

May 13, 2015

Mr. J.M. Hall
Senior Crown Counsel
Legislative Services
Ministry of Justice and Attorney General
601 – 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2

Dear Mr. Hall:

Re: Follow-up To CAFII Feedback On Bill 177, The Insurance Act (Saskatchewan)

This letter is a follow-up to our March 2 call where we committed to provide elaboration of our concerns with Clauses 8-103 and 8-159 as well as Clause 8-165.

We thank you for providing further information to Brendan Wycks, our Executive Director, concerning *Clause 5-79 (2) and (3), Recommendations for Restricted Licensee – Life Insurance* on May 7 and await your feedback on Clause 5-38.

Clauses 8-103 and 8-159, Issuance of Policy

You indicated that 8-103(8) covers off the consumer privacy exemption that CAFII believes is missing from this section. You noted that claimants' access to documents extends only to information that is relevant under the contract. You asked that CAFII consider this further and get back to you as to whether we agree that 8-103(8) suffices; or, if not, why not.

Response: CAFII continues to believe that 8-103(8) does not suffice. In our view, the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* is not sufficient to restrict access to privileged and confidential information because PIPEDA includes an "unless required by law" provision, which means that a province's Insurance Act will override PIPEDA. Therefore, it is important that these exclusions are included in Saskatchewan's insurance legislation.

Alberta and BC insurance regulations have addressed this issue and we encourage Saskatchewan to harmonize its Insurance Act with those two provinces. Neither BC nor Alberta allows the insured access to confidential commercial information between the group policyholder and insurer; and document access is restricted to the class of insurance to which the group person insured or debtor belongs.

In Appendix A, we have provided examples from both the Alberta and BC regulations concerning the exclusion of privileged and confidential information.

Clause 8-165, Exclusions, Exceptions or Reductions

You asked CAFII to provide the rationale for our desire to include an exclusion for group insurance and creditor's group insurance modelled on Alberta and BC. You noted that there is no such exclusion in the current Saskatchewan Insurance Act and the proposed Bill 177 clause is identical to Ontario's.

Response: We acknowledge that Ontario's Insurance Act is not currently harmonized with Alberta and BC. However, the Ontario Ministry of Finance is currently engaged in a consultation with the industry on "Regulations for Parts V and VII of the Insurance Act."

While none of the four new Regulations being proposed deals with exclusions, exceptions or reductions, the Ministry's consultation document expressly states that "the proposed regulations are intended to harmonize with regulations already adopted by Alberta and British Columbia so as to provide similar rights to insured persons and policyholders in different jurisdictions. The harmonization is also intended to eliminate the cost to insurance companies of needing to comply with a multitude of different regulatory requirements."

The rationale for the revised subsection 704(5) in Alberta's Bill 11, enacted in 2008, was to remove impediments to the offering of simple insurance policies. British Columbia's Bill 40, subsection 88(5) is identical to Alberta's Bill 11, subsection 704(5) and was enacted in 2008 for the same purpose.

Under both the Alberta and BC legislation, group insurance contracts and creditor's group insurance contracts are exempted from the provision which requires an individual insurance policy to contain all exceptions or reductions affecting the amount of insurance proceeds payable. This is necessary because group insurance and creditor's group insurance are sold to institutions or associations but insure their members, not the entity. A group policy or creditor's group policy does not include details of the coverage for the insured person, as it is intended to outline the terms of coverage being provided to the group as a whole. Instead, the details of the insured person's coverage are disclosed in the certificate of insurance provided to them.

We trust that the information above will be helpful in your further consideration of Bill 177.

5-38, Representative's Duty of Disclosure

In our call, a CAFII member outlined the Association's issue with the expectation of written disclosure. This clause stipulates that the "in writing" part must be provided in advance, potentially before an individual has even purchased the product and before he/she is even a customer. You indicated that you now had a better understanding of CAFII's concern in this area and would review the clause again and get back to us on it.

CAFII looks forward to hearing back from you on this matter and to further consultation on the ensuing Regulations.

Should you require further information from CAFII or wish to meet with our Association at any time, please contact Brendan Wycks at brendan.wycks@cafii.com or 647-218-8243.

Sincerely,



Greg Grant, MBA, FLMI, ACS
Board Secretary and Chair, Executive Operations Committee
Canadian Association of Financial Institutions in Insurance

c.c. Janette Seibel, Lawyer, Financial Consumer Affairs Authority

Appendix A

Alberta Regulation 120/2001: Prescribed information re group and creditor group insurance

3.3 The prescribed information for the purposes of sections 642(8)(b) and 699(8)(b) of the Act is information in a policy of group insurance or creditor group insurance that, if disclosed, would reveal

- (a) confidential commercial information that a reasonable person would think could harm the competitive position of the insurer or insured, or
- (b) plan design and benefits information relating to different classes of debtor insured, group life insured or group persons insured covered in the same policy.

Insurance Regulation (B.C.) [Revised Regulation]: Confidential information disclosure limits — group contracts

8 (1) In this section, "**confidential commercial information**" means information in a policy of group insurance or creditor's group insurance the disclosure of which

- (a) could reasonably be expected to harm the competitive position of the insurer or insured, or
- (b) would reveal plan design and benefits information relating to a different class of group life insured, group person insured or debtor insured than the group life insured, group person insured or debtor insured to whom or in respect of whom the disclosure is being made.

8 (2) For the purposes of sections 41 (8) (b) *[issuance and furnishing of policy]* and 96 (8) (b) *[issuance and furnishing of policy]* of the Act, the insurer may withhold confidential commercial information that

- (a) does not relate to the rights, responsibilities or coverage of the group life insured, group person insured or debtor insured under the contract, and
- (b) the insurer did not rely on to determine the rights, responsibilities or coverage of the group life insured, group person insured or debtor insured under the contract.