

<p>From: Weir, David (FCNB) <david.weir@fcnb.ca> Sent: December-23-21 3:25 PM To: Kate Walker <KWalker@clhia.ca>; Brendan Wycks <brendan.wycks@cafii.com>; Keith Martin <Keith.Martin@cafii.com> Subject: Insurance Act Modernization - Life and Accident and Sickness Parts - Questions for Industry</p> <p>Hello Kate, Brendan, and Keith,</p> <p>I hope that you are all well and safe and will have the chance for some time off over the holidays.</p> <p>I am close to finalizing my recommendations for amending the life and accident and sickness parts of the Insurance Act. I hope to present them to our internal policy review committee in February. However, I have some questions that I was hoping CLHIA and CAFII could assist on. As in the past, it would be great if you could collaborate on the responses.</p> <p>Thank you all very much. Best wishes for a great holiday and a great new year.</p> <p>David</p> <p>Questions for Industry</p>	
<p>1. Section 133 of the NB Act provides that the life part applies to contracts made after July 1, 1962 and subject to subsections (2) and (3) applies to contracts made prior to July 1, 1962. In CLHIA’s comparison document for NS, you indicate that</p> <p>Although Manitoba’s Act doesn’t explicitly address this issue, Ontario, Alberta and British Columbia all introduced regulations for this purpose. See Ontario Insurance Act s. 172(1), Alberta Insurance Act s. 640(1), and British Columbia Insurance Act s. 39(1). We recommend that a transition provision be included in a regulation (see BC Insurance Regulation 108/2015 sections 13-15). This is consistent with other provincial acts. (BC Reg 403/2012)</p>	<p>CLHIA and CAFII Response</p>

Can you elaborate on what you are seeking?	
<p>2. Sask Reg s. 8-11 provides the following:</p> <p>In the case of a contract of creditor’s group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this part applies in determining:</p> <p>(a) the rights and status of the debtor insured’s personal representatives, and any debtor who is jointly liable for the debt with the debtor insured, with respect to claims for payment of insurance money if the debtor insured was resident in the Province at the time the debtor insured became insured; and</p> <p>(b) the rights and obligations of the debtor insured if the debtor insured was resident in the Province at the time the debtor insured became insured.</p> <p>This provision is similar to section 134 of the NB Act (s. 150 of the Manitoba Act), but deals with creditor’s group insurance. We are proposing to include it in our Act, but no other jurisdiction has added it. We are also proposing to add it to the accident and sickness part similar to s. 8-14 of the Sask. Reg. We welcome your thoughts.</p> <p>We note that the new provision does not include “beneficiaries”. Obviously, with Creditor’s Group Insurance the “beneficiary” is the creditor as the purpose of the insurance is to repay a debt. However, is there the possibility that there could be a “beneficiary” in addition to the creditor, specifically if there is somehow a surplus above the debt. If that is the case, we feel “beneficiaries” should be included.</p> <p>We may have asked this previously, but I cannot find a record of it.</p>	
3. in your submission to NS for changes to the accident and sickness part you suggested moving paragraph 224(6)(a) of the Manitoba Insurance Act up to a new paragraph that is equivalent to Manitoba’s 209(2)(e) for a new provision in Nova Scotia’s 72(1) that would read:	

<p>(e) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group life insureds under the replaced contract,</p> <p>(i) whether a designation of a group life insured, a group life insured's personal representative or a beneficiary as a person to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract; and</p> <p>(ii) if such a designation under the replaced contract applies to the replacing contract, the fact that the group life insured should review the existing designation to ensure it reflects the group life insured's current intentions;</p> <p>We intend to do the same for 192(1) of the NB Act.</p> <p>For your submission to NS for changes to the life part, you suggested that NS adopt a new subsection 192(6) that is like Manitoba's subsection 167(6) but without paragraph (a). However, unlike in the A&S part, you did not recommend that they adopt a similar provision to the above proposed 72(1)(e) for the new 179(1)(d) in NS. We assume that this was an oversight and we intend to adopt a similar provision for our updated section 138. Please confirm that this is correct.</p>	
<p>4. FCNB is recommending adopting provisions like Ontario's section 179.1 which would allow a person who believes that their life or health is endangered under a life insurance policy to seek relief from the courts. As recommended, we are not including paragraph 179.1(1)(b) of Ontario.</p> <p>We appreciate that subsection (2) gives the court discretion to determine an appropriate remedy. However, all jurisdictions give two examples of orders that can be made i.e:</p> <ul style="list-style-type: none">• an order that the insurance on that person's life under the contract is terminated in accordance with the terms of the contract other than any terms respecting notice of termination;• an order that the amount of insurance under the contract on the person's life be reduced;	

<p>FCNB proposed to include the following two additional examples:</p> <ul style="list-style-type: none">• an order designating a different beneficiary; and• an order designating a different owner. <p>We accept that these two remedies, like the existing remedies, are captured by the wording “any order [the court] considers just in the circumstances”. We have not intend to narrow that discretion and don’t feel that they would anymore than the existing enumerated remedies. FCNB believes that setting these out will draw parties’ and court’s attention to these potential solutions. These remedies would allow the policy to remain in place at the same value, which may be significant if the insured’s circumstances have changed and they could not receive a new policy, or at least not at the same price. As you point out in your comments to NS, the insured could very well feel endangered by an irrevocable beneficiary. Allowing the court to change the beneficiary could reduce the risk, but the policy could continue at the same value. Likewise, designating a different owner would allow the contract to continue.</p> <p>As indicated, FCNB will be recommending setting out these addition two remedies. We would like industry’s input on the proposed wording.</p>	
<p>5. Further to the above proposal, we intend to recommend adopting a provision like subsection 155.1(5) of the Manitoba Act,</p> <p>155.1(5) An order made under subsection (1) binds any person having an interest in the contract.</p> <p>However, we propose additional wording:</p> <ul style="list-style-type: none">• an order made by the court binds any person having an interest in the contract and, if applicable, discharges the insurer of all liabilities in respect of the contract terminated by the order. <p>We want to ensure that there are no unforeseen consequences from the additional wording.</p>	

<p>6. The life part includes the following provision:</p> <p>Where an insurer fails to disclose, or misrepresents, a fact material to the insurance, the contract is voidable by the insured; but in the absence of fraud the contract is not, by reason of such a failure or misrepresentation, voidable after the contract has been in effect for two years.</p> <p>We note that several jurisdictions have eliminated this. Those that have maintained it (Manitoba and Ontario) do not have an equivalent provision in the updated accident and sickness parts in their Acts? Do you recommend removing it for the NB Act?</p>	
<p>7. As per our previous discussions, we are proposing a new provision similar to Manitoba’s subsection 174(2).</p> <p>Despite subsection 168(1), if a beneficiary is designated irrevocably and has not consented as described in clause (1)(b), the insured may exercise any rights in respect of the contract that are prescribed by regulation.</p> <p>However, as per your advice, we are recommending to incorporate what is in BC’s s. 9.1 of Reg. 403/2012. The recommendation is that the provision read as follows:</p> <p>(1) Despite s. 152(1), if a beneficiary is designated irrevocably and has not consented as described in [clause 158(1)(b)], an insured may</p> <ul style="list-style-type: none">• exercise a right under a contract if one or both of the following apply:<ul style="list-style-type: none">○ the exercise of the right is required by law;○ the contract is an exempt policy within the meaning of Part III of the <i>Income Tax Regulations</i> (Canada) and if the insured does not exercise the right the contract will no longer be an exempt policy.• subject to [the next subsection], exercise one or more of the following rights under a contract:	

<div><ul style="list-style-type: none">○ a right relating to any insurance money or benefit to which the irrevocable beneficiary designation does not apply;○ a right to increase the amount of insurance;○ a right to add a new insured, or additional coverage, provisions or benefits to the contract;○ a right to make transfers between accounts or investment options, or to change the type of accounts or investment options;○ a right to assign the insured's rights and duties under the contract;○ a right to add, remove or substitute a revocable contingent beneficiary, if no irrevocable contingent beneficiary is designated;○ a right to add an irrevocable contingent beneficiary, if no irrevocable contingent beneficiary is designated.<ul style="list-style-type: none">● exercise any other rights that are prescribed by regulation.<p>(2) An insured may not exercise a right under [the second paragraph of the previous subsection] if the exercise of the right</p><ul style="list-style-type: none">● reduces the amount of any insurance money or benefit to which the irrevocable beneficiary designation applies, or● results in the cancellation or surrender of<ul style="list-style-type: none">○ the contract, or○ a coverage, provision or benefit of the contract to which the irrevocable beneficiary designation applies.</div>	
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<p>We are proposing to have it added as a stand-alone provision following an updated subsection 158 in our Act. We would like your confirmation that this proposed provision is sufficient and that it is okay to have it as a new stand-alone provision.</p>	
<p>8. We are recommending the adoption of a provision like Alberta’s 672(3):</p> <p style="padding-left: 40px;">If satisfactory evidence is provided to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to the debtor insured or to a debtor who is jointly liable for the debt with the debtor insured.</p> <p>We note that this is somewhat different wording than the other jurisdictions, but agree that it is preferable. However, we note that all jurisdictions say “the insurer <u>may</u> pay the excess ...”. We feel that this should read “the insurer <u>shall</u> ...”. Thoughts? Why would it be discretionary?</p>	
<p>9. We are recommending the adoption of a provision like Manitoba’s subsection 184(3),</p> <p style="padding-left: 40px;">(3) Subject to subsection (5), an action or proceeding against an insurer for the recovery of insurance money not referred to in subsection (1) must be commenced not later than two years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money</p> <p>We were hoping that you could elaborate on what is covered under “insurance money not referred to in subsection (1)”. Subsection (1) is clear in that it is “insurance money payable in the event of a person's death”. We assume subsection (3) includes disability insurance. Are there other types of insurance that would be captured by this provision?</p> <p>There is a similar provision in the proposed A&S part that is the equivalent to Manitoba’s 230.3(3). Can you also comment on that?</p>	
<p>10. We are recommending the adoption of a provision like Manitoba’s subsection 184(4),</p> <p style="padding-left: 40px;">(4) If insurance money is not payable unless a loss or occurrence continues for a period of time specified in the contract, the date of the first instance of the loss or occurrence for the purposes of subsection (3) is deemed to be the first day after the end of that period.</p>	

<p>We were hoping that you could elaborate on what type of insurance is covered by this subsection in light of the wording in the other subsections of 184. Would it include accidental death or dismemberment?</p>	
<p>11. Registered mail - there are several provisions that require notice to be sent by registered mail.</p> <p>Most jurisdictions that have modernized their Acts have maintained this provision. We are interested in allowing more electronic transactions. Do other jurisdictions allow these notices to be sent by electronic means. We are contemplating copying Alberta’s framework as outlined in section 547 and accompanying regulations.</p>	
<p>12. Subsection 198(2) of the A&S part reads:</p> <p>198(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor the premium or part thereof shall be deemed never to have been paid.</p> <p>A similar provision is found in the life part at section 142. This is the same as Manitoba’s section 217.5.</p> <p>Alberta, BC and Saskatchewan removed this from their A&S parts but kept it in their life parts. Can you shed some light on that?</p>	
<p>13. Section 202(1) of the A&S part reads:</p> <p>202(1) An applicant for insurance <u>on his own behalf and on behalf of each person to be insured</u>, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.</p> <p>BC, Manitoba and Sask dropped the use of “on his own behalf and on behalf of each person to be insured”. Alberta and Ontario kept it.</p>	

We were planning to keep it as it makes it more precise, but welcome your thoughts.	
<p>14. Saskatchewan introduced the following:</p> <p>8-204(1) If a contract includes provision for disability benefits to be payable only during confinement of the person insured, the provision does not bind the insured, and the benefits with respect to disability under the contract during the disability are payable regardless of whether the person insured is confined or not.</p> <p>NB’s section 222(2) is similar, but is limited to policies after September 1, 1973. All other jurisdictions besides Saskatchewan reference a starting date. We understand that the date represents when the rules first took effect in each province. However, we are considering following Saskatchewan and dropping the date so that the same rule would apply to a contract issued before that date. That seems fairer to consumers and moves away from what appears to be an antiquated concept. We welcome your thoughts.</p>	
<p>15We are interested in the proposal to change statutory conditions to statutory rules to give the industry greater flexibility to have consistent policies for several provinces. Please elaborate on how you foresee that being accomplished from a legislative point of view.</p>	