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September 30, 2009

Via email transmission ([Insurance@gov.ab.ca](mailto:Insurance@gov.ab.ca))

Dennis Gartner  
Superintendent of Insurance  
Alberta Finance and Enterprise  
Room 402, 9515 – 107<sup>th</sup> Street  
Edmonton, AB T5K 2C3

Dear Mr. Gartner:

The comments that follow are submitted in response to the Consultations on Proposed Regulations for the Amended Insurance Act ("Proposed Regulations"). Aviva Canada Inc. ("Aviva" or "we") appreciates the opportunity to participate in this consultation process. We believe that open and constructive dialogue with key stakeholders is the cornerstone of effective financial services regulation and policy development.

By way of background, Aviva Canada Inc. is a subsidiary of one of the world's largest insurance groups, Aviva plc, which provides peace of mind to over 50 million consumers through a global network operating in 27 countries. While part of this international corporate umbrella, Aviva Canada Inc. is a distinctly Canadian company offering protection to over 3 million customers from coast to coast. In addition, Aviva is an integral part of Alberta's insurance landscape with more than 200,000 policies and over \$330 million in gross written premiums. However, we believe that it is our customer-focused approach and commitment to changing insurance for the betterment of the consumer that distinguish us most in the insurance industry. It is through a perspective enriched by our commitment to innovation and improving the consumer's experience that we submit our comments.

In large part, we are supportive of much of the Proposed Regulations and applaud Alberta's continued progressiveness and innovation as the first Canadian jurisdiction to attempt to modernize the framework for insurance regulation. We believe that modernization should work to reduce the potential for unnecessary strain often caused by antiquation as well as reduce complexity and improve efficiency.

...Continued Page 2



September 30, 2009  
Mr. Dennis Gartner  
Page 2

In addition, as an industry leader in innovation, Aviva supports efforts intended to increase flexibility, limit prescription and enable regulation to leverage the experience and expertise of industry members. Nevertheless, we have identified areas within the Proposed Regulations that we believe could be further improved. The attached *Assessment & Recommendations* section details the issues and questions that we have identified and also includes recommendations for addressing them.

Aviva sincerely appreciates having the continued opportunity to participate in the processes to modernize the *Insurance Act* and develop its accompanying regulations. We hope that you find our comments helpful and we would be available at your request to further discuss or provide additional information and insight regarding any of the comments or concerns mentioned above.

Yours sincerely,

Bob Fitzgerald  
EVP & Chief Marketing and Underwriting Officer,  
Aviva Canada Inc.

## Assessment & Recommendations

### I. Disclosure of Limitation Periods

**Require disclosures of limitation periods on two occasions: upon notification of a claim and the denial of the claim only or establish a less contentious and more practical timeframe in which a third disclosure is to be provided.**

Aviva recognizes the importance of consumers being informed and is an advocate of providing meaningful disclosure. We also agree that consumer awareness and understanding can often be an effective tool for protection. However, we have concerns regarding the third occasion insurers are to provide notification of the limitation period for initiating legal action: between 60 and 120 days before the limitation period expires. We believe that as presently worded, this requirement would lead to difficulties in terms of compliance and enforcement. The difficulties are the result of incorporating the "discoverability principle" into the insurers disclosure obligations since the moment when a loss is discoverable is based on the *insured's* position and experience. This is problematic since this moment is not necessarily known to the insurer and is potentially contentious and disputable. The confusion and difficulties for both insurers and regulators would be exacerbated with continuous damage claims, such as progressive property loss, in which the limitation period is not fixed and can extend for a considerable amount of time. We also envision this requirement increasing in complexity as provisions would need to be added to ensure that the potentially arbitrary timing of such disclosures would not jeopardize or limit the insurer's ability to raise the limitation period as a defence.

Apart from the difficulties related to the timing of this disclosure obligation, we have concerns regarding the value of providing identical disclosures on three occasions. The ever-increasing costs of compliance within the financial services industry is ultimately borne by the consumer, and we question whether the expense of providing repetitive disclosures on three separate instances is warranted. In the absence of an identified problem relating to claimants' lack of knowledge regarding access to and limitations on the use of litigation, we believe this requirement could prove to be unnecessarily costly and redundant. What is more, repeated disclosures of this type may even steer otherwise contented claimants toward litigation and inadvertently increase the number of frivolous legal actions.

### II. Transitional Provisions

**Adopt a principles-based approach to the transitional provisions and apply the changes in regulation prospectively and *not* retrospectively**

Aviva believes that the operational impact of the changes to Part 5 of the *Insurance Act* could prove to be fairly extensive. Consequently, we ask that a degree of flexibility be accorded to insurance companies as they could potentially require significant or extensive updates to their existing materials and systems. For example, we anticipate there being significant changes to habitational wording that will require comparisons with legislation, exhaustive identification of where these changes will be required followed by the changes being made and tested, which could take upwards to six months. Moreover, we expect insurers to adopt a collaborative and consultative approach to ensure consistency across the industry in terms of habitational wording. Once completed, all affected parties would have to be advised of the changes and their anticipated impact, all of which taken together could be rather time consuming. We also ask that the differences in the extent to which each company will be affected be taken into account and that the transition provisions be principles-based and primarily concerned with the insurers' efforts to be compliant.

In terms of the application of the revisions to existing contracts and claims, we believe the transitions should occur prospectively rather than retrospectively since the changes are substantive and not merely procedural. Some of the proposed changes would impact substantive rights and create a series of difficulties if applied retrospectively given that existing policies were not structured, priced or agreed to with the revisions in mind. In addition, replacing all policies in force with revised versions that account for the regulatory changes would result in excessive expense incurred by insurers; the costs of which would outweigh any potential benefits. Consequently, we strongly suggest that the new Part 5 apply only to policies, renewals and claims that follow the amendments coming into force. In addition to this request, we have also identified potential transitional issues that apply to fire insurance coverage in particular and we have chosen to address those issues in the section below on changes to fire insurance coverage.

### **III. Required OmbudService Participation**

#### **Enhance customer service through industry-wide participation in the OmbudService**

As a company that is already a member of an OmbudService, which is part of our customer-focused approach, we believe that requiring participation for all industry members represents positive step forward for customer service and complaint resolution.

### **IV. Facilitation of Electronic Transactions**

#### **Continue to provide opportunities for industry members to incorporate technological advancements in their operations**

As an industry leader in innovation, Aviva supports regulatory changes that recognize and even encourage technological advancements in business processes. We view the allowance of certain types of electronic communication to be another sign of the province's progressiveness and commitment to modernization as was the case with the Alberta Insurance Council's fairly recent shift to electronic filings and renewals. However, we are unsure whether or not the use of electronic communications will be accompanied by a change in the time periods for deemed delivery that apply to registered mail. Any further information regarding anticipated time frames that will apply to electronic delivery would be greatly appreciated.

### **V. Classes of Insurance**

#### **Continue with efforts to advance regulatory harmonization and reduce complexity when possible**

Aviva is also supportive of the efforts to streamline and harmonize the classes of insurance. We are a proponent of harmonization as it generally works to redress some of the inefficiencies associated with the patchwork of regulation that exists across Canada. In addition, we believe that streamlining the classes of insurance will reduce the degree of complexity and convolutedness that marks Canadian insurance regulation.

## VI. Innocent Co-Insured

### **Provide rights to recover from losses to personal property for insured individuals who assist in the subsequent investigations**

Aviva agrees with many of the provisions in this section regarding the recovery rights of the innocent co-insured. We believe that individuals should be accorded the right to recover their proportionate interest in lost or damaged property provided that they a) qualify as "Insureds" under the policy and b) fully cooperate in the investigation and adjustment of claims involving suspicious circumstances. However, Aviva remains firm in our belief that these rights should only be accorded to individuals with personal lines of coverage and not be extended to include commercial coverage. Customary provisions and exclusions of criminal acts in commercial coverages and policies already adequately address the issue, eliminating the need for what would likely be an elaborate series of regulations given the complexities of commercial relationships and interests.

## VII. Fire Insurance Coverage

### **Develop an acceptable definition of terrorism through consultations with industry and include it among the causes insurers are allowed to exclude coverage for fire losses**

The proposal to occlude terrorist acts from causes insurers are permitted to exclude from coverage for fire losses represents the area of greatest concern for us. Aviva is not alone in the belief that doing so would not only represent a departure from internationally accepted standards in insurance regulation, but also have the potential to place the long-term stability of the industry in jeopardy. The potential for exorbitant and extensive losses from fire resulting from terrorist acts are widely accepted as far beyond the coverage capacities of P&C insurers and would ultimately raise concerns regarding their ability to remain solvent. Moreover, the ramification of this type of exposure would have drastic effects on the agreements and relationships between insurers and reinsurers. It is more than likely that reinsurance would become unaffordable and inaccessible for most if not all of the insurers operating in Alberta.

We understand the difficulties that can be involved in establishing fire losses resulting from terrorism as a category of exclusion (i.e., balancing industry stability and adequate consumer protection while safeguarding against unintended uses of the exclusion). However, we strongly encourage Alberta Finance and Enterprise to engage in consultations with the industry until an acceptable definition of terrorist acts has been determined so that it may be included in the regulations as a permissible exclusion from fire insurance coverage. We believe that incorporating an appropriately constructed exclusion of terrorist acts among the other causes insurers are permitted to exclude coverage for fire losses is the only means to adequately balance consumer interests and the industry's stability.

In terms of the transitional provisions, we believe that the current practice in Alberta of treating terrorism as a category for exclusion from fire insurance must be permitted to continue until an acceptable definition has been developed. This practice is standard for many insurers and is supported by the Supreme Court of Canada decision in *KP Pacific Holdings v. Guardian Insurance*, [2003] S.C.J. No. 24.

An additional aspect of section 545(3) of the *Insurance Amendment Act, 2008* that is of interest to us is the use of the phrase "or by another prescribed peril". Currently, the prescribed perils to which this section applies is limited solely to fire. Given the importance of anti-concurrent causation to the framing of insurance policies, we again request that industry consultations be adopted to ensure that the content of this list and the manner in which it is expanded are as practical and pragmatic as possible. We believe that industry insight and expertise in these areas are resources that should be taken full advantage of.

## **VIII. Disclosure of Dispute Resolution Process**

### **Clarify or amend the catalyst for providing disclosures regarding the dispute resolution process**

As stated previously, Aviva is a proponent of providing meaningful disclosures and recognizes the value of consumers being informed. An important aspect of this is the timing of the disclosure. Aviva believes that the timeframes established in the Proposed Regulations are appropriate and should ensure that there are no unnecessary delays in the dispute resolution process. However, we would like to point out that the trigger for these disclosures, a determination that there is a "disagreement", is worded somewhat ambiguously. We would like to stress that the dispute resolution process is a means to address an "impasse" that can impede a claim. We expect that the term disagreement will not be misconstrued or over-extended to include mere differences of opinion or contentions, which are routinely addressed in the claims process. However, we request that this interpretation be included in the content of the interpretive guidelines or have the term "disagreement" replaced with "impasse" to eliminate the possibility of any confusion or difficulties.

## **IX. Exclusion from the Application of Statutory Conditions**

### **Provide clarification regarding the intended scope**

Our concerns regarding this section are rooted in the ambiguity regarding the application and impact of the Statutory Conditions in light of changes that are present in the *Insurance Amendment Act, 2008*. To be more specific, while the previous Act dealt with covering losses in physical damage, it is unclear whether the intent of the amended Act and the Statutory Conditions is to increase the scope of the insurer's obligation to also cover losses of income and those resulting from business stoppages. We request any possible further information regarding whether or not the intention of the Act regarding obligations of the insurer is to apply Statutory Conditions designed for "property" to liability and business interruption coverages.

## **X. Miscellaneous**

### **Provide clarification regarding the filing of certain materials**

Although it is not a topic addressed in the Proposed Amendments, we would appreciate any further clarity that could be provided regarding section 537 of the *Insurance Amendment Act, 2008*. The section states that the Superintendent "may require" insurers file certain forms and materials, including advertising materials. The circumstances and situations in which such materials may need to be filed are not identified, making the intention of the section difficult to discern. We would be concerned if this section would result in the authority of the Superintendent being expanded to include prior approval of the marketing materials or the wording adopted in different forms.

## **Remain aware of and open to coming regulatory changes in other Canadian jurisdictions**

As noted above, Alberta is to be commended for taking the initiative and being the first Canadian jurisdiction to attempt to modernize the regulatory framework for insurance. We expect the other jurisdictions to follow suit and even adopt many of the provisions and regulations developed in Alberta. Correspondingly, we strongly suggest that Alberta closely follow the regulatory develops to occur in the other jurisdictions and be open to incorporating any innovative and improved regulations that may emerge. For example, we believe that given the elevated importance of issues regarding earthquake shock and fire following earthquake in British Columbia, the proposals and regulations that emerge there may represent an advancement over what is currently being developed in Alberta. In an effort to continue to improve insurance regulation and advance the much-needed regulatory harmonization in Canada, we encourage Alberta to consider adopting any agreeable or improved regulations that may be developed in other Canadian jurisdictions.