CAFII Legal Research and Analysis Project

Project Background and Purpose: An Australian Royal Commission on Banking is currently underway and conducting hearings in that country. The Royal Commission has been asked to investigate whether any of Australia's financial services entities have engaged in misconduct, and if criminal or other legal proceedings should be referred to the Commonwealth (federal government). Misconduct identified or admitted to thus far in Australia includes fraudulent documentation, processing or administration errors, and breaches of responsible lending obligations.

Since 1 July 2010, over $128m has been paid in remediation/fines to consumers by financial services entities as a result of poor conduct in connection with add-on insurance.

CAFII is concerned that findings of misconduct by Australian banks with respect to their distribution/sales of insurance could have a spill-over effect with regulators and governments in Canada; and, in particular, any findings of misconduct in sales, consumer disclosures, or claims settlements with respect to creditor's group insurance products in Australia could cause suspicions about Canada's system.

The purpose of this legal research and analysis project is to provide an objective comparison of the Australian and Canadian financial institutions in insurance (bancassurance) systems.

The approach we are proposing is a comparison of the Australian and Canadian systems to demonstrate that findings by Australia's Royal Commission are not transferable and relevant to Canada. We would seek to have a short summary of the findings publicly released, and we would share these as well with regulators and policy-makers, as part of a proactive effort to inform the public debate on these issues.

Our proposal is for the lawyer, perhaps supported by a legal academic/scholar on the research component of the project, to provide objective legal/regulatory interpretation responses, to the following hypotheses:

Hypothesis #1:
The financial institutions in insurance regulatory system in Canada is fundamentally different from Australia's, and more rigorous.
This section would review the regulatory structure, framework, and systems for financial institutions in insurance in Canada and in Australia in recent years; and compare them in terms of rigour, and the authority, legal powers, and monitoring and intervention practices of regulators in the two nations.

Hypothesis #2:
The regulatory compliance and monitoring system for financial institutions in Canada is fundamentally different, better resourced, and more rigorous than the parallel system in Australia.
This section would review the structure and resourcing of regulators' compliance and monitoring systems for Canada's financial institutions in insurance as compared to the parallel systems for Australia's financial institutions in insurance. This would include the level of regulatory penalties/fines paid in Canada and Australia due to non-compliance, and any remediation to Canadian and to Australian consumers due to improper behaviour.

Hypothesis #3:
The level of consumer complaints, in particular formal escalated complaints, related to financial institutions in insurance is much higher in Australia than it is in Canada.
This section would review and compare the level of escalated consumer complaint cases related to financial institutions in insurance in Canada versus those in Australia.

Hypothesis #4:
The evidence gathered in Australia about its creditor's group insurance system reveals a fundamentally different corporate culture and approach to the Fair Treatment of Customers than is prevalent in Canada.
This section would review available evidence, such as existing or proposed codes of conduct, guidelines on the Fair Treatment of Customers, and the results of regulatory reviews (such as the findings of Australian reviews in comparison to federal and provincial reviews of financial institutions in insurance carried out in Canada).