

Agenda Item 5(a)
March 30/21 EOC Meeting

New Brunswick's "An Act To Amend The Insurance Act," Tabled March 17/21

From: Brendan Wycks
Sent: March-24-21 9:10 AM
To: Weir, David (FCNB) <david.weir@fcnb.ca>
Cc: Mazerolle, Angela (FCNB) <angela.mazerolle@fcnb.ca>; Sutherland Green, Jennifer (FCNB) <jennifer.SutherlandGreen@fcnb.ca>; Keith Martin <Keith.Martin@cafii.com>; Albert Lin <albert.lin@cafii.com>
Subject: RE: Act to Amend the Insurance Act

Thanks very much, David, for your timely and helpful responses below.

We'll get back to you next week, after our March 30 EOC meeting, on your kind offer of a virtual meeting sometime within the next few weeks.

Best regards,

Brendan Wycks, BA, MBA, CAE

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From: Weir, David (FCNB) <david.weir@fcnb.ca>
Sent: March-24-21 8:43 AM
To: Brendan Wycks <brendan.wycks@cafii.com>
Cc: Mazerolle, Angela (FCNB) <angela.mazerolle@fcnb.ca>; Sutherland Green, Jennifer (FCNB) <jennifer.SutherlandGreen@fcnb.ca>; Keith Martin <Keith.Martin@cafii.com>
Subject: RE: Act to Amend the Insurance Act

Hi Brendan,

Nice to hear from you and thank you for the congratulations. It is a definite milestone in a project that has been a lot of work. I hope that you and your colleagues at CAFII are doing well.

Please see my responses below, **in red font**. I trust that you will find the information helpful.

David Weir

From: Brendan Wycks <brendan.wycks@cafii.com>
Sent: Tuesday, March 23, 2021 5:50 PM
To: Weir, David (FCNB) <david.weir@fcnb.ca>
Cc: Mazerolle, Angela (FCNB) <angela.mazerolle@fcnb.ca>; Sutherland Green, Jennifer (FCNB) <jennifer.SutherlandGreen@fcnb.ca>; Haines, Catherine (FCNB) <Catherine.Haines@fcnb.ca>; Keith Martin <Keith.Martin@cafii.com>
Subject: RE: Act to Amend the Insurance Act

Hello, David and thanks very much for including CAFII as a key stakeholder in your major announcement of March 17/21, on behalf of FCNB, below.

Kudos and congratulations to you and your FCNB colleagues for advancing the vitally important Insurance Act Rewrite modernization initiative to the point where legislation to amend the province's Insurance Act has been tabled and is at the First Reading stage.

CAFII has two key follow-up questions for you at this time:

- with respect to the new Rule that will be forthcoming from the Commission later in 2021, will you be holding a public/industry consultation on the proposed contents of the new Rule (i.e. on an advanced/refined draft of the Rule)?; and

The Commission practice is to post a proposed Rule for 60 days to allow for stakeholder comment. As you may recall, we had done this for our proposed Rule for fee changes several years ago. The Rule will have significant details for the insurance intermediary licensing framework. If there are issues that we need feedback on prior to the posting, we will reach out to targeted stakeholders as required.

- with respect to any new measures/compliance requirements that are introduced in either the amended Insurance Act or the new Rule which will have IT systems change and/or consumer notification implications for industry players, will there be a reasonable transition period allowed prior to the "in force date" of any new measure or requirement? As you may recall, CAFII always requests a transition period of 12 to 18 months whenever changes are introduced which have IT systems change implications.

As you can appreciate, the Commission has been seeking to update our intermediary framework for a long time. Therefore, we feel that it important to not delay introducing the changes too long. However, we appreciate that some stakeholders may require some lead up time before implementation.

We feel that many of the changes that are in the Act or will be in the Rules with respect to intermediary licensing are matters that have already been discussed in the several consultation papers that the Commission had published.

Although there are some changes to the proposals based on feedback from the consultation, the essence of the proposals is intact. Also, many of the proposals mirror what is already in place in some other jurisdictions. Given that the Bill has been introduced, we are hopeful that industry will be looking into what, if any, IT changes will be required. Are there any specific matters that cause CAFII particular concern in this regard?

Given our Association's highly relevant expertise and experience in the area of restricted insurance representative licensing regimes, we are very keen to have a consultation opportunity -- including a face-to-face or virtual meeting with you and/or other FCNB colleagues -- to provide feedback on "the details of the restricted insurance representative licence and the various consumer protections specific to the licence" which you've indicated will be in the new Rule.

As I'm sure you can appreciate, CAFII's view is that when it comes to introducing such a new licensing regime in New Brunswick, the details will be critically important to its efficient and effective functioning; and, in an apt phrase, "the devil will be in the details."

As indicated, we will be publishing our proposed Rule for 60 days comment. The Rule will have the details of the restricted insurance representative framework. However, I would welcome discussions with CAFII on any thoughts that you may have about our proposals beyond the feedback that CAFII had provided in your response to our consultation paper. Perhaps we can set up a virtual meeting in a few weeks.

As there is a CAFII Executive Operations Committee virtual meeting coming up on the afternoon of Tuesday, March 30/21, we'd appreciate hearing back from you on our follow-up questions before then, David.

Best regards and stay safe,

Brendan Wycks, BA, MBA, CAE

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From: Weir, David (FCNB) <david.weir@fcnb.ca>
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Subject: Act to Amend the Insurance Act

Dear stakeholder,

As you may be aware, today the Minister of Finance and Treasury Board introduced a Bill seeking to amend the New Brunswick *Insurance Act*. The Bill is not posted yet, but should be later today or tomorrow on this page - <https://www.gnb.ca/legis/bill/FILE/60/1/Bill-33-e.htm>

The primary purpose of this Bill is to update our intermediary licensing frameworks. This is a two stage process as some of the proposals for modernizing the intermediary licensing framework will be in the amended Act and other parts will be in a new Rule that will be forthcoming from the Commission later in the year.

As one of our key stakeholders, below you will find highlights of some of the changes found in the Bill:

- **Rule-Making Authority** – As alluded to above, the Bill will provide the Financial and Consumer Services Commission with concurrent authority to make rules on various matters within the Commission's regulatory mandate. Rules are similar to regulations passed by government and must be approved by the Minister. The ability to make Rules provides greater flexibility to deal dynamically with an ever-changing insurance marketplace. While the Bill introduces many changes respecting licensing of intermediaries, many of the details of the licensing framework will be in the Rule. The intent is that the Rule will incorporate and update many things that are currently in various regulations (e.g., licensing levels, qualifications and market conduct matters) and provide specific details on other licences that are being introduced (adjusting firms, agencies, managing general agents and restricted licences).
Most of these items had previously been raised in consultation papers issued by the Commission on various topics. The Bill also proposes to repeal some provisions in the Act. The intent is to move some of these to the new Rule. This includes certain exemptions to licensing requirements currently found in the Act and the requirements related to trust accounts. Other antiquated provisions are being eliminated. When the draft Rule is complete, the Commission will publish it for comment and then make any necessary changes to finalize the Rule.

With respect to licensing, the Bill includes the following changes:

- **Eliminating Distinct Non-Resident Licence** – New Brunswick currently has a distinct non-resident broker licence for general insurance. Eliminating it means that all licence holders carrying out similar activities will hold the same licence and be subject to the same qualifications and responsibilities. The Rule will allow for equivalences for non-residents.

- *Eliminating Agent/Broker Distinction for licensing purposes* - The Bill proposes merging agents and brokers for licensing purposes for general insurance with a new definition of “agent” that captures both. Again, this will ensure that all licence holders carrying out similar activities will hold the same licence and be subject to the same qualifications and responsibilities. The Bill protects brokers and consumers by placing restrictions on who can hold themselves out as a “broker or brokerage”. The specific classes and levels of agent licences will be in the Rule.
- *Prohibiting the use of unlicensed individuals or businesses* – Although the Act currently prohibits individuals from acting as an intermediary without a licence, the Bill introduces a clear prohibition against an insurer or others allowing individuals or businesses to act on their behalf if the individual or business is not licensed or otherwise authorized or exempted.
- *Licensing Corporations, Partnerships and Sole Proprietorships* – The Bill introduces licensing of adjusting firms and agencies (which includes brokerages). The Bill also introduces licensing for managing general agencies (MGAs) and third-party administrators (TPAs) to clearly bring them within the Commission’s regulatory authority.
- *Licensing for Incidental Sales of Insurance* – The Bill introduces authority for the Superintendent to issue a restricted insurance representative licence to certain individuals and businesses that sell insurance incidentally to the sale of other products or the provision of services (e.g., life insurance on a mortgage). The details of the restricted insurance representative licence and the various consumer protections specific to the licence will be in the Rule.
- *Insurance with Unlicensed Insurers Through Special Insurance Brokers* – The Bill will expand the types of insurance that can be obtained from an unlicensed insurer beyond just fire and marine insurance. The amendments will allow all lines of insurance other than automobile, life and accident and sickness to be arranged through a special insurance broker. This allows insureds with hard to place risks to go outside New Brunswick or even Canada.

The Commission also recommends requiring the special broker to advise a consumer of certain risks about purchasing insurance through an unlicensed insurer.

- *Elimination of Damage Appraiser Licence* – The Bill will eliminate licensing of damage appraisers (New Brunswick is the only province that currently licenses damage appraisers). However, the Bill maintains regulatory oversight of individuals engaged in damage appraising. In particular, an insurer or adjusting firm allowing a damage appraiser to act on its behalf must ensure that the damage appraiser is properly qualified and must provide oversight. The Superintendent will also have the authority to prohibit an individual from acting as a damage appraiser if the person is not suitable.

Other changes include:

- Eliminating the Requirement on Insurer to File Notice or Process – This requirement does not provide a lot of information on industry practices or trends to the Commission. Reviewing court decisions and accessing insurers' annual market conduct statements provide better information to help understand what is happening in the marketplace. Eliminating the requirement would remove an unnecessary burden on insurers.
- Allowing for Diagnostic and Treatment Protocols – The amendments provide authority to introduce diagnostic and treatment protocols for motor vehicle accident victims who suffer a common collision injury. The over-riding objective of the protocols is to ensure that people who are injured in collisions receive fast and effective treatment to support their recovery. This would be accomplished by regulation, but the Act needs to be amended to include regulation-making authority to enable the adoption of the protocols.

While some of the changes will be coming into effect as soon as the Bill receives Royal Assent, several provisions will come into effect at a later date (on proclamation). This will allow time for the Rule to be finalized and for the Commission's systems to be updated.

I trust that you will find this information helpful. Although you are free to discuss the subject matter with others in your organization, I would ask that you keep it within your organization. If you have any comments or questions, please do not hesitate to contact me.

Best regards,

David Weir

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Financial and Consumer Services Commission
Commission des services financiers et services aux consommateurs