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The Canadian Association of Financial Institutions in Insurance | L'association canadienne des institutions financières en assurance

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Regulatory Update – CAFII Executive Operations Committee, June 2024

Prepared by Robyn Jennings, Research Analyst.

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Federal/National

Canadian Association of Financial Institutions in Insurance (CAFII)

On June 4, 2024, CAFII Hosted its Second Reception Dinner of 2024, at which Pollara Presented.

On June 4, 2024, The Canadian Association of Financial Institutions in Insurance (CAFII) held its second annual reception event of the year, which was hosted by Securian Canada. The event occurred following the June 2024 Board of Directors meeting. The highlight was a presentation by the Senior Vice President of Pollara Insights, Lesli Martin, on Canada's insurance industry post-pandemic. Before L. Martin took the stage, however, the CEO of Securian Canada, Nigel Branker, gave a few introductory remarks. He thanked everyone for coming and commented on CAFII's ongoing success. He expressed Securian Canada's interest in and commitment to upholding its relationship with CAFII. Finally, he concluded with a land acknowledgment before passing the microphone to L. Martin.

Lesli Martin began her presentation by asking the crowd how they think Canadians are doing post-pandemic. According to Pollara's research, 73% of Canadians feel Canada is in a recession. As high as that number is, since December 2023, this sentiment has actually declined. That being said, 44% of Canadians feel the recession will only continue to worsen as 2024 goes on, globally and nationally.

Looking internally, many feel the cost of living in Canada is unmanageable. In fact, 43% expect to fall behind in their financial saving goals, including maintaining healthy financial management habits. Groceries and gas are two other areas of concern for Canadians. In general, the top three financial issues weighing on Canadians' minds are:

- **Cost of housing**: Mortgage renewal is a real concern for 73% of Canadians.
- **Inflation**: When compared to its peer countries, 4/10 Canadians feel Canada has higher inflation rates than others.
- **Healthcare**: 61% of Canadians are very concerned, while 35% are somewhat concerned, with the state of healthcare in Canada, particularly after the pandemic.

While sentiments towards inflation and housing are poor, anxiety and depression levels have lessened since the pandemic; however, they are higher than pre-pandemic levels. 58% feel annoyed or angry, and 21% say they are very angry. Ontarians expressed the highest levels of anger, mostly due to anxiety about the national and provincial economies.

Post-pandemic has seen a decline in remote work, with many companies requiring employees to be in-office 1 to 5 days a week. Generally, Canadians are open to hybrid work options. However, if forced to go back to the office full-time, 41% of Canadians said they would be unhappy and begin to look for work elsewhere.

Lesli Martin concluded her presentation with a brief analysis of Canadians' feelings toward the American presidential election and its potential impact on Canada's economy. 14% of Canadians feel that Donald Trump winning the presidency would be good for Canada's economy, whereas 62% feel it would be bad. Conversely, 35% of Canadians feel that Joe Biden winning the presidency would be good for Canada's economy versus 19% who feel it would be bad.

Peter Thompson, President and CEO of National Bank and CAFII's former Board Chair, thanked Lesli Martin. Valerie Gillis, CAFII's new Board Chair and the head of TD Insurance, then introduced herself and thanked P. Thompson for his work with CAFII and presented him with a gift to commemorate his time with the Association.

Karyn Kasperski, CAFII's new EOC Chair and the Director of Regulatory Initiatives and Creditor Insurance with RBC spoke next. She thanked Rob Dobbins, the Senior Director of Compliance at Assurant Canada and CAFII's former EOC Chair and presented him with an appreciation gift as well. R. Dobbins expressed a few words of gratitude for his time with CAFII.

The speeches concluded, and attendees were encouraged to continue mingling.

Canadian Life and Health Association (CLHIA)

On June 5, 2024, the CLHIA Announced the Election of a New Chair of Its Board of Directors.

On June 5, 2024, the CLHIA announced that it elected a new chair of its Board of Directors – Jacque Goulet, President of Sun Life Canada. The announcement was made via an article posted to the CLHIA website, in which details of J. Goulet's professional life were included. The article is as follows:

> ***Jacques Goulet elected CLHIA Chair***
> ***Release Date:*** *06/05/2024*
> ***Staff Reference:*** *Palvinder Gill*
>
> *Jacques Goulet, President of Sun Life Canada, has been elected Chair of the Board of Directors of the Canadian Life and Health Insurance Association (CLHIA).*
>
> *Jacques guides Sun Life Canada in its purpose to help clients achieve lifetime financial security and live healthier lives. Prior to Sun Life, Jacques had a 29-year career at Mercer, where he held leadership roles in Canada, Europe and the United States.*
>
> *Jacques sits on the board of the Montreal Heart Institute Foundation and is a campaign cabinet member for the Centre for Addiction and Mental Health (CAMH) Foundation. He holds a Bachelor of Science in Actuarial Science from Concordia University and is a Fellow of both the Society of Actuaries (FSA) and the Canadian Institute of Actuaries.*

Read the CLHIA's full article here.

On May 22-24, 2024, the CLHIA Held Its Compliance and Consumer Complaints Annual Conference.

From May 22 to 24, 2024, the CLHIA held its *Compliance and Consumer Complaints Annual Conference* in Vancouver, BC. As the name suggests, this annual conference is dedicated to compliance and complaint handling in Canada's life and health insurance industry. The next conference will be held in Charlottetown, PEI, from May 14-16, 2025. The CAFII team – Executive Director Keith Martin, Research Analyst Robyn Jennings, and Operations Manager Shanay Smith - attended the three-day in-person event. A full summary of the Conference can be found here: *CLHIA Compliance and Consumer Complaints Annual Conference Summary*

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LIMRA and LOMA

On May 1, 2024, LIMRA and LOMA hosted its Canada Annual Conference.

On May 1, 2024, LIMRA and LOMA hosted its Canada-based Annual conference titled *The Challenge of Change: Capital, Chatbots, and Culture.* The conference explored the ways in which COVID-19 impacted Canada's insurance industry. The event covered topics like AI, the changing work-from-home practices, the pace of innovation, and economic trends, to name a few. CAFII's Research Analyst, Robyn Jennings, attended the event.

The conference began with opening remarks from LIMRA and LOMA's CEO David Levenson, who asked the room why so few Canadians own life insurance. Is it a perception issue? A cost issue? LIMRA conducted a study on this issue and found that it was about perception, cost as well as accessibility. Approximately 50% of all individuals polled indicated they wanted a hybrid purchasing option, meaning adequate online research tools with the option to buy products from an agent. 26% said they would buy online with some kind of facilitation. Mr. Levenson then asked what companies can do to improve or assist customers' online experiences. Could AI be of use?

In the same study, LIMRA and LOMA found that 24% of Canadians polled indicated that, if the primary earner were to pass away, they would barely remain financially stable. Within this group, 51% would rely on their savings account, while 46% said life insurance would help them remain afloat. Respondees were allowed to select more than one option, therefore, 21% also indicated they would rely on extended family and friends for financial aid. These findings are indicative of the Canadian population at large.

Mr. Levenson concluded his opening remarks by noting that as digitalization increases, populations change, and as financial habits vary generationally the insurance world (business and industry alike) will also change.

The first panel of the day began with a discussion on elevating and innovating life insurance products. Moderated by Edd Levy (Manulife), the three panellists—Selena Puttick (Munich re. Canada), Mathieu Charest (Manulife), and Byren Innes (Jennings Consulting)—were asked how they would define a product. Mr. Charest responded that, where once the customer's comfort (durability, necessity, usefulness) was seen as an integral part of the product, now products focus on simplicity and affordability. He gave the example of Amazon and the products it sells, which tend to be cheaper and less durable. Ms. Puttick added that building products now includes a lot more customer input – crowdsourcing, consumer experience feedback, collaboration and conversation, and customer wants.

Mr. Levy opened the floor for audience questions. The panelists were asked if they were excited about any global innovations or developments. Mr. Innes said that, generally, no, he is not. He explained that the challenge is to understand customer needs. Reflecting upon product innovation, he feels this area has been stagnant, but understandably so. It is hard to cater globally. He added that he can see flexibility but not innovation. Mr. Charest disagreed; he is excited about the learning opportunities coming out of Asia regarding critical illness products. He views this as a what-not-to-do lesson since there is so much competition around coverage there. Ms. Puttick replied that, for Canada, innovation needs to focus on social norms and systems nationally in order to build desirable, useful products.

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Mr. Levy asked Mr. Innes how distribution channels influence Canada. He replied that distributors aren't always looking at consumer needs and perspectives. Therefore, distribution channels can be good sources of feedback; however, they are not always used for such, meaning that sometimes there isn't an adequate understanding of consumer wants, including pricing. Ms. Puttick added the need for more strategies considering incentivization for sales across the industry. Distribution cannot be reserved solely for large commissions. Mr. Charest explained that distribution channels must prove to customers that they need the product. Therefore, products must be simple and accessible for both consumers and distributors alike.

The conversation shifted towards the perception of the industry and life insurance products. Ms. Puttick commented that, generally, insurance has a negative connotation or a misinformed perception. People are often confused about the products and distribution channels. Therefore, industry players need to improve their consumer communication and educational tools. Products need to be built with consumer education in mind. This can also mean taking DEI and/or ESG into account. Mr. Innes agreed, noting that simplicity in products is necessary. Mr. Charest added that industry needs to promote itself better, including using concise language.

An audience member asked the panellists where they felt AI would make the biggest impact on industry. Mr. Charest said that AI will impact everything, but especially administrative work. AI will allow for more dynamism through streamlining work. Mr. Innes felt that AI would greatly impact structured and unstructured data as well as use cases. Additionally, underwriting will become more effective with the implementation of AI. Finally, Ms. Puttick said that operational efficiencies will increase due to AI, and companies will be able to divert funds to other areas that need attention. She agreed that guidance for use cases will change.

Finally, Mr. Levy asked the panellists if they felt the industry could simplify products by adhering to regulations. Ms. Puttick said not really because those who make the laws don't always understand the breadth of industry issues; therefore, it is difficult to navigate regulations and consumer needs as is. Furthermore, if companies decide to go beyond standard legislation, they need to be able to explain and justify this - a lot of clarity and oversight would be needed. Mr. Charest stated that insurers need to work with regulators so they can understand product design rather than design products based on industry preferences.

The panel ended for a break.

After the break, two more panels occurred, both focusing on AI. The first panel looked at innovations with AI and discussed how AI will increase the scale and speed of embedded insurance. AI will enhance efficiency across industries. It may reduce the need for programming knowledge, though human supervision will always be necessary. The panel agreed that companies must build adequate checks and balances into their AI frameworks to maintain credibility and security. The second panel explored how AI can transform customer and employee experiences, otherwise called the total experience. An important point made was the necessity for balance; generative AI can be a tool to allow for better work-life balance. In essence, AI will permit employees to "do more with less." If employees' work life is improving, theoretically, this will then improve customer interactions and, thus, satisfaction.

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Conversational intelligence, or personal data collection and analysis by AI, can streamline employees' work, including time management. Beyond balance, another key point discussed was optimization. AI is not intended to replace humans; rather, it can be used to optimize our workday. The following were given as examples of generative AI's optimization possibilities:

- Conversational AI: capture and analysis of personal data, including work ethic, daily agenda, notetaking, etc.
- Process automation: reducing the administrative burden that often accompanies processes.
- Agent-assisted AI: frees up time for employees to focus their attention else by answering basic questions or assisting customers with less demanding issues.
    - AI routing: Allowing for the customer to speak first to AI and then to an agent, if needed, thereby streamlining the process from problem to solution.
- AI analytics: data is rendered digestible through AI analysis.

The next presentation focused on leading with purpose. The speaker, Matt Berman (Forester Financial), spoke about the "new normal," or the rapid pace of change industry is experiencing. He described this as, in some ways, an increasing proximity to risk. For example, cybercrime has increased, and climate change is worsening, which directly impacts industry. These changes are not necessarily bad; they force industry players to reassess how they approach and quantify risk. Mr. Berman then listed some specific examples of industry changes:

- Increasing focus on un- and underinsured customers;
- Elevated arms race on products and processes;
- Heightened focus on distribution and vertical integration.

Customer preferences are changing; more and more people want a hybrid model for assistance. Once again, Amazon was brought up as an example. Therefore, industry players must balance preference versus profit. This can be extended to employees as well. Post-COVID, more employees prefer to work partially or completely remotely. Companies need to determine what the opportunity costs are in a changing world.

The room took a refreshment break before returning to hear the final panel of the day, which explored trends and issues that hinder or stimulate growth in a changing world. Moderated by John Carroll, Senior Vice President and Head of Insurance and Annuities at LIMRA and LOMA U.S. and Canada, the panel consisted of Rowena Chan, President of SunLife Financial, Renée Laflamme, Executive Vice President at iA Financial Group, and Rohit Thomas, Senior Vice President at BMO Financial. Mr. Carroll began the session by asking the panellists how they felt the COVID-19 pandemic changed the insurance industry. Ms. Chan said that the pandemic highlighted the interconnectedness of the industry and the need for a more holistic approach over the next five years in designing or rethinking organizational frameworks. Mr. Thomas added that digitalization has increased but, in many ways, was exacerbated by the pandemic. This trend will only grow over time. He also noted that interest in collaboration has also increased.

Continuing on the theme of technology and digitalization, Mr. Carroll asked what new regulation has had the biggest impact on the industry recently. Mr. Thomas was quick to say AI. Any AI regulations will impact data, privacy, security, functionality, internal and external communications, training, etc. Though new, it is a highly regulated area. Therefore, insurers need to ensure they have the right frameworks in place, including humanization, to implement AI well and safely while following regulations. Ms. Laflamme agreed and noted that strong governance and risk frameworks around AI will be needed to influence regulations and vice versa. She added that the roles and responsibilities of MGAs will be another important factor for industry to consider as AI regulations change. Ms. Chan then commented that the pace of change in the implementation, collection, and utilization of Gen AI and its data needs closer regulatory attention to safeguard against risk.

Mr. Thomas was momentarily pensive before asking his fellow panellists whether they found customers to be more agitated or angry due to human errors or technological ones.

The panel then discussed many of the fears around AI, including the concern for human replacement. In short, all agreed that AI will not take jobs but transform them. Some jobs may become redundant, but responsively, new jobs will arise. Ms. Chan observed that insurance is a business of trust; therefore, humans will never be entirely replaced. AI, then, must be seen as a tool to enable trust and efficiency.

The panel was not without its concerns about AI. Mr. Thomas explained that, while he agreed with Ms. Chan, the sheer volume of information and data AI can collect can be overwhelming and even detrimental to efficiency. Ms. Chan responded that in order to avoid confusion and inefficiency, everyone, including at the C suite level, must be properly trained. AI can then be used for operational efficiencies while being monitored for its ineptitudes.

Mr. Carroll asked the panel if industry is attracting or losing people. Is talent being retained? Is it being attracted? And is this an area of concern? Ms. Laflamme stressed that talent management is not a concern but a priority. Recruiting is now connected to marketing. Therefore, industry players need to incentivize people towards industry employment. She added that the younger generation of workers care about DEI and ESG and want their employers to engage in social activism.

The conversation moved to industry reputation, which everyone agreed needed improving. Perceptions of the insurance business are generally negative or apathetic. Social media could be utilized more to share success stories or promote financial literacy tools.

The conference concluded with some final closing remarks by LIMRA and LOMA's CEO, David Levenson.

The Travel Health Insurance Association of Canada (THiA)

From May 22-24, 2024, THiA Held Its Annual Conference in Quebec City.

From May 22-24, 2024, THiA held its annual in-person conference in Quebec City, QC. The event focused on the travel insurance industry and boasted a range of impressive speakers. The CAFII team was unable to attend; however, THiA shared a brief summary of the conference, which has been included below.

> *In keeping with the theme of trying new things at this conference, the event kicked off with a presentation from speaker and marketing expert Ron Tite before flowing into our opening reception.*

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During the shortened two-day session agenda (another first), delegates heard from a range of speakers and presenters with relevance to the travel insurance industry. Former New Brunswick premier and Chief Executive Officer of Medavie, Bernard Lord, opened the formal sessions with a well-received one-on-one discussion with THIA president Michael Camacho. Our Canadian location allowed us to hear directly from a panel of provincial insurance regulators about their perspectives on travel insurance providers, and three medical directors shared what keeps them up at night in a highly-rated session. The educational agenda wrapped up with the always-well-received summary of relevant legal cases and legislative changes from lawyers Jill McCutcheon and Tim Pavlov of Torys LLP.

On Thursday, May 23, Alice Zuquim, Co-Chair of THIA's Regulatory Affairs Committee, moderated the Regulatory Panel session featuring Mario Beaudoin, the Director of Alternative Distribution Practices in Insurance at the Autorité des marchés financiers (AMF) in Quebec; Huston Loke, the Executive Vice President for Market Conduct at the Financial Services Regulatory Authority of Ontario (FSRA); and David Sorensen, the Deputy Superintendent of Insurance for the Government of Alberta.

The conversation started with the moderator asking Sorensen about a recent bulletin from the Superintendent of Insurance Alberta concerning the CCIR incentive management guidance. The bulletin indicated that the regulator expects the principles in the guidance to be "meaningfully embedded" by April 1, 2025. While Alberta currently has no definitive plans for policing the guidance with all insurers, Sorensen advised that the AIC will take steps to confirm it is being followed, such as during individual complaint investigations or if the regulator is observing that a company is generating unusually high complaints.

Beaudoin noted that the AMF supported the development of the CCIR guidance. "An incentive offer may differ for the same product according to the sales channel used, but there's an expectation that a cost difference for the consumer will reflect the level of service that is expected to provide that product," he said.

Loke, from FSRA, added that "Insurance exists to provide people, families and businesses with important protection, peace of mind, and security. As regulators, we felt it was important to set guardrails as to how it gets sold. The incentive management guidance is more principles-based than perhaps some are used to. It starts with the question of how is your incentive program treating customers fairly? And then how can you give us some assurance that your incentives match that?"

The panellists also discussed the gap between consumers' understanding of insurance and the policies they purchase, noting that the onus is on both insurers and regulators to help bridge the gap. They agreed that this was a bigger issue with other insurance lines; however, travel insurance providers were not off the hook. Sorensen suggested incorporating multimedia to provide an effective policy summary or to explain key concepts. Sorensen also noted that regulators recognize that they bear more responsibility to improve consumer awareness.

> *Beaudoin urged the travel health insurance industry to collaborate on harmonizing some of the language in its documents. Loke concurred.*
>
> *Concluding the session, Zuquim asked Beaudoin how the AMF's enforcement experience has evolved since the alternative distribution practices were reformed in 2019. He acknowledged that the regulation has changed the landscape a lot, particularly related to Internet sales. He indicated that the main change he has seen is that the data obtained through the annual disclosure on products sold without a representative has changed the choice of surveillance activities and how the AMF is able to address different situations. He also shared that there are not many complaints related to travel health insurance compared to other products and that complaints received are mostly on sale processes and claim delays.*
>
> *Overall, the regulators indicated that the travel health insurance industry has not produced major concerns for them. But as MGAs take on a bigger role in the industry, Sorensen urged insurers and distributors to have very clear contracts with respect to responsibilities, who has the right to customer information and how it is exchanged.*

THiA's next Annual Conference (2025) will take place in Palm Springs, California. More details will be released early in 2025.

THiA Finds Canadians Planning to Spend More on Travel in 2024.
Mentioned briefly in its June newsletter, THiA noted that American Express' *2024 Global Travel Trends Report* found that 82% of Canadians are planning to or will spend the same or more on travel in 2024 than in 2023. Canada was also ranked the second-highest global market for anticipated personal (leisure) travel expenditure in 2024.

Provincial/Territorial

Ontario

The Financial Services Regulatory Authority of Ontario (FSRA)

FSRA Announces the Term Extension of Chair of the Board.
In an announcement published on June 26, 2024, FSRA announced the year-long extension of Joanne De Laurentiis' position as Chair of FSRA's Board of Directors.

Read the full announcement on the FSRA website.

FSRA Publishes Invitation to Join Stakeholder Advisory Committee.
In an announcement released on June 13, 2024, FSRA invited stakeholders to join its Stakeholder Advisory Committee for a two-year term beginning in September 2024. FSRA has seven Stakeholder Advisory Committees (SACs) and a Consumer Advisory Panel (CAP):

- **NEW**: Auto Insurance (including Health Service Providers)
- Property and Casualty Insurance
- Life and Health Insurance

- Mortgage Brokering
- Credit Unions
- Financial Advisors/Financial Planners

Interested parties must apply by July 11, 2024. Eligible participants must hold senior positions in their respective organizations and demonstrate a commitment to serving the public interest above personal and professional agendas. Keith Martin currently represents CAFII on the Life and Health Insurance SAC and will apply to remain on the Committee.

FSRA Announces CEO Nomination for Acting Chair of the Ontario Energy Board.
In an announcement published in May 2024, FSRA's Chair of the Board, Joanne De Laurentiis, congratulated their CEO, Mark White, on his nomination as chair of the Ontario Energy Board. The appointment is pending approval.

See the announcement on the FSRA website.

In an E-Blast, FSRA Announces Release of Its 2023 Consumer Advisory Panel Annual Report.
In an e-blast released in May 2024, FSRA announced the release of its 2023 Consumer Advisory Panel Annual Report. The Report outlines FSRA's Consumer Advisory Panel's engagement with FSRA at large and its key activities from January 2023 to March 2024. These activities include:

- established six topic-specific working groups, including one related to strengthening the protection of vulnerable consumers;
- held four general meetings and met with 13 different teams within FSRA on a wide variety of topics in addition to engaging with FSRA's Board of Directors;
- organized a meeting with 22 representatives from 13 different consumer advocacy groups and regulators to initiate a dialogue on consumer protection challenges and opportunities and investigate potential collaboration opportunities among organizations.

FSRA's Consumer Advisory Panel meets regularly to discuss and offer advice to FSRA on bettering its strategic approach and related activities regarding consumer-based, research, policy support, and education.

Read about FSRA's Consumer Advisory Panel.

Read FSRA's 2023 Consumer Advisory Panel Report.

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British Colombia

BC Financial Services Authority (BCFSA)

BCFSA Announces CEO/CSO Retirement.

On June 26, 2024, BCFSA informed stakeholders and industry alike that Blair Morisson, Chief Executive Officer and Chief Statutory Officer, will be retiring at the beginning of 2025. The recruitment of BCFSA's new CEO/CSO will be conducted by the CEO Search Committee of the BCFSA Board of Directors, which the BCFSA Board Chair is leading. Massey Henry, an external search firm, will support the CEO Search Committee in the recruitment and selection process.

Read the full announcement on the BCFSA's website.

International Developments, Research, and Thought Leadership

Insurance Portal

Insurance Portal Published an Article on Anti-Selection and Its Financial Burden on the Insurance industry.

In an article published in May 2024, the Insurance Portal explored the financial burden anti-selection poses to the insurance industry. The article focuses on RGA Re's recently published report on the topic. It should be noted that RGA Re is an associate, and its CEO spoke at CAFII's Annual Members Luncheon on May 28, 2024. CAFII's Research Analyst, Robyn Jennings, summarized the article below.

According to Insurance Portal, "New research published by RGA Re is revealing that the reinsurer, MIB Group and TAI, a reinsurance software and consulting services firm, have collaborated to create an unprecedented database of policy-level data, giving the industry insight into the impact of anti-selection on the life insurance industry and potential ways to prevent it." RGA Re's report, released in February 2024 and titled *Impact of Anti-Selective Behavior on the Life Insurance Industry*, found that anti-selection stifles innovation while increasing consumers' costs and reducing insurers' profits.

Two forms of anti-selection activity were analyzed – churning and stacking. Churning, in particular, was deemed a growing concern; "as long-established agents retire, and a younger generation takes over, insurers are concerned this may increase churning if the new generation is less familiar with or has lower regard for established norms for ethical business practices."

According to the report, anti-selection has grown over the past 10 years and is becoming increasingly difficult to identify. This is due to accelerated underwriting and certain distribution models. The Insurance Portal did not elaborate on those distribution models.

Read the full article on the Insurance Portal website.

Read RGA Re's report, *Impact of Anti-Selective Behavior on the Life Insurance Industry*.

McKinsey & Company

McKinsey & Company Publishes Article on Generative AI and Proper Risk Management.

In an article published on June 12, 2024, McKinsey explores how business and industry leaders should approach managing the risks around generative AI's implementation and maintenance. CAFII's Research Analyst, Robyn Jennings, has provided her summary below.

In conversation with Sean Brown and Oliver Bevan, McKinsey's Ida Kristensen explains that some in the industry have embraced generative AI while others remain skeptical. While risks are associated with it, not implementing or utilizing generative AI comes with substantial strategic risks.

Mr. Bevan explained that approaches to governance have changed over the last few years.

> *With data privacy, there was a sense that GDPR1 [General Data Protection Regulation] led the way. Many of our clients have adapted their initial data privacy frameworks to GDPR and have considered adapting them globally using GDPR as a foundation.*
>
> *We saw a lot of legislation that followed in the steps of GDPR. Some of what was happening in California drew directly on GDPR as well. We sense that it will be much trickier to do with gen AI.*

Many of the risks associated with generative AI's use pertain to citizens. Companies must ensure data privacy, cybersecurity, and consent around deepfakes, which can impact public-facing events like elections. Mr. Bevan elaborated that "there is potential for deepfakes and malicious use of gen AI as the technology can create compelling and realistic facsimiles of either individual or corporate identities, which creates massive reputational risks and challenges for governments." Ms. Kristensen added that these risks have been a part of AI, analytical and generative, since its inception; however, they have evolved. Generative AI, unlike the earlier model or analytical, is more challenging to explain because it is still so new and dynamic. Transparency, then, is a critical aspect of risk management.

Mr. Bevan and Ms. Kristensen both agreed that a deeper understanding of generative AI's functionality is an area both government and regulators are interested in. This relates back to explainability. Companies need to be able to explain how their generative AI's model works, yet it is difficult to do so when that information is only partial understood or inaccessible, or both. These, then, carries over into public trust in companies and their use of personal data.

Companies that have been using generative AI since its inception are, by and large, aware of the need for guidelines that limit generative AI's ability. This often combines digitalization with human oversight.

Ms. Kristensen listed a few more risks leaders should watch:

- Data quality;
- Malicious use of personal or industry data;
- Strategic risk, including computational power which jeopardizes company commitment to ESG goals.
- Internal and external trust.

Mr. Bevan explained the risk management approach model he suggests adopting:

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1. Principles and guardrails: leaders must engage in honest conversations on how and where they want to deploy generative AI.
2. Framework: leaders must develop a framework that aligns with their policies, goals, and the company's culture.
3. Deployment and governance: leaders must deploy and maintain their generative AI framework in a way that allows for adjustments and encourages transparency.
4. Mitigation and monitoring: Leaders must understand and account for the various risks they may face. They can do this by starting with lower-risk, easier-to-implement use cases. This allows for trial and error without significant repercussions if issues arise.

Ms. Kristensen pointed out that "security is an area where you must fight gen AI with gen AI." Companies can incorporate controls and oversight into their generative AI frameworks. This will not eliminate the risks. However, coupled with adequate employee training and regular human oversight, frameworks can reduces the chance of risk occurance.

Read McKinsey's full article.

Torys

On June 6, 2024, Torys Hosted a Webinar Titled "Competition Law and Future Collaboration in the Financial Services Industry."

On June 6, 2024, Torys hosted a webinar on competition law and future collaboration in the financial services industry. The webinar examined the general regulatory regime and its application to banks and insurance companies. It was moderated by Leah Frank (Partner, Torys) and featured the following speakers: Adam S. Armstrong (Partner, Torys), Dany H. Assaf (Partner, Torys), and Omar Wakil (Partner, Torys). CAFII's Research Analyst, Robyn Jennings, attended and summarized the event below.

The webinar began with Mr. Wakil providing a brief overview of the Competition Act, focusing on:

- **Section 45** examines any deals or arrangements between competitors that attempt to fix prices, allocate markets, or control the supply of products (price-fixing arrangements between competitors).
- **Section 49** pertains to federal financial institutions and any deals or arrangements concerning their services.

These two provisions are particularly relevant for collaborations between financial institutions.

Next, Mr. Assaf explained that the Competition Act is generally broken down into criminal and non-criminal acts. Sections 45 and 49 pertain to collaborations under the criminal acts. Under the civil provision, the two areas the Bureau will look to enforce are the abuse of dominance, including joint abuse, and arrangements between competitors and non-competitors that impact competition, including obstruction.

The Competition Bureau has advocated for significant changes to the Competition Act. Some of these changes have affected section 79 (abuse of dominance or joint abuse of dominance). Essentially, they have lowered the threshold for the Commissioner of Competition to stop behaviour deemed anti-

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competition. In order to gauge behaviour, the Commissioner issues a two-part test that assesses the institution's dominance and whether their conduct is anti-competitive or the behaviour has resulted in a substantial lessening of market competition. The previous test required proof of all three areas.

The Commissioner also expanded upon Section 90.1. Where once it was specific to deals or arrangements between business parties and competitors, now it deals with arrangements between *any* two people, including individuals.

In a sales process with multiple bidders, there is often a need to balance competing concerns between protecting a client's competitively sensitive information and providing sufficient information to a bidder to bid as high as possible. Ms. Frank asked Mr. Wakil how clients should conceptualize this balancing act. He explained that this question directly relates to collaboration between competitors or financial institutions. He clarified that no provision in the Competition Act prohibits parties from sharing or exchanging competitively sensitive information; the concern is collusion. The issue with sharing competitively sensitive information is that it can be seen as circumstantial evidence of collusion; therefore, competitors and financial institutions must be cautious about the information they share. In the context of MMA, where parties wish to share information but are concerned about its competitiveness, they can:

- Scrub the information to make it *not* competitively sensitive.
- Create a clean team. Mr. Wakil explains that this is a small and informed group established during the diligence stage to monitor the exchange of information from start to finish. When forming a clean team, he advises clients to avoid individuals with primary, direct, and/or day-to-day operational roles in procurement, sales, marketing, or pricing. Clients should not include anyone who could use or benefit from the exchanged information.

Ms. Frank then asked if there were any issues with the non-competes in the FI space within the Competition Act. Mr. Wakil replied yes. Section 49 states that two federal financial institutions cannot agree not to compete concerning specific matters. Unlike the provision in the Competition Act that generally applies to all industries, there is no auxiliary restraints defence (as in Section 45, which states no collusion). Competitors can have a provision in an agreement, that would otherwise be illegal, which states a component of that broader agreement deemed reasonably necessary to fulfill the broader agreement's objectives. Section 49 does not have this concept, making FI's interactions in the federal spaces trickier to navigate.

FIs need or want to collaborate and develop best practices or benchmark performance. How can they do this while maintaining compliance? Mr. Wakil explained that FIs can do so by remaining cautious, mainly when dealing with federal institutions. This is due to the stringency and severity of the Competition Act's new provision (Section 49). They can collaborate with federal institutions; however, he encourages FIs to be mindful and wary.

Access the full webinar recording on the Torys' website archive ([Torys CPD Library]). This link does not work.

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Torys Hosts a Webinar Discussing the Launch of Open Banking in Canada.

On May 14, 2024, Torys hosted a webinar on the launch of open banking. CAFII's Research Analyst, Robyn Jennings, did not attend the webinar when it was held; however, the event was recorded and uploaded to Torys' website. Her summary of the webinar has been included below.

Moderated by Brigitte Goulard (Senior Counsel) from Torys, Eli Monas (Torys Partner) and Molly Reynolds (Torys Partner) joined to discuss the federal government's newly launched Canada's Consumer-driven Banking Legislative Framework, which includes a new act (Consumer-driven Banking Act) and amendments to the Financial Consumer Protection Act. The three speakers, including Ms. Goulard, discussed what this legislation meant for fintechs and financial institutions alike.

Before beginning the webinar, Ms. Goulard explained that open banking is now called consumer-driven banking. However, for ease of communication, all speakers will continue to call it open banking.

Mr. Monas provided an overview of the new legislation. He explained that on April 30, 2024, the federal government launched Canada's consumer-driven banking framework by introducing in the *Budget Implementation Act, 2024, No.1:*

- A new draft legislation – the draft *Consumer-Driven Banking Act* (CDBA); and,
- Draft amendments to the *Financial Consumer Agency of Canada Act* (FCAC Act).

Mr. Monas explained that the CDBA addresses governance, scope, criteria, and processes for the technical standard. This is considered phase 1 of the new framework and will be implemented over the Summer. Phase 2, or the FCAC Act amendments, will address the more complex aspects of the framework, such as liability, privacy, and accreditation. It is expected to be tabled in the Fall of 2024.

Looking closer at the CDBA, it stipulates that consumers and small businesses can request that their data relating to financial products and services be shared with participating entities of their choice and ensure that the sharing of this data among participating entities is safe and secure. Mr. Monas said that the framework is limited to what is being called "read-only" privileges; however, Ms. Reynolds disagreed. She explained that she sees this as a distinction between access to existing data or copies of data and the ability to edit or write data. When thinking of "read-only" data, it is the equivalent of the status quo for access to financial account information through more invasive data access. This is, essentially, the consumers' ability to give their financial data to a third party via an API as it currently exists versus the ability to direct their account to do something, like pay a bill.

Ms. Reynolds added that, for future phases of open banking, she expects and hopes that consumers will be able to indicate whether they want bills paid, financial services automated, etc. This will give consumers "move access," or changing accounts or changing product holdings. The question of when this will occur is unclear.

Mr. Monas asked Ms. Goulard what is considered a small business. She explained that the Act does not provide a definition. She then mentioned the UK, which has had open banking for several years and has a clear definition of a small business—50 employees or less. Ms. Goulard expressed hope that this lack of clarity will be rectified for harmonization across industry.

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Ms. Goulard said that the new Act has adequately captured all the types of products seen in the Bank Act and non-Bank Act products, like investment accounts. She noted that it will be interesting to see how, down the line, the new Act and its regulations provide coverage for new and unexpected or unanticipated financial products. As it is currently written, this issue does not seem to be considered. However, this may change.

The way the Act is structured is not intended to exclude but rather allow for participation. Large banks will have to participate, but all other entities will be allowed to decide. Those who want to join will need to register with the FCAC, comply with the technical standards imposed, and become subject to the FCAC. There are also enforcement provisions.

Ms. Reynold raised concerns about privacy law. In Quebec and proposed at the Federal level, there is a privacy law on data portability that applies only to personal information. The current data portability law allows a consumer to request a business transfer personal information provided by the individual to another business or party, including a government institution. The issue here is an inherent limitation: the consumer is the one who must have provided the requested data. In the open banking context, this is not necessarily true. The request does not have to be limited to personal data, though this is not excluded. It can also include information that the consumer provided during account opening or throughout the relationship or information the bank acquired or collected from other sources over time. There is one restriction: the framework will not apply to derived data. Derived data means data about the consumer or their holdings that a participating entity has enhanced to significantly increase its usefulness or commercial value. What does this mean? Speculating a bit, the intention is to protect the proprietary information of the financial institution; for example, an internal credit risk score over a consumer is considered proprietary. There will continue to be debate and challenge around these definitions and what consumers can request, including the scope of personal data.

The Open Banking Act also stipulates that data shared between participating entities will be shared in a manner that does not enable the participating entity who receives the data to edit the data on the servers of the participating entity that provides the data.

The Act also specifies that the Minister will designate a body as the technical standards body responsible for establishing the technical standards for sharing data by participating entities. Ms. Reynolds commented that, despite the usefulness of harmonization and the oversight of the FCAC, great attention will be paid to the choice of standard body. The governance of the technical and standard body will be critical. She expects lobbying will follow. The intention here is not to create additional barriers to entry by establishing a central technical standard, but minimum requirements will be necessary. Therefore, how much industry input should be sought before publishing the final technical standards? Once the standard body is selected and the standards are set, what is the process for proving that the participating entities comply with it? Will there be new consultants to gauge implementation? Will there be auditors and assessors to map participants' implementation to the technical standards? Will there be a certification process, and if so, how often will participants need to recertify? A process for revisitation and certification will be needed to maintain trust. Ms. Reynolds believes that these questions must be answered before the standards can be enforced.

Moving on, Mr. Monas noted that the draft legislation stipulates that the existing Bank Act provision prohibiting banks from sharing customer information with insurance companies, agents, or brokers for business or insurance will not be impacted by the CDBA's provisions.

Towards the end of the new legislation, enforcement provisions, including fines and penalties, are listed for those who misrepresent themselves as a "participating entity."

The FCAC mandate will expand to include supervising the oversight, administration, and enforcement of the open banking framework. The current mandate oversees federally regulated financial institutions, like banks, payment card network organizations, and external complaint bodies. The new open banking framework will introduce a new FCAC Senior Deputy Commissioner role to ensure that provincial credit unions and Crown Corporations acting as banks within the new system are exempt from direct federal oversight. Instead, it establishes an independent "parallel" consumer-driven banking regulator within the FCAC structure while incorporating many elements of the FCAC's administration into this new regulator. Some have questioned how *independent* the oversight of the new "parallel" regulator can really be if the FCAC is still somewhat involved in provincial activities; however, this is something that will be monitored as time goes on.

This new legislation has not yet been passed; the Bill must pass through a legislative process before it becomes law. If passed, regulations must be drafted and passed before actual implementation. Therefore, the proposed open banking framework has a long way to go before becoming law. Considering that a federal election is coming up in 2025, the future of open banking in Canada is still unclear.

Access the full webinar recording on the Torys' website archive.