

| Questions for Industry | CLHIA Response |
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| <p>1. Section 133 of the NB Act provides that the life part applies to contracts made after July 1, 1962 and subject to subsections (2) and (3) applies to contracts made prior to July 1, 1962. In CLHIA's comparison document for NS, you indicate that</p> <p>Although Manitoba's Act doesn't explicitly address this issue, Ontario, Alberta and British Columbia all introduced regulations for this purpose. See Ontario Insurance Act s. 172(1), Alberta Insurance Act s. 640(1), and British Columbia Insurance Act s. 39(1). We recommend that a transition provision be included in a regulation (see BC Insurance Regulation 108/2015 sections 13-15). This is consistent with other provincial acts. (BC Reg 403/2012)</p> <p>Can you elaborate on what you are seeking?</p> | <p>Our recommendation is to update this section to allow it to specify which changes to the Act will apply to existing insurance and which ones will only apply to insurance that takes effect after the changes.</p> <p>The transitional regulations were introduced by some of the provinces at the time that they made changes to their respective insurance acts to modernize the framework surrounding insurance contracts. The regulations were intended to provide guidance to the insurance industry and the legal community as to how existing and new insurance contracts and insurance claims were to be handled under the existing and new provisions. We have attached Alberta's Transitional Regulation 185/2011 as an example. In our view, Alberta's regulation is the best example of transitional provision because it is the clearest.</p> <p>We are not recommending any changes to the existing 133. But we need clarity on how these changes are going to apply.</p> |
| <p>2. Sask Reg s. 8-11 provides the following:</p> <p>In the case of a contract of creditor's group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this part applies in determining:</p> <p>(a) the rights and status of the debtor insured's personal representatives, and any debtor who is jointly liable for the debt with the debtor insured, with respect to claims for payment of insurance money if the debtor insured was resident in the Province at the time the debtor insured became insured; and</p> <p>(b) the rights and obligations of the debtor insured if the debtor insured was resident in the Province at the time the debtor insured became insured.</p> <p>This provision is similar to section 134 of the NB Act (s. 150 of the Manitoba Act), but deals with creditor's group insurance. We are proposing to include it in our Act, but no other</p> | <p>The omission of this provision was a technical error in BC and AB (which was subsequently clarified outside of the legislation) but was later addressed by MB with the assistance of CLHIA. We support the inclusion of this provision because it provides the debtor insured with clear remedies under the Act. However, the Act is not set up to grant the right to a debtor insured to name a beneficiary for amounts in excess of the debt nor are insurance companies able to administratively support the naming of a beneficiary.</p> <p>In concert with CLHIA, CAFII also supports the inclusion of this provision because it provides the debtor insured with clear remedies under the Act.</p> |

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| <p>jurisdiction has added it. We are also proposing to add it to the accident and sickness part similar to s. 8-14 of the Sask. Reg. We welcome your thoughts.</p> <p>We note that the new provision does not include “beneficiaries”. Obviously, with Creditor’s Group Insurance the “beneficiary” is the creditor as the purpose of the insurance is to repay a debt. However, is there the possibility that there could be a “beneficiary” in addition to the creditor, specifically if there is somehow a surplus above the debt. If that is the case, we feel “beneficiaries” should be included.</p> <p>We may have asked this previously, but I cannot find a record of it.</p> | |
| <p>3. in your submission to NS for changes to the accident and sickness part you suggested moving paragraph 224(6)(a) of the Manitoba Insurance Act up to a new paragraph that is equivalent to Manitoba’s 209(2)(e) for a new provision in Nova Scotia’s 72(1) that would read:</p> <p>(e) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group life insureds under the replaced contract,</p> <p>(i) whether a designation of a group life insured, a group life insured's personal representative or a beneficiary as a person to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract; and</p> <p>(ii) if such a designation under the replaced contract applies to the replacing contract, the fact that the group life insured should review the existing designation to ensure it reflects the group life insured’s current intentions;</p> <p>We intend to do the same for 192(1) of the NB Act.</p> <p>For your submission to NS for changes to the life part, you suggested that NS adopt a new subsection 192(6) that is like Manitoba’s subsection 167(6) but without paragraph (a). However, unlike in the A&S part, you did not recommend that they adopt a similar provision to the above proposed 72(1)(e) for the new 179(1)(d) in NS. We assume that this was an oversight and we intend to adopt a similar provision for our updated section 138. Please confirm that this is correct.</p> | <p>We confirm that this was an oversight. We support the adoption of a similar provision for the update to section 138.</p> |

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| <p>4. FCNB is recommending adopting provisions like Ontario’s section 179.1 which would allow a person who believes that their life or health is endangered under a life insurance policy to seek relief from the courts. As recommended, we are not including paragraph 179.1(1)(b) of Ontario.</p> <p>We appreciate that subsection (2) gives the court discretion to determine an appropriate remedy. However, all jurisdictions give two examples of orders that can be made i.e:</p> <ul style="list-style-type: none">• an order that the insurance on that person’s life under the contract is terminated in accordance with the terms of the contract other than any terms respecting notice of termination;• an order that the amount of insurance under the contract on the person’s life be reduced; <p>FCNB proposed to include the following two additional examples:</p> <ul style="list-style-type: none">• an order designating a different beneficiary; and• an order designating a different owner. <p>We accept that these two remedies, like the existing remedies, are captured by the wording “any order [the court] considers just in the circumstances”. We have not intend to narrow that discretion and don’t feel that they would anymore than the existing enumerated remedies. FCNB believes that setting these out will draw parties’ and court’s attention to these potential solutions. These remedies would allow the policy to remain in place at the same value, which may be significant if the insured’s circumstances have changed and they could not receive a new policy, or at least not at the same price. As you point out in your comments to NS, the insured could very well feel endangered by an irrevocable beneficiary. Allowing the court to change the beneficiary could reduce the risk, but the policy could continue at the same value. Likewise, designating a different owner would allow the contract to continue.</p> | <p>We agree with FCNB’s recommendation to adopt provisions like Ontario’s section 179.1 but not to include paragraph 179.1(1)(b). However, we do recommend against adding examples of what a court could order. In certain circumstances it may not be appropriate or possible for a different beneficiary to be designated such as in the case of some group insurance contracts. Adding examples would also create a provision that is unharmonized with other provincial insurance acts. We recommend not including the proposed two additional examples.</p> <p>Would it be possible to share the full provision that FCNB plans to recommend so that we could see the new wording in context?</p> |
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| <p>As indicated, FCNB will be recommending setting out these addition two remedies. We would like industry's input on the proposed wording.</p> | |
| <p>5. Further to the above proposal, we intend to recommend adopting a provision like subsection 155.1(5) of the Manitoba Act,</p> <p style="padding-left: 40px;">155.1(5) An order made under subsection (1) binds any person having an interest in the contract.</p> <p>However, we propose additional wording:</p> <ul style="list-style-type: none"> an order made by the court binds any person having an interest in the contract and, if applicable, discharges the insurer of all liabilities in respect of the contract terminated by the order. <p>We want to ensure that there are no unforeseen consequences from the additional wording.</p> | <p>We agree with FCNB's proposal to adopt a provision like subsection 155.1(5) of the Manitoba Act. However, we would like to suggest the following wording change which will include group insurance:</p> <p>Here are 2 suggestions, either will work:</p> <ul style="list-style-type: none"> an order made by the court binds any person having an interest in the contract and, if applicable, discharges the insurer of all liabilities in respect of the contract life insurance terminated under the contract by the order. an order made by the court binds any person having an interest in the contract and, if applicable, discharges the insurer of all liabilities in respect of the contract life insurance terminated by the order. |
| <p>6. The life part includes the following provision:</p> <p style="padding-left: 40px;">Where an insurer fails to disclose, or misrepresents, a fact material to the insurance, the contract is voidable by the insured; but in the absence of fraud the contract is not, by reason of such a failure or misrepresentation, voidable after the contract has been in effect for two years.</p> <p>We note that several jurisdictions have eliminated this. Those that have maintained it (Manitoba and Ontario) do not have an equivalent provision in the updated accident and sickness parts in their Acts? Do you recommend removing it for the NB Act?</p> | <p>We have searched our collective institutional records and memory and cannot find the reason for the inconsistency. If the provision is removed, consumers have similar rights under common law. We neither recommend retaining or removing this provision and we would support whatever drafting conclusion is made by FCNB.</p> <p>CAFII strongly recommends that if FCNB's drafting conclusion with respect to this provision is to retain it, it should be harmonized to the maximum degree possible with the parallel wording and placement/positioning as found in the Acts of those jurisdictions that have maintained such a provision.</p> |
| <p>7. As per our previous discussions, we are proposing a new provision similar to Manitoba's subsection 174(2).</p> | <p>We support FCNB's recommendation to include a new provision similar to Manitoba's subsection 174(2) and BC's s. 9.1 of Reg. 403/2012 as provided. We also support the recommendation to have this as a new stand-alone provision.</p> |

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| <p>Despite subsection 168(1), if a beneficiary is designated irrevocably and has not consented as described in clause (1)(b), the insured may exercise any rights in respect of the contract that are prescribed by regulation.</p> <p>However, as per your advice, we are recommending to incorporate what is in BC's s. 9.1 of Reg. 403/2012. The recommendation is that the provision read as follows:</p> <p>(1) Despite s. 152(1), if a beneficiary is designated irrevocably and has not consented as described in [clause 158(1)(b)], an insured may</p> <ul style="list-style-type: none">• exercise a right under a contract if one or both of the following apply:<ul style="list-style-type: none">○ the exercise of the right is required by law;○ the contract is an exempt policy within the meaning of Part III of the <i>Income Tax Regulations</i> (Canada) and if the insured does not exercise the right the contract will no longer be an exempt policy.• subject to [the next subsection], exercise one or more of the following rights under a contract:<ul style="list-style-type: none">○ a right relating to any insurance money or benefit to which the irrevocable beneficiary designation does not apply;○ a right to increase the amount of insurance;○ a right to add a new insured, or additional coverage, provisions or benefits to the contract;○ a right to make transfers between accounts or investment options, or to change the type of accounts or investment options;○ a right to assign the insured's rights and duties under the contract; | |
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| <ul style="list-style-type: none">○ a right to add, remove or substitute a revocable contingent beneficiary, if no irrevocable contingent beneficiary is designated;○ a right to add an irrevocable contingent beneficiary, if no irrevocable contingent beneficiary is designated. <ul style="list-style-type: none">• exercise any other rights that are prescribed by regulation. <p>(2) An insured may not exercise a right under [the second paragraph of the previous subsection] if the exercise of the right</p> <ul style="list-style-type: none">• reduces the amount of any insurance money or benefit to which the irrevocable beneficiary designation applies, or• results in the cancellation or surrender of<ul style="list-style-type: none">○ the contract, or○ a coverage, provision or benefit of the contract to which the irrevocable beneficiary designation applies. <p>We are proposing to have it added as a stand-alone provision following an updated subsection 158 in our Act. We would like your confirmation that this proposed provision is sufficient and that it is okay to have it as a new stand-alone provision.</p> | |
| <p>8. We are recommending the adoption of a provision like Alberta’s 672(3):</p> <p>If satisfactory evidence is provided to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to the debtor insured or to a debtor who is jointly liable for the debt with the debtor insured.</p> | <p>In concert with CLHIA, CAFII also supports FCNB’s recommendation to adopt Alberta’s 672(3) <u>but without revision</u>.</p> <p>CAFII offers the following commentary on this recommendation, which differs slightly from CLHIA’s parallel commentary:</p> |

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| <p>We note that this is somewhat different wording than the other jurisdictions, but agree that it is preferable. However, we note that all jurisdictions say “the insurer <u>may</u> pay the excess ...”. We feel that this should read “the insurer <u>shall</u> ...”. Thoughts? Why would it be discretionary?</p> | <p><i>For the most part, creditor’s group insurance will pay down a debt owing to the creditor. However, the Insurance Business (Banks and Bank Holding Companies) Regulations under the federal Bank Act permit an insurer to provide life insurance coverage for all or part of the amount of the <u>credit limit</u> of a line of credit, not just the debt owing against the line of credit, in respect of a line of credit held by a small business or a farm, fishery or ranch. The word “may” is permissive and allows the insurer to pay the excess to the debtor who is jointly liable for the debt (i.e. who may have continued to make payments on the debt). But this might not apply in all circumstances, for example, where existing contracts have provided for how the insurance money will be paid upon a valid claim.</i></p> <p>We do not recommend changing "may" to “shall” as it could have unanticipated consequences.</p> |
| <p>9. We are recommending the adoption of a provision like Manitoba’s subsection 184(3),</p> <p>(3) Subject to subsection (5), an action or proceeding against an insurer for the recovery of insurance money not referred to in subsection (1) must be commenced not later than two years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money</p> <p>We were hoping that you could elaborate on what is covered under “insurance money not referred to in subsection (1)”. Subsection (1) is clear in that it is “insurance money payable in the event of a person's death”. We assume subsection (3) includes disability insurance. Are there other types of insurance that would be captured by this provision?</p> <p>There is a similar provision in the proposed A&S part that is the equivalent to Manitoba’s 230.3(3). Can you also comment on that?</p> | <p>We support FCNB’s recommendation of adopting a provision like Manitoba’s subsection 184(3).</p> <p>New Brunswick’s Insurance Act defines “insurance money” in both the primary definition section and in section 132, of Part V, Life Insurance as the following:</p> <p>“insurance money” means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonus, and annuities payable under the contract”.</p> <p>Manitoba’s Act contains an identical definition of “insurance money” in the primary definition section.</p> <p>There are benefits that are covered under the Life part of the Act that do not include money payable in the event of a person’s death. These are always offered as part of a contract of life insurance (as opposed to being standalone) and can include:</p> <ul style="list-style-type: none">- Accidental Death and Dismemberment- Critical Illness- An annuity that is deemed to be part of the life insurance with periodic payments that may be unequal in amount, for a term dependent solely or in part on a life insured’s |

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| | <ul style="list-style-type: none">- A bereavement benefit- Return of premiums. <p>We also support FCNB’s recommendation of adopting a provision that is similar to Manitoba’s 230.3(3) in the A&S part. These rules clarify how the limitation period interacts with benefits coverages other than life benefits.</p> |
| <p>10. We are recommending the adoption of a provision like Manitoba’s subsection 184(4),</p> <p>(4) If insurance money is not payable unless a loss or occurrence continues for a period of time specified in the contract, the date of the first instance of the loss or occurrence for the purposes of subsection (3) is deemed to be the first day after the end of that period.</p> <p>We were hoping that you could elaborate on what type of insurance is covered by this subsection in light of the wording in the other subsections of 184. Would it include accidental death or dismemberment?</p> | <p>We support FCNB’s recommendation of adopting a provision like Manitoba’s subsection 184(4). As mentioned in our response to #9 above, insurance coverages may be added as riders to life insurance policies and they are then considered to be part of the Life part of an insurance act. This is usually set out under classes of insurance.</p> <p>Examples of benefits that would not be payable unless a loss or occurrence continued for a specific period of time (often expressed as waiting periods) under the contract could include:</p> <ul style="list-style-type: none">- Critical Illness coverages for conditions with specified waiting periods such as a coma or persisting symptoms of a stroke- Accidental Death where the insured has been reported missing in an accident but death has not been confirmed- Accidental Dismemberment for total loss of a specific body function- Life Waiver |
| <p>11. Registered mail - there are several provisions that require notice to be sent by registered mail.</p> <p>Most jurisdictions that have modernized their Acts have maintained this provision. We are interested in allowing more electronic transactions. Do other jurisdictions allow these notices to be sent by electronic means. We are contemplating copying Alberta’s framework as outlined in section 547 and accompanying regulations.</p> | <p>We strongly support FCNB’s recommendation to allow notices to be sent by electronic transactions. We recommend that FCNB adopt a provision that is like BC’s s. 7. In our view, this provision is clearer than AB’s s. 547:</p> <p><i>BC Insurance Act</i> Electronic communications 7 (1) If under this Act a record is required or permitted to be provided to a person personally, by mail or by any other means, unless regulations referred to in subsection (4) of</p> |

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| | <p>this section or under section 149 (2) (f) provide otherwise, the record may be provided to the person in electronic form in accordance with the Electronic Transactions Act.</p> <p>(2) Despite section 2 (4) (a) and (b) of the Electronic Transactions Act, in this section, "record" includes a contract or declaration that designates the insured, the insured's personal representative or a beneficiary as a person to whom or for whose benefit insurance money is to be payable.</p> <p>(3) If a record is provided in electronic form under this section,</p> <ul style="list-style-type: none"> (a) the record is deemed to have been provided by registered mail, and (b) a period of time that, under this Act, starts to run when that record, or notification of it, is delivered to the addressee's postal address starts to run when the record is deemed received in accordance with the Electronic Transactions Act. <p>(4) The Electronic Transactions Act and subsection (1) of this section do not apply to a record, or in relation to a provision, under this Act that is excluded from their application by regulation.</p> |
| <p>12. Subsection 198(2) of the A&S part reads:</p> <p>198(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor the premium or part thereof shall be deemed never to have been paid.</p> <p>A similar provision is found in the life part at section 142. This is the same as Manitoba's section 217.5.</p> <p>Alberta, BC and Saskatchewan removed this from their A&S parts but kept it in their life parts. Can you shed some light on that?</p> | <p>As with our response to #6, we searched our historical records and canvassed our members' and we cannot find an explanation as to why AB, BC and SK removed this provision from their A&S parts.</p> <p>We neither recommend retaining or removing this provision and we would support whatever drafting conclusion is made by FCNB.</p> <p>CAFII strongly recommends that if FCNB's drafting conclusion with respect to this provision is to retain it, it should be harmonized to the maximum degree possible with the parallel wording and placement/positioning as found in the Acts of those jurisdictions that have such a provision.</p> |
| <p>13. Section 202(1) of the A&S part reads:</p> | <p>We recommend that FCNB remove the underlined words in s. 202(1). Removing these words would make this provision consistent with BC, Manitoba and SK. In our view, the removal of these words would more accurately reflect the variety of application requirements that</p> |

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| <p>202(1) An applicant for insurance <u>on his own behalf and on behalf of each person to be insured</u>, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.</p> <p>BC, Manitoba and Sask dropped the use of “on his own behalf and on behalf of each person to be insured”. Alberta and Ontario kept it.</p> <p>We were planning to keep it as it makes it more precise, but welcome your thoughts.</p> | <p>currently exist. There are situations where an applicant would be applying for insurance coverage on behalf of another person but that person would be submitting (and signing off on) their own evidence of insurability. Removing the words “on his own behalf and on behalf of each person to be insured” would eliminate any confusion that might be caused in this case and any unintended consequences of such wording.</p> |
| <p>14. Saskatchewan introduced the following:</p> <p>8-204(1) If a contract includes provision for disability benefits to be payable only during confinement of the person insured, the provision does not bind the insured, and the benefits with respect to disability under the contract during the disability are payable regardless of whether the person insured is confined or not.</p> <p>NB’s section 222(2) is similar, but is limited to policies after September 1, 1973. All other jurisdictions besides Saskatchewan reference a starting date. We understand that the date represents when the rules first took effect in each province. However, we are considering following Saskatchewan and dropping the date so that the same rule would apply to a contract issued before that date. That seems fairer to consumers and moves away from what appears to be an antiquated concept. We welcome your thoughts.</p> | <p>Out of an abundance of caution, we would recommend that FCNB retain the existing wording of s. 222(2) that is limited to policies issued after September 1, 1973. This would avoid any possible unanticipated consequences and this section would remain harmonized with all other insurance acts with the exception of Saskatchewan.</p> |
| <p>15 We are interested in the proposal to change statutory conditions to statutory rules to give the industry greater flexibility to have consistent policies for several provinces. Please elaborate on how you foresee that being accomplished from a legislative point of view.</p> <p>Update: FCNB is considering including the updated wording in other Acts but including a caveat that insurers could make “slight” modifications to wording or grammar that did not change the substance of the provision. If a dispute arose, the wording and grammar in the Act would apply.</p> | <p>We support FCNB’s recommendation to update the A&S Statutory Conditions to modernized wording but allow for slight modifications to wording or grammar that do not change the substance of the provisions. The wording and grammar of the Act would apply in the event of a dispute.</p> <p>We strongly recommend that FCNB use the Statutory Conditions wording of BC, AB or MB as a model to update the A&S Statutory Conditions.</p> |

