the largest Canadian banks' retail operations because it has the potential to incrementally weaken the industry's favourable industry structure of a few concentrated players, and therefore the banks' retail franchise strength and associated high profitability," says the Moody's report.

The government promised to explore the idea of open banking in last year's federal budget, and launched an advisory committee to lead a public consultation this past autumn. Comments to the consultation were due by February 11/19. Following the consultation, the committee will provide its recommendations to the government.

The credit-rating agency says that the big Canadian banks have both the financial resources and the fintech expertise to adapt to innovations in consumer banking. "Nonetheless, technological disruption is likely to erode the incumbents' profitability in certain retail lending products, such as credit cards, and/or payments over the long term as smaller, more agile banks achieve competitive advantages," the report states.

EY Canada Announces New Centre Of Excellence For Insurers

Advisory services firm EY Canada is launching a new Centre of Excellence for insurance companies.

The Centre for Insurance and Actuarial Services will be based in both Toronto and Quebec City, a release said. EY's new centre will guide insurers on regulatory changes, as well as on how to keep up with digital transformation.

"The insurance sector is evolving every day – and we're responding by innovating the support we provide," said EY Canada financial services leader Paul Battista. "Insurers face immense pressure to modernize their businesses while, at the same time, manage increasingly complex actuarial and accounting standards. The centre will work with these companies to identify better ways of working, drive a clearer sense of purpose and adopt more effective use of technology."

According to EY's Insurance Outlook for the year 2019, the insurance sector's growth is projected to remain weak in the near-term. To counter this, insurers need to place greater focus on technology and initiatives that could help in optimizing costs and driving wider distribution, the report concluded.

"Margin pressures are straining the growth potential of many insurers in Canada," commented EY Canada insurance leader Janice Deganis. "Digital transformation is no longer optional, but absolutely necessary to optimize costs and reinvest in future-focused areas of the business that generate results."

Deganis revealed that EY Canada has been recruiting bilingual talent from across the country to help staff the Centre. Experts with backgrounds in strategy and business transformation, accounting standards, actuarial science and information will lend their experience to interested insurers.