



December 22, 2020

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Dear David,

Thank you for your emails of November 6, 2020 to our respective Associations. As you suggested, CLHIA and CAFII have taken the opportunity to work together to provide you with a joint response to avoid a duplication of our efforts. This letter is therefore submitted on behalf of both our organizations.

We have now had an opportunity to survey our members on the questions you raised with respect to insurance money that is payable to a minor where no trustee or guardian for property has been appointed.

You advised that New Brunswick is reviewing sections 182 and 215 of the province's *Insurance Act* and is considering amending these sections to provide for payment of the money to the Public Trustee. You cited section 198 of Manitoba's *Insurance Act* as an example of a jurisdiction that has included a provision that permits an insurer to pay insurance money to the Public Trustee as an alternative to paying into court in a situation where there is no one who can provide a valid discharge on behalf of a minor.

The following is a brief summary of each of your questions and our corresponding responses:

- 1) How frequently are insurers making payments into court in New Brunswick under sections 182 and 215 of the *Insurance Act*, and in Atlantic Canada under similar provisions?

Without exception, our members reported that, on an annual basis, the frequency of payments into court with respect to minors is extremely low. Mid-sized insurers reported five to six such payments across all of Canada annually, with possibly one payment into court in Atlantic Canada. None of the mid-sized insurers surveyed indicated that they were tracking these payments by province because each time such a situation arises, it is handled as a one-off due to the relative infrequency of occurrence. One of the larger insurers reported making 20 payments into court in Atlantic Canada in 2019, with three of the payments being made in New Brunswick. The reason why the number of these cases is so low across the industry is discussed below.

- 2) Where a benefit is payable to a minor, what process do insurers follow to determine the best course of action to discharge their legal obligation to the minor?

The principal process that the industry has adopted to proactively manage the payment of benefits to minor beneficiaries is the standard inclusion of a question on insurance beneficiary designation forms that requests the name of a trustee where minors are named as beneficiaries of insurance benefits.

It is our understanding that members will typically follow-up with policy owners or group insureds who have named minor beneficiaries but have not included the name of a trustee. As a result, there are relatively few cases industry-wide where a trustee has not been named. If the benefit becomes payable to the minor, the insurer will pay the money to the named trustee. Where electronic beneficiary designation processes are used, some insurers have included mandatory fields that require a trustee to be named in situations of minor beneficiaries. Going forward, this type of tool will further reduce the number of times insurance money would need to be paid into court or to the Public Trustee.

In cases where either no trustee was named or the named trustee is unwilling or unable to act as a trustee for the minor, insurers will then typically follow a series of steps to determine the best course of action to discharge their obligation to the minor. They will determine:

- Is there someone who has been appointed to act either as the trustee or as the guardian for property for the minor? It is our understanding that in most jurisdictions, this is generally an appointment made by a court since a parent or personal guardian of a minor is not automatically that minor's guardian for property; and that legal distinction is why insurers are not routinely able to resolve the absence of a designated trustee with a personal guardian for a minor. That said, by way of example of an available solution in your own province, payment may be made to the parent(s) of a child or to another person who has been appointed by the parent(s) to act as guardian of a child per New Brunswick's *Guardianship of Children Act*.
- If there is no trustee or guardian for property for the minor, insurers will determine if the province or territory in which the minor resides allows for payment to a parent or guardian of a minor and whether the benefit amount is within the stated maximum allowable payment permitted by the legislation.

In 2020, Alberta updated its Minors' Property Regulation to allow up to \$25,000 to be paid to a minor's "guardian"; and that said guardian may be a parent of the minor (see section 2(1) Small Obligations - Alta. Reg. 240/2004. We view \$25,000 as a more realistic and reasonable figure to establish as the maximum amount of insurance money which may be paid to the parent or guardian of a minor.

In Ontario, the situation is less desirable from the industry's perspective as the *Children's Law Reform Act* permits such a payment up to a maximum of just \$10,000 (see section 51, Payment of debt due to child if no guardian [*Children's Law Reform Act, R.S.O. 1990*](#)). In British Columbia, a similar provision is contained in section 178 of the *Family Law Act*, although the maximum amount is prescribed in the Regulation to that Act, BC 347/2012, at section 24 (also \$10,000).

We do not believe that this is currently permitted in New Brunswick.

- If there is no trustee or guardian for property for the minor and either there is no provision permitting payment to a parent or guardian or the benefit amount exceeds what is permitted, then insurers will consider either payment into court or paying the benefit to the Public Trustee in the jurisdiction where the minor resides.

Our members have advised that this is a last resort and will always be done on a case-by-case basis. It was not clear from the responses that we received that there is any established industry practice preferring one method of payment over the other. It is our understanding that both require documents to be filed but it may be in the best interests of the minor that the insurer make payment to the Public Trustee.

3) How are the costs incurred by the public trustees for these services covered?

We do not have any information on this. We assume that the Office of the Public Trustee in each jurisdiction is publicly funded.

In conclusion, we support New Brunswick's intention to amend sections 182 and 215 of the province's *Insurance Act* to permit the payment of a benefit to the Public Trustee where payment to the trustee or guardian of a minor is not possible. We recommend replacing these sections with wording based on section 198 of Manitoba's *Insurance Act* and some additional proposed wording changes that we have set out in red:

If an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so, the insurer may, at any time after 30 days after the date of the event on which the insurance money becomes payable, pay the money to the Public Guardian and Trustee for the benefit of the minor; and if it does so pay, it must ~~and~~ notify the Public Guardian and Trustee of the name, date of birth and residential address of the minor, and the name and residential address of at least one parent or guardian of the minor, as known to the insurer.

These proposed changes would assist insurers by aligning with privacy legislation principles and requirements (i.e., disclosure that is "required" by law).

Thank you for the opportunity to provide you with our collective comments on this issue. If you have any further questions, please do not hesitate to contact us directly.

Best Regards,

Original signed by

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Canadian Life and Health Insurance Association

Original signed by

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