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The Canadian Association of Financial Institutions in Insurance | L'association canadienne des institutions financières en assurance

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Regulatory Update – CAFII Executive Operations Committee, July and August 2024

Prepared by Robyn Jennings, Research Analyst.

Contents

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Federal/National

Canadian Association of Financial Institutions in Insurance (CAFII)

Canadian Council of Insurance Regulation (CCIR)

On July 22, 2024, CCIR Held a Webinar on Its Report on The Fair Treatment of Customers.

On July 22, 2024, CCIR held a webinar to discuss its recently released report, *Governance and Business Culture in Terms of Fair Treatment of Customers Report*. The report is 24 pages long and details the supervisory work the CCIR has conducted on FTC to better understand the industry's development of governance and business culture in response to CCIR's FTC expectations. It aimed to identify weaknesses as well as good practices. As per the report:

> *[it set] out the main observations drawn from different work involving 40 insurers out of a total of nearly 300 insurers nationally, including cooperative FTC reviews conducted by CCIR members, including an industry review on governance and business culture for 26 insurers that concluded in October 2023 and individual FTC reviews carried out since 2017 by one or more regulators in their respective jurisdictions.*

Most of the examinations conducted for this report began in early 2022; reports from previous monitoring programs conducted before 2022 have been considered. For clarification, CCIR's definition of business culture is "the common values (e.g., ethics and integrity) and standards that characterize a business and influence the mindset and actions of its entire staff. It informs strategic decisions and the conduct of client-facing staff." It is, therefore, important that companies establish an FTC-centric culture to foster consumer confidence and long-term relationships. In the view of the CCIR, this will also maintain, even improve, insurers' reputation and solvency.

The report was divided into four sections: FTC responsibilities for the board of directors and senior management, codes of ethics or conduct and FTC policies and objectives, risk management and commercial practices that could adversely affect FTC and management information. Each section had one to three subsections. Below is a brief summary of each section and CCIR's recommendation.

- ***FTC-related roles and responsibilities of the board of directors and senior management.***
  - *Roles and responsibilities of the board of directors:* The Board of directors are responsible for their company's adherence to sound commercial practices through maintaining strong governance and business culture FTC commitments.
    - In order to achieve robust FTC governance, CCIR recommends that insurers "assign to board members or one of its committees responsibility for ensuring adherence to sound commercial practices and for monitoring changes in business culture and risk of inappropriate practices that could adversely affect FTC" within the organization.
    - It is important to "define and document the FTC roles and responsibilities for the board of directors or a committee of the board" responsible for ensuring adherence.
  - *Roles and responsibilities of senior management*: senior management is responsible for the management, effectiveness, and functionality of an organization in a manner that

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aligns with policies, practices, procedures, and strategies approved by the Board of Directors.

- In order to comply with the regulatory frameworks for each insurer's respective jurisdictions and achieve robust FTC governance, CCIR recommends that insurers "assign the roles and responsibilities to the position held by the designated person." CCIR found that some insurers assigned FTC responsibilities to individuals rather than positions, thereby resulting in a divergence from FTC commitments when the individual in question departed. Furthermore, many FTC roles and responsibilities were not p[properly defined, thereby causing confusion, uncertainty, and stagnation in meeting FTC commitments.
  - Appointing a designated officer responsible for FTC and commercial practices and providing them with clear definitions, expectations, and goals is an example of good FTC practices by senior management.

- ***Codes of ethics or conduct, FTC policies and objectives***.
  - *Codes of ethics or conduct*: CCIR found that "all insurers had a code of ethics or conduct to which all staff were subject. In about 50% of cases, insurers' external distributors were also subject to this code of ethics or conduct."
  - *FTC policies*: CCIR found that "approximately 73% of insurers had established one or more FTC policies."
  - *Codes and policy objectives*: CCIR found that "in some cases, FTC policies or the code of ethics of conduct were not approved by the board of directors. In some cases, there was no evidence the policy had been approved by the board of directors." In regards to reviews, CCIR found that some insurers did not review or sporadically review their policies. The same was found for policy updating. Some insurers identified 1 to 3 years as the appropriate window for policy review.
    - CCIR recommends insurers:
      - Adopt a code of ethics or conduct;
      - Establish a Board-approved FTC policy, communicate it to all stakeholders, and implement it across the company;
      - Review and update the FTC policy or policies on a periodic basis.
- ***Risk Management and commercial practices that could adversely affect FTC****:* CCIR found that only 9% of insurers included a specific FTC risk in their company's integrated risk management framework or policies. It is crucial that senior management ensure integrated risk management considers the risks and commercial practices that could negatively impact FTC. Furthermore, CCIR found that reporting options, data collection, monitoring and performance measurement, and implementation tools were not always effective for continuous FTC improvement processes.
  - CCIR recommends that insurers incorporate FTC-specific risk into their risk management framework or policy.
  - CCIR also recommends that insurers implement and/or strengthen the controls used to track and measure FTC performance company-wide.
- ***Management Information****:* According to the CCIR, "a company seeking to achieve meaningful FTC results should ensure that all levels of the organization understand the importance of FTC reporting, and to do so should develop and use FTC indicators that are measured, monitored, and driven by a continuous improvement cycle." Therefore, the CCIR recommends insurers should:

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- Develop indicators for assessing the extent to which set objectives and strategies are being achieved;
- Analyze the indicators to identify FTC-related issues or trends and take corrective action when required;
- Report to senior management and the board of directors to assure them that FTC objectives are being met and thus be able to assess the company's FTC performance.

The CCIR report found that while some insurers had incorporated FTC objectives into their strategic plans, many of these objectives were either poorly defined or borrowed from the CCIR without proper adaptation to the insurer's particular situation. Many insurers had FTC objectives but did not have proper indicators for assessing the objective's achievement. Finally, for some insurers, the implementation of FTC reporting was suboptimal or simply nonexistent. Many were unable to show they had any kind of formal review process in place.

Therefore, the CCIR's overall recommendations to insurers in order to maintain FTC across company governance and within business culture are:

1. Document and communicate FTC objectives to stakeholders and implement them within all operations.
2. Extend, develop, and implement FTC performance indicators, including tools to identify and aid in corrective action when required.
3. Communicate with the board of directors and senior management to maintain assurance that FTC objectives and strategies are being met.

Read the entire report here. If you are unable to access the report via the link, please contact CAFII's research analyst, Robyn Jennings, who will email you a PDF copy.

Financial Consumer Agency of Canada (FCAC)

FCAC Informed CAFII It Has Deprioritized (Withdrawn) Its Proposed Guidelines on Complaint-Handling Procedures for Trust and Loan Companies and Insurance Companies.

CAFII Executive Directo Keith Martin informed the CAFII Board, EOC, and Market Conduct & Licensing Committee members that, after submitting a letter to the FCAC stipulating CAFII's concerns around its proposed guidelines on complaint handling procedures, the FCAC has agreed to deprioritize its work on the guideline. Therefore, the guideline will remain "on hold" for the foreseeable future. K. Martin's email is included below.

> *Hello CAFII Board, EOC, and Market Conduct & Licensing Committee Member,*
>
> *CAFII made a submission earlier this year to the FCAC on its "Guideline on Complaint-Handling Procedures for Trust and Loan Companies and Insurance Companies." The submission, sent to the FCAC in February 2024, suggested that the Guideline was outside of the FCAC's jurisdiction and that existing regulations and guidelines around complaints already achieved what the FCAC was intending.*

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The FCAC has just reached out to CAFII to provide an update on the Guideline. Shanay Smith and I met virtually today with Diana Iaconi, Manager, Regulatory Guidance and Insights, Supervision and Enforcement Branch, and Tammy Maheral, Senior Compliance Officer, FCAC.

Ms. Iaconi said that the FCAC has decided to "deprioritize" the work on the Guideline, and as such, the Guideline is "on hold for the foreseeable future," and no final version will be produced at this time. If that decision changes, the industry will be advised, and a new round of consultations will begin.

While stated diplomatically by the FCAC, I believe this essentially means that the Guideline has been withdrawn.

This will be on the Agenda for the September 17, 2024, EOC meeting for discussion.

Thank you,

--Keith

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FCAC Welcomes Expanded Mandate Giving Oversight Into Open Banking.

In an article published by *Wealth Professional* on July 4, 2024, it was announced that, thanks to the federal budget, the Financial Consumer Agency of Canada (FCAC) has acquired the right to oversee the potential implementation of open banking in Canada. Due to the passing of the Budget Implementation Act 2024, FCAC expanded its mandate to officially assume the responsibility of "overseeing, administering, and enforcing Canada's consumer-driven Banking Framework." Further legislation will be announced in the Fall, addressing issues around liability, consent, and technical standards.

This does not mean Canada will suddenly adopt open banking; many Canadians have expressed hesitation in sharing their financial information with fintechs and businesses.

The new federal budget has allocated $1 million to fund an informational campaign on the new framework for opening banking. The framework will require "robust and securing sharing of data relating to financial products." However, the first legislative step will only "allow partial access to Canadians' financial management with 'read-only' capabilities."

Read the full article on the *Wealth Professional* website.

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Federal Department of Finance

The Federal Department of Finance Indicates It Intends to Include Insurance Premiums in the Determination of Interest.

The Federal Department of Finance has indicated that it intends to include insurance premiums in the determination of interest, and has provided a very short period for industry to provide written feedback. CAFII has requested an extension of the deadline, but will also be making a written submission to the Department by the October 11, 2024 deadline. CAFII has also been coordinating its approach closely with CBA and CLHIA.

Following is the correspondence between CAFII and the Department of Finance.

From: *Keith Martin*
Sent: *September 4, 2024 5:12 PM*
To: *Radley, Mark <Mark.Radley@fin.gc.ca>*
Cc: *valerie.gillis@td.com; paul.cosgrove@assurant.com; karyn.kasperski@rbc.com; John.Burns@securiancanada.ca; bradley.kuiper@scotiabank.com; fay.coleman@td.com; Robyn Jennings <Robyn.Jennings@cafii.com>; Loosen, Anne <Anne.Loosen@fin.gc.ca>; Islam, Tanjana <Tanjana.Islam@fin.gc.ca>; Ward, Connor <Connor.Ward@fin.gc.ca>*
Subject: *RE: Request from the Canadian Association of Financial Institutions in Insurance (CAFII)*

Hello Mark,

I first of all would sincerely like to thank you for your response below, which was much appreciated. I also want to thank you for the offer of a meeting. It will be difficult to us to get this organized prior to the current deadline of September 11, 2024, but if an extension is offered I will definitely follow up with you and would welcome a meeting after that date for us to engage in a dialogue.

CAFII will be making a preliminary submission to the Department of Finance by your current deadline of September 11, but if an extension is offered we could expand on that submission with more detailed comments and as noted above, we would welcome the opportunity to participate in a meeting with you and your colleagues after that date. With additional time, I believe we can better prepare and make the meeting more robust and beneficial for you and your colleagues.

Please do not hesitate to reach out to me on this or any related matters, and thank you again for your consideration.

Regards,

--Keith

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From: *Radley, Mark <Mark.Radley@fin.gc.ca>*
Sent: *August 30, 2024 4:54 PM*
To: *Keith Martin <Keith.Martin@cafii.com>*
Cc: *valerie.gillis@td.com; paul.cosgrove@assurant.com; karyn.kasperski@rbc.com; John.Burns@securiancanada.ca; bradley.kuiper@scotiabank.com; fay.coleman@td.com; Robyn Jennings <Robyn.Jennings@cafii.com>; Loosen, Anne <Anne.Loosen@fin.gc.ca>; Islam, Tanjana <Tanjana.Islam@fin.gc.ca>; Ward, Connor <Connor.Ward@fin.gc.ca>*
Subject: *RE: Request from the Canadian Association of Financial Institutions in Insurance (CAFII)*

Hi Keith,

Sorry for the delay in responding. Thank you for your email regarding your concerns around the consultation on potential Criminal Code amendments. I would note that the draft legislation is for consultative purposes only. As such, on timelines, we have not determined or finalized any dates for next steps with regards to this draft legislation. We are awaiting all stakeholder comments to help inform next steps, including potential final legislation, and we appreciate your comments written below and look forward to receiving a formal submission on the issue.

We have noted your request for an extension on the submission deadline, which we will return to you on. If you have any interest in meeting with us so we may answer any questions you may have or to discuss your initial thoughts, please let us know and we can set something up for next week, if you are amenable.

Thank you,

Mark

From: *Keith Martin <Keith.Martin@cafii.com>*
Sent: *Tuesday, August 27, 2024 12:03 PM*
To: *Radley, Mark <Mark.Radley@fin.gc.ca>; Loosen, Anne <Anne.Loosen@fin.gc.ca>*
Cc: *'valerie.gillis@td.com' <valerie.gillis@td.com>; 'paul.cosgrove@assurant.com' <paul.cosgrove@assurant.com>; 'Karyn Kasperski' <karyn.kasperski@rbc.com>; Burns, John*

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<John.Burns@securiancanada.ca>; Bradley Kuiper <bradley.kuiper@scotiabank.com>; 'Coleman, Fay' <fay.coleman@td.com>; Robyn Jennings <Robyn.Jennings@cafii.com>
Subject: *Request from the Canadian Association of Financial Institutions in Insurance (CAFII)*

Hello Mr. Radley and Ms. Loosen,

My name is Keith Martin and I am the Executive Director of the Canadian Association of Financial Institutions in Insurance (CAFII), whose members include Canadian banks, credit unions, and insurers. CAFII focuses on optional insurance products including life insurance offered with loan instruments like mortgages, HELOCS, and loans, as well as credit card balance protection insurance.

I am writing you about the consultation the Department of Finance is engaged in around the draft legislative amendments to the Criminal Code, which includes provisions to include insurance costs in the calculation of interest. We are very concerned about whether this provision intends to capture optional credit protection and balance protection insurance. These optional products provide critical protection to Canadians, and as worded it is not clear to us what the provisions you are consulting on apply to, and specifically whether optional credit protection and balance protection insurance is captured by these provisions. It should be noted that these products are not tied to the extension of credit nor do they protect against credit risk, but rather provide optional insurance risk protection against a borrowers' life and health related risks as well as in some instances, job loss, and are transacted under separate contracts for customers who wish to purchase this protection.

There are many important implications to these provisions for our members depending on their scope, and these insurance products are also under the jurisdiction of provincial and territorial regulators and policy-makers.

While in principle we are very concerned if optional credit protection insurance and balance protection insurance is intended to be captured by the proposed amendment, in practice it is also extremely problematic to announce a draft change that is intended to be implemented in four months or less (January 1, 2025). We typically request that any change that requires system changes and policy modifications have an implementation window of at minimum 12-18 months.

The consultation period is also extremely short. CAFII has fifteen members that represent large, complex financial institutions. We need time to internally formulate our feedback on any new regulatory or legislative approach, and to prepare our response.

We would be pleased to share our thoughts with you in a detailed written submission, and would like to request an extension beyond the September 11, 2024 deadline for responding to your consultation, if possible by a month. In the meantime, any clarification you can provide about the scope of the provisions with respect to the inclusion of insurance products in the calculation of interest rates would be helpful as we formulate our response.

Thank you in advance for considering this request.

--Keith Martin, CAFII Executive Director

***About CAFII**: The Canadian Association of Financial Institutions in Insurance is a not-for-profit industry association dedicated to the development of an open and flexible insurance marketplace. CAFII believes that consumers are best served when they have meaningful choice in the purchase of insurance products and services. CAFII's 15 members include the insurance arms of Canada's major financial institutions--BMO Insurance, CIBC Insurance, Desjardins Insurance, National Bank Insurance, RBC Insurance, Scotia Insurance, and TD Insurance, along with major industry players Assurant Canada, The Canada Life Assurance Company, Canadian Tire Bank, Canadian Western Bank, Chubb Life Insurance Company of Canada, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and Securian Canada.*

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The Financial Services Regulatory Authority of Ontario (FSRA)

FSRA Announces CEO Stepping Down.

In an announcement released on July 5, 2024, FSRA announced that its CEO, Mark White, will be stepping down as of July 16, 2024. This comes after the announcement confirming his appointment as Chair of the Ontario Energy Board. Stephen Power will be taking over as FSRA's interim CEO.

As a result of this transition period, it was announced in June that Joanne De Laurentiis's term as chair of FSRA's Board of Directors has been extended by a year.

Read the full announcement on FSRA's website.

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FSRA Publishes Membership of the Life & Health Insurance Stakeholder Advisory Committee.

On August 8, 2024, FSRA advised Keith Martin that he had been selected to remain on the FSRA Life & Health Insurance Stakeholder Advisory Committee.

Following is the email received:

> *Dear Keith Martin,*
>
> *Thank you very much for your interest in participating on the Stakeholder Advisory Committee for Life & Health SAC (L&H SAC). I am pleased to advise that you have been selected to serve on the L&H SAC. Congratulations! We will announce the SAC membership shortly.*
>
> *We will be in touch soon regarding any upcoming meetings to be scheduled. Should you have any questions regarding the Committee, please don't hesitate to contact me directly.*
>
> *Sincerely,*
>
> *Huston Loke*
> *Executive Vice President, Market Conduct*
> *Financial Services Regulatory Authority of Ontario*
> FSRA
> Financial Services Regulatory Authority of Ontario
> *Mobile: 416-569-2504*
> *E-mail: huston.loke@fsrao.ca*
> *www.fsrao.ca*

On July 15, 2024, a FSRA Representative Met With CAFII's DEI Working Group to Present the Regulator's DEI Initiatives.

On July 15, 2024, Swati Agrawal (FSRA) participated in a virtual meeting with the CAFII DEI Working Group to present the initiatives she has been and is currently working on with the International Association of Insurance Supervisors (IAIS). After her presentation, Ms. Agrawal agreed to participate in a CAFII webinar on this issue in 2025. A summary of her presentation has been included below.

The chair of the CAFII DEI Working Group, Tejal Harri-Morar from BMO Insurance, opened the meeting by introducing Swati Agrawal, who is from the Financial Services Regulatory Authority of Ontario (FSRA). S. Agrawal is currently in a leadership role at the International Association of Insurance Supervisors (IAIS) on Diversity, Equity, and Inclusion, which includes the fair treatment of diverse customers. S. Agrawal began her presentation by explaining that, generally, the traditional way to talk about DEI is from an institutional perspective – governance, risk management, institutional issues, etc. She asked members to think about DEI from an external conduct perspective, meaning asking if we can apply a DEI perspective

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to all the various kinds of consumers we serve. One of the key questions (and the driving philosophy) that S. Agrawal and her colleagues ask themselves is: what can they do better as an industry, lead supervisors, and lead intermediaries to consider the needs of diverse consumers?

S. Agrawal explained that her team conducted a report involving regulatory authorities from many countries, which was released in December 2022. The report revealed that DEI is a growing focus across many regulatory jurisdictions. The results led to the creation of a two-pronged approach: the Governance Working Group focused on DEI at an institutional level, while the Market Conduct Working Group, led by S. Agrawal herself, focused on determining the practical ways to better serve diverse consumers.

As a regulator, it is easy to focus on ideal statements about what the industry should be like without considering practicality and applicability. To maintain practicality, S. Agrawal tasked all member countries in the Market Conduct Working Group to study how consumers have actually been harmed in their country. This information will highlight practical, real ways consumers have been mistreated so that policy can be catered to reality rather than belief. S. Agrawal noted that no definition of diversity or a diverse consumer was included because she did not want respondents to be boxed into strict categories when diversity changes per country. All 49 Market Conduct Working Group member countries came back with answers which were analyzed. The outcome, from a fair treatment of consumer perspective, highlighted common themes regarding what went wrong:

- Insurance companies and/or intermediaries intentionally target many diverse populations. For example, immigrant students in Canada are targeted for complex universal life policies that are typically catered to high-net-worth individuals. This is not unique to Canada.
- Many diverse populations did not understand their policies or what they had agreed to.
- Many diverse populations across the world expressed limited access to policy information.
- Many diverse populations expressed issues with after-sales servicing. The product has been purchased but now the consumer has little to no idea what to do and cannot get the proper help to figure this out.

David Self (CIBC Insurance) asked S. Agrawal how the IAIS adopts and adapts these findings into standards in a way that would be relevant to the Canadian population. IASI's mentality around the findings was not to invent new standards, per se, but to adapt the current standards contained within the Association's core principles on how business should be conducted. It is clear, then, that some of the pre-established standards and principles are not being followed. Thus, the findings are not meant to create new standards but to advise countries on how to better adhere to the current standards. The goal is to better establish a global standard that countries and companies can follow. One such example is Canadian provincial regulators taking the international principle (ICP-19) and converting it to the CCIR FDC Guidance, which then became the national guidance for any conduct regulator to be able to test insurance companies and intermediaries.

S. Agrawal concluded her presentation by saying that, after the responses the IAIS received from around the world were analyzed, her team honed in on three international principles (aligned with Canadian national guidance) that were most commonly misapplied:

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- ICP-19.1 (the supervisor requires insurers and intermediaries to act with due skill, care and diligence when dealing with customers),
- ICP-19.2 (the supervisor requires insurers and intermediaries to establish and implement policies and processes on the fair treatment of customers, as an integral part of their business culture), and,
- ICP-19.5 (the supervisor requires insurers to take into account the interests of different types of consumers when developing and distributing insurance products).

She then developed recommendations to better address and apply these three principles. S. Agrawal ran out of time before she could go into detail regarding the recommendations for the correct application of ICP guidance. Therefore, she will need to come back to present again to the CAFII DEI working group.

Keith Martin asked S. Agrawal if she could comment on FSRA's consultation on vulnerable consumers. She replied that there are commonalities between her work and the work happening with the Consumer Office. Internationally, every jurisdiction can adopt the international principles they feel best suit their national industry. Ultimately, the international standard is the highest standard to adopt.

S. Agrawal encouraged K. Martin and T. Harri-Morar to provide their feedback on the IAIS's application paper.

Ontario Ministry of Finance

The Ontario Ministry of Finance Publicly Posted Its Consultation on the Regulatory Framework for Life and Health Managing General Agents (L&H MGAs).

In an email sent out on August 1, 2024, Ontario's Ministry of Finance informed CAFII that it had officially published its technical consultation on the regulatory framework for Life and Health Managing General Agents (L&H MGAs). The post can be accessed via the links below.

English: Proposed Life and Health Managing General Agent Legislative Framework in Ontario
French: Proposition de cadre législatif pour les sociétés de gestion de l'assurance vie et santé en Ontario
Feedback form: https://forms.office.com/r/m5aHxXkubK

All feedback must be received no later than September 9, 2024.

Quebec

Autorité des marches financiers (AMF)

On July 25, 2024, CAFII Met With the AMF's Hugo Lacroix, the New Superintendent of Securities Markets and Distribution.

On July 25, 2024, CAFII held an hour-long virtual meeting with the AMF's Hugo Lacroix, the new Superintendent of Securities Markets and Distribution. Also in attendance from the AMF were:

- Louise Gauthier, Senior Director, Distribution Policies (reports into Hugo Lacroix);
- Mario Beaudoin, Director, Alternative Distribution Practices (reports to Nathalie Sirois);
- Nathalie Sirois, Senior Director, Prudential Supervision (reports to Patrick Déry, Superintendent, Financial Institutions).

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CAFII Executive Director Keith Martin moderated the meeting. The following CAFII volunteer leaders asked questions:

- Val Gillis, CAFII Chair of the Board and SVP, Life, Health and Credit Protection, TD Insurance;
- Paul Cosgrove, CAFII Vice-Chair of the Board and President & CEO, Assurant Canada;
- Karyn Kasperski, CAFII Board Secretary and EOC Chair (RBC Insurance);
- John Burns, CAFII Vice-Board Secretary and Vice-EOC Chair (Securian Canada);
- Fay Coleman, Vice Chair, Market Conduct & Licensing Committee (TD insurance);
- Jennifer Russell, Chair, Quebec Committee (Assurant Canada);
- Jason Beauchamp, Vice Chair, Quebec Committee (Canada Life).

The following is a summary of the key points from the meeting.

Hugo Lacroix emphasized that the new structure at the AMF would allow for more collaboration, with Louise Gauthier, Mario Beaudoin, and Nathalie Sirois able to better coordinate their activities. Mario Beaudoin will work closely with Nathalie Sirois on files relating to distribution without a representative.

Overall, Mr. Lacroix said the AMF is keeping a close eye on emerging trends and the risks they could pose to the financial system, including technology changes like AI, crypto, climate change, ESG, and developments in international markets. On AI, Mr. Lacroix said that it provides great opportunities and mentioned, for example, the possibility of disclosing details about products in a more tailored way than the usual approach of just sharing paper that describes the product. He also added that technology and AI could increase the tailoring of products to consumers and systems efficacy for distributors and consumers alike, thereby increasing client satisfaction.

Louise Gauthier said there are no current plans for new initiatives around online sales.

Nathalie Sirois informed attendees of two important documents (both in French only) on the AMF's website:

- The Calendar of Initiatives, which explains the initiatives on the AMF's radar for the next several months, including guideline development and draft issuance;
- An OSFI-type risk outlook, including cyber risk and third-party risk.

Mario Beaudoin said that his team is looking at industry statistics around claim denial levels and the premium returned to customers. These findings will be presented at the October 8/24 meeting in Montreal, QC. Work is also being done on sharing information about coverage loss, especially for critical illness coverage or disability coverage, for example, due to age.

Mr. Lacroix believes that 80% of regulation can be principles-based, but 20% might need to be prescriptive.

Mario Beaudoin noted that for distribution without a representative, where agents were not licensed, it was necessary to inform customers through disclosure. The issue, however, is that customers don't always understand the documents they are provided or the products they are obtaining. M. Beaudoin

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emphasized that one of the biggest challenges has been and remains proper disclosure to consumers regarding their policies and products.

Louise Gauthier said that there will be consultations around online web sales conducted with industry in the coming months.

If a document only has a French version, the AMF can be contacted to request an English translation.

Mr. Lacroix said that he is a fan of harmonization in principle but that it needs to be done wisely; otherwise, it can lead to costly mistakes. He is not a believer in a "cut and paste" approach to regulation.

A full report summarizing the meeting can be found here: *CAFII Meeting with Hugo Lacroix and Colleagues July 25, 2024, Summary of Meeting*

After a Conversation with CAFII, the AMF Agreed to Extend the Deadline for Cancelling Spousal Coverage for Credit Card Portfolios.

After many conversations with the AMF, CAFII's Executive Director Keith Martin informed CAFII members that the AMF has agreed to extend the deadline for cancelling spousal coverages by three years for credit card portfolios and indefinitely for loans. His email is included below.

> *Hello CAFII member,*
>
> *By way of follow up to my note to you yesterday on the AMF extending the deadline for cancellation of spousal coverages by three years, I want to clarify that this extension only applies to spousal coverages in the credit card portfolio.*
>
> *The AMF has told CAFII that it is satisfied with the natural attrition rate for the cancellation of spousal coverage in the loan portfolio. I have written them to confirm that understanding, and they have written me back – there is no deadline for the cancellation of spousal coverages for loans.*
>
> *Thank you,*
>
> *--Keith*
>
> ***Keith Martin***
> *Executive Director / Directeur general*
> *Canadian Association of Financial Institutions in Insurance*
> *L'association canadienne des institutions financières en assurance*
> *keith.martin@cafii.com*
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British Colombia

British Colombia Financial Services Authority (BCFSA)

On August 9, 2024, CAFII Met With the BCFSA to Discuss Its Extra-Provincial Incident Reporting Guideline.

On August 9, 2024, CAFII met with the British Colombia Financial Services Authority (BCFSA) to discuss the regulator's Extra-Provincial Incident Reporting Guideline.

In attendance from BCFSA:

- Rob O'Brien, Manager, Financial Institutions Policy
- Steven Wright, Senior Policy Analyst, BCFSA
- Ming Hu, Senior Risk & Financial Analyst, BCFSA

In attendance from CAFII:

- Keith Martin, CAFII – Executive Director
- Robyn Jennings, CAFII – Research Analyst
- Sara Belanger, Assurant
- Rebecca Saburi, BMO Insurance
- Jason Beauchamp, Canada Life Insurance
- Dallas Ewen, Canada Life Insurance
- David Self, CIBC Insurance
- Karyn Kasperski, RBC Insurance – CAFII EOC Chair
- Charles Maclean, RBC Insurance
- Christine Suaza, RBC Insurance
- John Burns, Securian Canada – EOC Vice-Chair
- Andrea Stuska, TD Insurance
- Fay Coleman, TD Insurance –Market Conduct & Licensing Vice Chair
- Shahnoor Khimjee, TD Insurance

The meeting began with the BCFSA explaining that, initially, it intended to require reporting incidents to include filling out a form unique to BC. However, after discussing this with the industry, the BCFSA concluded that other existing forms that meet BC's data requirements, like OSFI's, could be used instead.

The BCFSA walked CAFII through the guidelines so that the CAFII members in attendance could provide feedback and/or input. Steven Wright (Senior Policy Analyst, BCFSA) began the presentation by explaining how, in 2022, the BCFSA proposed an incident reporting rule requiring extra-provincial insurance and trust companies to report material information security incidents. After the Industry expressed valid concerns, BCFSA changed the requirement to outline the expectations regarding reporting material information security incidents by extra-provincial insurers and trust companies through a guideline, not a rule. The new proposed guideline is focused on harmonizing requirements, to the extent possible, with other federal and provincial regulators. Mr. Wright informed CAFII that they

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have also been working with CCIR on a harmonization document that would develop one set of requirements across all provincial and territorial regulators.

Looking closer at the guideline's components, Mr. Wright explained that, for the incident reporting form, the BCFSA has identified the required data points that need to be shared with BCFSA. He is confident this aspect is harmonized with other jurisdictions, except for the additional request to identify the number of BC-resident customers affected by the reporting. They have not specified an exact form to be filled out; rather, BCFSA has identified the data points that need to be reported on, which should allow regulated entities to fill out an existing form that they already need to submit to a regulator, like the OSFI form.

In terms of reporting timelines, the BCFSA is asking that extra-provincial companies notify the regulator as soon as possible within reason but no later than 72 hours after determining that an incident is material. This does not mean the full report is sent within 72 hours after an incident; rather, it means that BCFSA will be notified within 72 hours that an incident meets the materiality threshold.

David Self (CIBC Insurance) asked if there was any subjectivity around reporting for the 72-hour deadline after determining materiality. Mr. Wright replied that, yes, there would have to be subjectivity, but BCFSA would always fall back on the "reasonable persons test" or the idea that the person reporting the incident had exercised reasonable judgment.

In terms of transmitting these reports, the regulator understands that these reports can include very sensitive information, therefore, it has taken measures to ensure security and confidentiality around filing them. BCFSA has, specifically, established a process in which, in the event of an incident, the company will contact the regulator via email explaining it wants to submit an incident report. The BCFSA will get back to the company with a secure SharePoint link so the report can be uploaded safely. The BCFSA is currently working on creating a mailbox specific to incident reporting. Once the mailbox has been created, the Guideline will be updated to include the new address.

Mr. Wright mentioned that the Guideline discusses materiality and what constitutes a material event. Ultimately, determining the materiality threshold comes down to a company's judgement as informed by the guideline. Again, the regulator assumes companies will exercise reasonable judgment to determine materiality.

K. Martin asked the regulator what it intends to do with the reports it receives and what the industry might expect in terms of interactions with the regulator regarding process and expectations. Steven Wright explained that the primary, but not sole, focus will be on the market conduct implications of an incident for BC residents. The BCFSA and its market conduct team acknowledge its limited capacity. Regarding timing, the BCFSA is conscious of burdening companies; it does not believe that communication and/or actions will occur immediately after an incident but rather only after companies have gotten control over the incident.

Charles McLain (RBC Insurance) explained that his company has been in conversation with OSFI around incident reporting, and it has stated that it considers brokers and MGAs to be relevant third parties, and thus, their breaches need to be reported by the insurers they have contracts with. He then asked if, in BCFSA's eyes, there is an onus on insurers to report when MGAs inform them about an incident, even if

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the insurer's system is untouched. The BCFSA replied that, according to the Guideline's objectives, if the MGA is providing frontline services to customers (as stipulated in the contract between an insurer and MGA that establishes duty of care to customers), then yes, it needs to be reported. BCFSA will not require the level of detail OSFI requires but will need to receive basic information.

Finally, BCFSA informed CAFII that it has not determined a publication date for the Guideline; however, when it does, it will inform CAFII and its members.

Read the full summary here: *Summary of BCFSA Meeting on the Extraprovincial Incident Reporting Guideline - FINAL*

On August 13, 2024, CAFII Met With the BCFSA to Discuss Its New Intentions Regarding Life and Health Insurance Claims Officials.

CAFII's Executive Director, Keith Martin, and CAFII's Research Analyst, Robyn Jennings, participated in a meeting on August 13, 2024, with the British Colombia Financial Services Authority (BCFSA) regarding its intention to require life and health insurance claims officials who "make decisions" to be viewed as adjustors who need to acquire an individual license.

BCFSA contacted CAFII in mid-July 2024, requesting a meeting for mid-August to discuss its Regulatory Statement on the Adjusting and Settlement of Insurance Claims. Marina Makhnach of the BCFSA sent the following email to CAFII's Executive Director, Keith Martin:

> *Dear Keith*
>
> *BCFSA intends to issue a Regulatory Statement, "Adjusting and Settlement of Insurance Claims," that sets out our position on the regulation and licensing of businesses and individuals who perform insurance adjusting work involving British Columbia ("B.C.") consumers and insureds.*
>
> *The Regulatory Statement offers information and clarity as to BCFSA's position on two issues related to insurance adjusting as it is regulated under the Financial Institutions Act ("FIA"):*
>
> 1. *What activity we consider to constitute insurance adjusting; and*
> 2. *For businesses and persons engaged in insurance adjusting, what constitutes "acting in B.C." and would therefore require being licensed in B.C. or qualify for an exemption.*
>
> *Marketplace changes in technology have impacted the ability, capacity and practices of businesses that perform insurance adjusting work. BCFSA has assessed the impact and practical integration of changes in the insurance adjusting industry with specific consideration given to the conduct and licensing provisions set out in the FIA applicable to the adjusting of insurance claims. Other Canadian regulators have taken these technical capacity changes into account when setting out their regulatory oversight of adjusting work. Where possible, BCFSA seeks to harmonize the regulation and oversight of adjusters*

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in B.C. with that of other Canadian jurisdictions having similar statutory requirements for adjusting activities.

We are providing you with the opportunity to review the Regulatory Statement on an embargoed basis in advance of a meeting we will be scheduling to take place sometime on the 13th or 14th of August 2024, subject to your availability. Specific agreement to hold the existence of the Regulatory Statement and its content is required from you before it will be provided. Agreement to the terms of release can be facilitated by sending an email back to me at marina.makhnach@bcfsa.ca.

At the time of the meeting, you will be able to bring forward thoughts and comments on how the Regulatory Statement impacts your member's current and future business practices from a practical perspective. We also expect the meeting to facilitate discussions about long-term compliance with the FIA and the transition of specific or industry-wide business practices moving forward, should they be required.

Should you have any questions about specific details of the draft Regulatory Statement, you may submit them in writing to insurance@bcfsa.ca. Any responses to your inquiries may be integrated into agenda items set out in the meeting.

We ask that you acknowledge receipt of this email and agree to the terms of the Regulatory Statement release as soon as practicable. We also ask that your reply email include your availability and intention to attend the meeting tentatively scheduled on 13th or 14th of August 2024.

Thanks and Kind Regards,

Marina

After several conversations with BCFSA, CAFII set up a meeting for August 13, 2024, to discuss the Statement. Prior to the meeting, the Statement in question was released to CAFII on an embargoed basis, meaning it could not be shared.

In attendance from BCFSA were:

- Harry James, Director, Regulation Advisory Service;
- Sean Sisett, Director, Inspections & Case Management;
- Marina Macknach, Director, Market Conduct Financial Institutions;
- Kari Toovey, Manager, Policy Team.

In short, based on new language in the BC Financial Institutions Act (FIA), BCFSA has interpreted the Act to require individuals who act as adjusters to be individually licensed. K. Martin explained that, while in P&C, actual decisions are made by adjusters, in life and health insurance, individuals confirm eligibility as part of the claims process. Harry James said that this was not the view of BCFSA and that life and health insurers who make decisions about claims would be considered adjusters and would need an individual license.

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Mr. James also said that this was not a consultation but a clarification and that BCFSA was not asking for comments on its interpretation but rather wanted to discuss how to implement it, over what timeline, and get industry feedback on who is captured as an adjustor, as there could be grey areas.
Specifically, he said that the test of someone adjusting is whether they are making either of the following decisions:

1. Will the claim be paid?
2. How much of the claim will be paid?

He also said that he understood that some individuals would be "checking off boxes" in a claims centre as part of claim adjudication and that those individuals would not be viewed as adjusters. It was also stated that third parties administering claims, like a TPA, would be captured by this definition, and individuals making decisions about claims in those organizations would need to be individually licensed.

The Insurance Council of BC's intent to implement a new Restricted Insurance Agency regime was discussed, and Mr. James said that this corporate license was for distributors operating in the sales channel and that the RIA regime would not capture the claims settlement process. Mr. James said that this interpretation applied to life insurance, employee benefits, health insurance, and travel insurance. Sean Sisett said that this was an existing requirement and that the industry was currently in "pre-existing non-compliance."

The meeting concluded. The next day, K. Martin met with Luke O'Connor, prior to CLHIA's meeting with BCFSA, to provide him with an update on CAFII's meeting. L. O'Connor said he would reinforce the importance of being able to share the Regulatory Statement. He then shared the following aspects of the BC FIA:

- Section 168 of the FIA now defines "insurance adjuster" to mean "a person who makes any adjustment or settlement of a claim under a contract of insurance other than a contract of marine insurance.
- Subsection 180 of the FIA states that no person shall act in the province as an insurance adjuster or as an employed insurance adjuster unless the person is licensed as such or is exempted by regulation.
- Section 6 of the Insurance Licensing Exemptions Regulation provides exemptions from the requirement to obtain an adjuster's licence in certain circumstances. Section 180(1) does not apply to a person who:…(e) is a salaried employee of that insurer, who in either case is acting for that insurer.

Based on these clauses, it seems clear that salaried employees are exempted under the legislation and cannot be expected to be individually licensed, regardless of their role in claims. What is less clear is the situation for third-party administrators, and sometimes retired employees/contractors work for an insurer in claims and are not salaried employees.

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The definition of insurance adjuster (Section 168 of the FIA) could be interpreted differently from how BCFSA is interpreting it, and it is not clear what customer protections are offered by requiring life and health claims staff to have an individual license.

While K. Martin cannot release the Regulatory Statement at this time, it does state that "Breach of section 180(1) of the FIA may be subject to an administrative penalty or attract additional enforcement action under the FIA."

K. Martin will consult with the EOC Chair and Vice Chair and the Market Conduct & Licensing Chair and Vice Chair about CAFII's next steps.

Read the full summary, including the August 14, 2024, meeting with L. O'Connor, here: *Summary of Meeting with BCFSA on Initiative around Life Insurance Adjusters*

A few weeks later (August 30, 2024), BCFSA contacted K. Martin to inform him that it would be deferring the publication of its Regulatory Statement. The regulator explained that, after hearing from stakeholders, it recognized the need for further work on the Statement to clarify the nomenclature. BCFSA added that it welcomes more written feedback from CAFII, with consultation remaining open until October 11, 2024. Finally, BCFSA stated they would happily meet with CAFII again in October for a follow-up discussion on the Statement.

The full email has been included below:

> *Dear Keith*
>
> *Thank you for meeting with BCFSA on August 13th, 2024, to discuss our Regulatory Statement "Adjusting and Settlement of Insurance Claims". The statement sets out BCFSA's position on the regulation and licensing of businesses and individuals who perform insurance adjusting work involving B.C. insureds.*
>
> *Based on the feedback received from our meetings with various stakeholder groups, we recognize the need to make additional changes to the Regulatory Statement in order to make the nomenclature clearer regarding who is considered to be an adjuster. Giving the timing of the B.C. government election and additional work required, we will be deferring the publication of the Regulatory Statement until after the new B.C. government is formed.*
>
> *In the meantime, we welcome your written feedback about the Regulatory Statement. As previously communicated, we are not consulting on our position regarding the requirements set out in the Regulatory Statement. Those requirements are established by the existing legislation. What we are seeking is a feedback on how to improve the Regulatory Statement to make those requirements clearer. We also wish to hear your thoughts on a reasonably expedited transition period to understand how quickly the industry could adjust to comply with the licensing requirement. We ask you to submit your feedback by October 11, 2024, by sending it to: insurance@bcfsa.ca. We would be happy to have a follow-up conversation with you at the end of October 2024 once we had the time to consider all of the feedback.*

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> *For your convenience, attached is a confidential draft of the Regulatory Statement that, with the exception of the addition of a footnote, is the same as the one previously shared with you. We ask you not to share the Regulatory Statement broadly with your members; however, feel free to share it on a confidential basis with a select group of members in order to inform your feedback.*
>
> *We would like to thank CAFII for engaging with BCFSA on this matter.*
>
> *Thanks and Kind Regards,*
>
> *Marina*

Read BCFSA's draft Regulatory Statement here: *BCFSA Regulatory Statement-Adjusting Insurance Claims*

Insurance Council of British Colombia (ICBC)

On July 30, 2024, CAFII Contacted the Insurance Council of BC to Discuss Its RIA Performance Requirements Framework.

On July 30, 2024, CAFII sent a letter to the Insurance Council of BC on the *Consultation—Insurance Council of British Columbia Restricted Insurance Agency Performance Requirements Framework.* On August 1, 2024, Brett Thibault acknowledges receipt of the submission with the following email:

> *Hi Keith,*
>
> *Thank you for providing your input and engaging with us as we develop the RIA regime. We appreciate our ongoing dialogue.*
>
> *Our team will review your feedback and the questions you've provided and will contact you in the coming weeks.*
>
> *In the meantime, if you have any further questions, please don't hesitate to reach out.*
>
> *Thanks,*

CAFII's Executive Director, Keith Martin, has been invited to be a panellist on an industry panel in Richmond, BC, on September 18, 2024, in conjunction with the Insurance Council of BC's AGM.

International Developments, Research, and Thought Leadership

International Travel & Health Insurance Journal (ITIJ)

On July 2, 2024, ITIJ Published An Article on Medical Patient Repatriation.

On July 2, 2024, ITIJ published an article exploring repatriation trends for Canadian travellers. The findings were anything but positive. According to ITIJ, even before the COVID-19 pandemic, the medical repatriation of Canadian travellers was a long, arduous process.

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> *In an ITIJ report on Canada's overcrowded hospitals published in 2018, Dr Ferial Ladak, then a Medical Director for Global Excel, asserted: "Patients needing emergency procedures should be able to come to the emergency room (ER) by air ambulance and be assessed like any other Canadian."*

Fast-forwarding to the present day, ITIJ found that, since 2018, the issue has worsened: "wait times for acute beds have lengthened; staffing levels have lessened; and medically repatriated patients are reluctant to go through a repeat ER admission (which they have already undergone in their primary treatment facility)." So, how and why has this problem intensified?

The Fraser Institute published a report in 2023 documenting that Canadians' wait times for non-urgent medically necessary services were over 12 months. The findings indicated that wait times increased by 198%, for an average of 27.7 weeks, in 2023 compared to 1993, the first year the Institute conducted this report, which averaged 9.3 weeks. Furthermore, approximately 1.8% of Canadians left the country for treatment. Finally, Ontario had the shortest wait time of 21.6 weeks, while Nova Scotia had the longest, at 56.7 weeks.

When gauging wait time, ITIJ did not include urgent care procedures which demanded immediate lifesaving measures. ITIJ instead looked at two metrics:

1. The time it takes to receive a referral by a general practitioner/family physician to a consultation with a specialist; and,
2. The time it takes between a consultation with a specialist and the patient's receipt of treatment.

ITIJ found that wait times do not occur in a vacuum; time is exacerbated by emergency department congestion. For example, when the article was written, the emergency department of Montreal General Hospital was operating at 151% over capacity. They had 23 patients who had waited for 24 hours on stretchers and 23 who had waited over 40. This congestion has been found in Canadian hospitals. It's no wonder that, in 2023, according to the Canadian Institute for Health Information, 1.3 million frustrated Canadian patients left emergency rooms untreated.

But what about repatriation and Canadian travellers? The erroneous assumption is that this group is wealthy and can, therefore, afford private and/or international healthcare services. In reality, many Canadian travellers rely on travel insurance and Canada's tax-supported health insurance system. The issue arises when the receiving hospital is already overwhelmed by patients waiting hours to see a doctor (and then waiting a few more days on stretchers). The arrival of a patient from a beach resort in Cancun is more than an annoyance to harried ER staff.

Furthermore, the Canadian health system is already underfunded, understaffed, and exhausted after the COVID-19 pandemic. Repatriation is an expensive business. Flying Canadians back to Canada and getting them quick and proper treatment all costs money.

> *As a bottom line in developing a more accessible repatriation system, Will McAleer, Executive Director of THiA and Vice President of Travel Insurance Brokerage, insisted that "the provinces,*

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particularly Ontario, need to engage with the industry to develop an effective solution to the problem."

Read the full article on ITIJ's website.

McMillan

On July 17, 2024, McMillan Published An Article Explaining Quebec's New Complaints Handling Regulation Within the Financial Sector.

In an article published on July 17, 2024, McMillan detailed the Autorité des marchés financiers' (the AMF) new regulation titled the Regulation Respecting Complaints Processing and Dispute Resolution in the Financial Sector. The new regulation mandates standardized procedures for processing complaints. Effective as of July 1, 2025, this initiative is a step towards sectoral unity for complaints resolution practices.

The new regulation applies to financial institutions, financial intermediaries, and credit assessment agents designated under the *Credit Assessment Agents Act.*

According to the AMF, as explained by McMillan, a complaint for financial institutions and financial intermediaries "means any reproach or dissatisfaction regarding a service or product offered by such institutions or intermediaries where the reproach or dissatisfaction is communicated by a person who is a member of its clientele and a final response is expected." For credit assessment agents, however, a complaint is "any reproach or dissatisfaction concerning a practice of a credit assessment agent where the reproach or dissatisfaction is communicated by any other person concerned on whom the agent holds a record." McMillan provides a list of what is *not* considered a complaint (see link to article).

The AMF's new regulation will require all entities to adhere to proper communication requirements, timely responses, and thorough documentation of all complaints as stipulated by the guideline. This means that all entities must adjust their processing framework as needed for proper adherence, including:

- Detailing how complaints are received, assigned, analyzed and responded to, ensuring that the processing is kept simple and free of charge for the complainant and is conducted in an objective manner that considers the complainant's interests;
- Specifying measures for implementing the policy across the organization, including appointing a complaints officer with appropriate authority and competence;
- Ensuring complainants are properly assisted throughout the process, including timely updates on the status of their complaint;
- Defining measures for assigning complaints to staff under the supervision of the complaints officer and ensuring staff have access to essential information at any time;
- Requiring periodic reporting to the financial intermediary's officers on various elements: number and causes of complaints, outcomes of complaints, policy implementation issues and issues identified when ascertaining the causes common to the complaints; and
- Aiming to develop a comprehensive understanding of received complaints to identify common causes and address raised issues effectively.

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Furthermore, all entities must follow the new rules and practices guidelines, including:

- *Proper disclosure requirements.* Concise, clear language must be used regarding complaint processing and dispute resolution to prevent clients' confusion or misunderstanding.
- *Clear communication and assistance for complainants*. Entities must comprehend what is being communicated and, if needed, provide assistance if necessary in order to facilitate communication.
- *Standardized complaints processing*. This includes prompt acknowledgement of complaints received as specified in section 22 of the new Regulation, proper complaint documentation and record maintenance, and final complaint response (no later than 60 days).
- *Resolution offers*. Entities must allow complainants a reasonable amount of time to respond to resolution offers. If accepted, entities must implement the offer within 30 days unless an alternative timeframe is agreed upon.
- *Accelerated processing of certain complaints*. If it aligns with the complainant's satisfaction, complaints can and should be accelerated to be resolved within 20 days. This process must be documented. If the complainant's issue cannot be resolved in 20 days, then this must be recorded and handled in a timely manner according to the new regulation.
- *Summary of policy*. Entities must have summaries and proper documentation of their complaint processing and dispute resolution on hand. This summary must be easily accessible either via the entity's website or through an agent.

The new regulation also stipulates that complainants will now have the right to escalate their complaint record to the AMF for examination and input. If requested, entities must send the complaint record to the AMF within 15 days of request. The documentation must include contact details.

Finally, non-compliance will be sanctioned by penalties ranging from $1,000 to $5,000.

As per the AMF and McMillan, this new regulation aims to bolster consumer confidence and trust in financial services by enforcing clear timelines, ensuring comprehensive documentation, and promoting effective communication.

Read the full article on McMillan's website, which includes a link to the new regulation.

On July 3, 2024, McMillan Published An Article Summarizing Regulatory Changes Made To Bill 96.

In an article published on July 3, 2024, McMillan succinctly summarized the recent (June 26, 2024) publication of a regulation made to clarify, complement, and, ultimately, implement the Charter of the French Language (the "Charter") as modified by Bill 96.

According to McMillan, "the regulation most notably provides specifics and concessions regarding the regime applicable to the use of trademarks in languages other than French on packaging and signage." Before the recent regulatory amendments, Bill 96 curtailed any use of recognized but unregistered trademarks displayed in languages other than French. After much pushback from stakeholders, the new regulation will recognize trademark exemptions to the extent that no equivalent French trademark is registered.

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The regulation also clarified Bill 96's rule requiring a "generic term or a description of the product" to appear in French when included in a trademark. As per the regulation:

- "A description refers to one or more words describing the characteristics of a product," and
- "A generic term refers to one or more words describing the nature of a product."

The name of the enterprise selling the product and the product itself are exempt from this translation requirement.

Bill 96 introduced another requirement for trademarks in languages other than French: they must be accompanied by "markedly predominant" French wording. Under the regulation, "markedly predominant" means that the French description and/or generic term must have a "much greater visual impact" than the non-French language. Therefore, the French text must be twice as large and have the same, if not better, visibility and legibility. The goal was to increase the public presence of the French language.

McMillan warns that Quebec may revisit the above regulation changes; therefore, stakeholders and industry should monitor these issues in the coming months and years.

Read the full article on the McMillan website.

Munich Re

Munich Re, Canada (Life) Published Article Exploring Accelerated Underwriting in Canada.

Munich Re, Canada (Life) recently published an article explaining and exploring the landscape of accelerated underwriting (AUW) in Canada. According to Munich RE:

> *AUW is the waiving of certain traditional underwriting requirements (e.g., fluid evidence, vitals) for a subset of applicants that meet favourable risk requirements in an otherwise fully underwritten life insurance process. While the interpretation of AUW can vary from one insurance company to the next, what is universal is that the "no fluid" aspect of AUW translates into a faster, less invasive buying experience for the majority of life insurance applicants.*

This approach to underwriting, however, is not without risk. Therefore, as AUW continues to expand, industry must take the necessary precautions to mitigate the potential issues that could arise from acceleration.

Torys

On July 22, 2024, Torys Published An Article on Quebec's New Personal Health Information Protection Act.

On July 22, 2024, Torys published an article summarizing the autorité des marchés financiers' (the AMF) new law on protecting personal health information. The new law, titled the Act respecting health and social services information and amending various legislative provisions, took effect July 1, 2024. It is not entirely harmonized with the rest of Canada, though it does bring some alignment.

As per Torys':

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Most of the requirements of the Act apply to certain designated "health and social services sector organizations," which include public health institutions, including clinics and hospitals, as well as other organizations that provide health and social services, such as private clinics, pharmacies, private seniors' residences, palliative care homes, laboratories, foster homes and families, intermediate resources (such as adapted living environments), funeral service providers and ambulances.

Service providers with whom these organizations enter into contracts for the provision of health or social services are also considered to be organizations in the health and social services sector.

These organizations have an obligation to protect SSS information, defined as any information that allows, even indirectly, a person to be identified and that meets one of the following characteristics:

- *It concerns the physical or mental health of that person and its determining factors, including his or her medical or family history;*
- *It concerns any material taken as part of an assessment or treatment, including biological material, as well as any implant or orthosis, prosthesis or other aid to compensate for a disability;*
- *It concerns the health or social services offered to that person, in particular the nature of these services, their results, the places where they were offered and the identity of the persons or groups who offered them;*
- *It was obtained in the exercise of a function provided for by the Public Health Act ;*
- *It is attached to one of these pieces of information or collected to admit the person to an organization in the health and social services sector.*

The inclusion of certain social services sector bodies and information relating to the provision of those services creates a broader scope than equivalent legislation in other provinces, which only covers personal health information.

The new act stipulates several new principles and legal obligations for private sector entities. These include:

- Receiving proper consent from all individuals, including proper disclosure of purposes, means, uses, protection, and duration of use of information collected.
- Conducting privacy impact assessments for projects involving an individual's or individuals' private information and new technology products and/or services.
- The deactivation of all technologies used in the collection of health data information, including identification, location, or profiling functions. According to Torys, "Organizations that collect SSS information using technologies that include identification, location or profiling functions must inform the individuals affected. As required by other private sector privacy laws in Quebec, all of these technologies must be deactivated by default."
- Adopting internal governance policy for the proper management of health information, with proper staffing appointed for observation and maintenance. Compared to other provinces, the Act requires several additional elements to be included in the policy, such as the roles and

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responsibilities of staff, the logging mechanisms and security measures in place, the process for handling privacy incidents and complaints, and a description of staff training and awareness activities.

- Monitor, log, and maintain all access, uses, and disclosures of health information. This includes technology products or services used, collected, stored, and disclosed. All records must be publicly available through the entity's website.
- Providing proper access to individuals so they can access and amend their health information. However, all entities must take the necessary precautions to maintain accuracy themselves. Individuals will also now be allowed to restrict access to their information from certain providers, services, and family members.
- All entities are responsible for the privacy and security of all health information they hold and must implement and maintain reasonable security measures to ensure security. They are required to report privacy incidents to the Commission de l'accès à l'information (CAI) and inform the individuals concerned if the incident presents a risk of serious harm.

Furthermore, the new law requires that all contracts be concluded in writing and must, "under penalty of nullity", require service providers to:

- use the information provided to them only for authorized purposes;
- ensure the protection of information and compliance with information governance rules;
- have any person likely to process the information sign a confidentiality agreement;
- use only technological products or services authorized by the organization;
- transmit upon request any information obtained or produced from the use of SSS information;
- enable the body to carry out any verification relating to the protection of information;
- promptly notify the organization's data protection officer of any breach or attempted breach of the data protection obligations under the contract;
- not to retain the information after the end of the contract.

If the information must be communicated outside Quebec, the contract must include clauses aimed at mitigating the risks identified in the assessment of privacy factors, if applicable.

Finally, as per the new law, violations of the Act may result in fines of up to $100,000 for an individual and $150,000 for others. These amounts are doubled for a first repeat offence and tripled for any additional repeat offence.

Read the complete article on Torys' website.

CAFII is monitoring this regulation and is in communication with CLHIA, which is actively engaged in this file.

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In an E-Blast Circulated on July 9, 2024, Torys Reported That Quebec Tabled Its Final Form of The Regulation Regarding the Language of Commerce and Business.

On July 9, 2024, Torys circulated an e-blast informing all recipients that Quebec had tabled its final form of *the Regulation to amend mainly the Regulation respecting the language of commerce and business.* The e-blast summarized the differences between the proposed and final regulation, as well as crucial changes businesses and industry should be aware of. They are as follows:

- ***Recognized trademarks.*** *The Regulations reintroduce the recognized trade-mark exception (which includes registered and common law marks) with respect to listing on a product and its packaging, public signage and commercial advertising, rather than limiting the exception to registered marks as originally proposed (although the generics and descriptions incorporated into it still need to be translated in some cases).*
- ***Transitional period and exceptions to the use of French on products and packaging.*** *The Regulations clarify the situations in which a product listing may be written exclusively in a language other than French. As such, products manufactured before June 1, 2025, or in some cases between June 1, 2025, and December 31, 2025, will benefit from a two-year exemption in certain circumstances.*
- ***Criteria related to the predominance of French on products and the availability of related contracts in French.*** *The Regulation facilitates the application of certain provisions of the Charter relating to product listings and contracts of adhesion and enacts new rules for the public display of trademarks and business names. Thus, the Regulations clarify the requirement of a clear predominance of French, specifying that the space devoted to the text written in French must be "at least twice as large as the space devoted to the text written in another language."*
- ***Engraved or embossed inscriptions on the products****. The Regulations do not require that markings be translated into French in cases where they are "necessary for the use of the product" (this requirement currently only applies to safety-related statements). That said, the Minister of the French Language has indicated that he is still considering reinstating this obligation.*
- ***Staggered entry into force.*** *While the majority of the provisions of the Regulation will come into force on June 1, 2025, those relating to contracts of adhesion will come into force 15 days after their publication in the Official Gazette, i.e., on July 11, 2024.*

Read Torys' full analysis of the final regulation on their website.