



Insurance Law and Regulation Update

May 31, 2019

Guest Speakers:

Mark E. White
Financial Services
Regulatory Authority
of Ontario

Huston Loke
Financial Services
Regulatory Authority
of Ontario

Speakers:

Kathleen E. Butterfield
+1 416 865 5451
kbutterfield@fasken.com

Koker Christensen
+1 416 868 3495
kchristensen@fasken.com

Sylvie Bourdeau
+1 514 397 4388
sbourdeau@fasken.com

Jennifer Stoddart
+1 514 397 4367
jstoddart@fasken.com

Robert W. McDowell
+1 416 865 4408
rmcdowell@fasken.com



Financial Services Regulatory
Authority of Ontario

A Progress Update on FSRA

Fasken Institute – Insurance Law and Regulation Update

Mark White, Chief Executive Officer

Huston Loke, EVP, Market Conduct

May 31, 2019



Financial Services Regulatory
Authority of Ontario

Topics

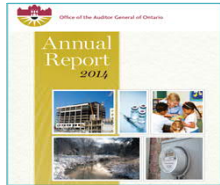
- Why reform: FSCO to FSRA
- Sectors we regulate
- Areas of focus
- New strategic focus
- Working with industry
- Year 1 priorities
- Questions and answers



Financial Services Regulatory
Authority of Ontario



CANADA
Financial Sector Stability Assessment
February 2014



REVIEW OF THE MANDATES

of the Financial Services Commission of Ontario,
Financial Services Tribunal, and the
Deposit Insurance Corporation of Ontario

Final Report
March 21, 2014

Panel Members:
George Conine
James Oles
Lawrence Riddell

Why Reform?

"With financial services and pensions sectors changing at a rapid pace...

Ontario needs a regulatory authority that is flexible, innovative, and in possession of expertise appropriate to match the consistently evolving financial environment. We call not for amendments, revisions or improvements to the existing regulatory framework and apparatus, but **for the replacement of the current regulatory structure and approach with a more nimble and accountable one ..."**

2



Financial Services Regulatory
Authority of Ontario

Regulatory Scope

When operational, FSRA will regulate:

Sector	Regulatory Focus
Property and Casualty Insurance	Auto rate regulation, conduct and prudential supervision
Life and Health Insurance	Conduct and prudential supervision
Credit Unions and Caisses Populaires	Conduct and prudential supervision, including deposit insurance
Loan and Trust Companies	Conduct
Mortgage Brokers	Conduct (mortgagor and investor perspectives)
Health Service Providers	Conduct in auto insurance service provision
Pensions	Conduct and prudential supervision, including pension benefits guarantee fund

3

Legislative Mandate - General

- Regulate and generally supervise the regulated sectors
- Contribute to public confidence in the regulated sectors
- Monitor and evaluate developments and trends in the regulated sectors
- Cooperate and collaborate with other regulators where appropriate
- Promote public education and knowledge about the regulated sectors
- Promote transparency and disclosure of information by the regulated sectors, and
- Deter deceptive or fraudulent conduct, practices and activities by the regulated sectors

4

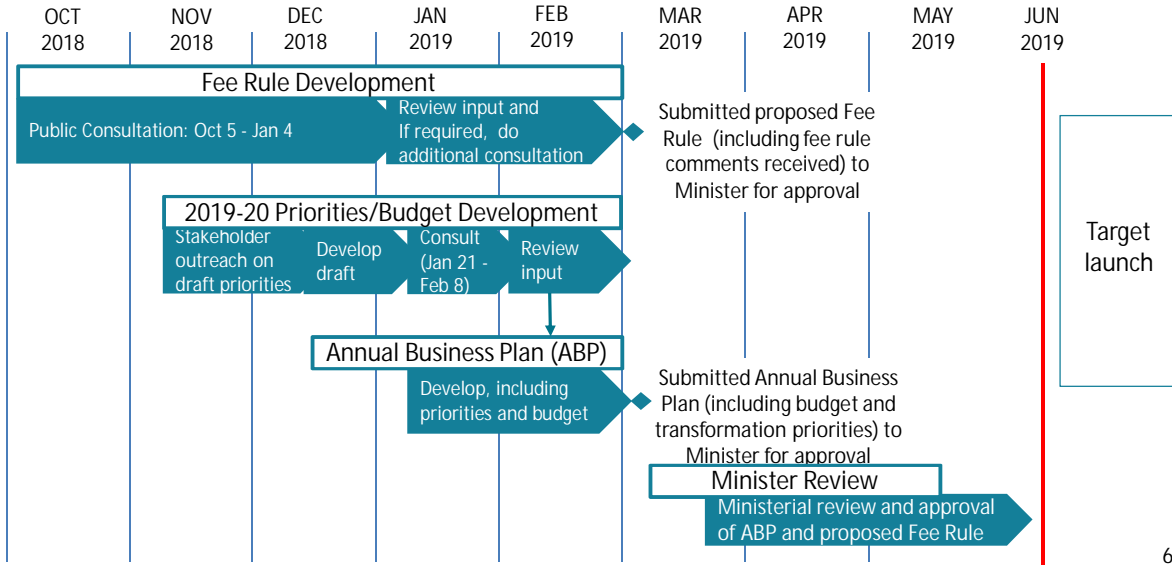
Legislative Mandate - Specific

Financial Services

- To promote high standards of business conduct,
- To protect the rights and interests of consumers, and
- To foster strong, sustainable, competitive and innovative financial services sectors

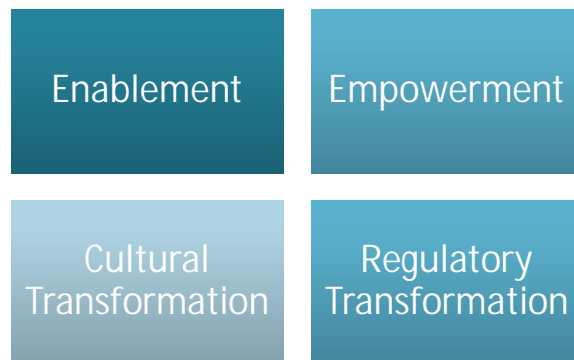
5

Timeline: Key Foundation-Building Activities to Launch



6

FSRA's Areas of Focus



7

Leadership

Chief Executive Officer
Mark E. White

Core Regulatory

EVP, Pensions Caroline Blouin	EVP, Auto/Insurance Products Tim Bzowey	EVP, Market Conduct Huston Loke	EVP, Credit Union & Prudential Guy Hubert
----------------------------------	---	---------------------------------------	---

Regulatory Support

EVP, Policy Glen Padassery	EVP, Legal & Enforcement Jordan Solway	Chief Public Affairs Officer Judy Pfeifer
Chief Consumer Officer		

Corporate Services

EVP, Corporate Services Stephen Power
Chief Human Resources Officer Kelly Kimens
Chief Finance Officer Randy Nanek
Chief Risk Officer Alston Perianayagam
Chief Information Officer Aleksandar Simic

FSRA Strategic Framework

Vision



Safety



Fairness



Choice

Mission

- Public service through dynamic, principles-based and outcomes-focused regulation

**Key
Enablers**

- Principles based
- Rule making
- Clear guidance
- Risk-based, evidence driven and outcome focused
- Collaborative, consultative and transparent culture
- Dynamic
- Operational independence from, and continuous collaboration with, government

Overall Priorities				
Burden Reduction		Regulatory Effectiveness		
<ul style="list-style-type: none">Review inherited guidanceReview data collection and filing requirementsEstablish meaningful service standards		<ul style="list-style-type: none">Protect the public interestIncrease sectoral expertiseEnable innovationEnhance stakeholder collaborationModernize systems and processes		
Sector-specific: Targeted High-impact Priorities				
Auto Insurance	Credit Unions	Insurance Conduct	Mortgage Brokering	Pensions
<ul style="list-style-type: none">Streamline Rate Regulation ProcessSupport Auto Reform StrategyReview Health Service Provider (HSP) RegulationDevelop Fraud Reduction Strategy	<ul style="list-style-type: none">Integrate Conduct and Prudential SupervisionSupport Modernization of Regulatory FrameworkAdopt Industry Code of ConductEnsure Appropriate Resolution and Deposit Insurance Reserve Fund (DIRF) Framework	<ul style="list-style-type: none">Adopt Effective Conduct StandardsImprove Licensing Effectiveness and EfficiencyHarmonize Treating Consumers Fairly Guidance	<ul style="list-style-type: none">Provide Effective Syndicated Mortgage Investment (SMI) OversightImprove Licensing Effectiveness and EfficiencyAdopt Industry Code of Conduct	<ul style="list-style-type: none">Support Plan FlexibilityReview Prudential FrameworkFocus on Burden Reduction

10

Insurance Conduct Priorities

- Adopt Effective Conduct Standards
- Harmonize Treating Financial Services Consumers Fairly Guidance

1. Adopt Effective Conduct Standards

- Why? Strengthened conduct standards will eliminate oversight gaps in the industry, ensure a level playing field for all industry participants and help increase fairness to consumers.

Next steps:

- Engage with you and other regulators to better understand positions and opportunities for consensus
- If stakeholders in a particular subsector adopt a code of conduct, FSRA will review it and consider adopting it for use in its supervision of such sector
- Be transparent on why certain approaches were adopted or not

12

2. Harmonize Treating Consumers Fairly Guidance

- Why? You told us there are overlapping and potentially inconsistent fair treatment of consumers guidance documents issued by different regulatory bodies which create confusion.

Next steps:

- Consult with stakeholders and other regulators to determine harmonized conduct expectations so FSRA can provide clarity about how this guidance is to be interpreted and applied in day-to-day business throughout the insurance product life cycle in Ontario

13

TCF Guidance – Key Features

- The TCF Guidance is based on Insurance Core Principles (ICP 19) of the International Association of Insurance Supervisors (IAIS)
- Most TCF principles
 - Generally align with accepted industry best practices
 - Integral part of sound market conduct
- Provides latitude
 - Not “one size fits all”
 - Recognizes licensee size, distribution strategy and complexity of operations
 - Provides space for tailored solutions to achieve desired outcomes
- Consumer interest priority throughout lifecycle
 - Product/service design right through to fulfilment of obligations
 - Responsibility of all licensees involved

14

TCF Reviews - Scope

Corporate Governance	• Assess organizational structure to ensure that reporting relationships between management and senior officers allow for effective oversight. Confirm that there is a reflection of TCF within the insurer's culture and values.
Agent Training and Outsourcing Arrangements	• Evaluate policies and procedures, advisor suitability factors as well as nature, timing and extent of training conducted.
Incentives and Remuneration	• Review policies and procedures, agent compensation structure, and incentives. Confirm that the insurer assesses risks periodically to ensure appropriate products are sold to consumers
Product Marketing and Advertising	• Confirm the insurer provides sufficient product information to allow a customer to make an appropriate decision.
Information Provided to Customers	• Confirm the insurer has a formal process for informing customers before, at the moment, and after sales, that takes into account TCF.
Claims Handling	• Confirm the insurer has a claims handling policy which incorporates TCF elements, as well as standard processing times that appropriately reflect TCF.
Complaint Handling and Dispute Settlement	• Confirm the insurer informs its customers of the existence of its complaints processing service and of its response timelines

15

Working With You


- We are committed to an open, transparent and collaborative approach that engages our stakeholders and ensures broad input and diverse perspectives to inform our direction.
- Online transparency of our engagement opportunities and consultation to date. We have also responded to feedback in writing and have clearly showed how feedback was considered.
- Commitment to further expand our online engagement.

16

Learn More / Be Engaged

- Questions?
- Stay up-to-date by subscribing to our mailing list @ www.fsrao.ca [Contact Us tab]

17



The Coming Data Protection Tsunami

Jennifer Stoddart, Strategic Advisor
+1 514 397 4367
jstoddart@fasken.com

FASKEN
Institute



The coming data protection tsunami

FASKEN
Institute



▼ *EU General Data Protection Regulation, May 2018*

- Applies if doing business EU or targeting EU individuals
- Focus on individual rights
- Strict enforcement



▼ *California Consumer Privacy Act, January 2020*

- Companies over \$25M gross revenue
- Has personal information of more than 50,000
- More than 50% income selling personal information

▼ California

- Individual rights to :
 - Withdraw consent
 - Access
 - Correction and erasure
 - Object for sale or disclosure
 - Data portability
 - Restrict processing
 - Transparency about information use
- Statutory penalties and lawsuits by A.G.

▼ Compliance is a global requirement

- 134 countries have data-protection legislation
- India next :
 - Personal data must have a copy in India for 2 years
 - Critical data cannot leave country

▼ General Trends

- Greater rights and protections for data subjects/ consumers
- Broad application based on perspective of those affected
- Dramatically increased regulatory sanctions
- Data localization



- New rights: data portability, delinkage, enhanced consent, local remedies, opting-out of data sharing
- New obligations: data impact assessments, privacy by design, data breach reporting, data privacy officers, transparency

▼ What does this mean for Canada?

- More pressure to meet global standards
- Increased demands from data subjects
- Rethinking its position in the data protection and e-commerce world

▼ Principles of Canada's Digital Charter, May 2019

- | | |
|---|--|
| 1. Universal Access | 6. A Level Playing Field |
| 2. Safety and Security | 7. Data and Digital for Good |
| 3. Control and Consent | 8. Strong Democracy |
| 4. Transparency, Portability and Interoperability | 9. Free from Hate and Violent Extremism |
| 5. Open and Modern Digital Government | 10. Strong Enforcement and Real Accountability |

▼ Canada's Digital Charter

- Strengthen consent
- Transparency required (big data)
- Data portability
- Data trusts
- Enhanced enforcement powers
- Penalties fake news

▼ Other challenges for business

- Multiple jurisdictions
- Populist voices (data localization, data monetization)
- Artificial intelligence
- Private is public is private (health care industry, public health, smart cities)

▼ How to Prepare

1. Implementation of a data protection organization (including the need to appoint a DPO/CPO) in consideration of existing organizational structures
2. Required data protection framework (especially a data protection policy and a data protection standard/manual)
3. Identification of personal data and creation of the records of processing activities
4. Implementation of a data protection impact assessment (DPIA) for the affected processing activities
5. Adaptations and updates regarding information duties and consent of the data subject

▼ How to prepare

6. Development of the necessary data protection processes (especially right of access and right to erasure)
7. Development of a procedure for the efficient treatment of data breaches
8. Evaluation of existing measures to ensure data security (confidentiality, integrity, availability, resilience)
9. Adaptation of existing contracts or preparation of necessary contractual agreements
10. Data protection awareness and training



Consumer Protection Developments

Kathleen E. Butterfield, Partner
+1 416 865 5451
kbutterfield@fasken.com

Institut
FASKEN

Consumer Protection Developments

- Australia Royal Commission Report
 - Key Observations
 - Principles and Rules
 - Implications for Canada
- Consumer Protection Framework for Bank Customers & FCAC Sales Practices Review

Institut
FASKEN

▼ Provincial Requirements

- FSCO – Treating Financial Services Consumers Fairly Guideline
- CCIR Guidance – Conduct of Insurance Business and Fair Treatment of Customers
- FSRA Priority – Harmonize Treating Consumers Fairly Guidance



OSFI's Reinsurance Discussion Paper

Koker Christensen, Partner
+1 416 868 3495
kchristensen@fasken.com

FASKEN
Institute

Discussion Paper on OSFI's Reinsurance Framework

- Released June 2018
- First comprehensive review of the reinsurance framework in ten years, and proposes a number of significant changes
- A key concern is the “leveraged business model”

FASKEN
Institute

▼ Elements of the current reinsurance framework

- Principles-based guidance: Guideline B-3 - *Sound Reinsurance Principles and Practices*
- Capital framework: credit for reinsurance; registered vs unregistered reinsurance
- Risk-based supervision
- Approval required for reinsurance with unregistered related parties

▼ Phases of reinsurance review process

- **Phase I:** Minimum Capital Test (MCT) Guideline for 2019
- **Phase II:** Amendments to guidelines and transaction instructions for unregistered related party reinsurance approval
- **Phase III:** Revisions to the MCT Guideline and Life Insurance Capital Adequacy Test (LICAT) for 2022 or later years.

▼ OSFI's concerns with the leveraged business model

- This model involves issuing high-limit policies in Canada and subsequently reinsuring a very significant portion of these risks, typically with an unregistered reinsurer
- OSFI's concern is that little collateral is required to be held in Canada until occurrence of loss - credit risk and potential solvency issue

▼ OSFI's proposal regarding the leveraged business model

- OSFI intends to revise Guideline B-3 to include an expectation that a FRI establish reasonable limits on its overall reinsurance exposure to any one reinsurance entity or group, particularly where the cedant FRI relies on its reinsurance programs to underwrite high-limit policies
- OSFI also intends to introduce a rule that would limit the maximum policy limit that a P&C FRI could issue based on its level of capital and excess collateral, as well as the diversity of its reinsurance counterparties (Annex 1)

▼ MCT Guideline margin requirements for unregistered reinsurance

- Currently, for a P&C FRI to obtain a full capital credit for risks ceded to an unregistered reinsurer, the collateral requirement is established at 115%. This is viewed as being less than the equivalent amount of capital that would be held by an FRI
- OSFI intends to increase the margin required for reinsurance ceded to an unregistered reinsurer from 15% to 20%

▼ Financial resources supporting earthquake risk exposures

- OSFI requires the establishment of an earthquake reserve, which can be reduced by a FRI using eligible financial resources
- OSFI is reviewing the appropriateness of this on the basis that it may inappropriately reduce overall capitalization by counting the same resource twice

▼ Reinsurance concentration risk

- OSFI has observed that some FRIs have material reinsurance programs with one or only a few reinsurers, or a few groups of related reinsurers
- OSFI is considering introducing a concentration risk charge/limit on reinsurance assets

▼ Worldwide treaties and flow of reinsurance funds

- In the case of worldwide treaties providing coverage of operations in different countries, OSFI is concerned that:
 - Coverage could be exhausted by events outside Canada
 - Where proceeds flow to the foreign entity arranging the coverage rather than directly to the FRI in Canada, there is risk the FRI will not recover claims in a timely manner
- OSFI's expectation is that worldwide reinsurance treaties should only be granted credit in the determination of target operating capital levels if the reinsurance payments flow directly to the FRI in Canada

▼ Fronting arrangements

- OSFI is concerned about the FRI having inadequate knowledge of the risks it has insured, and about underwriting discipline being compromised
- OSFI expects FRIs have sufficient knowledge and expertise when entering into fronting arrangements that expose the FRI to material risks, or that represent a material portion of the FRI's insurance business in Canada

▼ Foreign FRIs ceding risks back to the home office


- OSFI is concerned about situations where a foreign FRI cedes risks insured in Canada to an unregistered affiliated reinsurer, which then retrocedes the risks back to the home office of the FRI, and the foreign FRI then recognize the reinsurance arrangement for the purposes of determining its required vested assets
- The Discussion Paper proposes (1) denying credit to a foreign FRI for the risks that are ultimately retroceded, exclusively through entities within the FRI's group, back to the FRI in its home jurisdiction, or (2) requiring that additional collateral be maintained in Canada

▼ Legislative approvals for reinsurance with related parties

- OSFI plans to request additional information when a FRI requests the Superintendent's approval to reinsure with an unregistered related party reinsurer. As well, OSFI plans to expand the scope of the information to be submitted annually in respect of such relationships
- The Discussion Paper states that OSFI would generally only recommend that the Superintendent grant an approval where both the related party reinsurer and the group to which it belongs appear to be in sound financial condition. As well, OSFI may recommend that the Superintendent revoke an approval if it is subsequently determined that either no longer appear to be in sound financial condition

▼ Industry concerns and issues

- Imbalance between risks OSFI is trying to address and potential implications of proposals
- Requiring additional capital or collateral gives rise to the risk of unintended consequences



Bill 141 and the Regulation respecting Alternative Distribution Methods

Sylvie Bourdeau, Partner
+1 514 397 4388
sbourdeau@fasken.com

Institut
FASKEN

▼ Bill 141

Most of the provisions of the *Insurers Act* and the *Act respecting the distribution of financial products and services* will come into force on June 13, 2019

Institut
FASKEN

▼ Bill 141

Significant changes are related to the distribution of financial products

▼ Bill 141/Brokerage firms

- Provisions applicable to brokerage firms
- New conditions/amendments related to ownership by financial groups/financial institutions:
 - 20% or less of the voting rights
 - 50% or less than the firm equity capital (excluding preferred / non-voting and non-participating)

▼ Bill 141/Brokerage firms

Does not limit the entering of financing agreements or contracts for services

▼ Bill 141/3 offers

The brokerage firm:

- which offers insurance directly to the public
- to a client who is a natural person
- must be able to obtain quotes from at least 3 insurers
- who are not part of its group

▼ Bill 141/3 offers

- The regulation is not published yet
- The brokerage firm must keep the information to prove that it made every effort to comply
- The regulation may only pertain to damage insurance for personal, family or household insurance

▼ Bill 141/Business relationships

- Obligation for a firm to disclose (website and in writing):
 - the names of the insurers for which it offers insurance products or is bound by an exclusive contract (including the products)
 - the names of the financial groups that hold an interest of more than 20% of the value of the firm's equity capital (with some exclusions)
 - the names of the insurers to which are paid more than 60% of the premiums related to a single class

▼ Regulation respecting alternative distribution methods

The regulation was published on May 10, 2019 and most of its provisions will come into force on June 13, 2019

▼ Regulation respecting alternative distribution methods

- Applies to the digital distribution of insurance by a firm and to the distribution without representative
- Significant changes relate to digital distribution
- Insurers offering travel insurance through digital space must have an insurance representative available

▼ Regulation respecting alternative distribution methods

- The regulation applies to any transactional digital space
- Specific conditions must be met by the insurer regarding its digital space (s. 13, 14 and 18 of the Regulation)
- Other obligations apply to the distribution by a firm through a transactional digital space

▼ Regulation respecting alternative distribution methods

- With respect to the distribution without representative, the guide is replaced by a summary and a fact sheet
- The summary should be less extensive than the distribution guide
- Other obligations apply to the distribution without representative
- Insurers that filed a guide before June 13, 2019 can use it up to June 13, 2020

▼ Regulation respecting alternative distribution methods

The AMF invites the insurers and distributors to inform it of any compliance issues and discuss them

Institut
FASKEN



Robert W. McDowell

- Partner
- +1 416 865 4408
- rmcdowell@fasken.com



Jennifer Stoddart

- Strategic Advisor
- +1 514 397 4367
- jstoddart@fasken.com



**Kathleen E.
Butterfield**

- Partner
- +1 416 865 5451
- kbutterfield@fasken.com



Koker Christensen

- Partner
- +1 416 868 3495
- kchristensen@fasken.com



Sylvie Bourdeau

- Partner
- +1 514 397 4388
- sbourdeau@fasken.com

Institut
FASKEN

FASKEN
Institute