

8 July, 2019

Nancy Meagher
Superintendent of Insurance, Yukon
Community Services
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Re: Your Recent Licence Renewal Letter To Insurers Issuing A Prohibition On The Enrollment of Consumers in Credit Protection Insurance in Yukon

Dear Ms. Meagher,

Congratulations on your recent appointment as Superintendent of Insurance in Yukon.

My name is Keith Martin and I am Co-Executive Director of the Canadian Association of Financial Institutions in Insurance (CAFII), a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet. Our members are both insurance company underwriters and financial institution distributors of credit protection insurance. (Appendix C contains a full list of our members.)

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII and our members have a long history of working collaboratively with regulators and policy-makers to ensure that Canadians are offered simple, accessible, and affordable credit protection and travel insurance solutions.

I am writing to you on behalf of our members to express CAFII's concerns about your letter of 28 June, 2019 to several of our members, which indicated that Yukon's class of licence dealing with credit protection insurance would not be renewed; and that enrollment in these policies was to cease effective 30 June, 2019.

We were surprised by that decision and are concerned that the approach taken is a stronger action than necessary to deal with the underlying issue. We want to work with you to understand your concerns fully and to address them in an expeditious manner, from a thorough, comprehensive, big picture perspective.

Above all, we are concerned with the decision to terminate, even temporarily, the opportunity for Yukon consumers to choose to enroll in credit protection insurance coverage because it will deprive them of a simple, accessible, and affordable insurance option, thereby potentially putting individuals and families at risk.

We understand that your letter was prompted by an application for a licence renewal which included "credit protection insurance." We also understand that a licence had been previously issued which included "credit protection insurance" as a class of insurance listed on the licence. We recognize that in reviewing the licence renewal application, you discovered that "credit protection insurance" is not a class of insurance under the Yukon Insurance Act. Your letter of 28 June, 2019 denies the licence for the class of credit protection insurance, but goes further by prohibiting the enrollment of Yukoners in credit protection group insurance, effective 30 June, 2019.

We appreciate that your office has concluded that it does not have the legislative basis to issue a licence for "credit protection insurance" at this time. However, we believe that the products being offered by CAFII members should be considered within the scope of the classes of life and of accident and sickness insurance. As such, we believe that our members should not be required to discontinue offering credit protection insurance coverage to Yukon consumers, even temporarily.

Please see Appendix A below for elaboration of the many reasons why CAFII believes that the cessation approach chosen to deal with what appears to have been a decades-in-existence administrative oversight is problematic; and what the potential consequences could be for both Yukon consumers and the industry. Among the concerns we detail in Appendix A are:

- **Denying Yukoners Credit Protection Insurance Coverage:** CAFII-commissioned research by Pollara Strategic Insights found that of those who purchased credit protection insurance, "71% do not know what they would do without CPI, should something happen to them and/or their family." Due to the order to no longer enroll consumers in credit protection group insurance until further notice, Yukoners would effectively be denied the opportunity to protect themselves and their families from a catastrophic financial loss related to a major debt obligation, such as a mortgage on a home, if an unforeseen life event were to occur.

- **Appropriate Timelines to Implement Decisions:** CAFII members are large and complex organizations, and a two-day timeline to implement a decision that will require changes to coding and procedures is simply not possible.
- **Consistency and Harmonization:** Yukon is now no longer consistent with every other jurisdiction in Canada, each of which allows consumers to be enrolled in credit protection insurance.
- **The Importance of Consultation:** Because of the technical complexity of insurance, and the fast-paced changes facing the industry generally, we believe that better regulatory outcomes are achieved for all stakeholders when there is consultation and dialogue prior to a major regulatory decision being taken.
- **The Importance of a Principles-Based Regulatory Approaches:** We are concerned this decision was rules-based, rather than being rooted in a principles-based approach focused on the regulatory outcome desired; and, in particular, we note that a class of Yukoners – those who purchase a mortgage or debt instrument between 1 July, 2019 and whenever the legislative gap is resolved – will be denied the opportunity to purchase insurance that could protect them from significant financial risk.
- **Distribution Methods:** The 28 June, 2019 letter was sent to insurers, but those who actually enroll consumers in credit protection insurance – and who therefore have primary responsibility for implementing this decision – are distributors (typically financial institutions such as a bank, a credit unions, or a mortgage broker), adding to the complexity of implementing this order.
- **Clarity around Definitions:** The letter says that “...effective June 30, 2019 credit protection policies can no longer be sold in Yukon,” but it is not clear if this applies to all credit protection insurance offerings (life, critical illness, disability, job loss) or only to one or a sub-set of those types of creditor’s group insurance.


Based on the background rationale and arguments set out in Appendix A, CAFII respectfully requests that Yukon re-consider the order to cease allowing enrollment in credit protection insurance policies issued in your letter of 28 June, 2019. We urge you to consider more measured alternative solutions which can achieve the same objective, without denying Yukoners access to simple, convenient, affordable life, disability, critical illness, and job loss insurance that covers their major debt obligations against an unforeseen event that could lead to a catastrophic financial loss; and without putting businesses in the credit protection insurance sector in an untenably difficult situation.

We understand your concern that there is a potential legislative gap in Yukon’s *Insurance Act*, but we believe that the Act does indeed provide an avenue which covers credit protection insurance; and that there are also other alternatives available which can provide legislative coverage on a temporary basis, until such time as the necessary amendments can be made to the legislation. We have suggested such possible alternative approaches for your consideration in Appendix B of this letter.

As a general principle, however, since the Yukon Insurance Act does indeed define “creditors group insurance,” it is our view that the legislation must have intended that such products could be sold in the Yukon, even if there was a technical error or oversight when the clauses on the specific classes of insurance were drafted. Therefore, we respectfully urge you to take a broad interpretation of the legislation, so as not to prevent Yukoners from having the opportunity to purchase insurance that they might need. Credit protection group insurance has been sold for decades in Yukon without regulatory concerns; and the cessation order is not in relation to any product deficiency or market conduct concern. Whatever mechanism is found to resolve this issue, we believe that it is important for Yukoners to have access to all insurance solutions; and, in that connection, we very much want to work collaboratively with you and your office to find a speedy resolution to this problem.

CAFII thanks you, in advance, for your attention to the issues raised and the alternative solutions proposed in this letter. I would like to answer any questions you may have and discuss these matters more fully with you, and in that connection **I request the opportunity to speak to you on the phone as soon as possible.** Given the importance and urgency of this matter to CAFII members, **I would also be very willing to travel to Whitehorse to discuss these matters with you and your colleagues.**

With respect,

A handwritten signature in dark ink, reading "Keith Martin", enclosed within a large, hand-drawn oval.

Keith Martin, Co-Executive Director, CAFII
647.460.7725

Appendix A—Concerns with the Decision from Yukon Superintendent of Insurance to Not Allow Consumers to Enroll for Credit Protection Insurance in Yukon

#1 Denying Yukoners Credit Protection Insurance Coverage.

Credit protection insurance is meant to be simple and convenient, and as such provides an important layer of insurance coverage to consumers who may not otherwise have access to insurance. Research has found that Canadians are vastly underinsured, and this is particularly true for lower- and middle-income Canadians, who are offered fewer products by the broker or advice channel since they tend to focus their efforts on wealthier Canadians who purchase larger policies. CAFII-commissioned research by Pollara Strategic Insights found that of those who purchased credit protection insurance, “71% do not know what they would do without CPI, should something happen to them and/or their family.” Due to the order to cease enrolling consumers in credit protection group insurance until further notice, Yukoners would effectively be denied the opportunity to protect themselves and their families from a catastrophic financial loss related to a major debt obligation, such as a mortgage on a home, if an unforeseen life event were to occur.

#2 Appropriate Timelines to Implement Decisions.

It is important to give the industry time to adjust to regulatory decisions. CAFII members are large and complex organizations, operating in a national environment. Generally, we ask that regulatory changes provide a minimum six months for implementation, and preferably a transition period of one year or longer.

While CAFII members are regulated provincially and territorially, they offer many of their products nationally, through a variety of means including in physical locations such as branches; through call centres; and online. For example, a Yukoner can purchase credit insurance from some of our members online without the intervention of a person. To implement your office’s edict that credit protection insurance cannot be sold in Yukon, some of our members will need to implement new logic in their online sites prohibiting the sale of credit insurance to someone who indicates they are from Yukon. As with any online change, these changes need to be developed, tested, and implemented rigorously. In a similar vein, call centres need to be able to identify that a caller is from Yukon and have processes in place, either automated or manual, to not sell this product to a Yukoner. For branch sales, system changes need to be developed and tested to prevent sales via the branch systems. As I am sure you can appreciate, these are not simple procedures to implement and it is simply not possible for CAFII members to implement such a decision in two days.

#3 Consistency and Harmonization.

Because our members are national organizations that are provincially and territorially regulated, nationally harmonized and consistent regulatory approaches are critically important to them. We work closely with the Canadian Council of Insurance Regulators (CCIR) in the pursuit of such consistency. Credit protection insurance is widely accepted as a convenient and simple way for consumers to purchase insurance, and every province and territory in Canada allows for the sale of this coverage. For Yukon to now become an outlier produces a two-tier system that is complex for our members to manage, is inefficient, and removes options to purchase insurance for Yukon residents.

Along with consistency, harmonization among regulators is critical to a well-functioning regulatory system. This is another fundamental principle that we work on diligently with the CCIR and provincial and territorial regulators. Revoking CAFII members' ability to sell credit protection insurance, when there is no other Canadian jurisdiction where this is the case, produces an inconsistency in the marketplace that fundamentally contradicts this important principle of harmonization.

#4 The Importance of Consultation.

Because our members operate in a complex and fast-changing marketplace, which they are fully immersed in with a deep level of expertise across their organizations, we believe that it is in the interests of Canadian consumers, regulators, and the broader Canadian economy for any regulatory decisions to be made after a full and thorough consultation with the industry. This allows regulatory authorities, their government policy-makers, and the industry to share information with each other; and it allows for the industry to be able to share its expert advice; suggest, where appropriate, alternative ways for the regulator to achieve its objectives; and to outline all the implications and consequences of a decision. It also gives the industry time to prepare for the implementation of a change. We fully recognize and appreciate that the regulator is the ultimate decision-maker and that we are obligated to comply with whatever decision is taken, but we believe that consultations produce better regulatory outcomes for all concerned.

#5 Principles-Based Regulatory Approaches.

We strongly support a principles-based regulatory approach, which is focused on the outcomes of the regulatory activity. This is also an approach advocated by the CCIR. With the approach taken by Yukon, the decision taken will result in credit protection insurance being available to consumers who enrolled in it prior to 30 June, 2019, and to those who enroll in it after the legislative gap is ultimately addressed, while those who take on a mortgage or other debt obligation between 1 July, 2019 and the date the legislative gap is resolved will be denied the opportunity to enroll in credit protection insurance. This action does not eliminate any risks to the citizens of Yukon, but disadvantages a subset of the populace. It is a rules-based approach that is opposite to the principles-based regulatory approach that the CCIR advocates for.

#6 Sale of Credit Protection Insurance—Distribution Methods.

The letter in question, received by some CAFII members, states that “...effective June 30, 2019 credit protection policies can no longer be sold in Yukon.” However, the recipients of that letter are generally the underwriters or manufacturers of this insurance, but not the sellers of it. Credit protection insurance provides insurance in the event of a life event, such as death, disability, critical illness, or job loss, against a specific debt obligation. For example, when taking out a mortgage, a consumer can purchase credit protection life insurance against the mortgage, so that if they die the mortgage (up to the limit set out in the certificate of insurance) is paid off. As such, this insurance is typically purchased at the time the mortgage, HELOC, loan etc. is taken out, with the enrollment completed by the distributor (a bank, a credit union, or a mortgage broker) offering the loan instrument. This element of credit protection insurance makes implementation of your decision even more challenging, as it will need to be put in place not by the companies you have sent the letter to, but by their distributors who actually enroll consumers in the credit protection insurance coverage.

#7 Clarity about Definitions.

Credit protection insurance can be associated with mortgages, home equity lines of credit (HELOCs), loans, and credit card balances. The insurance can provide coverage in the event of a set of life events, such as death, disability, critical illness, or job loss. Your letter says “...credit protection policies can no longer be sold in Yukon” but “credit protection policies” is not defined. Are you prohibiting the sale of all forms of credit protection insurance? Does this apply to life, disability, critical illness, and job loss? We also hasten to add that if this decision applies to some but not all of these products, that adds additional complexity because many of our members make credit protection insurance coverage available as a “bundle”—for example, with the purchase of mortgage life insurance, one can also purchase some of the other coverages.

Appendix B: Possible Options that Avoid Prohibiting Enrollment in Credit Protection Insurance

Alternative #1: Further Legal Review and Consideration. We believe that credit protection insurance could be covered under the Life and Accident and Sickness classes of insurance, and for greater clarity Yukon could update its Regulations to include “credit protection insurance.”

We note that “creditor’s group insurance” is a defined term in both Part 5 Life Insurance and Part 7 Accident & Sickness of the Yukon *Insurance Act*. Although the *Insurance Act* may not have a specific class of insurance called “credit protection” insurance,” it most certainly has classes for “life insurance,” “accidental death insurance,” and “sickness insurance.” Therefore, the appropriate class for creditor’s group life insurance may be the class “life insurance” and the appropriate class for creditor’s group disability and critical illness insurance may be the class “sickness insurance.”

CAFII has received a preliminary legal opinion from counsel that these provisions may well provide the necessary legislative coverage. In that case, your office might be able to address your concerns by amending the province’s insurance licence application so that it aligns precisely with the existing defined language and nomenclature of the Yukon *Insurance Act*.

To provide further context, legal counsel has identified the following potentially applicable clauses of the Yukon *Insurance Act*:

Page 63, definition of Creditor’s Group Insurance (in the life insurance section):

“creditor’s group insurance” means insurance effected by a creditor in respect of the lives of the debtors whereby the lives of the debtors are insured severally under a single contract; ...

Page 130, definition of Creditor’s Group Insurance (under the A&S Section):

“creditor’s group insurance” means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of the creditor’s debtors are insured severally under a single contract; ...”

Alternative #2: Order in Council / Proclamation. In the event that your legal counsel reaffirms the view that there is a gap in the existing Yukon legislation such that there is not currently legal language allowing for the sale of credit protection insurance, there are alternatives available other than a blanket prohibition on the sale of this coverage.

Among the tools available to the Government of Yukon are the issuance of an Order in Council proclamation to provide temporary coverage until the necessary amendments can be made to the *Insurance Act*. This would be a much less burdensome and intrusive way of temporarily addressing the perceived legislative gap.

Appendix C—About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.