

As a member of the Canadian Council of Insurance Regulators (CCIR), the Financial Services Commission of Ontario actively participates in the CCIR's Consumer Protection Initiatives Working Group.

At the request of the CCIR, we are publishing their working group report to help facilitate comments by stakeholders on the recommendations. Please note the deadline for submitting your comments to the CCIR is December 31, 1999.

CANADIAN COUNCIL OF INSURANCE REGULATORS (CCIR)

CONSUMER PROTECTION INITIATIVES WORKING GROUP CONSULTATION REPORT

NOVEMBER 22, 1999

One of CCIR's key priorities identified in their Strategic Plan for 1999-2002 was a commitment to advance consumer protection initiatives.

CCIR established a working group that was initially comprised of CCIR representatives from Alberta, North West Territories, Ontario and Saskatchewan. The working group subsequently requested the participation of various industry associations and Canadian Life and Health Insurance Association (CLHIA), Canadian Association of Insurance and Financial Advisors (CAIFA), Canadian Association of Financial Institutions in Insurance (CAFII), and Independent Life Insurance Brokers of Canada (ILIBC) have since been actively involved. In addition, the Canadian Insurance Self-Regulatory Organization (CISRO) expressed a desire to assist in this process and two representatives joined the working group: Josee Turcotte from Association Des Intermediaires en Assurance De Personnes Du Quebec and Tom Hampton from the Alberta Insurance Council.

In February, the working group presented a listing of topics to CCIR which was approved. The initial tasks of the working group were to address three items.

- Point of Sale Disclosure
- Policy Contract Wordings
- Errors & Omission Insurance

Initially, these items were to be addressed from the perspective of the life insurance sector.

The task of reviewing the three issues represented a significant challenge. The working group has held nine meetings. The recommendations developed through this process are reflected in this report.

While this report reflects the recommendations of the CCIR - Consumer Protection Initiatives Working Group, it should be noted that the industry representatives who participated did so as individuals, i.e., they were not in a position to give sign-off on behalf of the associations they represent.

Comments on this document should be forwarded by December 31, 1999 to:

Pat Chamberlain - Chair
CCIR - Consumer Protection Initiatives Working Group
C/O Financial Services Commission of Ontario
5160 Yonge Street, Box 85
North York, Ontario M2N 6L9

RECOMMENDATIONS

POINT OF SALE DISCLOSURE

The working group, with the assistance of the industry participants, has developed a one-page document titled "Product Summary Disclosure" (Appendix A attached) which would outline the details of the purchase being made by a consumer.

The working group felt that this summary should be designed in a fashion that would enable it to be kept to a one page document. The group's view is that if the document is any longer, it will cease to serve the purpose of encouraging a consumer to review the information contained in the summary.

It is important that the document be completed in a fashion that would enable a copy to be left with the consumer, a copy to be submitted to the insurance company with the application, and a copy retained by the agent for his/her files.

In addition to the requirement that there be a one page Product Summary, there should be a legal requirement to provide "full and fair" disclosure at point of sale of risks and benefits of the insurance policy being sold. This disclosure should be sufficient to enable the purchaser to make an informed purchasing decision in consideration of his/her needs.

The Product Summary Disclosure document deals only with the disclosure of the product being purchased. It does not address the issues of holding out or business relationships. Further work will need to be completed on holding out and the disclosure of business relationships.

It should be noted that there may also be some concern that much of the information contained in the Point of Sale Disclosure Product Summary would be the same as the information contained in a Comparison Disclosure Statement. While this may be true, not all sales situations are replacements and the document will contain necessary information that should be explained to the consumer in all cases.

POLICY CONTRACT WORDING

A great deal of time and discussion was directed to this topic. Industry associations and consumers have complained that some of the wording used in policy contracts is not easily understood. The working group discussed, at length, how to approach this issue. In the group's discussions, the lawyers went to some length to stress the concerns that would be raised by life insurance companies' legal counsel, if we attempted to dictate the actual policy wording that would be required. Many of the specific terms and clauses that are used in the legal policy contract have been developed through the process of law over many years. For this reason, the working group has recommended the use of non ambiguous language in a policy contract.

The working group, with the assistance of the industry participants, has developed three key principles to improve the clarity and understandability of insurance contracts for the consumer.

1. That all policies should include a definition page.
2. That no contract should use ambiguous language.
3. That the requirements for the information to be included in a Schedule of Benefits Page should be clearly articulated. Further work will need to be done with respect to some of the specific areas of concern that have been identified by consumers.

The working group concluded that one of the most important aspects of consumer protection is ensuring that a consumer is able to understand the terminology used in the policy contract. In this regard, the recommendation that a definition page be included in a contract also raised some concerns from members of the working group. After discussion, our recommendation is that we should not dictate where the definitions should appear, but rather that they must appear; that the consumer must be advised where they appear; and that they must be in a fashion that is clear, legible and easily understood by the consumer.

In addressing the whole issue of policy contract wording, it became clear that one of the most beneficial things that the working group could recommend would be the type of information that needed to be included in a Schedule of Benefits Page. The discussion surrounding this culminated in the development of a Schedule of Benefits Page (Appendix B attached). This is the page in the policy contract that is most likely to be read by the consumer and therefore, must contain sufficient information for him/her to understand if the policy contract conforms with the point of sale disclosure form that was left by the life agent. The information contained in the recommended Schedule of Benefits Page reflects the information that will be most relevant to the consumer and will enable the consumer to compare the policy contract issued against the Point of Sale Product Summary provided at the time of application.

ERRORS & OMISSION INSURANCE (E&O)

The development of recommendations with respect to Errors & Omission Insurance proved to be the area that presented the working group with the most significant challenges. It was the working group's desire that the participation of the three major E&O carriers be sought (St. Pauls, Encon and Employers Re) to facilitate the required level of expertise in this field.

Each of the E&O carriers were asked to comment on its experience with claims. Without exception, the three carriers agreed that the main reasons for claims being denied were:

- prior knowledge
- lapsed contract
- outside scope of insured services.

Another fact that emerged was the actual claims experience. Following are St. Paul's actual numbers.

Year	Number of Claims	Average Claim	Number of Fraud Claims	Average Claim
1997	93	\$19,750	4	\$180,000
1998	93	\$19,750	9	\$180,000
1999 30/06	40		2	

Both Encon and Employers Re said that their claims statistics would closely mirror those of St. Paul but that since a large volume of their business is written on group contracts, it would be more difficult to extrapolate the numbers. The St. Paul broker advised the working group that the average length of time between the date of cause and a claim made for fraud is four years. The representative from Employers Re stated that the length of time spanning the date of cause to the date of claim is more likely to depend on the type of product sold. The example given was that an Accident and Sickness policy time frame tends to be shorter while a claim made for an investment scheme tends to be longer. The other statistic presented illustrated that the claimant profile would indicate a concentration of claims in the 55 to 75 age group.

All of the regulators with whom the working group discussed this topic in the early stages of the project, believed that a 10-year tail coverage should be required for any E&O product. All of the E&O carriers quickly pointed out to the working group that they could not deliver such a product. Their rationale for this statement was that they could not commit their re-insurers to a product 10 years in the future. If this requirement was placed on the E&O carriers, they all felt that they would cease to offer E&O coverage to the life industry.

SUMMARY OF WORKING GROUP RECOMMENDATION FOR E&O REMOVE

With this information in hand the following are the recommendations of the working group:

- that mandatory E&O coverage be conditional on obtaining and retaining a life license
- that a life license should terminate upon termination of E&O coverage
- that there be a minimum of \$1,000,000 liability per claim
- that a clear definition of covered activities be included
- that there should be coverage for individuals acting in an administrative or assistance capacity
- that the regulators develop a system of verifying/auditing that E&O coverage is in place (perhaps similar to the way Continuing Education (CE) audits are completed)
- that it should be mandatory for Managing General Agents (MGAs) to have E&O coverage for their managing activities
- that no E&O policy should limit the coverage to the products of one company
- that there be a 3-year extended tail coverage built into the policy and the costing of all E&O premiums, which would eliminate the need to try to convince an individual to purchase the 3-year tail when he/she leaves the business
- that an E&O policy term should be the same as the life license term
- that premiums must be paid to coincide with the life license term and that there should be no termination of coverage during the term.

CCIR should develop guidelines that will outline what appropriate requirements are for an E&O policy. The E&O carriers should be asked to enter into an undertaking with CCIR that their products will comply with these guidelines. This will then guarantee that all E&O policies will be in a format that is acceptable to CCIR without having to have individual policies approved by each jurisdiction.

There is more work required on this subject and the Working Group will continue to work with the E&O carriers to establish the guideline for an appropriate E&O policy.

CONSUMER PROTECTION INITIATIVES WORKING GROUP RECOMMENDATIONS

1. It is the CCIR - Consumer Protection Initiatives Working Group's recommendation that the proposals be put out for industry consultation.
2. A two-phase approach to the implementation of these recommendations.
 - (i) First, that CCIR use a Best Practices approach for the industry as an interim measure. This would accomplish a short term method of achieving the goal.

Canadian Association of Pension Supervisory Authorities (CAPSA) has developed a CAPSA Communique which they use as their communications vehicle to industry stakeholders. The CAPSA Communique facilitates the flow of information from the Pension Regulators to the pension industry. CCIR may wish to consider adoption of a similar form of communication with the insurance industry.

- (ii) while using a Best Practices approach in the short term, the working group recommends that CCIR also adopt a longer term approach with a view to having these proposals addressed through changes to regulation or amending legislation as required. Consideration should be given to the National Association of Insurance Commissioners (NAIC) model law approach. NAIC has recommended the use of a Buyers Guide which should be studied further particularly with respect to the Point of Sale Disclosure document.

Adoption of these recommendations would address both the immediate concern for consumer protection by issuing Best Practices and the longer term goal of consumer protection by giving the proposals the force of law.

FURTHER WORK

The CCIR - Consumer Protection Initiatives working group will continue the work in developing a proposal for addressing the following:

- holding out and disclosure of business relationships
- specific terminology and clauses that have been identified as areas of concern for consumers
- consult with Mutual Fund Dealers Association (MFDA) on E&O insurance and any co-ordination of requirements that would be beneficial

APPENDIX A

PRODUCT SUMMARY

- Insurance company name & (1-800) company information number.
- Advise that any monies payable to be payable to the insurance company and no cash payment should be made.
- Name of agent.
- Name(s) of life/lives insured.
- Name of Policy owner.
- Basic amount of insurance for each insured.
- Is the consumer applying as a smoker or non-smoker?
- Additional benefits/riders.
- When benefit(s) are payable.
- Is medical information needed for insurability and when will it be required?
- Does policy have suicide & contestability clause?
- Does policy have a conversion clause and if so, until what age?
- Does policy have a guaranteed renewable clause or is it subject to medical evidence?
- Notice that consumer has 10 days from receipt of policy to decline the policy with full refund of premium.
- Are insurance costs guaranteed, for how long, and whether such amounts may vary?
- Are returns on the amounts invested through the insurance product guaranteed or not. If not, reference should be made for client to review additional documentation.
- Is the face amount of insurance guaranteed or may it vary? If not guaranteed, reference should be made for client to review additional documentation.
- Are there any specific exclusions under the contract?
- Is a surrender fee or penalty payable if the contract is surrendered?
- Is the policy applied for intended to replace another contract?
- Date and signature of Insurer and/or owner and agent.
- Date the coverage comes into effect. (May reference the temporary insurance agreement of the application if money is paid to bind the coverage).

APPENDIX B

WHAT SHOULD BE INCLUDED IN A SCHEDULE OF BENEFITS

Name of Company	Policy Number	Name of Owner and/or Insured
Issue Date	Effective Date	Face Amount (If & when it will change)
Type of Plan	Smoker\Non-Smoker Class (Preferred Class 2 etc.) Renewable Status	Expiry Date

Premium Payment Provision (guaranteed or not, for how long) - this may appear on another page but then reference should be made for the consumer "To see Page XX for full details"

Riders or Additional Benefits Ratings (if any and for how long)

Exclusions in the contract - as related to death as the result of a criminal act

Beneficiary - "Designation of a beneficiary irrevocably under this policy will limit an owners rights under this policy. See Page XXXX for further details.

IN BOLD PRINT

10 Day Free Look Explanation Highlight any differences between what was applied for on the application and what was issued (This is also where any Preferred Class should be identified and if the class issued is different from that applied for)

DEFINITIONS

Consumer should be advised that there will be a "Definition of terms that are required to understand your policy". This may be accomplished by showing these terms along the side of the page where the terms are used or by indicating there is a definition page included in the contract and advising the consumer what page number that is.

PAGE NUMBERING

All contract pages should be numbered as Page 1 of 10, Page 2 of 10 etc.

APPLICATIONS

All policies should include a copy of the application in the policy contract.

CONSUMER QUESTIONS OR COMPLAINTS

Notice should be included advising the consumer that if they have any questions or complaints, they should contact either their agent/broker or the position of the person at the insurance company's head office complete with telephone number and address.

WORKING GROUP COMPOSITION

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