

November 12, 2019

Privileged and Confidential

Sent By E-mail

**CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS
IN INSURANCE**

411 Richmond Street East, Suite 200
Toronto (Ontario)
M5A 3S5

**Attention: Keith Martin
Co-Executive Director**

Dear Keith:

Letter of Engagement / Opinion on cancellation of Spousal Coverage in Quebec

Thank you for engaging Norton Rose Fulbright Canada LLP to act as legal counsel to The Canadian Association of Financial institutions in Insurance (CAFII) in connection with the preparation of an opinion to CAFII examining certain legal and regulatory issues arising from the position adopted by the Autorité des marchés financiers du Québec (AMF) which requires credit protection insurers to cancel the existing spousal coverage of a non-debtor spouse if the creditor cannot demonstrate its having a pecuniary interest in the life and/or health of the non-debtor spouse to the AMF's satisfaction.

We are pleased to work with CAFII on the terms in this engagement letter, including the Norton Rose Fulbright Standard Terms of Engagement which are reproduced in the appendix. If there is any inconsistency between this engagement letter and the Standard Terms, this engagement letter will prevail. You and we may agree to changes in these terms by confirming our agreement in writing.

About Norton Rose Fulbright Canada LLP

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada, with places of business in Calgary, Toronto, Ottawa, Montreal, Québec and Vancouver, and is subject to the laws and professional regulations of the jurisdictions in which it operates.

Client

The client for whom we are engaged to act in this matter, and to whom our duties arising from this engagement are owed, is CAFII. We are not acting for any other related entities or individuals such as CAFII's directors and officers, employees or partners, or any of its parent, affiliated or subsidiary corporations. We understand that the opinion is also for the benefit of, and may be shared with, CAFII members who may be affected by the above position of the AMF. We have disclosed that to you, and you are aware that, several of CAFII's members are also clients of NRFC, but that the opinion, while addressing the potential consequences on CAFII members in general, will not analyse the specific position of any particular member as it may be affected in particular by the position of the AMF.

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NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

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Marc Duquette
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marc.duquette@nortonrosefulbright.com

Your reference

Our reference

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Scope of Engagement and Instructions

We are engaged to do the following: the preparation of an opinion to CAFII examining certain legal and regulatory issues arising from the position adopted by the AMF which requires credit protection insurers to cancel the existing spousal coverage of a non-debtor spouse if the creditor cannot demonstrate its having a pecuniary interest in the life and/or health of the non-debtor spouse to the AMF's satisfaction.

Our opinion will focus mainly on the possibility for an insurer to reduce the coverage of group insurance policies without the consent of the policyholder and/or 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 with respect to compulsory clauses within a group insurance contract;
- 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.

Please do not assume we will be undertaking other tasks unless they are set out in subsequent correspondence between us. We are authorized to act for CAFII in this engagement on the instructions of Mr. Keith Martin or such other person who has apparent authority, unless you advise us otherwise.

Instructions, especially those communicated by email, can be subject to delays and non-delivery over which we may have limited or no control. CAFII must accordingly ensure, by confirming with us, that we have received and acknowledged all instructions provided.

We will use our best efforts to represent CAFII to its full satisfaction and consistent with our ethical and professional obligations. This depends on you providing us with full instructions at all times during the matter. Written instructions are preferred. Please do not assume we know certain facts: we will be relying on the circumstances, facts and information that you provide to us. Therefore, it is very important that you inform us promptly of all

changes in circumstances, facts and information that may have a bearing on the matters on which we are assisting CAFII. It is understood that CAFII will not be relying on Norton Rose Fulbright Canada LLP for non-legal advice such as business, investment or accounting advice, or to assess the character or creditworthiness of persons with whom CAFII may deal.

Responsible Lawyer

The lawyer responsible for this engagement is the undersigned, Marc Duquette.

Staffing

I will provide or supervise the provision of services to CAFII and report to you regularly. Dominic Dupoy and ● are the members of the Firm who will primarily assist me. Our approach is to draw on the best resources the Firm has to offer for CAFII's benefit. In engagements where we are asked to come to a view on important legal questions or difficult questions of strategy or tactics, we will often consult with some of our senior colleagues. If it is appropriate to do so, I will from time to time involve one or more other members of Norton Rose Fulbright Canada LLP (including other partners, associates, articling students or legal assistants). Our legal assistants include law clerks, law students, research librarians and technical specialists.

Legal Fees

Legal fees will be based on the hourly rates generally charged for those involved, as adjusted over the period of the engagement.

Time is recorded in increments of one-tenth of an hour (minimum units of 6 minutes). My billing rate is currently \$ 850 per hour. Currently, the hourly billing rates for the other members of the Firm who will be involved in this engagement are:

Dominic Dupoy	\$ 455 per hour
Caroline Bélair	\$ 305 per hour

You have indicated that our fees for the preparation of the opinion should not exceed 40,000 \$ (before taxes). We will use our best efforts to deliver the opinion for a lower amount, if possible. The above fees include consultation with CAFII's Quebec Legal Committee and / or Legal Counsel and Advisors Committee, as indicated by CAFII, and an in-person presentation by our Marc Duquette (and other NRFC colleagues, as and if appropriate) to representatives of the AMF at their Montreal or Quebec City offices, to present and discuss the conclusions of the opinion.

To our knowledge, these assumptions are realistic, based *inter alia* on the assumptions that the consultations with CAFII's Committees will consist in one consultation each and will not require extensive changes to the draft opinion, that the opinion will be completed prior to the deadline for CAFII's response set by the AMF (November 29, 2019) and that we will be called upon to participate in only one meeting or conference call with the AMF. Should we become aware of a material variation in the underlying assumptions requiring additional services on our part, we will discuss with you an appropriate fee for that work.

Costs and Expenses

Costs and expenses incurred by us in connection with the engagement (including any disbursements) will be billed

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in addition to our legal fees.

Billing Arrangements and Payment

Our statements of account for fees and costs and expenses will be sent to CAFII monthly (and at the closing of the Retainer) and are payable on receipt. Interest is charged on amounts outstanding greater than 30 days, at a rate in accordance with lawyer professional/ethical rules.

Electronic Communications

We make no warranty with respect to the security of electronic or digital communication between us and, unless CAFII indicates otherwise, you consent to our exchange of electronic communications, including confidential documents, unencrypted. We are able to set up more secure email links on an individual basis; please contact us if CAFII would like to explore this further.

Conflicts and Confidentiality

Conflict searches: We have conducted a review of our records and we confirm that we have not identified a legal conflict of interest in representing CAFII in this matter. We searched your name as well as the following names that you have provided to us as being relevant: The Canadian Association of Financial institutions in Insurance. Please let us know immediately if there are any other names that we should search in connection with this matter or if there are any changes or additions to these names in the future. We are relying on you to let us know of any other parties who become involved in this matter, including those whose interests may be adverse to CAFII's.

Confidentiality: The rules of professional conduct under which we practice require us to preserve the confidences of our clients. This obligation continues after the completion of an engagement. Because we owe this duty to all of our clients, we will not disclose to CAFII information we hold in confidence for others (even where such confidential information would be relevant to our representation of CAFII) or disclose to others information we hold in confidence for CAFII and its members (even where such confidential information may be relevant to our representation of those others).

Acting adverse to you after you are no longer a client: In accordance with applicable lawyer professional/ethical rules, after you are no longer a client, we are entitled to represent other clients whose interests may be directly adverse to yours, provided that: (i) the other matter is not the same as or related to the matter in which we previously represented CAFII; and (ii) we protect CAFII's relevant confidential information and the relevant confidential information of its members. CAFII acknowledges that the timely establishment of an ethical screen will be sufficient protection of the confidentiality of such information.

Acting adverse to you while you are a client: Under lawyer professional/ethical rules, while you are a client, we may not be permitted to act for another client in an engagement that is directly adverse to your immediate interests unless you have agreed to a waiver.

Our acceptance of this engagement is on the basis that you agree to this waiver. In particular, you agree that we may represent current or future clients (including any parties adverse to you in this matter) in any matters that are not substantially related to this matter, even if the interests of such clients in the other matters are directly adverse to you. We agree however that your consent does not permit us to represent another client in a matter if we have obtained non-public proprietary or other confidential information from you that could be used by the other client to your material disadvantage in that matter, unless we take timely and adequate steps to protect your confidential information.

November 12, 2019

 **NORTON ROSE FULBRIGHT**

External advisors and other professionals

If we select or instruct, on your behalf, external advisors and other professionals such as, but not limited to, external counsel, correspondent lawyers and experts, we are accountable only for using reasonable care in our selection of and instructions given to such advisors and other professionals, and we are not responsible for the advice given or services provided by, or default of, such persons.

Governing Laws and Jurisdiction

This agreement shall be governed by and construed in accordance with the laws in force in the Province of Quebec and the federal laws of Canada applicable therein, including all matters of construction, validity and performance, and it shall be treated in all respects as a contract in the Province of Quebec. For any disputes arising out of or relating to this agreement, including any question regarding its existence, validity or termination, the parties shall submit to the exclusive jurisdiction of the courts of competent jurisdiction in the Province of Quebec, Canada.

Acceptance

Please confirm your agreement with the terms in this letter (including the Norton Rose Fulbright Standard Terms of Engagement) by signing and returning this engagement confirmation (a copy of which should be retained for your records). If, after having received this letter, you instruct us to begin work on the Retainer prior to you returning a signed copy of this letter to us, this letter will govern the terms of our engagement.

This letter of agreement has been drafted in English at the express request of the parties. [Cette lettre d'engagement a été rédigée en anglais à la demande expresse des parties.]

I appreciate the confidence you have expressed in Norton Rose Fulbright Canada LLP by engaging us, and look forward to working with you. If at any time you have questions or concerns about our services, please discuss them with me, our Managing Partner or with any other partner of our firm.

Yours very truly,



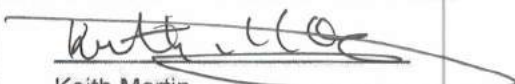
Marc Duquette
Senior Partner

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Enclosure

Agreed and accepted on behalf of The Canadian Association of Financial institutions in Insurance.

Date: November 13, 2019

By: 
Keith Martin
Co-Executive Director

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