

**Agenda Item 6(b) (i)**  
**September 23, 2014 EOC Meeting**

**Recap Document On**  
**Nova Scotia Bill 43: Amendments to Direct Sellers' Regulation Act (DSRA)**

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**From:** Lewsen, John [mailto:john.lewsen@bmo.com]  
**Sent:** Friday, August 15, 2014 9:46 AM  
**Subject:** RE: Update Re Nova Scotia Bill 43 - Amendments to Direct Sellers' Regulation Act (DSRA)

Hi Brendan  
Thanks for the update  
Subject to what Moira has to say after speaking to her GR people, I would be in favour of us making a submission similar to the one for the CLHIA  
Regards,

**John Lewsen**

Chief Compliance Officer: BMO Life Assurance Company; BMO Life Insurance Company | Legal, Corporate & Compliance Group | BMO Financial Group

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**From:** Brendan Wycks [mailto:brendan.wycks@cafii.com]  
**Sent:** Thursday, August 07, 2014 4:51 PM  
**Subject:** Update Re Nova Scotia Bill 43 - Amendments to Direct Sellers' Regulation Act (DSRA)  
**EOC Members:**

Here is an update on what I've found out about this legislative/regulatory development in Nova Scotia, which was brought to light last week by Rose Beckford (**see Action Item question for CAFII posed at end**):

On August 5, CLHIA sent a letter **Re: Direct Sellers' Regulation Act (DSRA), as amended by Bill 43**, along with a summary of Direct Selling (including distant or remote contracts) Legislation In Other Provinces As At July 2014, to Dean Johnston, Director, Consumer and Marketplace Policy, at Service Nova Scotia.

The letter asks the government of Nova Scotia to reaffirm that life and health insurance products and services regulated under the province's insurance legislation will continue to be excluded from application of the DSRA, noting that this exemption is currently codified in the DSRA but will be removed by Bill 43 once it is proclaimed. The letter points out that the DSRA, which regulates the direct selling of certain goods and services in Nova Scotia, now excludes from its application goods and services whose sale is regulated by another federal or provincial statute [clause s. 6(1)(a)]. Bill 43 will remove this exemption [clause 3(b)].

CLHIA has been advised that Nova Scotia's intent is to continue to have some exclusions, but to have them be more focused. Therefore, the letter highlights the fact that similar legislation in a number of other provinces excludes financial services and products or consumer transactions which are already regulated under **those provinces'** Insurance Acts from the scope of their direct selling and 'distant' or 'remote selling' consumer protection legislation.

Nova Scotia is asked to include similar provisions in its regulations to exclude both contracts for and the selling of life and health insurance which are already regulated under the province's Insurance Act. The letter notes that such exemptions would be more focused, narrower and more specific than the current exemption, while still being consistent with the public policy goal of avoiding dual and overlapping regulation, which substantially increases costs for regulated entities. This approach would also maintain consistency between the laws of provinces that have enacted legislation with respect to direct selling and 'distant' selling or 'remote' contracts. As well, it would give clarity to the industry with respect to its compliance obligations in this area.

The letter points out that in Nova Scotia, sales and sellers of insurance products are already strictly regulated. Life and health insurers and insurance intermediaries carrying on business in Nova Scotia are subject to the *Insurance Act* and its regulations (in particular the *Insurance Agents Licensing Regulations*). The *Insurance Act* and its regulations are overseen by the Office of the Superintendent for Insurance and create a complete code of consumer protection for life and health insurance products in the province.

It further points out that Newfoundland and Labrador, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia have previously put into place provisions under their 'consumer protection' legislation to address direct selling, 'distant selling' or 'remote' contracts. Prince Edward Island and New Brunswick have specific direct selling legislation. The provisions in these provinces are either specifically stated to be inapplicable to insurance products or the selling of insurance, where insurance legislation is in place; or, in the case of British Columbia's legislation, has been interpreted generally as being inapplicable to regulated insurance products.

The letter concludes with a recommendation that the government of Nova Scotia include provisions in the DSRA regulations to exclude both contracts for the sale of goods or services to which Nova Scotia's *Insurance Act* applies and direct sellers carrying on the business for which they are licensed under the *Insurance Act* from application of the DSRA.

This letter – prepared by Craig Anderson, CLHIA's new Assistant Vice-President and Senior Counsel (succeeding Jodi Skeates) – was sent under the signature of Frank Zinatelli, Vice President and General Counsel; and c.c.'d to Doug Murphy, Nova Scotia's Superintendent of Insurance.

**Action Item Question: should CAFII prepare and send a similar letter to Dean Johnston, who has the lead on the DSRA regulations file at Service Nova Scotia? Or are CAFII members' interests sufficiently well-covered by CLHIA's fairly comprehensive letter and intervention on this matter. Note, however, that the CLHIA letter does not explicitly ask that provisions be included in the DSRA regulations to exclude goods and services whose sale is regulated by a federal statute.**

Brendan Wycks, BA, MBA, CAE  
Executive Director  
Canadian Association of Financial Institutions in Insurance

**From:** Brendan Wycks [<mailto:brendan.wycks@cafii.com>]  
**Sent:** Tuesday, July 29, 2014 12:53 PM  
**To:** 'Beckford, Rose'  
**Subject:** RE: Nova Scotia Bill 43 - Amendments to Direct Sellers' Regulation

Thanks, Rose, for drawing this to our attention.

You're correct that one of the amendments that Nova Scotia Bill 43 made was to strike out this clause from the former Direct Sellers' Regulation:

***Act does not apply***

**6 (1)** *This Act does not apply to a direct sales contract*

*(a) the subject of which is goods or services, the sale of which is regulated by a federal or provincial statute;*

I find it interesting that a province can simply over-ride a federal statute by Regulation, especially without consultation.

I too would like to find out how significant a development other EOC members feel this Nova Scotia initiative is.

I recommend that

- I consult with Erica Hiemstra to find out exactly what CLHIA has done and plans to do on this issue (I wasn't aware of this prior to now; and Erica didn't raise it in our liaison discussion last week); and
- if we decide to take independent CAFII action on it, we should do so directly with Doug Murphy, Nova Scotia's Superintendent of Insurance, and not add it to the agenda for the Joint Meeting with the Atlantic Canada Regulators on October 1. Better not to have the matter discussed in an open forum and potentially give the three other regulators "ideas."

We'll need to decide how/when to engage with Doug Murphy. If it's to be post-haste, I suggest we arrange a teleconference meeting with him. If we need to meet with him in-person, we can decide if that needs to be quite soon such that it warrants a special visit to Halifax; or if we can kill two birds with one stone by having a dinner meeting with him in Fredericton on Tuesday, September 30, the evening before our meeting with the Atlantic Canada regulators.

Moira knows Doug Murphy quite well, so I'm sure can provide sage advice on the best way for CAFII to engage with him on this.

Brendan Wycks, BA, MBA, CAE  
Executive Director  
Canadian Association of Financial Institutions in Insurance

**From:** Beckford, Rose [<mailto:rose.beckford@scotiabank.com>]

**Sent:** Tuesday, July 29, 2014 9:22 AM

**To:** Brendan Wycks

**Cc:** Grant, Greg; 'Gill Moira'; 'Lewsen, John'; [derek.blake@rbc.com](mailto:derek.blake@rbc.com); Manson, Sue

**Subject:** Nova Scotia Bill 43 - Amendments to Direct Sellers' Regulation

Brendan,

The amended Direct Sellers' Regulation Act received Royal Assent on May 14, 2014.

The previous Act exempted direct sales contracts related to the sales of goods and services that are regulated under a federal or provincial statute, thus exempting insurance products. However, the Amendment that came into effect on July 1, 2014 removes this exemption and also expanded the definition of 'direct selling' to include telemarketing.

I think this Amendment may be of sufficient interest to CAFII for us to:

1. Contact Nova Scotia regarding their intent and our concerns; and
2. Add it to the Agenda for the Atlantic Regulators visit later this year.

I am aware that the CLHIA is working on this issue with Nova Scotia, but CAFII's voice would give more weight to the argument for maintaining the status quo. The link to the Amendment is below.

We have an opportunity to request that the Regulations that are being developed, exempt insurance products as per Clause 3(d) below.

I would welcome the feedback from the other EOC members.

#### Clause 3

(a) clarifies that the Direct Sellers' Regulation Act does not apply to certain kinds of sales contracts generally (rather than not applying to certain kinds of direct sales);

(b) removes exemptions from the Act that pertain to sales regulated by other statutes and merchants (as previously defined by the Act);

(c) clarifies that the purchase of goods or services to be used in businesses are exempt from the application of the Act; and

(d) provides that the Act does not apply to any class of direct sales contracts that is prescribed by the regulations.

[http://nslegislature.ca/legc/bills/62nd\\_1st/1st\\_read/b043.htm](http://nslegislature.ca/legc/bills/62nd_1st/1st_read/b043.htm)

[http://nslegislature.ca/index.php/proceedings/bills/bill\\_43\\_-Direct\\_Sellers\\_Regulation\\_Act\\_amended](http://nslegislature.ca/index.php/proceedings/bills/bill_43_-Direct_Sellers_Regulation_Act_amended)

**Rose Beckford** | Director, Compliance

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