

CONFIDENTIAL TO CAFII MEMBERS AND ASSOCIATES; NOT FOR WIDER DISTRIBUTION

Regulatory Update – CAFII Executive Operations Committee, 22 March, 2022

Prepared by Keith Martin, CAFII Co-Executive Director

Federal/National	3
Canadian Council of Insurance Regulators (CCIR) and Canadian Insurance Services Regulatory Organizations (CISRO)	3
CCIR and CISRO Jointly Announce Proposed Guideline on Incentives Management for Consultation	3
Canadian Council of Insurance Regulators (CCIR)	4
CCIR Announces Erica Hiemstra, Head, Insurance Conduct at FSRA as the new Chair of the OmbudServices Oversight Standing Committee (OOSC)	4
Travel Health Insurance Association of Canada	4
THIA Issues Regulatory Update on Quebec's Bill 64 – Legislation to Update Privacy Laws and Rules.....	4
The Ombudsman for Banking Services and Investments (OSBI)	6
The Ombudsman for Banking Services and Investments (OSBI) Releases its 2021 Annual Report, Along with a Press Release	6
Financial Consumer Agency of Canada (FCAC).....	7
CAFII Meets with Representatives of FCAC on its Proposed Approach to the Appropriate Products and Services Guideline.....	7
Auditor General of Ontario.....	7
CAFII Meets with the Auditor General of Ontario on FSRA's Performance	7
Canadian Health and Life Insurance Association of Canada (CLHIA)	8
CLHIA Releases Preliminary Agenda for the 4-5 May 2022 Virtual Compliance and Consumer Complaints Annual Conference.....	8
Canadian Association of Financial Institutions in Insurance (CAFII).....	8
CAFII Holds Webinar on 7 March, 2022 on Mental Health Issues and Challenges in the Workplace, At Home, and In Society: Coping With the Persistent Pandemic's Impact	8
CAFII Holds Webinar on 31 January, 2022 with Insurance Experts on Incentivization Programs	10
Ontario	11
Financial Services Regulatory Authority of Ontario (FSRA).....	11
CAFII Meets with FSRA Executives to Discuss Issues of Mutual Interest	11

FSRA Issues Framework Principles for Principles-Based and Outcome-Focused Regulation, Announces Consultation Until April 29, 2022.....	12
FSRA Holds Virtual Mini-Conference on 27 January, 2022 that Includes a Focus on Principles-Based Regulation.....	13
FSRA's New "Unfair or Deceptive Acts or Practices" Rule Effective 1 April, 2022	15
Quebec	16
Autorité des marchés financiers (AMF)	16
AMF Reaches out to CAFII on Action Plans Submitted Regarding the RADM and Credit Card-Embedded Insurance Benefits	16
International Developments, Research, and Thought Leadership	16
Insurance Portal.....	16
Year-Over-Year Life Insurance Application Activity Declines in Canada	16
Aviva Canada Annual Risk Insights Report	17
Mental health emerges as top concern for Canadian employers worried about workers' low-grade trauma from pandemic.....	17

Federal/National

Canadian Council of Insurance Regulators (CCIR) and Canadian Insurance Services Regulatory Organizations (CISRO)

CCIR and CISRO Jointly Announce Proposed Guideline on Incentives Management for Consultation

In a 17 February, 2022 news release, CCIR and CISRO announce that they are engaging in a public consultation on “a proposed guidance that sets out expectations for insurers and intermediaries that pay compensation and/or design incentive arrangements related to the sales and servicing of insurance products.”

The news release specifies that the Guidance “is intended to complement *CCIR-CISRO Guidance: Conduct of Insurance Business and Fair Treatment of Customers* (FTC Guidance)” and “ensure incentive arrangements align with principles set out in that document.”

The news release goes on to state that

Like the FTC Guidance, this guidance is principles-based and provides insurers and intermediaries with the discretion necessary to devise strategies, policies and controls in support of fair customer outcomes based on the nature, size and complexity of their business activities. While both insurers and intermediaries have a shared responsibility, the insurer bears the ultimate responsibility for fair treatment of customers through to the end of a product’s lifecycle.

The new chairs of the CCIR, Robert Bradley, and CISRO, Éric Jacob, made comments on the new Guidance:

“Fair treatment of customers has quickly become the key focus of financial services regulatory authorities in Canada and abroad,” said Robert Bradley, Chair of CCIR. “The proposed guidance builds on the foundation set by CCIR-CISRO Guidance: Conduct of Insurance Business and Fair Treatment of Customers by addressing a specific set of industry practices and how they can best support fair treatment of customers,” he added.

“Insurance intermediaries play an important role in the fair treatment of insurance customers,” said Éric Jacob, Chair of CISRO. “While insurance intermediaries are compensated for the services they provide, the proposed guidance will help to ensure that the risks that arise from compensation are properly managed,” he added.

The *Proposed Guidance on Incentives Management for Consultation* can be found here:
[Incentive Management Guidance](#)

The Fair Treatment of Customers Guidance that it is intended to align to can be found here:
[FTC Guidance](#)

There is a 45 day consultation period with written submissions to be submitted by 4 April, 2022.
CAFII will be providing a written submission.

Canadian Council of Insurance Regulators (CCIR)

CCIR Announces Erica Hiemstra, Head, Insurance Conduct at FSRA as the new Chair of the OmbudServices Oversight Standing Committee (OOSC)

In its Winter 2022 Newsletter, the CCIR announced that that Erica Hiemstra, Head, Insurance Conduct, FSRA would become the new Chair of the OmbudServices Oversight Standing Committee (OOSC). Ms. Hiemstra replaces Chris Carter of BCFSA. Members of the CCIR extended their appreciation to Mr. Carter as he takes on the Chair of the Climate Change, Natural Catastrophes & Consumer Awareness Working Group.

The CCIR website notes that

This committee works to ensure that third party dispute resolution systems in the insurance sector, including OmbudService for Life & Health Insurance (OLHI) and General Insurance OmbudService (GIO), fulfill the public interest objectives of complaint resolution as an important component of a well-functioning consumer protection policy framework.

Travel Health Insurance Association of Canada

THIA Issues Regulatory Update on Quebec's Bill 64 – Legislation to Update Privacy Laws and Rules

On 14 March, 2022 the Travel Health Insurance Association of Canada (THIA) issued a Regulatory Affairs Committee update on the adoption by Quebec's National Assembly of Bill 64 – *An Act to modernize legislative provisions as regards the protection of personal information*. The update notes that the bill significantly updates Quebec's privacy legislation, and will come into force over a three-year period, with most requirements coming into effect on 22 September, 2023. The update cites the following as highlights of the legislation:

- *Appointment of a privacy officer and publication of contact information on the organization's website (coming into effect on September 22, 2022).*
- *Mandatory breach reporting requirements to the Commission d'accès à l'information (CAI) and individuals, similar to those in PIPEDA (coming into effect on September 22, 2022).*
- *New requirements when outsourcing or transferring personal information outside of Quebec.*
- *Introduction of data portability, and the "right to be forgotten".*
- *The obligation for organizations to conduct privacy impact assessments (PIAs) for certain initiatives.*
- *Accountability rules, such as the obligation to establish, implement and publish governance policies and practices.*
- *Transparency requirements when organizations are using technologies allowing individuals to be identified, located and profiled.*
- *Greater enforcement tools for the CAI, including imposing administrative monetary penalties on organizations up to \$10,000,000 or, if greater, the amount corresponding to 2 per cent of worldwide turnover in the preceding year.*
- *Expanded range of offences for certain serious contraventions of the law, subject to a maximum fine of 4% of global revenue or \$25,000,000.*
- *Private right of action for intentional or gross fault of at least \$1,000 where an unlawful invasion of privacy causes harm.*

The update adds that

As we predicted in our previous Privacy Laws Bulletin in March 2021, we expect significant revisions to privacy and data protection laws to continue in coming years. The province of Quebec has gone first to bring its legislation closer in line with Europe's GDPR and other provinces have similar initiatives underway. Although the overhaul of Canadian federal privacy legislation and its replacement with the Canada Consumer Privacy Protection Act was suspended by the 2021 federal election, we can expect Parliament to re-introduce similar legislation in this session.

THIA's legal council of record is Jill McCutcheon of Torys, who would have been involved in the development of this update. CAFII will continue to monitor developments around privacy legislation carefully.

The Ombudsman for Banking Services and Investments (OSBI)

The Ombudsman for Banking Services and Investments (OSBI) Releases its 2021 Annual Report, Along with a Press Release

The Ombudsman for Banking Services and Investments (OSBI) issued a press release on 15 March, 2022 which commented on its just-released 2021 Annual Report.

The report notes that

“The past year marked a number of significant milestones for OBSI,” said Sarah Bradley, Ombudsman and CEO, OBSI. “We successfully managed the highest case volumes we have experienced in our 25-year history. During this landmark year, we also completed our 2017–2021 Strategic Plan and finalized the development of our new 5-year strategic plan. 2021 also marked an important governance shift for OBSI as it was the last full year in the term for our Chair of the Board of Directors, and the board undertook the recruitment process for our new chair.

The report adds that

2021 was OBSI’s busiest year on record, surpassing previous highs reached following the global financial crisis in 2009-2010. During the year, OBSI assisted 7,593 consumers who contacted the organization with inquiries, a 33% increase over 2020. In 2021, OBSI also opened 1,082 new cases, 37% more than in 2020.

In terms of banking highlights, the report states that

Banking cases increased 55% year-over-year, from 332 cases in 2020 to 514 in 2021. The top concerns raised with OBSI by consumers in 2021 related to credit cards, personal transaction accounts, and mortgage loans. Complaints related to credit cards were the subject of 35% of all banking cases, while personal savings and chequing account complaints followed at 15%, and mortgage loan complaints represented 14% of all banking cases.

Fraud was the overall leading issue for banking complaints in 2021, making up a large portion of the complaints involving credit cards, personal accounts, e-transfers and wire transfers, and 22% of OBSI’s total banking case volume. Concerns about service issues made up 18% of complaints overall. Among consumers with credit card concerns, chargeback was the most common issue raised. For personal savings and chequing accounts, issues related to a bank’s decision to end the consumer relationship were the most common area of

consumer concern. Pre-payment penalties was the top issue raised in relation to mortgage-related complaints.

The Annual Report can be found here:

[OSBI Annual Report 2021](#)

Financial Consumer Agency of Canada (FCAC)

CAFII Meets with Representatives of FCAC on its Proposed Approach to the Appropriate Products and Services Guideline

On 17 February, 2022 CAFII, at FCAC's request, met to hear the FCAC's final position on the Appropriateness Guideline that it planned to imminently release in final form. At the meeting from FCAC were Bradley Schnarr, Manager, Regulatory Guidance and Coordination, Supervision and Enforcement Branch; and Stephen Wild, Senior Research and Policy Officer, Supervision and Enforcement Branch.

While the FCAC said that the final version of the Guideline would remain largely unchanged from the consultation draft, there were significant changes made to the document that reflected CAFII's input. These are detailed in a written update of the meeting developed by CAFII which was shared with CAFII members as an attachment to an email sent on 24 February, 2022 at 4.15pm (please reach out to Keith Martin or Brendan Wycks if you would like a copy), which included the important clarification that the FCAC does **not** have an expectation that determining the appropriateness of a financial or insurance product for a consumer must necessarily include a needs analysis or providing advice.

Auditor General of Ontario

CAFII Meets with the Auditor General of Ontario on FSRA's Performance

The Auditor General of Ontario met with CAFII management (Keith Martin and Brendan Wycks) on 22 February, 2022 on the performance of FSRA. CAFII's input was generally very positive, but it was noted that FSRA's annual budget increases—and fees to industry—had recently been higher than the rate of inflation, and it was CAFII's view that this was not sustainable in the long run. CAFII applauded FSRA's quality of management, its commitment to principles-based regulation, and its open, consultative approach.

Canadian Health and Life Insurance Association of Canada (CLHIA)

CLHIA Releases Preliminary Agenda for the 4-5 May 2022 Virtual Compliance and Consumer Complaints Annual Conference

The CLHIA has released its draft agenda for the 4-5 May, 2022 virtual Compliance and Consumer Complaints Annual Conference. You can access the agenda here:

[Agenda: Compliance and Consumer Complaints Annual Conference](#)

If you are interested in attending the conference, you can contact Ethan Kohn:

Ethan M. Kohn EKohn@clhia.ca

Canadian Association of Financial Institutions in Insurance (CAFII)

CAFII Holds Webinar on 7 March, 2022 on Mental Health Issues and Challenges in the Workplace, At Home, and In Society: Coping With the Persistent Pandemic's Impact

On 7 March, 2022 CAFII held a webinar on "Mental Health Issues and Challenges in the Workplace, At Home, and in Society: Coping with the Persistent Pandemic's Impact." Participating in the webinar were three leading experts on these issues: *Paula Allen, Global Leader and SVP, Research and Total Wellbeing, LifeWorks, the successor to the business formerly known as Morneau Sobeco; Irene Keller, Director, Group Benefits Product and Solutions, Sun Life; and Shawna Oliver, AVP, Head of Global Benefits, Manulife, working out of its Boston office.*

Panelists all felt that the COVID-19 pandemic had definitely had an impact on mental health issues for Canadians. Paula Allen said that the impact had been greater than many realized. Change, uncertainty, risk, and isolation had all been introduced into peoples' lives in the past two years, and these are all stressors. LifeWorks has surveyed pre-pandemic and current levels of mental health and wellness, and has found that there has been a massive decline in the mental health status of people. This has resulted in major increases in mental health risks, including one-third of Canadians being at risk of mental health issues. Taking another measure, risky levels of alcohol intake has moved from 2 percent of the working population to 8 percent of the working population during the pandemic.

Irene Keller added that mental health issues were a big issue before the pandemic, and this has now been accelerated by the past few years, especially for the under-35 population. Paula Allen noted that there are more vulnerabilities and challenges for younger people, and the pandemic has added to the already existing stress for this more vulnerable population. This is also an age where isolation is more challenging and that has made the pandemic worse for this younger population. Shawna Oliver said that working mothers are another vulnerable group, and that the impact of stressors over the past two years are going to manifest themselves at some point in time.

The panelists spoke next about workplace culture, and the importance of creating a safe, supportive environment. Many employees still associate a stigma with mental health issues, and many will not want to share any such issues with their employers. Employers have to take this on a critical priority, and the right tone has to be set throughout the organization.

The right tools and resources are critical, but the cultural environment is even more important. It was also noted that employees should not have to choose between physical and mental health—they are not separate issues, they are linked, and both need to be part of the equation for employees. The panel also noted that “one size fits all” does not work for mental health issues, and employees need to offer employees options.

The session included good representation from regulators across the country, with the following regulators registered for the session:

- The Alberta Insurance Council;
- The British Columbia Financial Services Authority, or BCFS ;
- The Financial and Consumer Services Commission of New Brunswick;
- The Government of Alberta;
- The Insurance Council of Manitoba; and
- The Insurance Councils of Saskatchewan.

The webinar included some live polls that demonstrated that 100% of attendees had faced, or knew someone who had faced, mental health challenges; but the polls also revealed that nearly a third of attendees would not want to reveal to their employer that they were dealing with a mental health issue.

The recording of the webinar and the poll results can be found here:

<https://www.cafii.com/research/>

Kathryn Kitchen, VP Head of HR at Manulife, posted a link to the webinar on LinkedIn:

[LinkedIn Posting on CAFII Mental Health Issues Webinar](#)

CAFII Holds Webinar on 31 January, 2022 with Insurance Experts on Incentivization Programs

On 31 January, 2022, CAFII held a webinar on “The Ins and Outs of Life Insurers’ Health and Wellness Incentivization Programs.” Three expert insurance panelists participated:

- Patti Annable, Assistant Vice-President, Marketing Communications, Lumino Health, Sun Life;
- Lisa Heath, CEO, MediResource Inc, business partner to Canada Life's Health Connected; and
- Paul Savage, Head of Product and Pricing, including for Vitality, Manulife.

The session covered a wide range of topics and the panelists were engaged in the discussion. Patti Annable said that Lumino Health at Sun Life is about connecting customers with their needs. Lisa Heath spoke about Health Connected, which Canada Life participates in, with the intention to contributing the well-being of employees and connecting employees to the services that they need. Paul Savage said that Vitality is a program that tries to use incentives to promote healthy choices.

Panelists gave examples of incentives to promote healthy behaviour, like providing rewards for getting a COVID-19 vaccine. The panelists also noted that many people who have access to these programs are not aware of them, and increasing awareness is a key objective. On this issue, Lisa Heath stated:

Our experience is that communication actually matters the very most. It could be because our focus is the group benefit market so we're dealing with plan sponsors, but what's most important if you want engagement is to tell people, your employees, very specifically what you're offering to them in terms of health and wellness.

It's more important, from our experience, than gamification because if people just don't even know that the tool is available, and you don't make any effort to tell them that these benefits are available, they're not going to use them.

On the subject of wearables, Lisa Heath said that they had potential but that there was a need for evidence that they actually can influence behaviour, it needed to be kept in mind that not everyone has access to them, and caution needed to be shown around users being comfortable with sharing the data with third parties like their insurer.

On the latter issue, Patti Annable said that the information that was collected was often used in the aggregate, and that protection of personal privacy was essential. Lisa Heath said that regulatory changes would occur and that industry would have to adjust to that, and in fact proper regulation should be welcomed. Paul Savage said that trust is central to the collection of health data and that privacy is absolutely paramount.

Poll questions found that roughly half of attendees were in incentivization programs, which panel members felt sounded roughly correct. As well, 68% of attendees said gamification (like rewards, points, games) would increase their participation in incentivization programs, although panelists said that the demographic that found gamification most appealing was younger people.

The session included good representation from regulators across the country, with the following policy-makers and regulators registered for the webinar:

- Quebec's Autorité des marchés financiers, or AMF;
- The Financial Services Regulatory Authority of Ontario, or FSRA;
- The Ontario Ministry of Finance;
- The Government of Alberta ;
- BC Financial Services Authority;
- The Insurance Council of BC;
- Consumer and Financial Services Commission of New Brunswick;
- The Insurance Councils of Saskatchewan.

The session was recorded and can be found here:

<https://www.cafii.com/research/>

Panelist Lisa Heath posted a LinkedIn thread on the Webinar:

[Lisa Heath LinkedIn Posting on CAFII Webinar on Incentivization Programs](#)

Ontario

Financial Services Regulatory Authority of Ontario (FSRA)

CAFII Meets with FSRA Executives to Discuss Issues of Mutual Interest

CAFII Management (Keith Martin and Brendan Wycks) met with FSRA executives on 11 February, 2022 to discuss issues of mutual interest. Representing FSRA at the meeting were Erica Hiemstra, Head, Market Conduct—Insurance; Swati Agrawal, Senior Manager, Market Conduct, Life & Health Insurance; and Joel Gorlick, Director, Market Conduct Policy.

Erica Hiemstra explained that the purpose of these meetings was to provide a forum for open discussion on issues that CAFII or FSRA might wish to raise, with no pre-set agenda and with the intention to hold them on a regular basis. CAFII shared the high level of regulatory activity of late, and referenced some of the submissions made including to the FCAC on the Appropriateness Guideline. CAFII applauded FSRA for its 27 January, 2022 FSRA Exchange Event, and in particular the very interesting session on principles-based regulation, but also noted that an event focused on insurance, in particular life and health insurance, could be very valuable. FSRA agreed with that feedback and said it would explore holding such an event, which used to be organized annually by its predecessor organization FSCO.

FSRA Issues Framework Principles for Principles-Based and Outcome-Focused Regulation, Announces Consultation Until April 29, 2022

On 16 March, 2022 FSRA announced that it was initiating a consultation on its approach to principles-based regulation, noting that

We are setting out our approach to principles-based regulation, which will enhance consumer protection, facilitate innovation and ultimately lead to more efficient and effective regulation.

Where possible, we are moving away from "prescriptive checklists" and encouraging entities to internalize regulatory requirements and work towards achieving desired regulatory outcomes based on their size, complexity, and risk profile.

Adopting principles-based regulation represents an important cultural change for both the regulator and the regulated, now putting the emphasis on communication, collaboration and transparency on both sides of the regulatory relationship. It will also place greater reliance on a regulated entity's senior management, and its board of directors, to achieve desired outcomes and to demonstrate how they have achieved desired outcomes.

Our proposed Principles-Based Regulation Approach Guidance being issued today sets out:

- *FSRA's Framework Principles for principles-based and outcomes-focused regulation ("Framework Principles")*
- *How principles-based regulation is reflected in FSRA's approach to regulation and supervision*
- *How FSRA's Framework Principles will be implemented.*

At the core of the approach that FSRA is proposing are the following general principles:

1. **Outcome-Focused** – *FSRA will focus its regulatory activities on the outcomes we seek to achieve for consumers and pension plan beneficiaries, regulated entities and the sectors based on the statutory objects in the FSRA Act, which will be used as an overlay to the interpretation of the sector statutes*
2. **Innovative** – *FSRA will continue to develop its own culture and capabilities in a manner that enables it to fulfill its objects, which specifically includes facilitating innovation and transformation in the sectors it regulates*
3. **Consumer-Centric** – *In formulating its regulatory approach toward regulated entities and individuals, FSRA will focus on impact on consumers and pension plan beneficiaries. Our Rules³ and guidance strive to reflect the interests and needs of consumers*

4. **Risk-Based** – FSRA will direct its resources to the issues and regulated entities and individuals that pose the highest risk. FSRA's risk assessment will consider the size, complexity, nature of the regulated entity, and where non-compliance or the inability to achieve the desired outcomes, will result in the most harm to consumers or pose the greatest threat to FSRA's ability to execute against its statutory objects
5. **Transparent** – FSRA will communicate its expectations and/or requirements, as well as its activities and performance to stakeholders.⁴ We will design Rules and guidance that reference the applicable principles against which FSRA will supervise, and identify the specific outcomes FSRA is seeking to achieve
6. **Collaborative** – FSRA will engage with all stakeholders and leverage public consultations to ensure that its regulatory activities reflect the viewpoints and needs of its stakeholders, which include the interests of consumers and pension plan beneficiaries

CAFII will make a written submission to FSRA on this proposed guideline.

The proposed principles-based regulation document can be found here:

[Proposed Principles-based regulation | Financial Services Regulatory Authority of Ontario \(fsrao.ca\)](https://www.fsrao.ca/Proposed-Principles-based-regulation)

Details on the consultation can be found here:

[Seeking input on proposed principles-based regulation approach guidance | Financial Services Regulatory Authority of Ontario \(fsrao.ca\)](https://www.fsrao.ca/Seeking-input-on-proposed-principles-based-regulation-approach-guidance)

FSRA Holds Virtual Mini-Conference on 27 January, 2022 that Includes a Focus on Principles-Based Regulation

On 27 January, 2022 FSRA held a mini-conference called the "2022 FSRA Exchange Event" which had an overarching focus on principles-based regulation. FSRA CEO Mark White stated:

"We are moving away from prescriptive checklists and a compliance focus. We want to evaluate regulated entities by, do they achieve the desired outcomes," said White. "And with Principles-Based Regulation entities are expected to understand and achieve the desired outcomes and they can do so in a way that's suited to their size, nature and complexity of their business and where they are in the marketplace, it's not one size fits all."

FSRA Board Chair Joanne De Laurentiis said:

"As the Board Chair of FSRA I want to challenge the leadership in all the sectors we regulate to collaborate and engage with us," said De Laurentiis. "We want to hear from you, and your consumers, and hear your ideas about where the sector is today and where it is going and needs to go, in order to meet the needs of those who buy your product or use your services."

A panel was focused on principles-based regulation (PBR) and included Dr. Cristie Ford, Professor at UBC's Allard School, who stated:

"Principles-Based Regulation is absolutely the right system for thinking about private sector innovation and how to deal with it," said Dr. Ford. "A purely rules-based system is going to produce maybe one of a couple of different outcomes, one will be that it will stifle innovation good, bad or otherwise, because the rules just prevent any kind of flexibility or creativity on the part of industry actors and on the part of the regulators."

Dr. Ford emphasized that if principles-based regulation is based only on high level statements without clear communication between the regulator and regulated entities, it will not achieve the intended objectives. She added that it was necessary to have a regulator which collected information from the industry and operated in a collaborative way, while remaining independent, in order to have PBR succeed. However, done properly Dr. Ford felt that such a PBR regime was much more effective than a rules-based approach.

However, Dr. Ford also noted that principles-based regulation does not mean "doing away with rules." However, in such a regime the regulator does not reach for the rules first, and has a regulatory culture that is based on flexibility and focused on outcomes. Such a regime also requires significant regulatory guidance based on open discussions with industry. However, the option for enforcement of rules always has to be there—as William Douglas said: "If you have a big shotgun behind the door, hopefully you never need to use it."

Dr. Ford added that PBR is a better system for promoting innovation in the private sector. Innovative sectors do not thrive in a rigid, rules-oriented regulatory system. Such systems stifle innovation and restrict flexibility and creativity. Such a system also promotes "loophole behaviour" and efforts to circumvent the rules, as opposed to working with the regulator to achieve the outcomes it seeks; ultimately, industry actors may just seek out other jurisdictions. Summarizing her thoughts on PBR and innovation, Dr. Ford said:

Putting rules in place in a highly innovative system is a little bit like trying to put wallpaper on a cat. It's -- you can pretend that you're doing something really sort of comprehensive but ultimately you're just -- you're papering over a problem that is not staying still for you. So a principles-based system is absolutely the better way to go if you want regulation to stay relevant, if you want it to actually be responsive to industry. And through the communication with industry a principles based regulator has better information. So because there is a meaningful communication loop with industry, the regulator has better access to information, understands what's going on, understands the challenges that industry actors are facing, and also understands sort of where the risks might be arising for consumer protection, for example.

Commenting on how industry can most effectively make PBR work, Dr. Ford said:

So for -- for -- for folks in the industry I think it's important to understand that this is really a compliance focused not enforcement focused regime. It's about being engaged. It's aimed to be or the intention is that it be cooperative to the greatest extent possible. Now again, it doesn't mean there's no enforcement stick in the background. There is. But this is - the point is that this is not a gotcha regime, right? Where the regulator is looking for low hanging fruit and is seeking to I don't know catch you on some small rule violation. It really does look at overall regulatory priorities and by employing a risk based outcome oriented data driven regime, you can -- you can be confident that you're not going to be sort of caught out as long as you're communicating with the regulator

So -- so what this really means is it's in the industry -- it's in the interest of industry actors to really come to the regulator with problems earlier to demonstrate good will, and this allows the regulator to really focus its resources, its enforcement resources on the folks who are real, you know, causing -- a -- a -- real problem actors to mitigate that harm while not needing to do that with industry actors with whom they have a good relationship.

CAFII is organizing a panel on principles-based regulation, outcomes-focused regulation, and on the implications of rule-making authority for the regulatory regime in provinces across Canada, including its possible impact on harmonization. Dr. Christie Ford will be participating in that panel with leading Canadian insurance lawyer Stuart Carruthers, Partner at Stikeman Elliott, on 3 May, 2022 (1-2pm). CAFII members and Associates will be receiving more information about the webinar in the coming weeks.

FSRA's New "Unfair or Deceptive Acts or Practices" Rule Effective 1 April, 2022

Insurance Portal reports that the Financial Services Regulatory Authority of Ontario (FSRA) has announced that its Unfair or Deceptive Acts or Practices (UDAP) rule for the insurance industry, is approved by the Ontario Minister of Finance, and will become effective April 1, 2022.

Notably, the rule states: "If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice," if those figures cause, authorize, permit, acquiesce or participate in the commission of the unfair act or practice, or if those parties fail to take reasonable care to prevent the person from committing the act in the first place.

FSRA says the rule, which applies to life and health insurers, property and casualty insurers, including auto, and any related goods or services providers, clearly defines outcomes that are unfair or otherwise harmful.

The rule addresses discrimination, claims delays and unfair claims practices, incentives, misrepresentation and fraud. It also discusses prohibited conduct in automobile insurance quotations, applications and renewals. The rule was approved by the Minister of Finance following two public consultation periods and two submissions to the minister.

Quebec

Autorité des marchés financiers (AMF)

AMF Reaches out to CAFII on Action Plans Submitted Regarding the RADM and Credit Card-Embedded Insurance Benefits

CAFII members submitted by 17 December, 2021 Action Plans to the AMF on how to comply with the Regulation respecting Alternative Distribution Methods (RADM) for credit card-embedded insurance benefits. The AMF subsequently met with CAFII Management (Keith Martin and Brendan Wycks) to discuss the Action Plans and some concerns that they had identified, including some companies that produced one Product Summary for unrelated products (for example, warranty products and travel products cannot be combined in one Product Summary).

The AMF subsequently shared with CAFII a draft of a letter outlining these concerns, and on 15 March, 2022 CAFII submitted some suggested clarifications to the AMF (Mario Beaudoin and Charlene Boucher). The AMF intends to send the final version of the letter to CAFII; and to copy relevant insurer or underwriter members and other industry insurers which submitted Action Plans.

International Developments, Research, and Thought Leadership

Insurance Portal

Year-Over-Year Life Insurance Application Activity Declines in Canada

Insurance Portal cites MIB Life Index report on Canadian life insurance application activity to note that year-over-year application activity declined 8.4 percent in February, 2022 relative to February 2021. This continues a pattern of year-over-year declines that began in July, 2021.

Aviva Canada Annual Risk Insights Report

Mental health emerges as top concern for Canadian employers worried about workers' low-grade trauma from pandemic

The Financial Post reports that Aviva Canada's Annual Risk Insights Report finds that mental health has emerged as a top concern of Canadian employers, ranking alongside more obvious threats such as labour shortages and COVID-19.

Prior to the pandemic, Canada businesses tended to express worry about more tangible risks: an office fire that could destroy essential documents; a flood that could short-circuit expensive equipment.

But now, the biggest threats facing Canadian businesses are invisible, and trickier to manage, according to insurance company Aviva Canada's annual Risk Insights Report, which draws on interviews with 1,500 business leaders to rank the things that keep Canadian business leaders awake at night.

COVID-19 ranked as the biggest threat; no surprise, given it caused an epic global recession in 2020 and continues to torment businesses around the world. The second item on the list, cyber-security, also was on the radar of executives a few years ago, even if relatively few were unsure about how to guard against malicious hackers. Labour shortages and supply disruptions — fourth and fifth, respectively — have been widely reported as the driving forces behind a troubling burst of inflation for more than a year.

The biggest surprise might be the risk at No. 3 on Aviva's list: mental health, which was rarely discussed as an economic issue ahead of the pandemic. That's changed. Employee satisfaction declined when COVID-19 hit and employees began working remotely. Experts believe Canadians are living with low-grade trauma from the events of the past two years, which, from a purely business perspective, increases absenteeism and adds to costs associated with treating mental health.

"The impact of lost productivity on our economy from new mental health challenges since COVID measures in the billions," Akela Peoples, chief executive officer of Mental Health Research Canada, [wrote](#) in an op-ed published last week in the Financial Post.

Essential workers continued to work with increased restrictions during the pandemic, while other employees began working from home, isolating them from co-workers and increasing the risk of loneliness and depression. This initial transition, as well as the return to work, has created a great deal of anxiety. Overall, 45 per cent of businesses saw an impact on employee well-being and mental health, according to the report.

“The impact of lost productivity on our economy from new mental health challenges since COVID measures in the billions,” Akela Peoples, chief executive officer of Mental Health Research Canada, [wrote](#) in an op-ed published last week in the Financial Post.

Essential workers continued to work with increased restrictions during the pandemic, while other employees began working from home, isolating them from co-workers and increasing the risk of loneliness and depression. This initial transition, as well as the return to work, has created a great deal of anxiety. Overall, 45 per cent of businesses saw an impact on employee well-being and mental health, according to the report.

While some staff enjoy working from home, there are definite “downsides to the pressures of working from home and the stress of being ‘always-on,’” the report said.

Not all business sectors are equally concerned about mental health. Businesses that are dependent on face-to-face client interactions, such as real-estate, retail, and the service industry are more inclined to fret for employees’ well-being.

“Putting aside the human element, we have an economic rationale for continued focus on mental health,” Peoples said. “Our data indicates that eight per cent of the school or working population are losing days every week to mental health issues.”

The risk to businesses is not negligible. But most of the smaller companies surveyed by Aviva were still reeling from the impact of the pandemic, and said they were focused on staying in business rather than mitigating risks such as mental health.

Small businesses are already adept at risk management, whether they realize it or not, said Susan Penwarden, chief technical underwriter at Aviva Canada, the local unit of London-based Aviva PLC. “Small businesses do risk management every day, because risk management is basically running your business, and being aware of all the things that are going on that you have to manage.”

As the pandemic continues, the way Canadian businesses view risk is changing. In moving business operations online, the pandemic increased the potential for cyber-security threats, and has created new challenges for employees with regard to mental health. It has also made supply chain vulnerabilities painfully clear.

“We need to be able to see beyond the next curve in the road and identify future risks before they’re already upon us — because we know they’re coming,” Jason Storah, CEO of Aviva Canada, said in the report.

Some might argue that it is impossible to accurately predict what the next five or 10 years may hold, and concerns about mental health will pass. However, there is reason to doubt that work will return to normal. Protiviti, a global consulting firm with an office in Canada, predicts that the risks of 2031 could include managing the hybrid work environment, keeping up with the breakneck speed of innovation, and more.

“COVID-19 has fundamentally challenged how businesses assess, manage and mitigate risk,” the Aviva report said. “However, they’re meeting those challenges head-on and with clarity.”