

**From:** Craig Anderson [<mailto:CAnderson@clhia.ca>]  
**Sent:** Wednesday, June 13, 2018 2:09 PM  
**To:** [Brendan.wycks@cafii.com](mailto:Brendan.wycks@cafii.com); [keith.martin@cafii.com](mailto:keith.martin@cafii.com)  
**Cc:** Erica M Hiemstra; Kate Walker; Kim Doran  
**Subject:** Saskatchewan Insurance Act

Hi Brendan and Keith

Very nice to see you both again.

Attached is our letter to Roger Sobotkiewicz on the issues we have remaining with the new Insurance Act and regulation. Jan replied advising they are looking at our issues and will respond.

Any support you could provide on these issues would be most appreciated.

If you have any questions on the issues raised please reach out to either Kate or me at your convenience.

Thanks

**Craig Anderson**  
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June 5, 2018

Via email to: roger.sobotkiewicz@gov.sk.ca

Mr. Roger Sobotkiewicz  
Superintendent of Insurance  
Chair and CEO  
Financial and Consumer Affairs Authority  
601-1919 Saskatchewan Drive  
Regina, Saskatchewan  
S4P 4H2

**Re: The Insurance Act and Regulation**

The Canadian life and health industry has provided written<sup>1</sup> and verbal commentary on the pending Insurance Act and regulation on several occasions. We appreciate the opportunities that we have had to provide comments and the many improvements that have been made to date to the Act and regulation for the benefit of both consumers and the businesses that are subject to the legislation.

The CLHIA represents life and health insurers accounting for 99% of the life and health insurance business in Canada. The industry is a significant economic and social contributor in Saskatchewan. Employing nearly 4,000 people in the province, the industry provides a wide range of financial protection and income security products to help 900,000 Saskatchewan residents safeguard themselves and their families against the financial risks that can come with life situations such as illness, retirement and premature death. In 2016, Saskatchewan residents received \$2.2 billion in benefit payments. In addition, the industry has \$20 billion invested in Saskatchewan's economy. A large majority of life and health insurance providers that carry on business in Canada are licensed to operate in Saskatchewan, with three being headquartered in the province.

We are writing today however, because we still have some very serious unresolved issues with respect to several provisions of the Act as they are currently written. Our concerns relate to a number of issues in the Act and regulations that will be costly to implement without proportionate benefit to consumers.

Indeed, some provisions might also have the unintended consequence of confusing consumers rather than helping them.

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<sup>1</sup> See our letters dated Feb. 18, 2015, Apr 7, 2016, and Dec. 9, 2016

The issues which remain, all of which are detailed in the attached Appendix, include:

- 1) Insurer's Representatives as currently defined could mean thousands of employees, primarily outside of Saskatchewan, who are not engaged in the selling of insurance would now need to be licensed;
- 2) Insurers' contact information for correspondence and some advertising requires a Saskatchewan address and a Saskatchewan telephone number that will result in consumers being initially directed away from the locations established by insurers to assist them, resulting in delay, upset and confusion;
- 3) Insurers are required to keep physical records in Saskatchewan even though most, if not all, of those records are either in an electronic format and/or are stored at insurers' head offices located in other provinces;
- 4) Requirements for notice of insurance to Insured Person are unclear, very costly to administer and, most importantly, will confuse and impose a burden on consumers; and
- 5) The industry requires clear transition rules for many of the new requirements well in advance of the proclamation of the Act.

We have set out a detailed explanation of our concerns, the sections of the Act to which they relate and suggested steps that we recommend be taken to address each issue in the Appendix to this letter. This Appendix includes the five issues mentioned above as well as ten others, all of which are important to our industry. We strongly urge that the Act, wherever possible, be aligned with the insurance legislation of other provinces that have updated their legislation so that provincial insurance legislation may be harmonized across Canada, to the greatest extent possible.

Our primary and most urgent concern at this time though, is that in the absence of addressing these issues our members will have great difficulty in complying with the provisions of the new Act and regulation by January 1, 2019. We are therefore writing to respectfully request that Saskatchewan delay proclamation of the Act until further direction and clarity can be provided to our industry and to allow us time to fully comply with the required changes. This will greatly assist us in making a transition that is seamless and effective for consumers.

We feel strongly about the need to address these important concerns and would like to meet with you and your staff in person to discuss these matters in more detail.

Yours very truly,

*"Craig Anderson"*

Vice President and General Counsel

**APPENDIX**  
**THE INSURANCE ACT**  
**UNRESOLVED ISSUES**

**1) Section 1-2 and 5-5(1) & (2), The Insurance Act**

**Section 5-2(1) The Insurance Regulations - Insurer's Representatives (Definition)**

The combination of the definitions of Insurer's Representative and Insurance Agent under the Act are so broadly worded that they will, in their present form, arguably require numerous employees of insurers who do not have any direct involvement with the sale of insurance to be licensed at significant cost. These costs will, ultimately, increase the cost of insurance to consumers. The exemption under the Regulations, while helpful, may not completely resolve this issue because it arguably is not broad enough to exclude all employees who have no identifiable need to be licensed. This issue is also of concern with respect to employees of third party administrators where insurers outsource clerical and administrative functions.

It is our view that the focus for licensing requirements should be on those individuals who are engaged in the sale and negotiation of insurance. If employees are not involved in the sale or negotiation of insurance (such as an employee who prints and mails an insurance policy to a consumer), then there should be no need to license them.

Ideally these sections should be amended; or alternatively, they should be clarified through regulation in a manner that is similar to British Columbia's [\*Financial Institutions Act\*](#) - Insurance Licensing Exemptions Regulation which, among other exemptions to insurance licensing, contains an exemption for "a person who is an employee of an insurer or insurance agent if the employee does not solicit insurance, is paid a salary by the insurer or insurance agent and does mainly clerical work".

It is not clear what specific risks are being addressed by the provisions as they are currently written, but the resulting cost and burden of the extra level of licensing to the industry will be greatly disproportionate to any intended protection.

**2) Section 7-11, The Insurance Act**

**Section 7-2(1) The Insurance Regulations - Insurer's Contact Information**

This section of the Act requires extra-provincial insurers to include both the address and telephone number of their head office as well as the address and telephone number of their chief office in Saskatchewan, on certain documentation. However, many life and health insurers do not actually have an office or phone number in Saskatchewan where employees are present that can assist consumers. As detailed below, we therefore request an exemption from this requirement for life and health insurers who provide their contact information (e.g. toll-free number and website) on the relevant documents.

The Regulations do provide an exception to these requirements for advertising or general correspondence in Saskatchewan which involve either campaigns that include other regions as well as Saskatchewan and are not targeted specifically to residents of Saskatchewan. However, they do not go far enough to reduce the considerable burden these requirements impose.

These requirements, in their present form, are impractical if Saskatchewan consumers are seeking assistance, will be costly to comply with and will cause more confusion than help for Saskatchewan consumers. The reasons for this are:

- most insurers who are licensed in Saskatchewan do not have any physical presence in the province other than an office for service through an agent physically located in Saskatchewan, as required under section 10-25 of the new Act. These insurers have offices physically located in other provinces which provide

- customer service to Saskatchewan consumers and to which concerns should be directed so that they may be dealt with as expeditiously as possible. Directing consumers to these section 10-25 agent offices will not assist consumers and only delay their contact with those persons who can assist them with their questions;
- requiring a Saskatchewan address to be included on a group policy could cause confusion for plan members because in addition to the point above, members insured under a single group policy may reside in Saskatchewan or in another province or territory across Canada. Including a Saskatchewan address in addition to the proper office to provide assistance will cause plan members both within and outside Saskatchewan to contact an office that will only be able to redirect them; and,
- it would be impractical and costly to insurers, and potentially confusing to consumers, to include multiple street addresses and phone numbers in the various types of documentation that would be unique to Saskatchewan and not used in any other provinces or territories.

It is a reality of today's business world and the experience of our industry that consumers are primarily communicating through the internet and/or through customer service centers by telephone through a toll-free number. Recognizing this, insurers already clearly communicate how to be contacted through a website address and toll-free telephone numbers so they can effectively and expeditiously respond to their customers' questions and concerns. Providing a physical address within the Province of Saskatchewan is unlikely to be of any benefit and will lead to confusion and delay in providing customer service for Saskatchewan residents.

Ideally this section should be amended or clarified through regulation in a manner that is similar to section 91 of British Columbia's [\*Financial Institutions Act\*](#) which requires insurers to clearly state "its identity" on certain documents or section 508 of the Alberta's [\*Insurance Act\*](#), which requires the conspicuous disclosure of an insurers name on all advertising, correspondence, contracts of insurance and policies. This would meet Saskatchewan's policy objectives and align with existing requirements in other provinces.

### **3) Section 2-39 The Insurance Act – Records to be Kept in Saskatchewan or Approved Location**

Under section 2-39, insurers are required to keep physical records in the province or "in any other location that the Superintendent may approve". While section 2-7 of the regulation sets out particulars on records retention, it is silent on whether extra-provincial insurers can maintain the records electronically or at their head office locations where access can be made available to them upon request. We ask that an insurer's head office be specified by regulation as an approved location for records retention in advance of the proclamation date of the Act.

### **4) Section 8-108(2), 8-171(2) The Insurance Act – Notice of Insurance to 3<sup>rd</sup> Party Insured Person**

Under section 8-108(1), individuals who have an insurable interest in their own lives and in the lives of other people, including the individuals' spouse and children, as set out in section 8-108(1), may place insurance on the lives of those other people. Section 8-171(1) creates a similar rule for accident and sickness insurance. How to ensure the person being insured is aware of insurance being placed on their life or health is an issue that we have raised and discussed in the context of section 8-108(2) and 8-171(2).

While very positive changes were made to this section by Sections 15 and 19 of *The Insurance Amendment Act, 2017* (not yet passed) we still are concerned that the sections are too broad in their requirements and they will be redundant in their effect. While we agree that it is generally important that people should know if someone else places insurance on their lives or health, we believe that separate notice is not needed in all cases. We recommend

that a new regulation be created that will set out express exceptions to the notice requirements for insurers in the circumstances specified below.

- Where the insured person has signed the application for insurance, or has otherwise provided the insurer with evidence that they are insurable for the insurance in question
  - in this case, the insured person clearly already knows about the insurance, and has agreed to it
- Where the insured person is a minor, and their parent or guardian has signed the application of insurance on behalf of the minor, or otherwise consented to the insurance
  - in this case, the person who is responsible for the life and health of the minor insured person is aware of the insurance, and has agreed to it
- In group life and health insurance
  - life insurance on anyone other than the group member is typically small unless the member applies for optional life insurance
  - for optional life insurance, the person to be insured must typically provide evidence of insurability and consent to the insurance, before the insurer will issue it
  - group health insurance such as dental, extended health, pharmacy benefits, vision care, etc. does not raise any risk for the insured person
  - currently, insurers do not obtain a separate address for dependents, and don't have any place in their systems to put this information; updating systems to enable insurers to send the letter required under 8-108(2) and 8-171(2) would require significant work at significant cost for little benefit. Insurers cannot reasonably achieve this by January 1, 2019.

Ideally, all the circumstances listed above should be exempted from this provision by a new regulation. Alternatively, we ask that clarification be provided through an Information Bulletin prior to the proclamation of the Act.

## **5) Transition Regulation Required**

The industry requests guidance through a regulation be provided on how the transition is to be made with respect to the application of new provisions on existing insurance contracts, certificates and claims.

If it would be of assistance, we would be pleased to provide you with a full list of the affected sections and recommended transition rules based on our experience with other jurisdictions. Assistance in the form of a transition regulation was provided to the industry by both British Columbia and Alberta when they amended their respective Insurance Acts which was very helpful in identifying sections that only applied to existing contracts when they were to be renewed or replaced. It is worth noting though that in those provinces, the transition provisions of the Acts clearly stated which sections were subject to transition regulations: see Alberta s. 640(1), 697(1) and British Columbia s. 39(1), 94(1).

## **6) Free Look Should not Apply to Group and Creditor's Group Life Insurance Contracts: Request Exception to Act s. 7-21(1) Be Extended in s. 7-5 of The Insurance Regulations**

The new Saskatchewan law gives owners the right to rescind insurance within 10 days of purchasing it. Like the CLHIA Guideline G10, "10-Day Insurance Contract Rescission Right", it exempts group and creditor's group accident & sickness contracts. Unlike the Guideline G10, it does not exempt group and creditor's group life insurance contracts. This appears to have been an oversight, and we presume that Saskatchewan intended to exempt both.

We ask that the exception in the regulation be extended to apply to group life and creditor's group life insurance contracts.

## **7) Notification of Right to Make Complaint: Information Bulletin Required to Clarify s. 7-25 of The Insurance Act**

Section 7-25 requires insurers to notify the insured of their right to make a complaint against the insurer to the OmbudService for Life & Health Insurance within 5 days after denial of a claim or after a "dispute" arises regarding the payment of claim. However, the OmbudService will not address a complaint until the complainant has exhausted the insurer's own internal appeal and complaint process.<sup>2</sup> Also, it's not clear what a "dispute" is in the section.

This section of the Act will create serious implementation challenges to our industry unless an Information Bulletin is released prior to the proclamation of the Act. The bulletin should:

- set out a clear distinction as to which provisions apply to our industry and which apply to property and casualty insurers
- harmonize the rules with other jurisdictions
- clarify how insurers' established complaints procedures should operate in conjunction with section 7-25 (i.e. insurer should not direct the consumer to the OmbudService until the internal complaints/appeal process is complete)
- define and thereby further clarify the term "dispute". We suggest the following definition:

""dispute" means a complaint in relation to a declined claim that has been through an insurer's complaint resolution process and remains unresolved."

## **8) Notice of Statutory Conditions – s. 8-18 of The Insurance Regulations – Missing Words**

This section of the regulation specifies that certain wording must be included in a policy of insurance as follows:

***"Despite any other provision in this contract, this contract is subject to the statutory conditions in The Insurance Act respecting contracts of accident insurance".***

We believe that it was an oversight that the words: "...and sickness" were omitted immediately following the word "accident" in the above provision. (See Alberta section 707, British Columbia section 103, etc.) We request that this section be amended to include the missing words.

## **9) Suspension of Limitation Period – s. 7-23(6) of The Insurance Act**

Saskatchewan's new 7-23 introduces a rule, unique in the common law provinces, that "[d]uring any period of negotiation or settlement discussions between an insurer and an insured with respect to payment of a claim or loss under a contract of insurance... the applicable limitation period is suspended." This new provision suspends the limitation period in certain circumstances. We have several serious concerns with this rule, and for the reasons set out below, request that Saskatchewan pass a regulation stating that this rule does not apply to life or accident and sickness insurance.

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<sup>2</sup> <https://www.olhi.ca/complaints/our-process/>

The problems with the new rule include:

- The circumstances under which the limitation period is suspended are ambiguous and will be difficult to track
- Insurers, consumers and their lawyers will therefore all be at risk, because it will be hard for them to know when the limitation period expires
- It's not clear why (6) requires insurers to give notice to the insured to restart the limitation period, rather than to the claimant as defined in 7-23(1) (e.g. the beneficiary)
  - If the insured is both the owner and the insured person for life insurance, the rule in (6) would require us to track down the estate and give the executor or administrator notice, even though they have no right to the insurance money
  - This is the only way for us to restart the limitation period
- The terms "negotiation" and "settlement" are also not defined so it is unclear at what point the limitation period is suspended
  - There is much greater certainty for other forms of insurance covered under the Act, such as those to which a formal dispute resolution process under 8-11, 8-28 or 8-41 applies
- It also means that insurers will find it difficult to know when the negotiation is over and they must provide notice under section 7-23(6) and 7-23(2)(e) to comply with this subsection.

It is our concern that this rule will result in confusion and increased litigation with respect to uncertainty over limitation periods.

We request that life and accident and sickness insurance be exempted from the scope of this rule by way of a new regulation. Alternatively, in the interim, we ask that an Information Bulletin be issued prior to the proclamation of the Act to provide further clarification on the section and the meaning of the undefined terms.

#### **10) Information Folder for Individual Variable Insurance Contracts (IVICs): Exception be Made for Group Insurance – s. 7-19 of The Insurance Act**

The industry requests that s. 7-19 be amended by regulation to clarify that it only applies to individual insurance and not to group insurance. While many insurers offer segregated funds for both individual investors and for employee-sponsored group savings and pension plans, information folders are only prepared for segregated funds for individual insurance.

CLHIA Guideline G2 requires insurers to prepare an information folder for each individual variable insurance contract. Each information folder is reviewed by a neutral third-party reviewer who confirms that it complies with G2, and the insurer then files the pre-approved information folder with the regulator in each jurisdiction where the IVIC will be offered, together with the reviewer's comfort letter. Before an application for an IVIC is signed, the applicant must receive a true copy of the most recent information folder. In Ontario, this process is required by law, under Ontario Regulation 132/97 ("Variable Insurance Contracts") made under the *Insurance Act*.

There is no similar process or rule anywhere in the common-law provinces for group insurance contracts.

#### **11) Premium Refunds: Reinstate Exception for life insurance – s. 7-5(2)&(3) of The Insurance Act**

It appears that in combining rules from various parts of the existing law into section 7-5(2) and (3), Saskatchewan inadvertently introduced a rule that requires insurers to refund premiums on life insurance calculated on a prorated basis when the insurance is terminated. We request a regulation to clarify that this rule does not apply to life insurance.



Under the current Saskatchewan Insurance Act, there are rules requiring the insurer to refund a pro-rata portion of premiums (or an amount based on this calculation) where fire,<sup>3</sup> auto<sup>4</sup> or accident and sickness<sup>5</sup> insurance is terminated. However, there is no similar rule for life insurance. In fact, in the Liquidation part of the Act, the existing law clearly states that the liquidator should, if possible, set aside assets to pay claims for refunds of unearned premiums for all types of insurance **except** life insurance (see section 413).

Life insurance is not priced for this refund. We therefore request a regulation to clarify that this rule does not apply to life insurance.

#### **12) Amend Definition of “Travel Insurance” sold under a Restricted Licence to Match the definition in Alberta, British Columbia and Manitoba – s. 5-69 of The Insurance Act**

Under section 5-69, “travel insurance” means (a) a policy that provides certain insurance regarding trip cancellation, interruption, or baggage loss or delay, and (b) group insurance against certain other risks. In Alberta, British Columbia and Manitoba, the word “group” is not included in subsection (b) of the definition regarding restricted licensing.<sup>6</sup>

While Saskatchewan is updating its Insurance Act, it would be extremely helpful to harmonize this rule with the other provinces that have restricted insurance agents’ licences.

#### **13) Financing Agreements May Override the Duty of Good Faith Disclosure – s. 7-17(3) of The Insurance Act**

Under section 7-17(3), it appears that creditors will be able to require life and health insurers to amend their insurance contracts. The insurer may need to pay benefits to the creditor even if the owner made a material misrepresentation in the application or, in a more extreme example, murdered the insured person. This appears to be an error as the section in the current law does not apply to life or health insurance. We request that life insurance be exempted from this section by regulation prior to the proclamation of the Act.

#### **14) Electronic Beneficiary Declarations, etc. - Approved Procedures – s. 7-24 of The Insurance Act**

Section 8-4 of The Insurance Act allows records to be provided to an insurer in electronic form. In accordance with section 7-24, such records may include beneficiary declarations provided that, in any given case, the declaration is made by the insured directly to the insurer and “in accordance with procedures approved by the Superintendent”.

We are unaware at this time whether any procedures under section 7-24 are being contemplated. However, as it has done for the Alberta Superintendent of Insurance, the CLHIA would be pleased to offer our assistance in drafting a process document for your review and approval.

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<sup>3</sup> Saskatchewan Insurance Act s. 128, Statutory Condition 5.

<sup>4</sup> Saskatchewan Insurance Act s. 192, Statutory Condition 8.

<sup>5</sup> Saskatchewan Insurance Act s. 234, Statutory Condition 5.

<sup>6</sup> British Columbia “Insurance Licensing Exemptions Regulation” under the *Financial Institutions Act*, s. 1(1) “travel insurance,” Alberta “Classes of Insurance Regulation” under the *Insurance Act*, s. 1(1)(t) “travel insurance,” Manitoba “Insurance Agents and Adjusters Regulation” under the *Insurance Act*, s. 23 “personal travel insurance”.

### **15) Our Support for Section 7-16 of The Insurance Act - Trading in Life Insurance Policies**

We would like to take an opportunity to reinforce our concern that section 7-16 of the Act be proclaimed when the bulk of the Act is. In our letter of April 7, 2016, we detailed our concerns with respect to the addition of any exceptions being made by regulation to the new provision which, once in force, will prohibit the trafficking of life insurance policies in Saskatchewan. We continue to have serious concerns with respect to the significant risks of fraud and abuse that viatical settlements, life settlements and stranger-owned life insurance pose for consumers in the absence of a prohibition against the trading of life insurance policies. In Section 7-16, Saskatchewan will have a strong prohibition against the trafficking of life insurance policies that will protect consumers which should not be delayed pending the drafting of any related regulation.

We strongly support this section being included as part of The Insurance Act being proclaimed into law and request that no exceptions be made by regulation.