



ELECTRONIC COMMERCE IN INSURANCE PRODUCTS

A document prepared by the
Canadian Council of Insurance Regulators (CCIR)
Electronic Commerce Committee

This document reflects the work of regulators who are members of CCIR and is intended to generate discussion. The views expressed should not be considered as legal opinions.

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1. CCIR

The Canadian Council of Insurance Regulators (CCIR) is an inter-jurisdictional association of provincial, territorial and federal insurance regulators. The provincial and territorial regulators are responsible for market conduct regulation and legislative compliance of insurers authorized in their province or territory. They may also have responsibility for the solvency of insurers incorporated in their jurisdictions.

One of the major goals of the CCIR is to facilitate harmonization of insurance regulation across Canada to benefit both consumers and the insurance industry. Working towards a harmonized approach promotes efficiencies and cost savings while providing consistent protection to consumers across Canada.

It is recognized that individual jurisdictions may need to accommodate any local or regional issues in implementation.

2. INTRODUCTION

The use of the Internet by insurers has increased significantly over the past decade and we expect it will continue to grow. The selling of insurance over the Internet has many advantages for both insurers and consumers.

While there is legislation in all Canadian jurisdictions governing electronic commerce in Canada, none applies specifically to financial products, unlike the European Union and the United Kingdom where there are regulations designed specifically for the distance marketing of financial services and general insurance, respectively. As well, much of the insurance legislation currently in place in Canada was developed long before electronic transactions were contemplated and specify that certain transactions must be performed by mail, such as termination of a policy. Both of these circumstances have been cited by some industry participants as factors in inhibiting the growth of electronic commerce for insurance products.

Canada's federal government has recognized the need for a comprehensive strategy to improve the financial literacy of Canadians. In December 2010, the Task Force on Financial Literacy released its report which emphasized the need for a collaborative and coordinated approach. Accordingly, the federal, provincial and territorial governments should require all financial services providers within their respective jurisdictions to simplify their informational materials and disclosure documents. In CCIR's view, this means that consumers must be afforded an adequate level of information and protection regardless of how the insurance is sold. The CCIR's Electronic Commerce Committee (ECC), led by the Autorité des marchés financiers (AMF), has compiled an inventory of websites operated by insurance providers, which vary greatly in the kind and level of information provided.

Purpose of the Paper and Next Steps

This is an issues paper – it is intended to map out the context and situation as we believe it currently exists and to stimulate debate about the issues noted in this paper and launch a process of consultation on those issues as well as to educate and to build a common understanding of the topic and issues for both regulators and stakeholders.

We seek to engage stakeholders about the accuracy of the findings gathered to date and to obtain stakeholders' views 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 also seeks 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.

The Committee recognizes that social media have begun to play an important role in consumer choices, though that is not a focus of the current paper. Nevertheless, stakeholders that wish to comment on social media's role in the selling of insurance are invited to do so.

Once we have incorporated stakeholder feedback into our approach, CCIR's ECC will determine the direction of further work on these issues.

3. INSURANCE SOLD THROUGH THE INTERNET

3.1 Growth in use of the Internet to sell insurance

3.1.1 In Canada

More than three quarters of Canadians aged 16 years or more, i.e. 21.7 million people, used the Internet for personal ends during the year 2009¹. Of those, 39% acquired a good or service by placing an order online². During that same year, the 95 million online orders carried out represented a value of approximately \$15 billion. These figures are significantly higher than those recorded in 2007 (a 35% increase in orders and a 15% increase in the value of such orders)³.

3.1.2 In the United States

In 2009, in the United States alone, nearly 17 million online searches on the subject of life insurance were carried out by consumers; this is 15% more than in the previous year. During the same period, Americans requested over 2 million quotes from life insurance companies via the Internet⁴.

However, in the automobile insurance sector, Internet use, both by insurers and by American consumers, is more widespread:

- Over 32 million automobile insurance quotes were obtained online in 2008; this was 15% more than in 2006;
- 2.9 million automobile insurance policies were purchased online in 2010; this was 35% more than in 2007;
- 63% of consumers who shopped around for automobile insurance in 2009 obtained a quote online⁵.

It is also the automobile insurance sector that enjoys the most extensive technological advances. For example, some American insurance companies offer the possibility of carrying out the entire claim process using a mobile phone: thanks to a special application, which

¹ Statistics Canada, "Canadian Internet Use Survey", The Daily, May 10, 2010, p.1.

² Statistics Canada, "E-commerce: Shopping on the Internet", The Daily, September 27, 2010, p.2.

³ Id., p.1.

⁴ "Life Insurance Searches in the U.S. Increase 15 Percent in 2009 to Reach Record Number"; www.comScore.com.

⁵ www.comScore.com.

includes GPS technology, insureds can report an accident immediately after it occurs by transmitting photos of their vehicle taken with their smart phones. Using these same phones, insureds can subsequently monitor the location of their vehicle and the status of repairs, and pay the bill. Canadian providers are beginning to develop and use those types of technologies as well.

3.2 The offering of insurance through the Internet – Content of Websites

The distribution of insurance products via the Internet made its appearance in the 1990s. Today, most industry players use the Internet in one way or another as part of their distribution process. These players, be they certified insurance intermediaries, firms or insurance companies registered with regulators, are referred to globally as “providers” in this paper.

As part of its works, the ECC compiled an inventory of websites operated by providers. This exercise revealed four main activities practiced on those websites relating to the distribution of insurance:

- providing information to consumers;
- obtaining a quote;
- concluding the insurance contract;
- obtaining advice.

Providing information to consumers

Most of the websites visited have an information section, which enables the provider to give various information to consumers.

There one can find, among other things, a description of the products and services offered: the main characteristics, advantages, drawbacks, risks, and the coverage and associated exclusions. Information of an educational nature on the subject of insurance may also be presented there.

It is also in this section that we usually find the conditions governing the use of the website and legal opinions concerning the relationship between the provider and the website user. Statements are made regarding security measures and the protection of personal information.

Finally, this section generally provides information about claim and complaint procedures, as well as contact information for reaching one of the provider’s representatives.

Obtaining a quote

Some providers offer the possibility of obtaining a quote via their website. These include those sites that merely allow consumers to initiate a request, and where a representative will contact consumers to offer them a quote, as well as those where the process can be completed, and the quote obtained, online. To that end, consumers generally have to complete several secure forms, answering various questions regarding their identity, eligibility and rates. This service is mainly offered in property and casualty insurance (“P&C”). For automobile insurance, for example, consumers will be asked to indicate the model of their vehicles, how much they intend to use it and whether they have been involved in a loss. The forms are said to be “interactive” as the questions asked depend upon the answers given: the forms have an underlying “yes or no” tree structure, the path of which is dictated by the answers given by the consumer.

Once all the questions have been answered, if the consumers prove to be eligible for the desired product, a premium that reflects the risk that they represent is usually displayed on the screen. At this point, various coverages are often proposed to consumers. This has the benefit, not only of offering choices, but of visually informing consumers about the factors that cause the premium to vary.

In the case of firms that present quotes via the Internet, it is at this step of the process that they show the premiums of the various insurers with which they deal. Consumers thus have an opportunity to compare the premiums, along with the insurers that offer them, and make their choice.

For most providers, the Internet-based distribution process ends with the quote. Consumers are usually then invited to contact a representative by telephone to conclude the contract. The provider’s representative will access the database containing the information disclosed by the consumers, and will verbally conclude the contract with them.

Concluding the insurance contract

A small proportion of providers offer the possibility of concluding the insurance contract online. In some of these cases, consumers validate a form that recapitulates the information they have entered, and then electronically accept the quote that is presented to them. In so doing, they indicate the date on which the new policy will come into force and provide information about their old policy, if applicable. The new policy is then sent to the consumers, either electronically or by mail, as they prefer. Once again, this practice is more widespread among providers offering P&C insurance.

Some providers also enable their insureds to amend their policy online if changes occur mid-term (e.g. replacement or storage of the vehicle, addition of drivers, etc.).

Advice

Behind the scenes of these electronic platforms, the providers have support teams in place. Not only technical support, but advice is available.

Insurance representatives are usually available to provide assistance to consumers. They will answer consumers' questions, or complete and close the transactions initiated online by consumers.

In cases where the contract is concluded online, some providers follow the practice of having the quote reviewed by a representative. Generally, the representative checks over the answers to the questions relating to rates and eligibility. The representative also does some checking to verify the consistency and logic of the information given by the consumer (e.g. duplication of policies). If necessary, the representative contacts the consumer if clarifications are required or if mistakes or omissions that have a bearing on the premium quoted have been noted. This revision process normally dictates that there be a time lag between the electronic acceptance of the quote and the entry into force of the new policy.

4. CURRENT REGULATORY FRAMEWORK

4.1 Elsewhere

The regulatory oversight of online distribution of insurance varies considerably from one jurisdiction to another. In some jurisdictions, a specific framework is practically non-existent. Others, such as the European Union, the United States and the United Kingdom, have established regulatory benchmarks to govern this particular practice.

European Union

In 2002, the European Union set up a framework governing e-commerce in financial services by handing down a directive that applies to all member states.⁶ This directive arises from a desire to strengthen consumer protection:

“Because of their intangible nature, financial services are particularly suited to distance selling and the establishment of a legal framework governing the distance marketing of financial services should increase consumer confidence in the use of new techniques for the distance marketing of financial services, such as electronic commerce.”⁷

The directive creates a set of obligations for the service provider and rights for the consumer, including:

- The obligation for the provider to convey specific information to the consumer prior to the conclusion of the contract:

Information about the provider

- Identity and main activity of the provider;
- Geographic address of the provider;
- Identity and geographic address of the provider’s representative, if applicable;
- The trade register in which the provider is registered, and his registration number;
- Contact information of the relevant supervisory authority.

Information about the financial service

- Description of the main characteristics of the financial service;

⁶ Directive [2002/65/EC](#) of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directives [90/619/EEC](#), [97/7/EC](#) and [98/27/EC](#).

⁷ Id., art. 5.

- The total price to be paid by the consumer, or the basis for the calculation of the price if the exact price cannot be indicated;
- Where relevant, notice indicating that the financial service is related to instruments involving special risks and that historical performances are no indicators for future performances;
- Any limitations of the period for which the information provided is valid;
- The arrangements for payment and for performance;
- Any specific additional cost for the consumer of using the means of distance communication.

Information about the contract

- The existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it;
- The minimum duration of the contract;
- Information on any rights the parties may have to terminate the contract early or unilaterally, including any penalties imposed in such cases;
- Any contractual clause on law applicable to the distance contract and/or on competent court.

Information about redress

- Whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it;
 - The existence of guarantee funds or other compensation arrangements.
- The obligation to communicate this information, as well as all the contractual terms and conditions, in good time, on paper or on another durable medium, as well as the obligation at any time during the contractual relationship, to convey the contractual terms and conditions on paper, if the consumer so requests.
 - The consumer's right, at any time during the contractual relationship, to change the means of distance communication used.
 - The consumer's right to withdraw from the contract within 14 days (or 30 days for certain life insurance products), subject to certain terms and conditions.

United Kingdom

The regulatory authority of the United Kingdom, the Financial Services Authority (FSA), oversees e-commerce and distance contracts by means of rules of conduct that apply to firms, among others. The Key Rules for General Insurance Brokers set out the following requirements for distance contracts:

- The firm must provide the following information (in addition to that required for contracts that are not at a distance) to the consumer, in good time (prior to the conclusion of the contract):
 - The policy;
 - The complaint handling mechanism;
 - Information about cancellation rights, if applicable;
 - Information about the benefits payable, if applicable.
- Immediately following the conclusion of the contract, the firm must give the consumer the information described above, on a durable medium that enables him to store and reproduce it. At any time during the contractual relationship the terms and conditions of a distance contract must be provided to the consumer on paper, at his request.
- During the contractual relationship, the consumer has the right to change the means of distance communication used.
- The firm must render easily, directly and permanently accessible to a customer the following information:
 - The name of the firm, his geographic address and other information concerning his identity;
 - A statement that the entity is entered in the FSA Register and its FSA Register number;
 - The different technical steps to follow in order to conclude the contract;
 - The technical means for identifying and correcting input errors prior to the placing of the order.
- The prices quoted must be clearly indicated, and it must be specified whether taxes are included or not.

United States

Some states have examined e-commerce issues in a general way, but, to date, the American regulatory authorities have not drawn up a specific oversight framework for the online distribution of insurance products.

For example, the State of New York has merely stated, for the time being, that the selling of insurance via the Internet was no different from other insurance transactions⁸. This provides assurance that the regulatory oversight that applies to conventional insurance transactions applies equally to transactions carried out via the Internet.

4.2 In Canada

Canada does not have an oversight framework that is specific to the online distribution of insurance products. There are, however, a number of voluntary and legislated schemes that apply to electronic transactions generally, described briefly below.

In September 1999, the Uniform Law Conference of Canada produced Canada's Uniform Electronic Commerce Act (UECA) based upon the 1996 United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce. The UNCITRAL model law was intended to be a non-exhaustive set of standards that would be acceptable internationally. Its language was crafted to enable electronic commerce, but not impose it.

The UECA formed the basis of electronic commerce legislation that is now in force in every Canadian province and territory. The UECA provides model rules for the legal recognition of information in electronic form. The use of electronic means is not mandatory. Electronic documents must be accessible by the recipient, capable of being retained and usable for later reference. Electronic signatures must reliably identify the person, and reliably associate the signature with the document.

Also in 1999, the Organisation for Economic Co-Operation and Development (OECD) developed Guidelines for Consumer Protection in the Context of Electronic Commerce. These guidelines informed the development of the 2004 Canadian Code of Practice for Consumer Protection in Electronic Commerce. This voluntary Code sets out the following eight generic principles of good business practice for merchants conducting commercial activities with consumers online.

- Principle 1: Information Provision – what information the vendor should provide about the vendor, products, services, transactions and invoicing; when and in what format the information should be provided.

⁸ *Insurance Transactions Over The Internet*, March 6, 2000; website of the STATE OF NEW YORK INSURANCE DEPARTMENT

- Principle 2: Language – requires the vendor to provide all information, transactions and customer services in the language used by the website, unless otherwise stated on the site.
- Principle 3: Contract Formation and Fulfilment – the requirements to ensure that a consumer’s agreement to a contract is informed and intentional, including requirements where there is a material change in the ongoing provision of a product or when the vendor is not able to meet a term of the contract.
- Principle 4: Online Privacy – endorses the Canadian Standards Association Model Code for Protection of Personal Information and expands on those requirements. Includes requirements that consent to the use of personal information be obtained separately from other terms of the contract, and that any opt-out consent mechanism be highly visible.
- Principle 5: Security of Payment and Personal Information – requires vendors and third parties to ensure security of payment and other personal information.
- Principle 6: Redress – requirements for internal complaint handling and alternative dispute resolution (ADR). Use of ADR is optional for consumers but vendors must abide by any decision.
- Principle 7: Unsolicited E-mail – is prohibited unless the consumer has consented or there is an existing relationship between the parties. Browsing a website does not constitute a prior relationship.
- Principle 8: Communications with Children – imposes additional requirements on vendors if a site is targeted at children, particularly in respect of personal information and consent.

In 2001, the Internet Sales Contract Harmonization Template was approved by Canadian federal, provincial and territorial ministers responsible for consumer affairs. It is generic. It is designed to apply to various types of sales contracts, not just insurance contracts. It addresses disclosure of information, contract formation, cancellation rights, refunds and recourse for credit card charges.

Electronic Signatures

Part 2 of Canada’s Personal Information Protection and Electronic Documents Act (PIPEDA) came into effect in May 2000. It seeks to put electronic and paper media on an equal basis. It also describes the characteristics of “secure electronic signatures” and grants authority to make regulations prescribing technologies or processes. Before a technology or process can be prescribed:

- the electronic signature must be unique to the person using it;
- the person whose electronic signature is on the document must have control of the use of the technology to attach the signature;
- the technology must be used to identify the person using the electronic signature; and
- the electronic signature must be linked to an electronic document to determine if the document has been changed after the electronic signature was attached to it.

The 2005 Secure Electronic Signature Regulations under the Canada Evidence Act set out technological processes (such as cryptography) that will result in a valid “secure electronic signature” as required under PIPEDA. Electronic signatures must be readable, and must not have expired or been revoked.

5. CONSUMER PROTECTION OUTCOMES

The distribution of insurance products via the Internet offers many advantages for providers, including lower costs compared with conventional distribution methods and the penetration of new markets.

For consumers, online access to insurance products also presents advantages. These advantages account for the past and future growth of this distribution channel. However, new ways of doing things can involve risks, both for its initiators and its users.

We seek several kinds of input from stakeholders:

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

5.1 Consumers Have Access to Additional Information/Advice

There is a substantial information imbalance between the consumer, who often knows little about insurance, and the insurer, who is a specialist in the subject. The intervention of intermediaries in the offer process has traditionally narrowed this gap. The intermediary advises consumers, answers their questions and makes sure that they understand the product.

With the Internet, as is the case with Incidental Selling of Insurance, this direct, preventive and personalized advice may be absent, or greatly weakened. If not remedied, this lack can lead to the following undesirable situations:

- Risk of an invalid contract due to the absence of consent by the consumer: not understanding the product bought, the consumer did not really intend to make a contractual commitment;
- Buying insurance that is inappropriate for the consumer: excessive or insufficient coverage for the consumer's needs;
- Buying an insurance product that is too expensive: a similar product is available on the market, but unknown to the consumer;
- Overinsurance: the consumer already has insurance coverage for the risk in question;

- Omission to buy: the consumer should acquire insurance, but fails to do so;
- Biased selection of insurer: the consumer may choose an insurer based solely on the website, or the price offered. The consumer does not benefit from receiving advice from a licensed intermediary regarding other considerations that might influence the decision-making process, such as that insurer's customer service;
- Failure to properly identify one or more beneficiaries: currently, when consumers purchase insurance through call centres or online, and then do not sign and return the paper designation of beneficiary form, they are regarded by insurers as not having properly designated any beneficiary. If no beneficiary is named on paper, insurance benefits are paid to the estate, which delays insurance payments to beneficiaries, renders the proceeds taxable, and makes the proceeds vulnerable to claims from creditors;
- Failure of communicating material changes to the insurer: if the consumer does not inform the insurer of any material change in risks, the insurance coverage may be affected.

The CCIR believes that, regardless of the means of communication chosen, consumers should receive proper advice when needed and that the products chosen by the consumers should suit their needs. There are different ways to achieve these consumer protection goals, among others:

- Having the relevant information and advice available on the provider's website;
- Having a provider offering insurance products via the Internet enable consumers who visit its website to contact a licensed intermediary at any time; and
- Having a licensed intermediary review the insurance application completed by a consumer to ensure that the product in question suits the consumer's needs.

5.2 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.

If certain important information were made easily, directly and permanently accessible on the websites of all providers that distribute insurance products online, consumers would be able to verify the identity of the service provider and, if need be, check whether it is registered with the regulator.

The type of information that might be included on the website home page includes:

- 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.

5.3 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 information. Traditionally, that information was conveyed to them proactively by a licensed intermediary (by telephone or in person).

The Internet does not allow consumers to benefit from such direct, preventive advice, creating the potential risk that consumers do not have the necessary and relevant information prior to entering into an insurance contract.

One approach could be for providers offering the possibility of buying insurance products online to make sure certain information is drawn to the consumer's attention before buying an insurance product:

- 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' sites should meet all the legal obligations that are incumbent upon them and should be conveyed in a clear and understandable manner, and take into account the protection of those considered incapable, such as minors.

Given the importance of the exclusions and limitations, highlighting this information or separating it from the other important information and requiring consumers to confirm that they have read and understood the information would reduce the risks that consumers might pursue products for which they are ineligible and closes the expectation gap between a consumer and an insurer.

Ensuring that the information is written in clear, simple language would be comparable to information one would expect a consumer would receive if they were speaking directly to a licensed intermediary. Avoiding the use of technical or legal terms or reproducing the insurance contract in full, would also reduce the likelihood of confusion or consumer misunderstanding.

The Internet contains a wealth of information and advertising designed to attract and influence consumers. The ECC is of the view that the pages on a provider's website relating to an insurance application are not an appropriate environment for guiding consumers' choices. Should this be addressed by prohibiting providers from posting advertising on the pages of their websites that form applications for an insurance product?

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

On the Internet, it is the consumers themselves who complete the insurance application form. That process may be subject to error. To prevent the consequences of such errors, the information from the application form could be recapitulated in a summary and presented to consumers before the contract is concluded, giving them an opportunity to validate their answers once more.

5.5 Consumers are Aware of the Terms and Conditions

It is important that consumers have a copy of the contract that they can refer back to following the transaction. In most cases, it is likely that consumers would receive a paper copy of the insurance contract. However, alternative media may also be available and if that is the case, ensuring that it is in a form that enables reproduction and storing would allow consumers access to the document long after the transaction has been completed.

5.6 Consumers Can Rely on the Transaction

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

- The transaction is not carried out;

- Information is not transmitted;
- Unauthorized alteration of a document.

5.7 The Consumer's Personal Information is Secure

The Internet is an intangible medium, easily accessible and therefore 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.

These potential reliability and security risks appear to be managed effectively using technology that is already available and in current use, in online banking, for example.

6. EXISTING PAPER TRANSACTIONS

6.1 Beneficiary Designations

Current provincial insurance legislation generally does not address the use of electronic forms or communications.

Some stakeholders recommend implementing specific legislative authority for electronic designation of beneficiaries. The concern is that if a beneficiary is designated electronically, it may be found to be a “testamentary disposition” and may be held to be invalid because it is not considered to be “in writing.” In Ontario for example, the Succession Law Reform Act requires a will to be “in writing.”

The 1996 UN Model Law was the original source of the electronic commerce legislation adopted by many jurisdictions. It was intended to be a non-exhaustive set of standards that would enable the use of electronic commerce, but not impose it. Governments were encouraged to adopt all or part, and to impose exclusions as they thought necessary.

Several international jurisdictions, which have adopted the UN Model Law, exclude wills from its coverage (including Canada, the United States of America, New Zealand, Ireland, the Commonwealth, Singapore).

Commentary in the 1999 report of the Uniform Law Conference of Canada, when the UECA was approved, stated: “The principle of exclusion is not that such documents should not be created electronically. Rather, they seem to require more detailed rules, or more safeguards for their users, than can be established by a general purpose statute like this one.”⁹

Several jurisdictions within Canada have enacted electronic commerce legislation modeled after the UECA, and they specifically excluded wills. They are BC¹⁰, Alberta, Saskatchewan, Ontario, Nova Scotia, Newfoundland and Labrador, PEI, Yukon, the Northwest Territories and Nunavut. However, electronic commerce legislation in Manitoba, New Brunswick and Quebec does not specifically exclude wills.

Initial Designation of Beneficiary

Are consumers better protected by requiring beneficiary designations to be made on paper, rather than permitting the option of using electronic means?

⁹ Uniform Law Conference of Canada. Proceedings of Annual Meetings. Winnipeg. August 17, 1999.

¹⁰ BC recently passed amendments to its *Insurance Act* that permits electronic beneficiary designations, effective July 1, 2012.

With the current unclear status of beneficiary designations made electronically, no insurer currently accepts them. Instead, when consumers purchase insurance through call centres or the Internet, they are sent a paper beneficiary designation form in the mail to be filled out and mailed back to the insurer. If they do not sign and return the paper beneficiary designation form, they are regarded by insurers as not having properly designated any beneficiary, even if they identified a beneficiary in an Internet application or by fax or phone. If no beneficiary is “properly” named – on paper – insurance benefits are paid to the estate.

In such circumstances, consumers do not achieve the results they intended. As noted earlier, this not only delays insurance payments to beneficiaries, but renders the insurance proceeds both taxable, and vulnerable to claims from creditors. It is safe to assume that consumers buying insurance electronically are attempting to protect their loved ones, not their creditors.

In a fairly shocking result, two large direct sellers of life insurance recently conducted internal surveys of beneficiary forms received and processed. They found that 65% and 63%, respectively, of individuals who bought life insurance policies in 2009 do not have beneficiary forms on file, in which case the estate is named as beneficiary by default. It is important to note that these numbers do not include people who intentionally designated their estate as beneficiary. One of these insurers added that it receives many papers that are not processed as beneficiary designations, either because consumers did not use the paper form provided, they did not complete the form properly, or they tried to provide beneficiary information by fax or phone.

Given that the younger generations of Canadians are less and less likely to use “snail mail,” and that these are the most likely people to have young children who would benefit from life insurance protection, CCIR wonders whether there isn’t some way ensure that the initial designation of a beneficiary could be done electronically and be reasonably assured to “hold up in court.”

If electronic beneficiary designations were clearly permitted, could insurers design online and telephone processes to insert automated checks to prevent customers from moving through the electronic process if an entry is not completed properly, as is done for other online insurance transactions? And could they provide electronic help about the correct way to provide the information required?

The governments of BC and Alberta have been working to reform their insurance legislation. In Alberta, electronic transactions have been addressed in a regulation. Designations of beneficiaries must continue to be made on paper. BC recently passed amendments to its *Insurance Act* that permits electronic beneficiary designations to be made electronically in accordance with BC’s *Electronic Transactions Act* effective July 1, 2012.

Change of Beneficiary

Should electronic means be permitted for changing a beneficiary after an initial designation has been made?

The main argument against this is the possibility that an insured party might change a beneficiary designation for emotional reasons, or under duress (both of which can occur now using paper designations). Perhaps if insured parties are only permitted to change a beneficiary on paper, the time required to make the change on paper might impose a “cooling off period.” On the other hand, it is now possible to change a paper designation fairly quickly by mail or personal delivery using forms that are routinely available online or by telephone request. If a designation could be changed quickly using electronic means, it could also be changed again (or changed back) quickly using electronic means.

As noted above, insurance regulations in Alberta still require paper transactions to change insurance beneficiaries, in order to protect the interests of consumers.

6.2 Termination of Insurance Contract by Insurer

Today, insurers give notice of termination of insurance contracts by registered mail or personal delivery. With both parties’ consent, should electronic means be permitted for terminating an insurance contract?

In Alberta, insurance regulations continue the previous requirement that a notice of termination of insurance by the insurer be sent by registered mail.

BC’s recent *Insurance Act* amendments continue to require that cancellation of an insurance policy be done on paper.

7. COMPARISON SHOPPING SITES

The advent of the Internet has given rise to new business models and the emergence of new players, including sites where consumers can compare premiums. These websites enable the consumer to submit a single proposal and receive quotes from several insurers in one place. There are few such sites in Canada, and those that do exist deal mainly with P&C insurance. However, they are prevalent in the United States and in Europe, and they are gaining popularity.

The main function of these websites, namely, comparing various available coverage options, is similar to the advisory role normally played by insurance representatives. 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. The line between simple comparisons only vs. transacting insurance must be clear. These sites must not provide advice, hold themselves out as licensed insurers, or post insurance applications, which could mislead a consumer into thinking they are an insurance provider.

8. CONCLUSION

CCIR's ECC seeks comments about the best ways to achieve these consumer protection goals. As stated earlier, consumers should enjoy the same protection, regardless of the means of communication chosen.

Providers would also benefit from meeting these goals, most of which are already met by many providers. Applying industry-wide standards would enable the industry to scale up and would maintain the industry's credibility, without the need to impose requirements that are unnecessarily constraining or onerous. Achieving these goals would help to confirm the validity of insurance contracts concluded online by fostering informed consent by the purchaser and thus a common will between the parties.

Stakeholders are invited to comment on the ideas set out in this document and to make any additional comments that could achieve the goal of protecting consumers while allowing the electronic commerce of insurance products to evolve.

9. CONSULTATION DETAILS

An electronic copy of this document is available on CCIR's website at www.ccir-ccrra.org/.

We look forward to receiving your submissions by April 27, 2012.

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

Written submissions should be forwarded to:

CCIR Secretariat
5160 Yonge Street, Box 85
17th Floor
Toronto, Ontario M2N 6L9

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.