

Presentation to the Canadian Council of
Insurance Regulators
And
The Canadian Insurance Service Regulatory
Organizations

Industry Practices Review Committee

Presented by

Third Party Administrators' Association of Canada
(TPAAC)

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Introduction

Thank you for the opportunity of presenting our comments on *Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices*. As an association representing a number of Canada's Third Party Administrators (TPA's), and with our members' strong support for the initiatives outlined in your paper, we wish to offer our comments on the recommendations contained in this paper to the Industry Practices Review Committee (IPRC).

We have discussed the recommendations presented in the paper with the CLHIA to determine if there was consensus on the items proposed in this paper relative to how it impacts the whole Life and Health insurance industry. There is universal consensus by the primary organizations that include intermediaries (advisors) on the need for consensus and how this can be accomplished. Our comments as it impacts our members are outlined below.

As outlined in our previous submission, the TPA community is made up of companies that act as:

TPAs only or Consultants (Advisors) and TPAs

TPA Only

The TPA only side would be made up of:

Premium Administrators Only
Premium and Claims Administrators
Pension Administrators

The TPA is chosen by an advisor or a client directly, who feels the products and services offered by the TPA will best meet their client's needs. As the TPA is not an advisor to the consumer in the selection process of an insurer, in our opinion, the recommendations will not impact the business provided by the TPA that does not offer consulting services. The onus to meet the recommendations outlined in the consultation paper would rest with the advisor.

TPA and Consultant

Typically, if a TPA is offering Consulting services, the TPA would also offer administration services to their clients. In practice, the client or consumer will choose the consultant on the basis of consulting services offered as well as the TPA component. Choosing the consultant/TPA is most often independent of where the insurance business will be placed. It can also involve a specific product or products offered by the TPA and written by one or a number of insurers. The consultant in this case would be under the same obligations, as any other advisor, to reveal the relationships they may have with the insurer(s) they are recommending or approaching.

Our organization represents the TPA industry and as such, all our best practices and Codes of Conduct are based on what will help a TPA provide the best and most ethical service to their client. As administrators, we are not advisors but recognize the need for advisors we deal with to have best practices. We will provide comment on the recommendations as it pertains to advisors whom we sell our services to and how we deal with our customers using our best practices as outlined in our Code of Conduct.

IPRC Recommendations

As we understand, the IPRC, after a comprehensive review of best practices, has proposed a principles based focus on market place outcomes that could be achieved through industry standards, regulation or a combination of both. The IPRC will use a progressive approach to regulation wherein regulatory steps would be taken only if lesser means proved ineffective. These recommendations are to be presented to the CCIR and CISRO “... *to consider and industry associations to support as appropriate means to manage actual or potential conflicts of interest associated with insurance advice and transactions.*” The three principles outlined in your paper are:

1. *Priority of the client's interest:* An intermediary must place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests.
2. *Disclosure of conflict or potential conflict of interest:* Consumers must receive disclosure of any actual or potential conflict of interest that is associated with a transaction or recommendation.
3. *Product suitability:* The recommended product must be suitable for the needs of the consumer.

We appreciate the desire of the IPRC to ensure that there is a uniform approach to the objects stated above. How to ensure the consumer is protected is the area for discussion. Should the objectives be accomplished by regulation and codified or should it be by some voluntary or self regulatory method. As stated above, we represent many of the major players in the TPA industry and as such we are addressing this issue as a provider of services to the advisors. However, we also recognize that some of our members may also, through an area of their company, act as advisors. Our comments address the objects of the IPRC in the following section.

TPAAC Response

1. Priority of the client's interest: An intermediary must place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests.

We agree with the basic principles outlined in this section. We agree that the client's interest is the paramount principle. Practices should: *Not prejudice the clients or consumer interest for personal gain.*

We recognize that advisors are in the business to both provide services and receive remuneration for the services provided. Saying that, they should not knowingly compromise a clients needs for their own interest. We feel Provincial legislation, although not uniform in language, effectively meets that need through the various provincial licensing organizations. The IPRC has proposed that where possible, harmonized language should be used. We support that initiative. In addition various advisor associations have codes of conduct that address this important concern.

TPAAC Approach

As a TPA association, we follow our code of conduct which we feel meets the examples of expected conduct or practices outlined in the Consultation paper. Our Code of Conduct states:

- All member companies must act in their clients' best interests at all times.
- All member companies must fulfill the needs of their clients to the best of their ability.
- All member companies must act with honesty, trustworthiness and integrity.
- All member companies must keep informed with respect to applicable laws and regulations and observe them in the practice of their profession.

2. Disclosure of conflict or potential conflict of interest: Consumers must receive disclosure of any actual or potential conflict of interest that is associated with a transaction or recommendation.

We are in agreement with the thrust of this principle. This is clearly the most detailed area of this consultation paper. We feel that the CLHIA Reference Document on Advisor Disclosure, Advocis Code of Professional Conduct and disclosure best practices, IFB Code of Ethics and Statement of Principles and provincial regulations currently adequately meet the concerns expressed in this section. In addition harmonization of provincial regulations would also help meet the objectives outlined in this principle.

TPAAC Approach

Through our Code of Conduct we address these concerns for our members as follows:

- All member companies must disclose to their clients and prospective clients any and all information that may affect the member's ability to provide services and/or advice to its clients.
- All member companies must fully disclose to each client the terms of engagement and the services to be rendered to that client.

TPA's are selected as part of the advice being provided to a client by an advisor. Our role, although different than the advisor, still requires us to follow best practices. Full disclosure is a requirement of ours to be able to help the advisor to determine if a TPA is a proper option for a client.

3. Product suitability: The recommended product must be suitable for the needs of the consumer.

This area is critical to the advisor providing the proper advice to the customers they deal with. In our service-based business, advice is given based on the express or perceived needs of a client. The advice will not always be the same, and products may not always be the answer to the needs of a client. Expertise of the advisor will also determine the level of advice given. For example, what differentiates one advisor from another may be the experience of the advisor, exposure to situations that provide knowledge specific to a need, etc. The assumption that a product will always meet the needs of a client does not respect the full spectrum of experience that is required by an advisor to provide services to their client.

- How do you regulate experience?
- How do you regulate competitive advantage?
- How do you regulate ability?

With this in mind, suitability of advice or product sold may be different from one advisor to another. How can this be regulated? The concerns in this area can be best mitigated through training and experience not regulation. Saying all this, if an advisor makes a recommendation, it is incumbent on the advisor to provide the reason for the recommendation, and all supporting documentation. Disclosure will ensure that no conflict of interest is interfering unduly with the recommendation. Proper due diligence, as in any profession, will separate one advisor from his or her competitors. The selection process of an advisor by a client will allow them to determine if the advice an advisor is capable of giving will meet their needs in such areas as:

- Proper research capabilities;
 - Including proper research of the clients needs
 - Proper research capabilities to assess the market
- Experience
- Client references
- Potential conflicts of interest through relationships and compensation arrangements.

This evaluation process by a client or consumer recognizes that there is an onus on the client to make an informed decision about who to use to provide the services or products they need. Suitability may also be up to the final decision of the client. Perhaps a better heading for Recommendation # 3 would be "Informed Advice" as products may not be involved. "Informed Advice" would incorporate all the items outlined in Recommendation # 3.

TPAAC Approach

This is an area where we will be required to provide information to the advisors we deal with in order for them to fulfill the above requirements. We would expect, as our services are presented to a prospective client, that all pertinent information about our respective association members be presented to the prospective client.

Other Matters Raised in the 2005 Consultation

Independence of an advisor, if defined, removes independence as it is now regulated, rather than advisors being required to prove their independence through the procedures outlined in this paper.

In any industry where sales of products are involved, performance-linked benefits or other financial links are offered by service providers to make their products more attractive or to cement relationships. However, disclosure requirements that currently exist will make those arrangements transparent. Performance-linked benefits or other financial links do not necessarily imply improper advice. Rather, they are more likely to be an indicator of a superior service provider's ability to provide the best product for a client, and the incentive may be recognition for the advisor who has realized this.

Implementation of Recommendations and Outcomes

Although our TPA members in their role as administrators do not fulfill the advisor role (even if some member companies might also act as consultant), we feel we can adequately regulate our members as administrators only. We cannot however, regulate those who do not belong to our association. As a relatively new association, we are endeavoring to increase our membership to ensure our industry meets best practices and follows our Code of Conduct. As an association, TPAAC members can also ensure the advisors they deal with follow best practices as outlined in the IPRC.

We look forward to any questions you may have about this presentation.



John R. Moore
President,
Third Party Administrators' Association of Canada (TPAAC)

APPENDIX 1

TPAAC

Code of Conduct



The Code of Professional Conduct, as stated below, articulates the professional and ethical principles and values of the THIRD PARTY ADMINISTRATORS' ASSOCIATION OF CANADA. The Code forms the basis for the professional conduct of all its members and also serves to enlighten the public of the standards of professionalism and ethical conduct for which members are to be responsible and accountable. The Code is designed to encompass such values as integrity, competence, responsibility and trust.

All member companies have a responsibility to ensure that they are familiar with this Code of Professional Conduct, understand its application to their professional conduct, and strive to adhere to its principles and values. Furthermore, members should also be familiar with other sources of information that will assist them in making informed professional decisions. These include the laws, regulations, and policies that are professionally relevant to their industry sector.

Member companies are accountable to both the public and their peers, and as members of the Association are subject to the complaints and membership review procedures of the Association. Violations of this Code do not automatically imply legal liability. In the event of a complaint from peers or the public, the Association will conduct a peer review. A peer review is intended to enable the Association to provide guidance to its members where possible.



AS A CONDITION OF MEMBERSHIP IN THE THIRD PARTY ADMINISTRATORS' ASSOCIATION OF CANADA ALL MEMBER COMPANIES AGREE TO ADHERE TO THE ASSOCIATION'S CODE OF PROFESSIONAL CONDUCT AS STATED BELOW.

- 1) All member companies will act to uphold the ideals and objectives of the THIRD PARTY ADMINISTRATORS' ASSOCIATION OF CANADA as set out in the Application for Membership and the Association's by-laws.
- 2) All member companies will hold our profession in high esteem and strive to enhance its prestige.
- 3) All member companies must act with honesty, trustworthiness and integrity.
- 4) All member companies must protect client confidentiality.
- 5) All member companies must act in their clients' best interests at all times.
- 6) All member companies must act in a manner that reflects positively on the TPA industry and on other members of the Association.
- 7) All member companies must disclose to their clients and prospective clients any and all information that may affect the member's ability to provide services and/or advice to its clients.
- 8) All member companies must fulfill the needs of their clients to the best of their ability.
- 9) All member companies must strive to perfect the skills of their employees and increase their employees' knowledge through continuing education.
- 10) All member companies must keep informed with respect to applicable laws and regulations and observe them in the practice of their profession.
- 11) All member companies must co-operate with others whose services are constructively related to meeting the needs of their mutual clients.
- 12) All member companies must ensure that all client funds collected and/or held by the member company are used for the express purpose for which the funds are collected and/or held as understood by the client.
- 13) All member companies must fully disclose to each client the terms of engagement and the services to be rendered to that client.