

16 January, 2018

M. Raymond Bernier
Chair, Committee on Public Finance
National Assembly of Québec
c/o Clerk of the Committee, M. Mathew Lagacé
Édifice Pamphile-Le May
1035, rue des Parlementaires
3e étage, Bureau 3.15
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Re: Québec Bills 141 and 150

Dear M. Bernier:

The Canadian Association of Financial Institutions in Insurance (CAFII) appreciates the opportunity to provide the National Assembly's Committee on Public Finance with feedback and comments on Bill 141 – *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* -- and Bill 150 – *An Act respecting mainly the implementation of certain provisions of the Budget Speeches of 17 March 2016 and 28 March 2017* -- which were recently tabled by the Ministry of Finance.

For Committee members who may not be familiar with CAFII/ACIFA, an "About CAFII" overview is provided as an addendum to this letter.

First, CAFII congratulates the Honourable Carlos Leitão and his Ministry of Finance colleagues for tabling Bills 141 and 150, as we believe that this legislation will bring about a much-needed modernization of the province's financial services sector, including insurance.

For example, we strongly support section 484 of Bill 141 that amends section 70 of *An Act Respecting the Distribution of Financial Products and Services (ARDFPS)* which will bring about an important modernization of the regulatory framework by allowing a firm to offer insurance without necessarily having a certified representative involved in the process. This is a very favourable change for consumer choice and for the ability of CAFII members and other industry players to meet consumers' demand for such choice.

While our Association supports the overall thrust of Bills 141 and 150, we do have concerns about the particular language used in certain clauses of the two Bills. Because our members utilize alternate distribution channels (i.e. client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet) to provide life and health insurance products to Québécois, we are concerned about the potential for undue restrictions that would impede their ability to do so. There are ambiguous and unclear provisions in both Bill 141 and Bill 150 that could potentially be interpreted in a manner that results in unintended limitations or restrictions on the ability to sell insurance directly to consumers.

In that connection, our Association is strongly opposed to the *Association professionnelle des conseillers en services financiers (APCSF)*'s self-serving recommendation that the Quebec government should require distributors to place a prominent warning on their websites about the risks of acquiring an insurance product without the advice of a registered professional.

Online Insurance Sales through a Distributor

Based on our legal counsel's analysis of Bill 141 – specifically those clauses that pertain to Sections 408, 426, and 431 of *ARDFPS* – we understand that a distributor will be permitted to sell insurance online **or** through a natural person. CAFII applauds these important clauses of the Bill. It is critical that consumers be able to purchase insurance in the way they desire, including online. Supporting the ability of new technologies and distribution channels to offer insurance options to consumers is critical to the industry staying relevant and current.

However, we would like the National Assembly and/or the Ministry of Finance to confirm this interpretation, as the wording used in the relevant clauses of Bill 141 is somewhat ambiguous.

By way of example, Section 408 of *ARDFPS* currently reads as follows:

“An insurer may, in accordance with this Title (Distribution without representative), offer insurance products through a distributor. A distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client's adhesion in respect of such an insurance product.”

Bill 141 would see this clause modified through the addition of the following sentence (Clause 530 of Bill 141):

“Only a natural person may distribute an insurance product on behalf of a distributor.”

Therefore, as currently worded, Bill 141 could be interpreted as mandating a regressive change whereby online insurance sales would only be allowed if a natural person acts for the distributor. In other words, based on this interpretation, sales via an electronic tool or platform, including through the internet, would not be allowed. It is our belief that this is not the intent of this clause, because financial institutions cannot be licensed as a firm for the purpose of insurance sales.

Impediments/Limitations on the Sale of Creditor Insurance through a Distributor

CAFII has taken note of the fact that Clause 257 of Bill 150 indicates that Section 426 of *ARDFPS* will be repealed. Section 426 reads as follows:

*“For the purposes of this Title, the following insurance products are deemed to be insurance products which relate solely to goods and to which clients adhere:
(1) debtor life, health and employment insurance;
(2) investor life, health and employment insurance.”*

In addition, Clause 256 of Bill 150 states that Section 409 of *ARDFPS* will also be repealed. Clause 409 includes a direct reference to sales of creditor insurance and it is inter-connected with Clause 426 (by direct reference).

CAFI is seriously concerned about Bill 150's repeal of Sections 409 and 426 of *ARDFPS*, as their removal can be interpreted as abolishing a distributor's ability to sell creditor insurance.

We would appreciate a clarification as to the intent of Clauses 256 and 257 of Bill 150; and, more specifically, a confirmation that the intent is **not** to prohibit financial institutions and other industry players from selling creditor insurance. Our understanding is that the actual intent of these clauses is to enable the enrolment of consumers in a creditor's group insurance policy without the involvement of a certified representative. We believe that consumers should be offered as much choice as possible, and that having the ability to purchase directly through alternate distribution channels is critical to consumer choice.

In addition, we have taken note of the possible scenario where Bill 150 is adopted before Bill 141. If that possibility does occur, Section 59 of the new *Insurers Act* -- successor legislation to the current *Act respecting Insurance (Quebec)* -- will need to be reviewed to ensure that financial institutions and other industry players will continue to be allowed to enrol consumers in a creditor's group insurance policy.

Sales of Insurance without a Representative

Section 59 of Bill 141 gives rise to an entirely new provision in the new *Insurers Act* which will allow for the sale of insurance with or without the involvement of a natural person, including through an electronic tool or platform; and, more specifically, provides that an insurer can distribute insurance through the intermediary of a natural person or without the involvement of such person (if a natural person is involved, that person must be a certified representative).

We would like confirmation that financial institutions and other industry players will be allowed to enrol consumers in creditor's group insurance policies through an electronic tool or platform. We would also appreciate confirmation that Section 85 of *the Regulation under the Act respecting insurance* will be amended to allow financial institutions and other industry players to receive remuneration for doing so (other than reimbursement of expenses relating to the administration of the contract for group insurance on the life or health of debtors).

Abolition of the Distribution Guide

We note that Sections 410 to 418, 429, 430, 435, 474, 475, and 476 of *ARDFPS* are to be removed. The removal of those clauses effectively abolishes the Distribution Guide as a document governing insurance distribution in the province.

CAFI members would like to know if the Distribution Guide is to be replaced by the document referred to in the new Section 222.3 of the *Insurance Act (Québec)* introduced in Bill 150; and the new Section 62 of the *Insurers Act* introduced by Bill 141 (which shall be provided in addition to the insurance certificates referred to in Article 2401 of the *Civil Code of Québec*). If not, we would like to inquire as to how insurance sales will be governed once the Distribution Guide is abolished.

Registration as a Firm

Since Bill 150 removes the ability of a distributor to sell creditor insurance, we request confirmation that financial institutions and other industry players will **not** have to register as firms with the Autorité des marchés financiers (AMF) in order to continue to enrol consumers in creditor insurance.

As well, with reference to the second paragraph of Section 71 of *ARDFPS*, we would like confirmation that persons who enrol consumers in creditor's group insurance policies will not have to register as firms with the AMF, even if they receive commissions or other remuneration based on the sale of financial products or the provision of financial services.

AMF Approval Authority With Respect To Third Party/Outsourced Partners

We have a concern with respect to Clause 49 in Chapter III of Bill 141 as currently worded, which reads as follows:

“The Authority may prohibit that an authorized insurer’s obligations under this Act be performed by a third person on the insurer’s behalf if, in the Authority’s opinion, such performance would render the application of this Act difficult or ineffective. Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the insurer in writing and grant the latter at least 15 days to submit observations.”

Our concern is that this clause could render an authorized insurer vulnerable to unilateral decisions on the AMF's part with respect to the insurer's chosen third party administrator or other outsourced partner. We believe that a process which is more consultative —one that is based upon objective criteria and includes an appeal process -- would be a better approach which would still achieve the objectives of this clause.

Summary and Conclusion

Despite the issues we have identified, which could give rise to confusion and possibly unintended interpretations, our Association believes that, overall, Bills 141 and 150 will introduce an appropriate balance between fostering industry innovation and minimizing regulatory burden. At the same time, the proposed revisions work to safeguard the consumer's interests and enhance consumer protection. In addition, the Bills will improve the soundness of the overall financial services regulatory framework in Québec by consolidating various legislation and regulations and by centralizing regulatory responsibilities and authority within the AMF.

CAFII supports the assignment of increased supervisory and regulatory powers to the AMF within Bills 141 and 150. In addition, the granting of further autonomy to the AMF would increase its efficiency and effectiveness, and strengthen its position as an exemplary and highly regarded integrated financial services regulator. We also support the integration of the Chambres within the AMF.

We strongly suggest that both Bill 141 and 150 be adopted before the end of the current parliamentary session.

Thank you again for giving CAFII the opportunity to make this written submission. We look forward to receiving responses to the issues we have raised herein, as well as to our Association's previously communicated request for an opportunity to present and discuss the highlights of this submission with members of the Committee on Public Finance during its hearings scheduled for that purpose.

Should you require further information or wish to meet with representatives of our Association at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647-460-7725.

Sincerely,

Peter Thorn
Board Secretary and Chair, Executive Operations Committee

c.c. Honourable Minister Carlos Leitão, Minister of Finance, Government of Québec
Louis Morisset, CEO, Autorité des marchés financiers

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express, Assurant Solutions, Canadian Premier Life Insurance Company, and The CUMIS Group Ltd.