



POSITION PAPER

ELECTRONIC COMMERCE IN INSURANCE PRODUCTS

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1. INTRODUCTION

1.1 CCIR

The Canadian Council of Insurance Regulators (CCIR) is a forum for Canadian insurance regulators to collaborate to improve insurance regulation to serve the public interest.

CCIR adopted our *Approach to Risk-based Market Conduct Regulation* several years ago. Since then we have been implementing a risk-based approach in everything we do. We don't just react - we identify and assess risks first. We focus on the outcomes needed and how to accomplish them, not on rules and forms. We recognize that the best control is self-control, so we work with our industry stakeholders to develop industry standards so that all market participants know what is expected of them.

With a risk-based approach, regulators try first to understand what is happening in the marketplace, give industry the opportunity to respond, assess the quality of the industry response, and then determine if there are risks or gaps that may require the engagement of government policy staff to change the laws. In other words, policy-makers will intervene where problems remain unaddressed by the industry. This can also be described as a progressive approach to market conduct regulation.

If gaps or risks are identified, it is up to policy-makers in each jurisdiction to determine- based on their specific legislation and public policy objectives- what particular measures, if any, will be introduced, and in what manner, so that the regulatory goals of fair treatment of consumers and compliance with the laws can be met.

1.2 ELECTRONIC COMMERCE COMMITTEE

The use of the Internet by insurance providers has increased significantly over the past decade and should continue to grow.

While there is legislation in all Canadian jurisdictions governing electronic commerce in Canada, none applies specifically to financial products. As well, much of the insurance legislation currently in place in Canada was developed long before electronic transactions were contemplated. Both of these circumstances have been cited by some industry participants as factors in inhibiting the growth of electronic commerce for insurance products.

In CCIR's view, consumers must be afforded an adequate level of information and protection regardless of how the insurance is sold. In January 2012, CCIR's Electronic Commerce Committee (ECC) released an issues paper, entitled *Electronic Commerce in Insurance Products*, for public consultation. The goal of the issues paper was, among other things, to obtain

stakeholders' views on various issues and on how best to achieve the following consumer protection goals in the electronic commerce context:

- 1) Consumers have access to additional information/advice from a licensed intermediary;
- 2) Consumers know they are dealing with a regulated entity;
- 3) Consumers have and understand the necessary information about the products;
- 4) Consumers have the opportunity to review the accuracy of the information they provide;
- 5) Consumers are aware of the terms and conditions;
- 6) Consumers can rely on the transaction; and,
- 7) The consumer's personal information is secure.

The paper was also seeking stakeholders' comments on whether consumers are better protected if the designation of beneficiaries and the termination of an insurance policy continue to be paper transactions.

ECC met with a variety of stakeholders during the consultation period and ultimately received 25 submissions from stakeholders, the full-text of which has been posted on CCIR's website. We received responses from industry organizations representing insurers (both direct writers and others) and agents and brokers as well as individual insurers. No consumer groups were heard from, though their input was requested.

We wish to thank all of those who participated in the consultation.

1.3 PURPOSE OF THIS PAPER

ECC's objective with this position paper is to communicate back to stakeholders what we have learned from the consultation and to set out ECC's recommendations to CCIR members regarding the issues discussed.

ECC welcomes your comments on the recommendations presented in this paper.

2. RESULTS OF CONSULTATION AND RECOMMENDATIONS

CONSUMER PROTECTION OUTCOMES

The ECC was seeking several kinds of input from stakeholders with regard to the various consumer protection outcome presented in the issues paper:

- Whether the description of the topic was factually correct;
- Whether the issues identified were, indeed, significant (i.e. have the potential to negatively affect consumers);
- Whether all significant issues had been identified; and
- How the significant risks could be managed, referencing both the methods suggested as examples and other methods possible to achieve our consumer protection goals.

2.1 Consumers Have Access to Additional Information/Advice

There is a substantial information imbalance between the consumer and the insurer. It was the case before and, even though the Internet provides the consumer with much more information than before, it is still the case now. If not remedied, this gap can lead to undesirable situations that can negatively affect the consumer (invalid contract, over-insurance, etc.).

Consultation Outcome

The issues paper suggested various ways to overcome this issue of information imbalance. The majority of stakeholders gave their opinions on how to achieve the goal of protecting the consumer facing this lack of information or advice. The positions expressed were polarized:

- Generally, brokers and intermediaries are of the view that a licensed agent should be involved in each insurance transaction. They argue that a consumer who deals with such an agent to complete an application for insurance has access to appropriate, specific and suitable information from an individual who has a duty to act in the consumer's interest. Without the individualized guidance from a licensed agent, there is an increased risk of purchasing an unsuitable product, due to the consumer's lack of knowledge.

Others propose that at least the consumer be allowed to contact a licensed agent at any stage in the process.

- Insurers generally believe that the Internet allows for the same level of advice as other methods of interaction. Through the Internet, they provide consumers with products and self-assessment information and thus, there is no need to involve a licensed agent in each

transaction. They argue that Web architecture gives the insurer the ability to clarify information and present it to consumers in a logical and consistent manner.

They believe that consumers should be able to compare and access insurance products that meet their needs using the delivery channel and mode of interaction they want to choose. For insurers, the consumer's choice should prevail. Consequently, they generally support having a licensed agent available for contact at the consumer's request during business hours.

Recommendations

The mandate of insurance regulators is, among others, to make sure that the consumer's interests are adequately protected when purchasing insurance products. This mandate does not include influencing the consumer's preferred means of acquiring this product. It is indeed the consumer's right to choose which product to purchase and how to do so.

To protect the consumer's interests, the ECC believes that, regardless of the means of communication chosen, the product chosen by the consumer should suit its needs. For this goal to be reached, it is of paramount importance that consumers have access to all the information needed so they can understand the product they are offered and, ultimately, they can make an informed decision.

To be able to make this informed purchase decision, some consumers may need advice, others may not. Moreover, the level of advice needed may vary depending on the consumer. It is ECC's view that consumers should receive proper advice when needed, again regardless of how they contract the insurance product.

Some insurance products are more complex than others. By their nature, simple or generic products require less advice than more sophisticated or complex products. The level of advice needed could consequently vary depending on the product complexity. Therefore, the level of advice provided could be adjusted to the nature of the product offered. In all cases, consumers purchasing an insurance product should have access to a clear, straightforward and suitable level of advice at all time.

Finally, the ECC believes that it is not sufficient to provide the on-line consumer with information or to give passive access to advice. The consumer should also be made aware of the importance of advice. Before beginning an on-line process, the consumer should be presented with a disclosure stressing the importance of advice and how to obtain it.

On-line insurance providers, whether licensed agents, insurers or firms, have the responsibility to make sure that a consumer purchasing an insurance product makes an informed decision by:

- Providing the consumer with the information needed, in a timely and comprehensive way;
- Giving the consumer access to a suitable level of advice, taking into account, among others, the complexity of the product;
- Making the consumer aware of the importance of advice.

2.2 Consumers Know they are Dealing with a Regulated Entity

On the Internet, consumers have access to information originating from many countries and from various sources. Therefore, a consumer might have trouble determining whether the service provider is indeed registered with the regulator. For example, the consumer might buy an insurance product from a company that is not an insurer, or from an insurer that is not registered with a regulator of its jurisdiction.

Consultation Outcome

Most of the stakeholders agree with the importance for a consumer to have access to specific information with regard to the identity of the provider. However, they are of the view that this information should not necessarily be found on the website homepage of a provider.

Recommendation

To allow a consumer to verify the identity of the service provider and, if need be, to check whether it is registered with the regulator, the following information should be made easily, directly and permanently accessible on the websites of all providers that distribute insurance products online:

- Legal name of the provider;
- Geographic address of the provider;
- Telephone and electronic contact information, whereby consumers can reach the provider directly and easily;
- A statement that the provider is registered with the regulator, including its registration number and type;
- Contact information and information on how consumers can file a complaint, including a link to the regulator's website.

2.3 Consumers Have and Understand the Necessary Information about the Products

In order to make informed insurance decisions, consumers must have access to a minimum of specific information about the product they are interested in. It is important that consumers receive disclosure that can give them a basic and correct understanding of the product and costs associated with it.

It is also important that this information be presented in a simple, clear and timely manner.

Consultation Outcome

Most of the stakeholders agree with the benefits of presenting the consumer with sufficient information on the products and that timing is relevant when it comes to providing this information.

Recommendation

- Providers offering insurance products online should draw to the consumer's attention the following information before buying an insurance product, in a clear and simple language:
 - The type of consumer for whom the product is intended;
 - Main characteristics of the product;
 - Options and coverage provided by the product, as applicable;
 - Exclusions and limitations associated with the product, if any;
 - The total premium and other charges that the consumer will have to pay (including all applicable taxes) or, if an exact amount cannot be indicated, the basis for the calculation of the amount, so that the consumer can verify it;
 - The consumer's right to cancel, if applicable, as well as the duration of the cancellation period and procedures for exercising that right;
 - Any time limit on the validity of the information provided.
- Disclosure on providers' websites should meet all the legal obligations that are incumbent upon them.

2.4 Consumers Have the Opportunity to Review the Accuracy of Information They Provide

On the Internet, it is the consumer who completes the insurance application form without assistance. That process may be subject to error. To avoid such errors that would negatively affect consumers and providers, consumers should be given the opportunity to validate their answers once more.

Consultation Outcome

Stakeholders' submissions showed strong support for this proposition.

Recommendation

- Providers offering insurance products online should present to the consumer, before a contract is concluded, a summary of the information provided by the consumer in the application form.

2.5 Consumers are Aware of the Terms and Conditions

It is important that consumers have a copy of the application and the contract that they can refer back to following the transaction.

Consultation Outcome

Stakeholders' submissions showed support for this proposition.

Recommendation

- Providers offering insurance products online should provide the consumer with a copy of the application and the contract in a form that enables reproduction and storing.

2.6 Consumers Can Rely on the Transaction

Computer systems are not fault-free. A defect in a provider's computer network could have negative consequences:

- The transaction is not carried out;
- Information is not transmitted;
- Unauthorized alteration of a document.

Recommendation

- Providers offering insurance products online have the responsibility to use systems on which consumers can rely.

2.7 The Consumer's Personal Information is Secure

The Internet is an intangible medium, it is easily accessible and therefore it can be vulnerable. Using it to carry out insurance transactions has the potential to put the consumers' personal information at risk through:

- Leaking of personal information;
- Identity theft (of the insured, of the intermediary or of the insurer);
- Fraud and misappropriation;
- Money laundering.

Recommendation

- In compliance with applicable laws, providers offering insurance products online have the responsibility to make sure that consumer's personal information is secure

EXISTING PAPER TRANSACTIONS

2.8 Designation of Beneficiary

The consultation paper asked whether insurers and consumers should have the option of designating and changing beneficiaries using electronic means.

In the absence of specific legislative provisions that authorize electronic beneficiary designations, insurers continue to require designations to be made in paper form. Without a designation on paper, insurers consider there to be no designation at all and any insurance benefits are paid to the estate by default. This not only delays insurance payments to beneficiaries, but also renders the insurance proceeds both taxable and vulnerable to claims from creditors – probably not the result the consumer intended, yet our research shows that this is a very common result.

Both British Columbia and Alberta recently implemented regulatory changes that may make insurers more comfortable using electronic beneficiary designations¹. An industry best practices guideline is under consideration in Alberta which may include additional consumer protection such as written verification of change in beneficiaries.

We thank the CLHIA for giving us access to their proposed guideline/process for designating, altering or revoking beneficiaries electronically for consideration during the electronic commerce discussions.

The issues around beneficiary designation – electronic and otherwise – are all centered on whether a court will accept the designation, therefore, admissibility and related evidentiary issues should form a key component of any best practices guidelines. Evidence Acts already exist and care should be taken to follow them.

Consultation Outcome

Seven stakeholders (six insurer groups and one group of intermediaries) said electronic designations should be an option available for consumers to choose. It would be a convenient and reliable method for exercising this important right.

One group of investment planners, however, said beneficiary designations should continue to take the form of written documents.

None of the commentators would make any distinction between requirements for the initial designation vs. a change in beneficiary.

Recommendation

- To protect consumers, and to harmonize standards across Canadian jurisdictions, the Committee concluded that CCIR should recommend that insurers have in place effective systems for offering consumers the option of designating and changing beneficiaries by electronic means.
- Electronic Beneficiary designation transactions should be followed-up with written verification as a critical protection against fraud.
- Any best practice guidelines, whether promulgated by industry or regulators, should clearly address evidentiary issues.

¹ See Section 547(2) of Alberta's Insurance Act and Section 5.4 of their Fair Practices Regulation

2.9 Termination of Insurance Contract by Insurer

Today, insurers give notice of termination of insurance contracts by registered mail or personal delivery. The consultation paper asked whether insurers should be able to terminate an insurance contract by electronic means, with both parties' consent.

BC and Alberta recently made significant changes in their insurance regimes but chose to continue the previous requirement that a notice of termination of insurance by the insurer be done on paper.

Consultation Outcome

Six insurer groups said that an electronic notice of termination of an insurance policy should be an option that consumers can choose, perhaps with an acknowledgement from the consumer or a "read receipt",

Three intermediary groups thought the current practice of paper notices should continue, perhaps with an additional notification by e-mail.

Recommendation

- In the interest of harmonization, the Committee does not recommend changes to existing practices at the current time.

COMPARISON SHOPPING SITES

The main function of these websites, namely, comparing various available coverage options, is similar to the advisory role normally played by brokers. However, the manner in which these entities are remunerated, and their ownership or business relationships with the insurers, raise questions about their independence, disclosure issues, and indeed, whether or not they are involved in transacting insurance and are therefore subject to regulation.

Consultation Outcome

The prevailing view is that no additional rules appear to be necessary at this time. Those sites should be held to the same obligations and bound by the same regulatory framework as other insurance entities in terms of information and advice provided.

Recommendation

- The line between simple comparisons only vs. transacting insurance must be clear. If not properly licensed, these entities must not:
 - provide advice,
 - hold themselves out as licensed insurers or firms, or
 - post insurance applications, which could mislead a consumer into thinking they are an insurance provider.
- Regulators will survey these websites and enforce the regulation when needed.

SOCIAL MEDIA

Social media are very much in vogue. As a rule, they facilitate social interconnection. They offer users a platform where they can interact, post content and share their views, thereby creating virtual communities and a sense of belonging.

There is also a commercial purpose to social media. Consumers visit sites to express an opinion about a company or product, or to read customer reviews prior to making a purchasing decision. Consumers' opinions about a company or product are now largely influenced by peer opinions.

The insurance industry is no exception: It is increasingly leveraging social media. Insurers are using social media sites to build and maintain customer relations, as a customer service tool and for marketing purposes.

Social media can benefit both providers of insurance products and consumers. However, risks are an inherent part of this communications channel: In the realm of social media, the barrier between consumers and professionals is thin and the "social" component clouds the issue by establishing a relationship of trust. Some providers could take advantage of the consumer's vulnerability, and often that leads to issues of conflict of interest and disclosure, in particular.

Recommendation

Although the issues paper did not specifically address social media, due to the growing popularity of this medium, it is important to communicate ECC's view on this topic.

- Social media are a form of communication like any other. CCIR is therefore of the view that the current legislative and regulatory framework apply. Consequently, rules pertaining to, in particular, ethics, advertising, suitability and file record-keeping, are to be followed when insurers and representatives use social media.

3. NEXT STEPS

- ECC will review the comments from stakeholders to this position paper, and will finalize its recommendations.
- Final recommendations will be presented to CCIR for adoption.
- Each jurisdiction will consider the recommendations and evaluate the circumstances in its own jurisdictions to determine what changes, if any, are necessary to implement them.
- CCIR will continue to monitor issues related to electronic commerce in insurance products.

4. HOW TO GIVE US YOUR COMMENTS

The ECC welcomes your comments on the recommendations presented in this consultation paper. This paper and all prior ECC publications are available on the CCIR's website, www.ccir-ccra.org.

We look forward to receiving your submissions by July 26, 2013, 2013.

Electronic submissions are preferred and should be forwarded to ccir-ccra@fsc.gov.on.ca.

Written submissions should be forwarded to:

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CCIR intends to make the submissions received publicly available. If you indicate that you do not want your submission or specific parts of your submission to be made public, we will treat the submission, or the designated parts, as confidential to the limited extent permitted by law.