



Alberta Finance and Enterprise
*Consultation on Proposed Regulations for the
Amended Insurance Act*

September 28th, 2009

Monday, September 28, 2009

Mr. Dennis Gartner
Superintendent of Insurance, Financial Institutions and Pensions
Alberta Finance and Enterprise
4th Floor, Terrace Building
Room 402, 9515 – 107th Street
Edmonton, Alberta T5K 2C3

Dear Mr. Gartner,

Subject: Consultation on Proposed Regulations for the Amended Insurance Act

The Co-operators is pleased to participate in the Alberta government's consultation process on the Alberta Insurance Amendment Act Regulations.

We remain committed to working with the government of Alberta to achieve common objectives that will benefit consumers.

ABOUT THE CO-OPERATORS

The Co-operators philosophy regarding the delivery of the automobile insurance product to the consumers of Alberta is based on the following fundamental guiding principles:

- **Security:** At its most basic level, insurance provides peace of mind. Consumers should have adequate coverage that ensures an appropriate measure of financial protection.
- **Affordability:** Insurance must be affordable for a compulsory insurance system to work.
- **Availability:** Insurance consumers have the right to expect reasonable access to a variety of providers who can meet their coverage needs.
- **Simplicity:** Insurance consumers have a right to understand the product they are purchasing and the benefits to which they are entitled.

The Co-operators is a group of Canadian companies focusing on insurance. As a co-operative, our members are 46 co-operatives, credit union centrals and like-minded organizations, representing a combined membership of millions of Canadians. Our Alberta members include Agrifoods International Cooperative Ltd., Credit Union Central of Alberta Ltd., Lilydale Inc., United Farmers of Alberta, Wild Rose Agriculture Producers, and the Alberta Federation of Rural Electrification Associations.

For the past six years The Co-operators was listed among Canada’s “50 Best Employers” in *Report on Business*.

In Alberta, 102 agents independently own offices in communities across the province providing service to 236,638 clients. A total of 442,383 policies are in effect in Alberta, providing coverage to 326,421 auto vehicles, 113,955 homes; 21,015 businesses and 20,751 farms.

Jobs Created		Auto Vehicles Insured
Corporate Staff	647	326,421
Agents	99	
Agents' Staff	550	
Total Direct Jobs	1299	
Total Indirect Jobs	1949	

Committed to Alberta Communities

Support for the community is one of our guiding principles as a co-operative organization. We seek to contribute to safe, healthy and sustainable Canadian communities through The Co-operators Foundation, our safety programming, and staff volunteerism.

As a national company, The Co-operators supports numerous organizations that focus primarily on education, youth, health, environment and safety. In 2008, The Co-operators Foundation directed \$345,500 to Alberta organizations. That number includes contributions to Alberta co-operatives through the Co-operative Development Program, (CDP); to communities through the Community Economic Development Program; to the United Way; and from Sovereign General to the Children’s Wish Fund.

This amount does not include the local charitable contributions of our agents.

The Co-operators continues to be active in supporting its communities in a variety of ways. We annually distribute nearly 14,000 Safe Seniors Calendars into Alberta Communities.



Shock Trauma Air Rescue Service (STARS) uses helicopters to air-lift critically injured and ill patients who are in areas that are not accessible by road in Alberta. We are proud to support this vital and unique emergency service organization.

In addition, we have a Community Advisory Panel (CAP) in Calgary. This panel was set up in order to create a listening forum where we can hear the concerns and issues of the community and seek their input. Our 10 panel members (who do not need to be insured by The Co-operators) represent diverse sectors of the community such as health care, social services, business, education, safety, seniors and youth. The CAP meets three times per year and will be invaluable in helping us meet the expectations of our clients and their communities.

The recent economic downturn touches all facets of society, not the least of which is the voluntary/non-profit sector. Conservative predictions estimate that in Canada in 2009 there will be a 22% decrease in corporate giving and a 24% increase in funding requests. And yet, non-profits such as foodbanks, employment and emotional counselling services always see a sharp rise in demand for their services during economic hardships.

At The Co-operators, we see our role in these challenging times as an unwavering commitment to the co-operative principle of "concern for community". And as such, The Co-operators has not decreased its community investment giving going into 2009.

Set out below are The Co-operators comments on the proposed regulations in the Consultation Paper.

ISSUES APPLICABLE TO ALL INSURANCE COMPANIES

1. Disclosure of Limitation Periods

Section of the Amendment Act: 3 S 511(1) (g.1)

Proposed Regulation:

- a) Insurance companies and their appointed adjusters will be required to notify policyholders in writing of the time period for bringing a legal action against the insurer. Notice of the limitation period must be given on up to three separate occasions: (1) upon notification of a claim; (2) on denial of the claim; and (3) at least 60 days, but no more than 120 days, before the limitation period expires.
- b) The first notice must include a copy of the relevant section of the *Insurance Act* that sets out the limitation period.
- c) In the event of non-compliance, the regulation will authorize the court to extend the limitation period or give such other remedy as the court deems necessary.

The Co-operators agrees with making claimants aware of limitation periods in a timely and transparent manner. The Co-operators complies with current Regulations regarding notice.

- (1) We do not endorse a written notice at the occasion of a client's claim. In our experience this generally influences the client against working towards a timely resolution of their case. This outcome, in our view, is not positive for the client, nor the insurer;
- (2) Our current practice is to advise clients of the limitation period in writing on the occasion of a denial. The Co-operators does not take issue with this portion of the proposed legislation;
- (3) In the case of a claim that has remained open by the time the 120/60 days before the limitation period expires, notifying the client of the limitation period may be straightforward, and practical. However, more clarity is needed on requirements for all files, open or closed. For instance, is this required on files closed by the time this diary date is reached? Moreover, what constitutes a closed file?

3. Require insurance companies to participate in industry OmbudService organizations

Section of the Amendment Act: S 511(1) (h.1)

Proposed Regulation:

Require insurance companies to participate in industry consumer complaint OmbudService programs.

We are a member of the national OmbudService, and thus comply with the proposed Alberta Insurance Act changes. We have built a solid relationship with the OmbudService chapters across Canada and would be pleased to continue as it relates to Alberta.

4. Facilitation of Electronic Transactions

Section of the Amendment Act: S 548(b)

Proposed Regulation:

Coordinate the process and types of records that can be completed electronically with the *Electronic Transactions Act* with exceptions for the following types of records:

- Notices or other documents currently required to be sent by registered mail,
- Designation or change of beneficiary, and
- Change of ownership of insurance policies.

The Co-operators does not object to this proposed Regulation, provided the legislated provisions are permissive and not compulsory.

5. Classes of Insurance

Section of the Current Act: S 16(c)

Proposed Regulation:

It is proposed that the classes of insurance be harmonized with the classes used in current federal legislation, with minor amendments to reflect differences relating to Alberta specific situations, such as equipment warranty insurance.

We are advocates of harmonization of insurance used in federal legislation and at the provincial level.

It is not possible to comment on this issue as certain sections of the Insurance Act require amendments to facilitate the change to the new classes of insurance – as stated in the government document.

ISSUES APPLICABLE TO LIFE AND ACCIDENT & SICKNESS INSURANCE COMPANIES

The Co-operators is a member of the Canadian Life and Health Insurance Association (CLHIA) and has worked closely with the CLHIA in developing their response to the Alberta Government's consultation process. Therefore, for comments related to Life and Accident & Sickness insurance companies, please refer to CLHIA's submission which we fully support.

ISSUES APPLICABLE TO PROPERTY AND CASUALTY INSURANCE COMPANIES

11. Innocent Co-Insured

Section of the Amendment Act: S 541(1)(d)

Proposed Regulation:

To be determined based on consultation

This will increase an insurer's exposure on a risk. Although a co-insured may not be criminally responsible, this does not necessarily mean they are completely free of some implication in an intentional or criminal act that has a connection to the loss. This is the very logic behind the current blanket exclusion applying to all of the insureds on the policy. The Co-operators does not support this change in legislation.

We believe "to claim their portion of the loss" is problematic. A case with Canadian Surety indicates that interest may well be 100%. Each occurrence needs to be looked at specifically for the facts of the case, however, this provision will essentially open the door for insureds to fraudulently claim with impunity. For example, "there is no reason not to claim for the 60 inch TV as my partner will at least get what we really had as long as I do not involve him/her".

Moreover, the government document states the industry advised this provision should apply only to individuals and not to certain corporations or other types of legal entities. This can be clear in a personal lines policy, e.g. husband and wife, but not so clear in the case of a corporation. Does this mean that "certain corporations or other types of legal entities" are yet to be defined, and if so who are they? What if a disgruntled employee of a corporation commits arson and torches the business? Does this mean the corporation is unable to collect the insurance money for the damaged / destroyed property? However, if the

owner of a business torches the property e.g. because the business is failing, we do not want that person to benefit from the insurance.

An individual performs a criminal act, such as arson, not the corporation. It would be difficult to convict a corporation of an illegal act such as arson.

12. Innocent Co-Insured

Section of the Amendment Act: S 541(1)(3)

Proposed Regulation:

Prescribe the following requirements on the “innocent co-insured” where a person seeks to rely upon this section of the *Insurance Act*.

- Co-operate with the insurer in the investigation of the loss.
- Participate fully in an examination under oath requested by the insurer.
- Provide all relevant information and documents in addition to those required by the contract.

These provisions are an important and necessary feature if Item 11 is approved.

However, The Co-operators does not support protection of ‘innocent’ co-insured’s as stated above. The problem with this provision is it could encourage fraudulent claims, e.g. arson, where even if one party of the contract / policy is excluded due to criminal or intentional act, another party of the contract could still benefit from payment of a claim. The proposed requirements are helpful, but not foolproof.

13. Fire insurance coverage

Section of the Amendment Act: S 545(3)(a) and (b)

Proposed Regulation:

- 1) Allow insurance companies to exclude coverage for fire losses resulting from the causes set out in section 544(1)(a) and (2) of the current *Insurance Act*. Exclusions for fire damage resulting from an earthquake or a terrorist act would not be permitted.
- 2) Allow insurance companies to exclude fire losses occurring under any circumstances after the insured property has been vacant for more than 30 days, except where the insurance company has agreed in writing to cover fire losses while the property is vacant. In such case, all fire losses will be covered except losses resulting from a cause in (1) above.

The vacancy issue is unclear. Presently there is nothing in the Act concerning vacant property. The Co-operators supports the proposal for the Act to exclude fire losses after insured property has been vacant for more than 30 days, which coincides with current fire policies. We believe this time frame is adequate and would not want to see it extended

14. Disclosure of Dispute Resolution Process

Section of the Amendment Act: S 511(1) (g.2)

Proposed Regulation:

- a) Insurance companies to notify policyholders in writing of the dispute resolution process. The notice must be given;
- (a) within 10 days of the insurer making the determination that there is a disagreement to which the process is applicable, or
- (b) where the insurer has not made a decision on the claim, no later than 60 days after the proof of loss was received by the insurer.
- b) A copy of the relevant provision of the Act that sets out the dispute resolution process must accompany the notice.

The Co-operators endorses any remedy to a dispute that is efficient, fair, and cost effective for all parties. Appraisal is a better method to settling a dispute than litigation. In addition to making Appraisal available, it must be noted that The Co-operators also offers its policyholders access to a "Service Review Panel", whereby clients who have a disagreement may have their issue heard by a group of policyholders who are randomly selected to decide the issue. This is a key benefit for our policyholders and The Co-operators would not want this avenue to be closed to its clients because of changes in legislation.

15. Exclusion from the application of Statutory Conditions

Section of the Amendment Act: S 540(2)

Proposed Regulation:

The Statutory Conditions listed in section 540 of the *Insurance Amendment Act*, 2008 will not apply to contracts of Credit, Guarantee, Surety, Mortgage, Title and Loss of Employment insurance.

- (1) It appears the Alberta Insurance Act will continue to require the use of "Statutory Conditions" in their Fire Policies. The Supreme Court ruled Statutory Conditions to be invalid in a property policy as a result of the case of Theresa Marche & Gary Fitzgerald vs. Halifax Insurance / ING in 1999. The Insurance Bureau of Canada (IBC) recommended the term Statutory Conditions be amended to Policy Conditions. Will the Alberta Insurance Act follow?
- (2) Although Section 540 appears to apply to Fire Policies, will it address Liability Insurance and Crime Insurance? Liability & Crime wordings have never been subject to "Statutory Conditions". Does this mean these wordings will have to include "Statutory Conditions" or "Policy Conditions" if the decision is made to change the title of the Conditions? The Act specifically refers to contracts of Credit, Guarantee, Surety, Mortgage, Title and Loss of Employment insurance, but Liability & Crime are not referenced.

As always, we are eager to work collaboratively with the Alberta government to ensure that long-term solutions are put in place to ensure that Alberta consumers continue to have an insurance product that provides security, is accessible, and is affordable.

Sincerely,

Frank Bomben
Director of Public Affairs and Government Relations
The Co-operators Group Ltd.