

22 July, 2019

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Re: Enrolling Yukoners in Credit Protection Insurance

Dear Ms. Connolly,

I would like to thank you, and your colleague Bradley Rowett, Regulatory Affairs Officer, Government of Yukon, for the very productive conversation we had on 16 July, 2019.

Our discussion focused on resolving the current issue around certain CAFII members who were notified that “credit protection policies can no longer be sold in Yukon.” Based on our conversation, I now understand that the Yukon Government is of the view that our insurance company members who have been issued Life and Accident and Sickness insurance licenses from the Government of Yukon are authorized to underwrite creditor’s group insurance.

To confirm, creditor’s group insurance in the Yukon is underwritten by insurers under the authority of their Life license (for creditor life insurance benefits) and their Accident and Sickness license (for creditor disability, critical illness, hospitalization, and related insurance benefits). As many insurers also underwrite coverage for involuntary loss of employment (job loss) in the territory, this is done under the Life license. Specifically, the class of life insurance in the Yukon includes a promise to pay insurance money “at a set or determinable future time,” which in this case would be the time that the insured person has met the definition of job loss in the certificate of insurance. The industry position on the matter is that where no class of credit protection insurance exists in a jurisdiction (such as is currently the case in the Yukon), creditor’s group insurance is offered under the authority of existing licenses as noted above.

However, the remaining issue is that these products are often offered to customers through distributors, such as a bank or credit union branch, a call centre, or an online portal. Since customers are enrolled by these distributors, the question is whether these distributors are authorized under existing Yukon legislation to complete the enrollment process.

As a starting position, it is important to note that individuals enrolling in creditor's group insurance receive no insurance advice, and are not purchasing an "individual" insurance policy. Rather, they are being enrolled in an existing group insurance policy, and receive a certificate of insurance for their enrollment. The group insurance policy is issued by the licensed insurer to the financial institution which advances the related credit product. The terms of the coverage, including eligibility and premium rates, are negotiated between the licensed insurer and the financial institution lender. The "contract of insurance," therefore, exists between the licensed insurer and the financial institution lender.

As such, it is CAFII's view that the Yukon *Insurance Act* supports the position that persons who facilitate the enrollment of individual group members for coverage under an existing group insurance policy do not have to be licensed as agents, because the activity does not fall within the definition of "agent" under the Yukon *Insurance Act*. We note in that regard Section 233.21 of the *Insurance Act*:

Section 233(21) states:

"Every person who acts as an agent without a licence, or while their licence is suspended, is guilty of an offence." [emphasis added]

Section 1 defines "agent" as:

"...a person who, for compensation, not being a duly licensed insurance broker or not being a person acting under the authority of subsection 233(15), (16) or (17), solicits insurance on behalf of an insurer, transmits for a person other than the agent an application for or a policy of insurance to or from that insurer, or offers or assumes to act in the negotiation of the insurance or in negotiating its continuance or renewal."

Therefore, an unlicensed person's activity must not fall within the definition of "agent" to avoid violating section 233(21). It is important to consider this analysis in the context of group insurance principles. Group insurance is insurance designed to insure the collective lives of a group of persons who have some relationship to or connection with the group policyholder. It is also important to note that there is only one contract/insurance policy created in a group insurance arrangement – that being the group insurance policy between the insurer and the group policyholder. In the context of creditor's group insurance, the group policy is a contract between the insurer and the creditor (e.g. bank or credit union) or administrator (as group policyholder) covering the individual members of the group (e.g. the customers of the bank or credit union who have taken out a mortgage, line of credit, loan, or credit card).

Although the persons whose lives are insured (borrowers) under the group policy obtain rights in relation to the coverage provided under the group policy, **there is no direct contractual relationship between the insurer and the individual members of the group who are enrolled in the group policy.** The terms and conditions of the group policy are, as noted above, entirely a matter of negotiation between the two contracting parties (the insurer and the financial institution lender as group policyholder).

Applying the definition of “agent” in the context of a group insurance arrangement:

- The group insurance contract is applied for, solicited and placed, and the needs of the group are assessed, at the **insurer/group policyholder level**;
- The group policyholder negotiates the terms of the group policy with the insurer;
- Once the group policy is finalized and in effect, the group policyholder facilitates the enrollment of the individual group members for coverage under the existing contract/group policy terms. **The group policyholder does not provide advice.** However, to ensure individual members of the group are made aware of the details of their insurance coverage under the group policy, the insurer issues, for delivery by the group policyholder, to each individual group member that has opted to enroll for the insurance, documentary evidence of the details of their insurance (the certificate of insurance);
- **Therefore, at the enrolment stage, there is no solicitation or transmittal of an application, or assessment of needs, or negotiation of terms for a policy, because the group policy is already in place.**

As a result, one can reasonably conclude that the activity of facilitating enrolment of individual group members for coverage under an existing group insurance policy does not fall within the definition of “agent” under the Yukon’s *Insurance Act*; and therefore, a group policyholder is not required to be licensed to conduct such activity. I can also confirm that this interpretation is consistent with the established position of insurers in jurisdictions where no licensing or exemption regime specifically addressing creditor’s group insurance has been implemented. In those jurisdictions, the industry position is that no license is required for the distribution of creditor’s group insurance because the person involved in distribution is not “selling or soliciting a policy of insurance” but rather is offering to enroll the customer under the creditor’s group insurance policy that has already been issued to the creditor or administrator of the insurance.

Ms. Connolly, in conclusion, based on our analysis and interpretation of the Yukon *Insurance Act* we are of the view that our insurance company members who received the notice around credit protection insurance should be able to underwrite creditor’s group insurance, and that our distributor members who received the notice or which are impacted by the notice, should be able to enroll customers in creditor’s group insurance without further licensing. We respectfully request your agreement with our concluding statement on this matter and your confirmation that **underwriting and distribution of creditor’s group insurance is permitted in the Yukon so long as the insurer holds valid licenses for Life and Accident and Sickness insurance.**

Thank you again for your collaboration with us on this important file, and we very much look forward to working with you going forward.

With respect,

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

Keith Martin, Co-Executive Director, CAFII
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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.