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Overview

On 11 June, 2019 the Financial and Consumer Services Commission of New Brunswick (FCNB) held an inaugural one day "2019 Consumer Protection Conference" in Fredericton, New Brunswick at which a series of individuals and panelists presented on a variety of compliance, consumer protection and regulatory issues. The FCNB stated that this conference reflected its mandate to act as a catalyst for innovation and action in advancing the financial interests of New Brunswickers. The speakers at the conference addressed topics such as the financial community's role in preventing, recognizing and reporting senior financial abuse; the latest enforcement trends; and how to protect customers against cybersecurity and fintech risks.

Brendan Wycks and Keith Martin, CAFII Co-Executive Directors, attended the conference. Copies of most of the presentations can be found on the FCNB website here: http://fcnb.ca/2019-consumer-protection-conference.html

Presentations

Rick Hancox, Chief Executive Officer of the Financial and Consumer Services Commission of New Brunswick

Opening Remarks—"Setting High Standards for Consumer and Investor Protection"

Rick Hancox, CEO of the Financial and Consumer Services Commission of New Brunswick, welcomed delegates to the inaugural 2019 Consumer Protection Conference. He said that the conference had been organized to help FCNB advance its mandate of protecting consumers and increasing confidence in financial institutions.

More broadly, Mr. Hancox noted that the financial services industry in Canada was very large, with $621 billion owed in non-mortgage debt and over $1 trillion owed in mortgage debt. The industry was constantly changing and adjusting, in particular due to ongoing technological change. With the constant development of new products and options, it was more critical than ever to help consumers understand the benefits, and risks, of options available to them. But the overload of information sometimes led to paralysis and to consumers not feeling able to determine what is the right choice for them.

In this context, regulators are important because behaviour can change when people know they are being watched. Mr. Hancox told a story of an experiment where a workplace coffee dispenser arrangement included an adjacent cup for people to put money into when they poured themselves a coffee. In one case, just the money cup was present; in another case, a picture of eyes was posted above the money cup. The experiment determined that the workplace with the picture of the eyes above the coffee dispenser was subject to much less cheating—in other words, being reminded that you are possibly being watched can change behaviour.

FCNB, Mr. Hancox noted, is an independent, self-funded regulator with wide-ranging powers. The Commission, he added, had oversight responsibilities for over 750,000 provincial consumers, 34,000 industry participants, and $30 billion in funds. The trick for any regulator, he said, is to strike the right balance between keeping up with developments in the industry, and protecting consumers, while not stifling business and innovation.

Mr. Hancox advised that a critical issue for New Brunswick is senior financial abuse, as New Brunswick has the highest provincial rate of seniors at 20% of the population. These individuals are a target of scam artists, and the extent of the problem is difficult to determine as senior financial abuse is generally not reported.

Consumer education is also a critical part of the picture, Mr. Hancox asserted. There is a low-level of financial literacy in the province, something the FCNB has made it a priority to address. A part of the mandate of the Commission is to help people detect and avoid fraud. Industry needs to be part of the solution to this problem. Mr. Hancox also identified newcomers to New Brunswick as another vulnerable group.

Deborah Gillis, Senior Legal Counsel and chair of FCNB's Senior Initiative (moderator); Norman Bossé (Senior Advocate for New Brunswick); Judith Shaw (Securities Administrator for the State of Maine Office of Securities); Chantal Landry (Public Trustee for the Province of New Brunswick)

Panel Discussion on Senior Financial Abuse

In a wide-ranging discussion, there was consensus that senior financial abuse and fraud is an increasing phenomenon, largely because the demographic segment vulnerable to this is growing with the general ageing of the population. It is a very difficult problem to solve, partly because those who are defrauded are often embarrassed or ashamed, and as a result do not report the incident. It is therefore difficult to investigate and solve these issues. Furthermore, the most common perpetrators of senior financial abuse are family members, who often do not feel that they are doing anything wrong because "the money is my inheritance anyways."

The panelists also noted that they have limited powers to fight senior financial abuse, and were mostly in a position to advocate or conduct reviews as opposed to enforcement. Education and information were critical as well, with the media playing an important role. It was noted that one of the greatest dangers for a senior is assigning a Power of Attorney to someone. This has to be done with extreme care, as this is a major power and one that can be abused.

David Weir, Senior Technical Advisor, Insurance, FCNB (moderator); Alaina Nicholson, Director, Consumer Affairs, FCNB; Jennifer Sutherland Green, Deputy Director of Pensions and Insurance and Senor Legal Counsel, FCNB; Louise Gauthier, Senior Director, Distribution Policies, Authorité des marchés financiers (AMF)

Panel on Introducing New Brunswick's Regulated Financial Industries to the Fair Treatment of Customers Guidance

Jennifer Sutherland Green provided an overview of the mandates and structures of CCIR and CISRO, and Alaina Nicholson did the same for the Mortgage Broker Regulators' Council of Canada.

The bulk of the presentation, however, was delivered (mostly in French) by the AMF's Senior Director of Distribution Policies Louise Gauthier, on the CCIR/CISRO Guidance on the Fair Treatment of Customers. Ms. Gauthier noted that the source document for the Guidance was the International Association of Insurance Supervisors' (IAIS) Insurance Core Principles (ICPs), in particular ICP 19 on the Conduct of Business, which defines the respective roles of insurers and intermediaries, and to a lesser extent ICP 18, which deals with intermediaries.

The Guidance was introduced in the Fall of 2018. Insurers and intermediaries are both expected to adhere to it, with insurers responsible for product design and intermediaries responsible for advice as distributors. The Guidance is an effort to help clarify expectations that regulators have of both insurers and intermediaries. It was also produced in response to expectations set out by the IMF in its 2013 Financial Sector Assessment Program (FSAP) report on Canada, in which the IMF said that provincial regulators in Canada needed to strengthen the conduct of business regulatory regime. The IMF is expected to issue its second FSAP report on Canada, based on its 2018 follow-up visit to our country, within the next few weeks, Ms. Gauthier advised.

The Guidance, Ms. Gauthier stressed, represented an evolution, not a revolution, in regulators' expectations of the industry—much of it was common sense and already practiced by industry players. She noted that intermediaries are broadly defined in the Guidance, and include individual agents, insurance firms, and MGAs. An important component of the Guidance are the expectations of regulators with respect to the relationship between insurers and intermediaries.

Ms. Gauthier then reviewed the 12 expectations in the Guidance one by one.

Governance and Corporate Culture—the Guidance is expected to be a core component of the governance and corporate culture of insurers and intermediaries. The "tone from the top," the information shared throughout the organization, and the mechanisms and controls within the organization, are all expected to be consistent with the Fair Treatment of Consumers Guidance.

Conflicts of Interest—this is a key issue for intermediaries, as the manner in which they are compensated should not produce conflicts around being aligned with the best interests of the consumer. Any potential or actual conflicts of interest should be avoided or properly managed, and not affect the fair treatment of consumers. Ms. Gauthier noted that conflicts of interest could arise from compensation structures, performance targets, or performance management criteria. Disclosure alone was not sufficient to deal with potential conflicts of interest. Focusing on compensation practices and the issue of conflicts of interest is likely to be the focus of the next phase of effort of the joint CCIR/CISRO FTC Working Group.

Outsourcing—outsourcing should not hinder the quality of services provided nor jeapardize the insurer's or the intermediary's ability to provide fair treatment of customers. Outsourcing does not absolve insurers or intermediaries of the ultimate responsibility to deliver FTC, and they should only deal with service providers with high ethical and professional standards, and additionally should always maintain appropriate controls over them.

Design of Insurance Product—the design of the insurance product should take into account the interests of the target consumer. Only products that deliver the reasonably expected benefits should be offered, and the products should only be targeted to those for whom the product is likely to be appropriate, while inappropriate sales should be prevented or limited.

Distribution Strategies—distribution strategies should be tailored to the product and should consider the interests of the targeted consumer group. Insurers are ultimately accountable and responsible for the distribution of their products.

Disclosure to Customer—Customers are to be given appropriate information in a timely and clear way, and before they make a decision about buying a product.

Product Promotion—marketing material needs to be accurate, clear, and not misleading. It should not hide, diminish, or obscure important statements or warnings.

Advice—when the provision of advice is required by law before the contract is signed, it should be offered, be relevant, take into account the customer's circumstances, and there should be an appropriate assessment of the insurance objectives and needs of the client before any advice is given. The basis for any recommendations should be carefully explained and documented.

Disclosure to Policyholders—policyholders are to be provided with information that allows them to make informed decisions throughout the lifetime of their contracts. They must be notified of changes to the contract, including product switches and early policy cancellation.

Claims Handling and Settlement—claims should be examined diligently and settled fairly, using a simple and accessible procedure. Written documentation on claims handling procedures should be maintained, and claimants should be informed about procedures, formal mechanisms, and timeframes for claims settlement. Mechanisms need to be in place to review claims disputes.

Complaints Handling and Dispute Resolution—complaints are to be examined diligently and fairly, using a simple and accessible procedure. Policies and procedures for handling complaints should be in place, and complaints should be responded to without unnecessary delays. Complainants should be kept informed of the process to examine the complaint and of the examination's status.

Protection of Personal Information—protection of confidentiality of personal information is critical, as is compliancae with legislation on privacy protection along with best practices. Customers need to be provided with a level of comfort around the security of their personal information.

Ms. Gauthier said that, in general, industry had received the FTC Guidance in a positive way. Communication channels between industry and regulatory authorities were open, and there were various industry initiatives underway to promote and advance FTC. She noted that regulators recognized that developing measures around FTC was a challenge. She added that the Guidance needs to be dissemenated to intermediaries and to consumers.

Turning to the AMF's own implementation of FTC, Ms. Gauthier noted that the principle of sound commercial practices was already embedded in Quebec's *Insurance Act* along with penalties for non-compliance. This has been in place for insurers since 2013, and supervision and enforcement has been in place since that date as well. What still needs to be worked on is similar principles and oversight for intermediaries. She added that there will be a review of the AMF's FTC provisions in connection with the 2017 amendments to ICP 19.

Speaking further on the issue of product design, Ms. Gauthier said that products should not be designed only with profitability objectives in mind. She said that the Distribution Guide in Quebec does not embed FTC principles currently, and that more needs to be done to align intermediaries with FTC principles.

FCNB officials noted that in February 2019, New Brunswick formally endorsed the CCIR/CISRO Guidance. As well, New Brunswick is looking at how to apply FTC principles to mortgage brokers. Other provinces and territories that have formally endorsed the FTC Guidance are BC, Saskatchewan, Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Nunavut.

Ms. Gauthier said that she expects that future regulatory audit inspections will include reference to adherence to the FTC Guidance. Any future amendments to Quebec's *Insurance Act* will also incorporate FTC principles. She added that issues around remuneration and compensation are critical to the proper appplication of FTC. It is necessary not just to disclose remuneration or conflicts of interest to consumers; it is also necessary to ensure the structure is fair to consumers.

In the question and answer period, Keith Martin asked Ms. Gauthier to comment on the issue of measuring the implementation of the fair treatment of consumers, given that much of this was about business culture and that was something that was difficult to measure. Ms. Gauthier agreed, and said that the CCIR/CISRO FTC Working Group was trying to develop key performance indicators (KPIs) on FTC. **Ms. Gauthier then said something we had not heard before, which both CAFII Co-Executive Directors were surprised and disconcerted by: she said that one such possible KPI was the loss ratio or claims ratio, which she described as the amount of premium collected relative to the amount of claims paid out. If the ratio was too low, she said, that could indicate that premiums were too high, or claims paid out too low; and that could be an indicator that consumers were not being treated fairly.**

Finally, Ms. Gauthier said that with respect to consumer complaints, policies and procedures needed to be in place, and they needed to be applied. Companies needed to ask the right questions around complaints.

After the session ended, Brendan Wycks and Keith Martin spoke to Ms. Gauthier in person; Keith Martin asked if consumer surveys could provide useful information around the fair treatment of consumers, and Ms. Gauthier said that "if done properly," yes such consumer surveys could provide useful insights, and that the process of asking about consumers' views of products and services was itself an indication of a commitment to the fair treatment of consumers.

Peter Moorhouse, President & CEO of Atlantic Canada's Better Business Bureau

"Building a Better Business: Creating Customer Trust from the Inside Out"

Peter Moorhouse, President & CEO of Atlantic Canada's Better Business Bureau, made the case that a fair and trusting relationship with customers is good for business. Protecting your customer's trust builds their willingness to do more business with you, and helps protect an organization's reputation. He quoted from an Edelman 2019 Trust Barometer study, which found that high trust companies outperformed their sector by an average of 5% in 2018.

Mr. Moorhouse said that there were six principles of trust:

Transformation at the Top—trust-oriented leaders are reflective, and work intentionally to increase manifestations of their own high character in the business culture. These leaders are ethical, and they know that positive character traits are an essential guide to life and work. They strive to live and lead accordingly, and they intentionally seek feedback in order to make personal improvements. Quoting again from the Edelman 2019 Trust Barometer, he noted that 74% believe that CEOs should embody the values and mission of the organization they lead, and that candor, honestry, and transparency are all powerful trust-building elements.

Reinforce and Build—leaders should reinforce and build a culture of high character ethics. The leader and the leadership team should intentionally behave and communicate with one another and stakeholders in ways that are consistent with their beliefs. Their actions follow their words, which intentionally reinforces the character culture of their organization and builds a high performance business model.

Unite the Team—leaders unify the organization around a clear purpose and compelling convictions. The leader and leadership team work consistently to ensure clarity of purpose and to develop an adherence to clear convictions that motivate and unite stakeholders. By doing so, they establish and emphasize the "why's" of an organization: why work here, why be a customer, why be a supplier, why be who we are? Mr. Moorhouse noted that the Edelman 2019 Trust Barometer found that employees who have trust in their employer are more likely to advocate on behalf of their organization (+39%); be engaged (+33%); remain loyal (+38%); and be committeed (+31%) than their more skeptical counterparts.

Steer Performance—leaders guide organizational performance by implementing high competency management practices. High character must be accompanied by high competency. The leader and leadership team continually manage performance by establishing goals, measuring achievement and allocating just rewards. They establish practices that represent their commitments to the future and the means for the organization to achieve those commitments.

Treasure People—leaders prize the intrinsic value of people. The leader and the leadership team adopt and implement human resources practices that prepare, continually support, recognize and provide opportunities for growth in all staff members. Mr. Moorhouse then quoted Richard Branson, who said *"Clients do not come first. Employees come first. If you take care of your employees, they will take care of the clients."*

Enthusiastically Give Back—leaders suppot the community that supports them. The leader and leadership team transfer their ethical ethos by their active engagement with their industry and the communities from which the organization derives its customers, workforce, vendors, investors and governance. Mr. Moorhouse noted that the Edelman 2019 Trust Barometer found that 73% agreed that a company can take specific actions that both increase profits and improve the economic and social conditions in the communities where it operates—a nine-point increase from 2018. He gave the example of a company that is not financially able to give funds, could instead let employees donate their time and expertise to worthwhile endeavours.

Kelly Keehn, personal finance educator, media personality, speaker and best-selling, award-winning author of nine books

"Creating a S.A.F.E. Financial Life"

Kelly Keehn, financial educator and speaker based in Edmonton, Alberta, gave an overview of some of the biggest fraud risks facing consumers. She noted that millenials are defrauded more than any other group, but that seniors get defrauded for the greatest amounts of money. The most common fraud that consumers fall for is the romance scheme, where fraudsters create fake profiles on social media and online dating sites to lure potential victims into online relationships. Once they gain the victim's trust, the fraudster begins making financial requests.

According to the Canadian Anti-Fraud Centre (CAFC), New Brunswickers lost $2.5 million to fraudsters in the past two years, but this is a vast under-reporting of the problem, because the CAFC also states that less than 5% of victims report fraud. According to the 2017 Canadian Securities Administrators (CSA) Investor Index for New Brunswick, 7 in 10 New Brunswickers who were approached by an investment fraudster did not report it. One reason that people do not report fraud is they are too embarrased to do so.

According to the Canadian Bankers Association (CBA), fraud costs the Canadian economy between $15-30 billion each year. According to Statistics Canada, 41% of large Canadian companies were affected by a cyber-security fraud incident in 2017.

Erin King, Senior Education and Website Officer; Lisa Legere, Education Coordinator

FCNB: More than Just a Regulator

This concurrent/breakout session focused on the activities of the Financial and Consumer Services Commission of New Brunswick (FCNB), emphasizing that while it had wide-ranging regulatory powers, it also focused on many other activities, most notably financial education and literacy, and fraud protection.

Financial literacy is particularly important to New Brunswick because 53% of the province's population over the age of 16 do not have the literacy skills need to function in everyday life. On fraud, seniors are the most vulnerable population and New Brunswick has the highest percentage of senior citizens of any province in Canada. In the past two years, $2.5 million has been lost to fraud in New Brunswick, although the actual number is likely much larger than that as most fraud losses are not reported. There are multiple programs that FCNB engages in to promote these activities, including its website, online fraud alerts (http://fcnb.ca/fraud-alerts.html), and a variety of educational programs including videos, infographics, eBooks, brochures, and educational visits, including to schools.

These topics are important to New Brunswickers, who have a $1.79 debt-to-income ration. Fully 42% of New Brunswickers have no savings or investments for the future, and 40% say that money is the biggest source of stress in their lives. There is a particular focus on educating young people, and on protecting seniors—on the latter, key topics are estate planning, power of attorney issues, and preventing fraud and senior financial abuse.

Wendy Morgan, FCNB Deputy Director Policy, Securities (moderator); Lise Estelle Breault, Senior Director Fintech, Innovation and Derivatives at the Authorité des marchés financiers (AMF); Jake van der Laan, FCNB Director, Information Technology and Regulatory Infomatics

Panel Discussion: Emerging Issues in Fintech and Cybersecurity

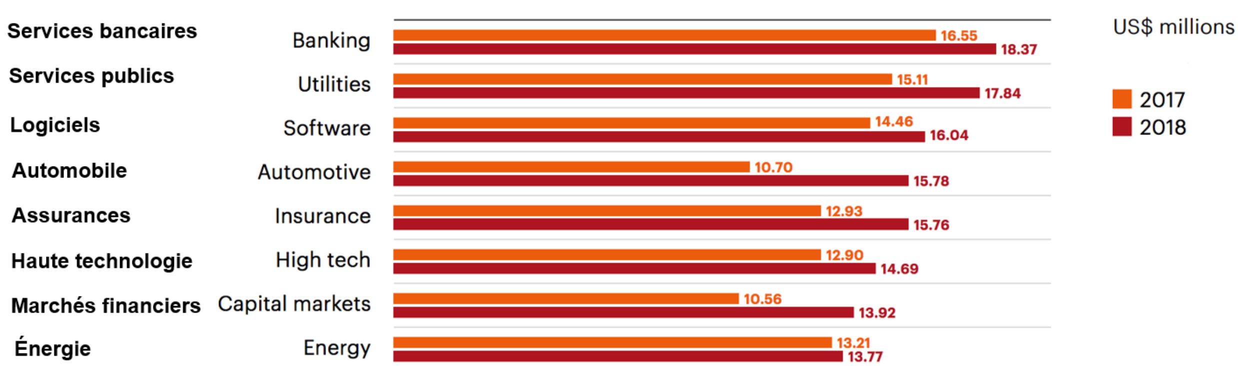
This wide-ranging panel spoke about the existing and emerging challenges which businesses face from fintech and cybersecurity. New online companies have emerged and have already had a profound impact on business and society, including the GAFAM companies (Google, Apple, Facebook, Amazon, and Microsoft). New fintech players are emerging and they will have a disruptive effect on banking and insurance. The vast increase in computing power available to companies, combined with the exponential increase in access to data, has produced new opportunities to use artificial intelligence and analytics to drive insights.

New issues will arise for regulators as well. For example, audits can be performed on firms, but how will they be performed on algorithms that are providing investment advice to individuals? Who is responsible for inappropriate advice given by an algorithm? Other ethical issues emerge as well. For example, facial recognition algorithms can identify people who may be a risk, but there are recent cases that demonstrated that these work well for caucasians, who were the source of much of the machine learning, but not for black people, and as a result these facial recognition programs identify a much higher number of false positives (finding a person is a risk when they are not) for the black population than for the white population.

These issues have resulted in a "culture lag" where our institutions, including regulators, have to catch up to the new technologies and realities. This process is ongoing, with open banking likely to produce a new set of data, confidentiality, security, and privacy issues in the near future. It was noted that some of these issues are difficult to tackle, and that strengthening privacy laws might prevent serious abuses. Consumer education is also critical.

The industries most affected by cybercrime are banking, utilities, software, automotive, insurance, high tech, capital markets, and energy (see Table One). The attacks that are most common are malware, web-based attacks, denial of service, malicious insiders, phishing and social engineering, malicious code, stolen devices, and ransomware (see Table Two).

Table One--Average Annual Cost of Cybercrime by Industry, 2017 and 2018



Source:
https://www.accenture.com/_acnmedia/PDF-96/Accenture-2019-Cost-of-Cybercrime-Study-Final.pdf

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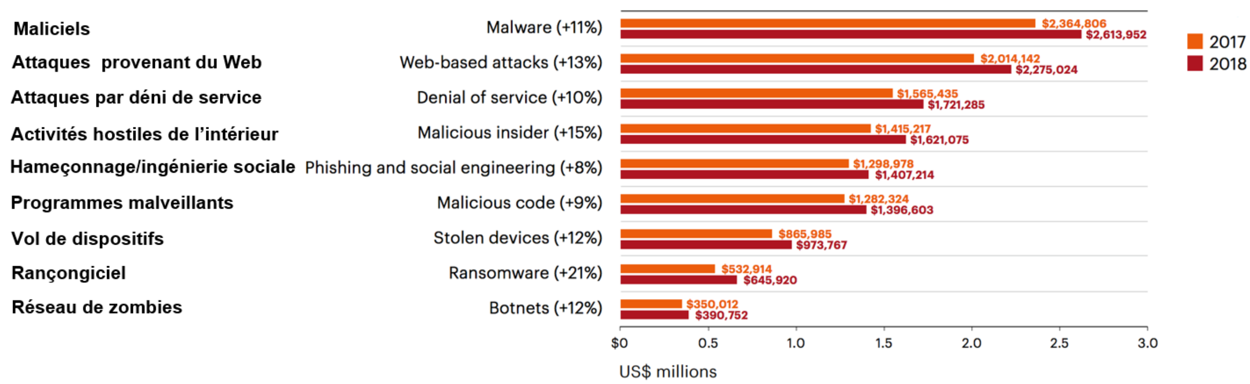
Table Two--Average Annual Cost of Cybercrime by Type of Attack, 2017 and 2018



Source:
https://www.accenture.com/_acnmedia/PDF-96/Accenture-2019-Cost-of-Cybercrime-Study-Final.pdf

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An analogy was given about how stealing and malicious behaviour have become much less dangerous. Robbing a bank meant being prepared to be arrested, injured, or killed. Now, you can steal through computers without any physical danger to yourself, and you may not even live in the same country that the computers or files you are stealing from are located in.

It was also noted that there has to be a societal, and potentially also regulatory or government, change to the prevalence of people saying "I consent" on online agreements, without reading or having any knowledge of what they are consenting to. People are giving away their data and not appreciating the extent to which information is being collected about them. The balance is to provide good regulatory protection without slowing innovation; that balance is off-kilter right now. Other entities than regulators—like industry Associations which establish conduct guidelines and best practices—might need to be more engaged.

CAFII Private Session with David Weir, Senior Technical Advisor, Insurance; and Jennifer Sutherland Green, Deputy Director of Pensions and Insurance and Senior Legal Counsel
In response to an email inquiry from CAFII Co-Executive Director Brendan Wycks, Angela Mazzerole wrote the following email to Mr. Wycks on 6 June, 2019:

> *Brendan,*
>
> *Thank you for your email. I enjoyed meeting with the CAFII representatives in Niagara Falls.*
>
> *Since the time that we met, FCNB has implemented a revised organizational structure in order to position ourselves to be more efficient and effective, and to prepare for a post CMRA[1] world. That reorganization has resulted in all the regulators other than securities becoming part of a new Regulatory Operations divisional group. I have become the Vice President of Regulatory Operations.*
>
> *With my move to this new role, Jennifer Sutherland Green was promoted to the position of Director of Pensions and Insurance. We no longer have a Deputy Director of Pensions and Insurance.*
>
> *Our work on the Insurance Act rewrite continues, with David continuing to lead this project.*
>
> *I have copied Jennifer and David on this email so that you have their contact info to try to coordinate a mutually agreeable meeting time.*
>
> *I look forward to seeing you at the event next week.*
>
> *Sincerely,*
>
> *Angela Mazerolle*
> *Vice President, Regulatory Operations / Vice-présidente, Activités de réglementation*

In response, CAFII Co-Executive Directors Brendan Wycks and Keith Martin held a private, one-hour in-person meeting following the FCNB 2019 Consumer Protection Conference with David Weir, now Senior Technical Advisor, Insurance, and newly appointed Deputy Director of Pensions and Insurance and Senior Legal Counsel, Jennifer Sutherland Green.

Mr. Weir advised that FCNB has recently issued a consultation paper around insurance appraisers and adjusters and that CAFII had an opportunity to provide input on it if we wish, with a 2 July 2019 deadline.

In a separate informal consultation document, FCNB has also asked some general, high level questions insurance licensing exemptions, which is also related to the Insurance Act Rewrite exercise, which we are invited to provide thoughts on if we wish.

[1] CMRA: Capital Markets Regulatory Authority.

Mr. Weir advised that he did not expect the Insurance Act Rewrite to fundamentally change the rules in New Brunswick around life and accident insurance. There is likely to be more fundamental change in the area of intermediary licensing. The changes will likely include the introduction of a Restricted Insurance Agent license regime, which will include a strong emphasis on the fair treatment of consumers.

Every effort will be made to harmonize to the extent possible with other RIA regimes in Western Canada, but New Brunswick will also attempt to learn from the shortcomings of other regimes and avoid those in its regime, Mr. Weir asserted. While Manitoba, the most recent province to introduce an RIA regime, will be a model of sorts for New Brunswick, there will also be an attempt to raise the bar in New Brunswick around consumer protection. One example is that while a corporate license is being envisioned (i.e. an RIA corporate licensing regime), under which individuals would be covered by the corporate license, New Brunswick would likely want to have the power to be able to ban specific individuals from being covered by that corporate license.

There will likely be a separate consultation document on the proposed RIA licensing regime, likely with a 60-day window for responses, Mr. Weir advised. New Brunswick is still not looking at taking an approach that includes an Insurance Council, which is the approach taken in the Western provinces with an RIA regime.

FCNB will also be looking for enhanced rule-making powers, and CAFII Co-Executive Directors said that they supported this in the Ontario FSRA consultations, and would support this for New Brunswick's Insurance Act Rewrite—which David Weir and Jennifer Sutherland Green said would be much appreciated.

Mr. Weir raised the specific issue of his preference for calling his province's imminent RIA regime an "incidental seller of insurance licensing regime." CAFII's Co-Executive Directors raised our Association's long-standing concerns with calling credit protection insurance "incidental" as it has a pejorative connation. Mr. Weir seemed unconvinced by this line of argument, but said he would welcome receiving our views.

He also noted that only Alberta had a requirement that the application for a loan had to be separate from the application for insurance on that loan, which he seemed to feel was the more appropriate approach to take.