

(French translation to follow, via separate transmittal)

January 28, 2019

Ms. Nathalie Sirois
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Dear Nathalie:

Re: CAFII Submission On Why The AMF's December 11, 2018 Letter Re: Distribution without a representative – Coverage offered to persons other than debtors Should Be Reconsidered

This letter is CAFII's formal response to your letter of December 11, 2018 **Re: Distribution without a representative – Coverage offered to persons other than debtors** sent to CAFII members who underwrite or distribute creditor's group insurance products which include the offer of coverage for the spouse of a debtor.

In your December 11/18 letter, the AMF invokes an interpretation of Section 76 of the Regulation Under the Act Respecting Insurance to rule that, under creditor's group insurance offered under the province's Distribution Without A Representative regime, no life or health insurance can be provided to the spouse of a debtor, when such spouse is not a co-debtor, because the creditor has no pecuniary interest in the life or the health of the non-debtor spouse.

CAFII and its members respectfully disagree with the AMF's interpretation and opinion on this matter.

While Section 76 of the Regulation Under the Act Respecting Insurance clearly requires creditors to have a pecuniary interest for persons "other than debtors," a distinction must be made between spouses and other persons. First, spouses may be co-borrowers on loans and other debt obligations, in which case they themselves are indeed debtors and the creditor has a clear pecuniary interest in the life and health of the spouse. Second, even if the spouse of a debtor is not a co-borrower, spouses are so closely financially integrated with and dependent upon each other that the creditor does indeed have a pecuniary interest in the life and health of the spouse, for a number of compelling reasons as outlined below.

CAFII and its affected members were surprised by the December 11/18 letter, particularly given that the Regulation Under the Act Respecting Insurance has been in existence for many years and some of our members have been offering creditor's group coverage to Québec spouses who are not co-debtors for more than 25 years, based on their desire to make simple, accessible, and affordable insurance protection available to consumer households; and their understanding of both federal law and Québec law, as explained below.

Federal Bank Act and Insurance Business (Banks and Bank Holding Companies) Regulations

By way of context, we note that the federal Bank Act and the Insurance Business (Banks and Bank Holding Companies) Regulations (IBBRs) define the types of "authorized insurance" which federally regulated banks are permitted to offer to consumers throughout Canada and those types of insurance include coverage for spouses.

The Bank Act and the IBBRs include creditor's group insurance as part of "authorized insurance products" and they permit the offering of spousal coverage under such creditor's group insurance. The relevant sections of the IBBRs are excerpted in italics below (with spousal coverage wording underlined):

authorized type of insurance means

- *(a) credit or charge card-related insurance,*
- *(b) creditors' disability insurance,*
- *(c) creditors' life insurance,*
- *(d) creditors' loss of employment insurance,*
- *(e) creditors' vehicle inventory insurance,*
- *(f) export credit insurance,*
- *(g) mortgage insurance, or*
- *(h) travel insurance; (assurance autorisée)*

creditors' disability insurance, in respect of a bank, means a group insurance policy that will pay all or part of the amount of a debt of a debtor to the bank, or to a loan company that is an affiliate of the bank, in the event of bodily injury to, or an illness or disability of,

- *(a) where the debtor is a natural person, the debtor or the spouse or common-law partner of the debtor,*
- *(b) a natural person who is a guarantor of all or part of the debt,*
- *(c) where the debtor is a body corporate, any director or officer of the body corporate, or*
- *(d) where the debtor is an entity, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations to the bank or to the loan company; (assurance-invalidité de crédit)*

creditors' life insurance, in respect of a bank, means a group insurance policy that will pay to the bank, or to a loan company that is an affiliate of the bank, all or part of the amount of a debt of a debtor or, where a debt is in respect of a small business or a farm, fishery or ranch, all or part of the amount of the credit limit of a line of credit, in the event of the death of

- *(a) where the debtor is a natural person, the debtor or the spouse or common-law partner of the debtor,*
- *(b) a natural person who is a guarantor of all or part of the debt,*
- *(c) where the debtor is a body corporate, a director or officer of the body corporate, or*
- *(d) where the debtor is an entity, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations to the bank or to the loan company; (assurance-vie de crédit)*

Québec Legislation

The *Civil Code of Québec (CCQ)* includes several provisions which indicate a legislative intention to recognize the financial inter-connectedness of spouses and that a person in Québec has an insurable interest in his or her spouse. It follows that a creditor's pecuniary interest in a person in Québec extends to his or her spouse with whom he or she is financially integrated.

Section 2419 of the CCQ states the following:

A person has an insurable interest in his own life and health and in the life and health of his spouse, of his descendants and the descendants of his spouse, or of persons who contribute to his support or education.

He also has an interest in the life and health of his subordinates and staff or of persons in whose life and health he has a pecuniary or moral interest.

Section 392 of the CCQ says this:

The spouses have the same rights and obligations in marriage. [...]

Section 396 of the CCQ states the following:

The spouses contribute towards the expenses of the marriage in proportion to their respective means.

The spouses may make their respective contributions by their activities within the home.

Section 397 of the CCQ says this:

A spouse who enters into a contract for the current needs of the family also binds the other spouse for the whole, if they are not separated from bed and board.

However, the non-contracting spouse is not liable for the debt if he or she had previously informed the other contracting party of his or her unwillingness to be bound.

Section 414 of the CCQ states the following:

Marriage entails the establishment of a family patrimony consisting of certain property of the spouses regardless of which of them holds a right of ownership in that property.

Those CCQ provisions describing the “family unit” are also reflected in provisions on divorce and death, as follows:

Section 416 of the CCQ says this:

In the event of separation from bed and board, or the dissolution or nullity of a marriage, the value of the family patrimony of the spouses, after deducting the debts contracted for the acquisition, improvement, maintenance or preservation of the property composing it, is equally divided between the spouses or between the surviving spouse and the heirs, as the case may be. [...]

Section 653 of the CCQ states the following:

Unless otherwise provided by testamentary provisions, a succession devolves to the surviving married or civil union spouse and relatives of the deceased, in the order and according to the rules provided in this Title. [...]

The following provisions, from Section 521.6 of the CCQ, also apply to civil union spouses:

The spouses in a civil union have the same rights and obligations.

They owe each other respect, fidelity succour and assistance.

They are bound to share a community of life.

The effects of the civil union as regards the direction of the family, the exercise of parental authority, contribution towards expenses, the family residence, the family patrimony and the compensatory allowance are the same as the effects of marriage, with the necessary modifications.

Whatever their civil union regime, the spouses may not derogate from the provisions of this article.

It is clear that the CCQ establishes that spouses occupy a special, inter-connected role in each other’s life which distinguishes them substantially from other “persons other than debtors.”

This is further supported by a 2015 Québec Government report titled “Pour un droit de la famille adapté aux nouvelles réalités conjugales et familiales,” which takes a deep dive into the “financial interdependence” between spouses.

Creditors have long accepted and planned in accordance with the financial interdependence that exists between spouses: there is a reason why banks ask loan and credit card applicants for marital status, household income, and household debt information. Debtors may only qualify for a certain credit card if they meet the requirement of a specified household income level.

When two people live together, both assume responsibility for and contribute to the household. Without such “joint endeavour” contributions, a person whose spouse becomes disabled or critically ill may be left in a position where, due to the absence of financial or other contributions from the disabled or critically ill spouse, he/she may not be able to repay debt(s). This is not only about the debts which one spouse may have assumed for the family, but also about other mutually assumed debts that need to be repaid. Such debt repayments rely on the contributions of both spouses. As such, a strong financial interdependence exists between spouses.

This argument is supported by the fact that it is recognized in law that a person who is no longer married to, or who does not live with, his/her ex-spouse or ex-de facto (common law) spouse has a pecuniary interest in the life of that ex-spouse or ex-de facto (common law) spouse from whom he/she receives alimony, which allows that person to apply for insurance coverage on the life of his/her ex-spouse or ex-de facto (common law) spouse to replace the financial support he/she currently receives, in the event of an untimely death of the ex-spouse or ex-de facto (common law) spouse.

Moreover, as set forth in the *CCQ* Section 397, a legally married or civil union spouse in Québec who enters into a contract for the current needs of the family binds his/her spouse for the entirety of the contractual obligations. And a surviving spouse is obliged to assume the debt(s) of his/her deceased spouse (unless the spouse renounces the succession), which confirms the legal reality of financial interdependence between married and civil union spouses.

Currently in Québec, as in most other Canadian provinces, a legally married or civil union spouse has property rights with respect to the family patrimony, which provides one half of the net value of all residences, vehicles, moveables, etc. acquired during the marriage or civil union. Therefore, it is fair and reasonable to argue that a creditor has a pecuniary interest in the life and health of a debtor’s spouse because that spouse, upon partition of the family patrimony which is triggered in the case of death of the debtor spouse, has a right to one half of the net value of the household’s property/assets.

In a similar vein, it is noteworthy that a current marketplace reality in the credit cards business, in Québec as in other parts of Canada, is that many credit cards are issued to a spouse as an “authorized user” rather than as a “co-debtor,” such that the debtor’s spouse is jointly accumulating debt to the creditor while not being contractually obligated to repay the debt to the creditor. Jointly-secured credit cards where both spouses are legally co-debtors are quite rare in the current market. In fact, for certain prestige/elite credit cards, creditors “incentivize” applications for authorized user spousal cards by offering a reduced overall annual fee under that approach, as compared to the spouse having to pay a full annual fee if he/she were to apply for a separate credit card.

Considering this marketplace reality, prohibiting the issuance of creditor’s group insurance protection for losses that might be suffered by a non-debtor spouse, thereby potentially leaving the debtor spouse with no coverage for the jointly accumulated debt, appears to be contrary to consumer protection and the public interest.

Finally, while there is currently no specific legislation in Québec governing a de facto (common law) union, section 61.1 of the Québec *Interpretation Act* includes de facto spouses in the definition of spouse. Additionally, the Québec government is currently contemplating legal reforms to better protect the interests of a de facto couple. In November 2018, Sonia Lebel, Québec’s new Minister of Justice, promised a major reform of the province’s family law within the CAQ’s first mandate, to recognize the economic interdependence between de facto spouses especially where the union has produced children.

Conclusion

Fundamentally, for all of the reasons advanced in this letter, CAFII and its members believe that a creditor does indeed have a pecuniary interest in the life and the health of the spouses of its debtors. The purpose of creditor insurance is to ensure that the debt will continue to be paid in the case of the death, disability, or critical illness of a debtor. The death, disability, or critical illness of any spouse (married, civil union or common law) is of pecuniary interest to a creditor because the debtor will more likely be in a position to continue debt repayment if his/her spouse is healthy and contributing to the household.

We also believe that had Québec's legislators intended Section 76 of the *Regulation Under the Act Respecting Insurance* to limit creditors group insurance to covering only guarantors on loans in addition to the actual debtors, such a limitation would have been explicitly stated. Given that Section 76 does not expressly define "other than debtors" as guarantors only and given the financial interdependence that exists between spouses, the rules of statutory interpretation suggest that Section 76 was not intended to prohibit the offering of creditor's group insurance coverage for non-debtor spouses.

Recognizing that our Association holds a view quite contrary to the AMF's view on this matter, we thank you for your immediate and accommodating response to the requests made in our January 16/19 letter. We are pleased and grateful that

- the AMF has granted an initial one month response deadline extension – to February 28/19 -- to CAFII member recipients of the December 11/18 AMF letter. (As per your request, Mr. Wycks informed all CAFII members immediately of that news; and of your indication that the AMF would be following up with an official communique to recipients of the December 11/18 letter to confirm the one month response deadline extension); and
- you have arranged an initial in-person meeting between CAFII representatives and the relevant AMF staff executives to discuss the December 11/18 letter and CAFII's position on it, on the afternoon of Wednesday, February 6/19 in Montréal.

In that connection, we ask at this time that the current February 28/19 deadline for action plan responses from recipients of the December 11/18 letter be deferred until such time as consultation discussions between the AMF and industry Associations on this matter are concluded. In our view, it does not make sense for affected industry participants to have to respond with an action plan when dialogue with the AMF related to the industry's request for reconsideration is still ongoing.

Thank you for receiving and considering this CAFII formal response to your AMF letter of December 11/18. We look forward to the opportunity to dialogue with you and with relevant AMF staff executive colleagues about this matter at our upcoming meeting in Montréal on Wednesday, February 6/19.

Sincerely,



Martin Boyle
Board Secretary and Chair, Executive Operations Committee

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 American Express, Assurant, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.