

**Agenda Item 4(d)(1)
November 19/19 EOC Meeting**

From: Keith Martin <Keith.Martin@cafii.com>

Sent: Thursday, October 31, 2019 8:37 AM

Subject: CAFII Proposal to Retain a Quebec Lawyer to Challenge the AMF Expectation that In-Force Policies For Non-Debtor Spouses Must Over Time be Cancelled

CAFII Board Members:

Update on Engaging a Quebec Lawyer to Challenge AMF Position on Cancellation of In-Force, Existing Policies

I have now had two detailed conversations with Marc Duquette of Norton Rose, in French with the very helpful engagement of Michele Jenneau of BNC Insurance, and Élyse Lemay of Canada Life, both of whom are very knowledgeable and engaged in this file, and who have added a great deal of value.

Mr. Duquette now has a good understanding of what we are trying to achieve, the approach and tone we wish to emphasize, and the pitfalls we wish to avoid. He has also reviewed the correspondence, submissions, and documents already developed on this file.

Below (beneath my signature block at the end of this email) is a proposal from Mr. Duquette. He proposes to take the lead on this work, and engage his colleague Dominic Dupoy to assist him. **Mr. Duquette estimates the costs for this engagement, before taxes, at \$40K.**

Given the complexity of this file, and the short timelines involved as we are seeking to meet with the AMF well before the 29 November, 2019 deadline for the submission of Action Plans, I recommend to the Board that it accept this quote, with the following provisions:

- The Letter of Engagement is to make clear that this is the upper limit of fees for this engagement, with best efforts to come in at a lower amount if possible;
- Fees include consultation with CAFII Committees, and an in-person presentation by Mr. Duquette (and Associates as appropriate) to the AMF in Montreal or Quebec City.

Next Steps

Please let me know if you agree to proceed on this basis by **Friday, 1 November, end of day**. If you need more time, please let me know.

If the Board instructs me to proceed, I recommend the following next steps:

1. Marc Duquette to prepare a letter of engagement to be signed by him for Norton Rose and by Keith Martin for CAFII;

2. The Board of Directors will be asked to nominate any Quebec-based, French-speaking lawyers from their company who would join Michele Jeanneau, Élyse Lemay, and myself in a small committee to provide feedback and guidance (in French) to Mr. Duquette (***The Quebec Legal Committee***)—***please let me know asap if you would like to nominate someone to join this Committee from your company;***
3. When Mr. Duquette is well-advanced in his work and has a proposed submission (verbal or written) prepared, the group of legal counsel / advisors (***The Legal Counsel and Advisors Committee***) (see list just below) will be convened, along with the ***Quebec Legal Committee***, for a teleconference presentation (in English) by Mr. Duquette to hear his recommendations—***please let me know asap if you would like to nominate someone to join this Committee from your company, especially if you do not already have a representative involved.***

Legal Counsel / Advisors (*The Legal Counsel and Advisors Committee*) Involved in the AMF Spousal Issue—Regarding Retaining a Quebec Lawyer to Challenge the AMF Position on Cancelling Existing, In-Force Policies

<u>Firm</u>	<u>Person</u>
Assurant	Rob Dobbins
Assurant	Brian Wise
Assurant	Cecilia Xiao
BMO Insurance	David D'Amico
BMO Insurance	Martin Boyle
BMO Insurance	Gillian Noble
BMO Insurance	Valerie Quintal
BNC Insurance	Michele Jenneau
Canada Life	Élyse Lemay
CIBC Insurance	Louise Nash
CIBC Insurance	Darren MacLennan
CUMIS	Michele Costello
CUMIS / COOPERATORS	Jennifer Goodstadt
Desjardins	Isabelle Choquette
Desjardins	François Cholette
ScotiaLife Financial	Elizabeth Gandolfi
ScotiaLife Financial	Colin Chisholm

TD Insurance	Kamana Tripathi
TD Insurance	Aleksandar Omaljev

Keith Martin

Co-Executive Director / Co-Directeur général

Canadian Association of Financial Institutions in Insurance

L'association canadienne des institutions financières en assurance

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From: Duquette, Marc <marc.duquette@nortonrosefulbright.com>

Sent: October 30, 2019 4:35 PM

To: Keith Martin <Keith.Martin@cafii.com>

Cc: Jenneau, Michele <Michele.Jenneau@bnc.ca>; Lemay, Élyse (Elyse.Lemay@londonlife.com) <Elyse.Lemay@londonlife.com>; Dupoy, Dominic <dominic.dupoy@nortonrosefulbright.com>

Subject: AMF Cancellation of Spousal Coverage / Opinion sought

Dear Keith,

As previously discussed, we would be glad to prepare an opinion to CAFII examining specific issues arising from the position adopted by the Autorité des marchés financiers (**AMF**) regarding the possibility for credit protection insurers to cancel the existing spousal coverage from non-debtor spouses. Our opinion would focus mainly on the possibility for an insurer to reduce the coverage of group insurance policies without the consent of the affected participants in light of the general principles governing insurance contracts in Quebec and the specific rules provided under the *Insurers Act* and the applicable regulation. The position that we propose to develop would revolve around the following main arguments :

- An interpretation of article 2405 of the *Civil Code of Québec (CCQ)* which takes into account the specific context of group insurance;
- Article 1375 CCQ which provides that the parties to a contract shall govern themselves in good faith at the time the contract is terminated;
- Article 1444 CCQ which provides that a stipulation for the benefit of a third person creates a direct contractual relationship between the third person (i.e. the participant) and the promisor (i.e. the insurer);
- Section 479 of the *Insurance Act* which provides that the AMF may apply to a court to cancel the performance of a contract entered into by an insurer in contravention of the *Insurers Act* if it shows that the cancellation or suspension is in the interest of the holders of insurance contracts underwritten by the insurer and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension;
- Sections 68 to 70 of the *Regulation under the Act respecting insurance*;

- The decision rendered in *Option Consommateurs v. Desjardins Sécurité financière* where the Quebec Superior Court held that the insurance contract in dispute was only affected with relative nullity (which may only be invoked by the affected participant);
- Specific provisions in the relevant insurance contracts providing that the insurers undertake to offer insurance coverage until the contract is terminated or the participant no longer fulfills the applicable conditions;
- Any other arguments that we may identify in the course of our verifications.

We estimate that our fees for the preparation of the opinion would amount to approximately 40,000 \$ (before taxes). We understand that CAFII and its members would like to send the opinion to the AMF before November 29 and that counsel for the insurers may wish to review a draft of the opinion before it is sent. We would thus make sure that a draft opinion is sent to you in advance to allow all parties to review and comment on it. The bulk of the analysis would be conducted by Marc Duquette and Dominic Dupoy. Junior lawyers and articling students may also be involved as appropriate to help reduce the overall costs.

We hope that the above proposition accurately reflects our previous discussions and that it fulfills your needs and expectations. If not, do not hesitate to contact us to discuss the issue further.

Yours truly,

Marc

Marc Duquette

Associé principal

Senior Partner

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