



September 30, 2013

Mr. Jim Fox
Senior Policy Analyst
Licensing and Market Conduct Division
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, ON M2N 6L9

**RE: Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario:
A Proposal for Consultation**

Dear Mr. Fox:

I am writing to you on behalf of the Canadian Association of Financial Institutions in Insurance (CAFII) with respect to *Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario: A Proposal for Consultation*.

CAFII commends FSCO for undertaking a timely and thoughtful consultation on *Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario: A Proposal for Consultation*.

We appreciate the opportunity to comment on this proposal. We also appreciate the fact that FSCO took the time to meet with our Association and other industry stakeholders about it -- both in February for an initial discussion of principles and concepts behind the initiative; and again in early September, after the consultation document was released in August.

We have framed our comments and suggestions in italics below, in response to the Questions set out on page 8 of the consultation proposal.

1. Would the substitution of the Financial Services Tribunal (FST) model for the Advisory Board (AB) model provide a more fair and streamlined disciplinary process for insurance agents and adjusters?

CAFII agrees that the FST model would be superior to the current AB model. The AB model seems to be a disjointed, two-stage process that gives rise to blurred accountabilities and, in cases where the Superintendent sees fit to exercise his new authority to impose an Administrative Monetary Penalty (AMP), the possibility of an inconsistent and embarrassing situation in which two separate but related tribunals might reach different conclusions/decisions on the same set of facts.

CAFII supports FSCO's proposal to modernize disciplinary hearings for insurance agents and adjusters by moving to an FST model, as doing so would

- *Align the disciplinary hearings process with modern principles of administrative law and natural justice/fairness;*
- *Create a more streamlined and efficient process;*

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- *Eliminate unnecessary costs incurred under the current model, save time, and avoid inconsistency; and*
- *Create harmonization and consistency with the disciplinary hearings process in use in other financial services sectors under the Superintendent's regulatory authority.*

In this connection, CAFII has been consistent in its support of AMPs as an enforcement tool, provided that regulatory guidelines make it clear that they will be used to address persistent transgressions rather than an inadvertent error.

2. Does the proposal to clarify the Superintendent's authority to issue interim orders achieve an appropriate balance between protecting consumers, and providing agents and adjusters with access to justice?

CAFII agrees that granting the Superintendent the authority to issue interim orders – in cases where there would be a risk of harm to the public if there was any delay – would be a prudent, modernizing reform that would achieve an appropriate balance between consumer protection, on the one hand, and insurance agents' and adjusters' right to fairness and justice on the other hand.

However, we have the following question with respect to this proposed change:

- *What criteria will be used to determine that there is an imminent risk of harm to the public?*

These criteria should be published, at least on a broad brush basis, so that both the public (and media) and the insurance agent and adjuster community will have a basis for knowledge and expectations in this area. Such publication will also help avoid or minimize perceptions of arbitrariness or capriciousness in cases where the Superintendent imposes an interim order on an agent's or adjuster's licence, which will compromise his/her livelihood.

3. Are there any other factors that the Superintendent should consider when approving licence surrender requests from agents and adjusters?

CAFII supports FSCO's modernization proposals with respect to Surrendering of a Licence.

That said, in addition to the factors itemized on page seven of the consultation proposal, CAFII recommends that the following factor be considered as a possible addition:

- *Has the licensee been diagnosed with a serious medical condition and/or become mentally or physically incapacitated?*

4. Any other relevant feedback or input for FSCO?

We find that the future model proposed for agent and adjuster disciplinary hearings is analogous to and closely parallels the best practices of many leading professional Associations, including Chartered Professional Accountants of Ontario (formerly Institute of Chartered Accountants of Ontario), but with appropriate customization tweaks for a regulated financial services sector.

That said, we have a few suggestions for FSCO's consideration:

- *As part of the modernization process and resulting legislative/regulatory change, you may want to review the terms and conditions related to the "complaints process" that may give rise to an FST hearing and, similarly, review existing communications around complaints protocol details.*

By that, we mean reviewing and clarifying who may initiate a complaint, the step-by-step process that must be followed, complaints escalation, etc.

- *FSCO may want to consider whether access to the services of the Ontario Ombudsman (an Office of the Legislature) is an optimal avenue of recourse for an unsatisfied complainant – ie. a party unhappy that FSCO, after investigating his/her complaint, has decided not to issue an NOP against an agent or adjuster – or whether an “Independent Reviewer of Complaints” mechanism might be more appropriate. This would be akin to the Reviewer of Complaints process utilized by Chartered Professional Accountants of Ontario in its Standards Enforcement and Disciplinary Procedures.*
- *CAFII recommends to FSCO, for review/reflection and benchmarking purposes, the Chartered Professional Accountants of Ontario document **Standards Enforcement and Disciplinary Procedures: Information For Complainants, Members, Students, Professional Corporations and Firms**, found at <http://www.icao.on.ca/Public/ComplaintsProcess/1013page14067.pdf>*

CAFII commends FSCO for the well-thought out improvement proposals set out in the *Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario* document. Our Association is generally in agreement with and supportive of all of the recommendations set out therein.

CAFII appreciates the opportunity to comment on this important modernization initiative of FSCO's, and we look forward to continued communication and input on policy matters. We would be pleased to meet with FSCO representatives to discuss our feedback in more detail. Should you wish to arrange a meeting for that purpose, please contact Brendan Wycks, our Executive Director, at brendan.wycks@cafii.com or 647-218-8243.

Yours sincerely,



Jennifer Hines
CAFII Secretary and Chair, Executive Operations Committee

About CAFII

The Canadian Association of Financial Institutions in Insurance (CAFII) is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. CAFII was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. CAFII 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.

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

In addition, CAFII has 10 Associate members that support the role of financial institutions in insurance.

CAFII members offer travel, life, health, property and casualty, and creditor's group insurance. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as its members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. CAFII works with government and regulators (primarily provincial) 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.