Regulatory Update – CAFII Executive Operations Committee, November 16, 2018

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Federal/National

Canadian Association of Direct Relationship Insurers (CADRI)

CADRI Supports Ontario’s Move To Foster Innovation In P&C Insurance
On November 16/18, the Canadian Association of Direct Relationship Insurers (CADRI) praised the Ontario government’s promise to allow insurers to offer their customers more digital options – made in its Fall Economic Statement released the previous day – as a very welcome move.

“We know that 70 percent of Canadians are willing to download an application from their insurer,” commented CADRI Chairperson and President Alain Thibault. “In this context, it makes sense for us to be allowed to offer them proof of their automobile insurance digitally, if they want it.”

In its Fall Economic Statement, the Ontario government said it will change the regulatory framework to allow electronic proof of auto insurance, usage-based technology and full electronic commerce in the insurance business.

“Having an application or a device reflect exactly how you drive means that your insurer can offer rates tailored to your safe driving record,” said Thibault. “New rules encouraging user-based insurance could encourage more Ontarians to try this out.”

CADRI said it looks forward to working with the government to make the regulatory system governing automobile insurance more efficient: making the market more competitive and increasing consumers’ choices.

CADRI Submission Calls For Better Representation On Insurance Council of BC
In its June 2018 submission in response to the BC Ministry of Finance’s Preliminary Recommendations Paper arising from its 10-Year Review of the Financial Institutions Act and Credit Union Incorporation Act, CADRI stated that “while the Preliminary Recommendations Paper calls in recommendation #54 for an expansion of the number of representatives on the Insurance Council’s Board, it is not clear to CADRI that these members would represent direct-relationship insurers, their agents and their customers. CADRI submits that when Insurance Council Board members are appointed, the Insurance Council (should) solicit recommendations for representatives of the direct-relationship industry including this trade Association.”

Insurance Bureau of Canada (IBC)

CCIR/CISRO FTC Guidance Should Recognize That Brokers Are Independent: IBC
When it comes to market conduct in the property and casualty industry, CCIR/CISRO’s “Guidance: Conduct of Insurance Business and Fair Treatment of Customers” should recognize that brokers are independent, the Insurance Bureau of Canada said in an early October 2018 media statement.

Though 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/CISRO said in their regulatory Guidance document, released in late September.

CCIR/CISRO stipulate in their FTC Guidance 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 document 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.”

<u>IBC Wants Regulatory Sandbox For P&C Insurance Industry</u>

The Insurance Bureau of Canada (IBC) wants a regulatory sandbox for the p&c insurance industry, something currently not accessible to insurers, the national association of property and casualty insurers announced in late August.

“Sandboxes relax specific legal and regulatory requirements to create a safe and conductive space for innovative ideas, enabling companies to experiment while at the same time, containing the fallout of any failure,” explained Rana Shamoon, senior policy advisor at IBC. “It can be of equal value to regulators in helping to identify where existing regulations hinder innovation, and in striking the right balance to encourage innovation and protect consumers.”

In February 2017, the Canadian Securities Administrators, an umbrella organization for provincial market watchdogs, launched a regulatory sandbox for innovative business models in the securities sector. While there are no regulatory sandboxes in Canada that are accessible to insurers, Shamoon said IBC is hopeful that Ontario’s new government “will continue efforts to establish a regulatory sandbox in Ontario that is accessible to all financial sector participants so that businesses in Ontario can test innovations and remain competitive.”

In Quebec, the Groupe de travail sur l'économie collaborative (working group on the sharing economy) recommended in June that the province's financial regulator, the Autorité des marchés financiers (AMF), develop a regulatory sandbox.

"It's sort of a laboratory where you work outside the confines of normal regulations and you observe and evaluate and make a conclusion at the end whether this can fall within the regulation or whether we need to adapt the regulation for these innovations to hit market," Pierre Babinsky, director of communications and public affairs with IBC, said in an interview.

In October 2016, the government of Quebec began a one-year pilot project with Uber to examine things like regulatory compliance and taxation before deciding whether or not to allow this activity in Quebec. The project was renewed for another year, beginning last October.

Babinsky said this pilot project is "sort of a regulatory sandbox" in that the regulator is allowing things to happen outside normal regulations, but within the strict confines and for the duration of the pilot project.

He added that there is something similar to p&c group insurance used within the pilot project, but "as soon as that pilot project ends, technically, the regulation would not allow for this type of insurance to continue."

P&C group insurance allows for a number of people (or a group) to be insured in a single contract. Currently, Quebec only allows life group insurance, not P&C group insurance. IBC is also calling for the creation and regulation of this type of insurance in the province.

Babinsky said a p&c group insurance policy could involve a ride-sharing company entering into an agreement with an insurer so that every user is protected by the insurance contract, rather than having every driver purchase their own policy to cover ridesharing activities. Whether p&c group insurance in Quebec will need a regulatory sandbox is "hard to say."

The working group on the sharing economy provides another example of an industry (not necessarily insurance) that allows the sale of new products for a six-month period to determine the feasibility or advantages of the industry. During the period, "the regulator allows the sale of this new product while it collects information on the experience and evaluates whether these new products should fall within the normal regulations or whether new regulations are required," Babinsky said.

Provincial/Territorial

Saskatchewan
Financial and Consumer Affairs Authority (FCAA)

<u>Saskatchewan Considering Delay In Implementation Of New *Insurance Act*</u>
On November 16/18, Jan Seibel, Director, Insurance and Real Estate Division with Saskatchewan's Financial and Consumer Affairs Authority and lead on its Insurance Act Rewrite and Regulations Development files, sent an email update/inquiry message to CAFII's Brendan Wycks indicating the following:

Further to our August 10 consultation document, we are canvassing participants regarding timing of the implementation of The Insurance Act. In particular, please advise of the impact to your members if the implementation of the Act is delayed for a period of time, for example 6 months. Please provide me with your response as soon as you can.

Manitoba
Insurance Council of Manitoba

<u>ICM Modernizes Criminal Record Check Requirements For Non-Resident Licences</u>
On July 19/18, the Insurance Council of Manitoba ("Council") announced that effective immediately, it had amended its policy for licence applicants who reside in a Canadian jurisdiction other than Manitoba ("non-resident licence applicants") and who are subject to criminal record check requirements in their home province or territory.

The Council's criminal record check requirements for non-resident licence applicants applying for an insurance licence in Manitoba are now as follows:

- non-resident licence applicants who hold an insurance licence that is in good standing in their home province or territory are no longer required to provide a criminal record check when they submit their Manitoba licence application; and

- non-resident licence applicants who are applying for an insurance licence with Council at the same time they are applying for an insurance licence in their home province or territory may submit a copy of their original, current criminal record check with their Manitoba licence application.

Non-resident licence applicants must still provide full written disclosure of any criminal charges, conditional or absolute discharges, or convictions as part of their licence application to Council.

The above changes do not apply to non-resident licence applicants who reside outside of Canada. These applicants must continue to submit an original, current criminal record check to Council as part of their application.

Ontario
Financial Services Regulatory Authority of Ontario (FSRA)

<u>FSRA's Rule-Making Authority Proclaimed Into Law</u>

On September 28/18, the Ontario Legislature proclaimed FSRA's rule-making authority under the Financial Services Regulatory Authority of Ontario Act, 2016 (FSRA Act). This milestone enables FSRA to make rules, including those governing fees and other charges required for FSRA to operate as an independent, self-funded agency that will operate on a cost recovery basis.

As part of the transition of FSCO's and DICO's regulatory mandate to FSRA, FSRA has developed an initial fee rule to obtain funding from the financial services sectors it regulates. The proposed fee rule is intended to enable FSRA to maintain continuity of FSCO and DICO operations and build enhanced capacity, resources and expertise to efficiently and effectively anticipate and respond to the dynamic pace of change in marketplace, industry and consumer expectations.

The proposed fee rules are based on foundational values and principles established by the FSRA Board: simple, consistent, fair, transparent, future-focused, efficient and effective.

Financial Services Commission of Ontario

<u>FSCO Publishes Results of Life Insurance Agent Inspections</u>
On November 5/18, FSCO published its "Life Insurance Agents Compliance Report: 2017/18 Examination Results" on its website.

This report summarizes the results of FSCO's review findings and enforcement actions from the 132 on-site examinations and 94 desk reviews conducted during the April 1, 2017 to March 31, 2018 fiscal year. It also sets out FSCO's expectations for agents to be more accountable and compliant with the legislation, regulations, and best practices that govern the industry and help protect consumers. Both on-site examinations and desk reviews considered agents' business activities in 2016.

Summary of findings - On-site examinations:

- FSCO found an overall compliance level of 66 per cent during its 2017/18 on-site examinations.
- of the 132 agents examined on-site, 45 (34 per cent) were referred to Regulatory Discipline Officers (RDOs) for possible enforcement actions.
- the most pervasive non-compliance issues included:
  -failing to disclose in writing all insurers represented; and
  -failing to comply with the continuing education (CE) requirement.

The most common best practice issues included:

-failing to document client acknowledgement if agents' recommendations were not purchased;
-failing to document client discussions;
-failing to document recommendations provided to clients; and
-failing to document needs assessments.

Summary of findings - Desk reviews:

- FSCO found an overall compliance level of 68 per cent during its 2017/18 desk reviews.
- of the 94 agents subject to desk reviews, 30 (32 per cent) were referred to RDOs for possible enforcement actions.

- The most pervasive non-compliance issues included:
  -failing to comply with the CE requirement; and
  -failing to maintain valid Errors and Omissions (E&O) insurance coverage.

Québec
AMF

AMF Undergoes Thorough Review By IMF In Its 2018 FSAP Review Of Canada

In early November, AMF officials confirmed to the Insurance Journal that International Monetary Fund (IMF) inspectors had been at the Quebec regulator's premises for a few days already – as part of its Financial Sector Assessment Program (FSAP) review of Canada's insurance regulatory system -- and would be there for several more.

The AMF is not the only regulator the IMF is visiting. The Office of the Superintendent of Financial Institutions (OSFI) and the regulators of three other large Canadian provinces, namely Ontario, Alberta and British Columbia, are also being scrutinized.

The last time the AMF was inspected by the IMF was in 2013. Every five years, Canada hosts an IMF delegation charged specifically with assessing the main Canadian regulators, including the AMF. It also shares its recommendations and expectations under its FSAP.

"The exercise is extremely rigorous," said AMF spokesperson Sylvain Théberge. "The questions submitted are considerable and complex. This assessment demands an enormous effort on our part."

In recent years, several AMF initiatives have resulted from the IMF inspection, particularly regarding the supervision of MGAs in life insurance, sound business practices for insurers, and supervision of independent representatives.

"We view this assessment by the IMF as an important and necessary exercise because if the AMF performs well in international assessments, this indirectly confirms the robustness of the institutions and the markets that we oversee," Théberge said. "In addition, the regulator's good reputation contributes indirectly to reinforcing confidence among retail and institutional investors, along with different actors in the financial and economic ecosystem."

New Brunswick
Financial Consumer Services Commission of New Brunswick (FCNB)

FCNB Launches Multi-Year *Insurance Act* Rewrite Project

On November 15/18, David Weir, Director, Insurance with the Financial Consumer Services Commission of New Brunswick (FCNB), emailed Brendan Wycks to advise that the FCNB is intending to update all of the legislation for which it is responsible. David himself has been asked to lead the rewrite project for the Insurance Act, which will be a multi-year project.

Mr. Weir advised that his first step is to conduct a comprehensive jurisdictional review, with focus on those jurisdictions that have recently updated (or will be updating) their Insurance Acts.

Another initial step that Mr. Weir is building into his project plan is preliminary discussions with key stakeholders. To that end, he is seeking to arrange a preliminary "one hour touchpoint" consultation meeting with CAFII in Toronto in early December, the date, time, and location of which remain to be confirmed.

Research, Thought Leadership, and Innovation Developments

THIA Survey Shows Shift In Canadians' Attitudes Toward US Travel

42 per cent of Canadians plan to travel within Canada with only 19 per cent heading to the U.S.

Despite recent reports that Canada-U.S. travel is alive and well, the times are changing according to the Travel Health Insurance Association of Canada (THiA)'s 2018 Smart Travelers Survey results released November 5/18. These results are also reflected in Statistics Canada data about declining travel to the U.S. by Canadians. The THIA survey results reveal that the political climate and the Canadian dollar/US dollar exchange rate appear to be motivating Canadians' interest in domestic travel.

When asked how the political climate impacts their desire to travel to the U.S., 57 per cent of Canadians said they're less likely to book a trip south of the border. In fact, Canadians are turning to the Great White North as a 2019 vacation alternative with 42 per cent of Canadians choosing Canada as their next vacation destination.

"The U.S. has historically been Canada's largest travel destination," says THiA Executive Director, Will McAleer. "These results are consistent with Statistics Canada data showing a five-month decline in travel to the United States. Our survey shows that many Canadian travelers will be exploring travel options within our own borders."

Other factors contributing to Canadians' cold shoulder include currency conversion. According to the survey, 59 per cent of Canadians are less likely to travel to the U.S. right now due to the Canadian dollar/US dollar exchange rate—making money a common travel concern.

THIA's online survey, conducted in September 2018, polled 1,343 respondents, ranging from ages 18 to 60+ across Canada.