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No. LH-02/97

- Life & Health

Regulatory and Administrative Update on Life Agent Matters

To the attention of companies licensed to transact life insurance in the Province of Ontario, and to Level I and Level II agents

The Ontario Insurance Commission (OIC) is issuing this Bulletin to provide an update on several important regulatory and administrative developments that affect life agents.

We are also taking this opportunity to reiterate information that relates to the proper discharge of life agents' responsibilities under the *Insurance Act* (*Act*) and its regulations, and to provide other information that will promote better communications between agents and the OIC.

Because life agents will find the detailed information in this Bulletin relevant and informative, the OIC is simultaneously sending, under separate cover, individual copies of this document to each Level II agent in Ontario.

To distribute this Bulletin to all Level I agents in Ontario, we will be sending an appropriate number of copies to the attention of Chief Executive Officers/Chief Agents or Marketing Managers of life insurance companies with a written request to distribute to their Level I agents. To reach Level II agents, we will be mailing a copy to each agent at the last address that was provided by agents to the OIC.

NEW DEVELOPMENTS

1. **Status of industry proposal for a life agent council in Ontario**

   On January 28, 1997, the Commissioner of Insurance sent you a copy of a proposal received from an industry committee to establish a life agent council. This proposal requested the Commissioner to transfer regulatory powers over life insurance agents to a council corporation. The Commissioner received many letters and also conducted an extensive consultation on the proposal. She has determined that there is no consensus of support within the industry for this specific proposal. Without such support, she is not satisfied that the council corporation planned on this basis could regulate effectively in the public interest.

   The Commissioner remains committed to harmonized and effective industry-based regulation of life insurance agents. Attached to this Bulletin is a copy of her letter to the president of the council corporation, setting out the fundamental reasons for her decision to turn down the proposal, and outlining where the she thinks we should go from here. This letter can also be accessed by visiting the OIC's Internet Home Page at http://www.gov.on.ca/OIC

2. **Accord reached on a Harmonized Continuing Education Standard**

   Agreement has recently been reached on a continuing education (CE) standard by three provincial insurance councils, the OIC and industry groups. Ontario has had a continuing education (CE) requirement since February 1, 1995. Several other provinces also have CE requirements or are about to introduce them. In addition, the Life Underwriters Association of Canada (LUAC) and l'Association des intermédiares en assurance des personnes du Québec (l'AIAPQ) have CE standards. While each standard has merits, they all differed, and caused problems for agents, course providers, insurers and regulators.

   The new standard is the outcome of ongoing inter-jurisdictional harmonization efforts and was developed by a working group of representatives from the insurance councils/commission in four jurisdictions, and LUAC and l'AIAPQ. The process was facilitated by the Canadian Life and Health Insurance Association (CLHIA).

   Acceptable CE is defined as a structured learning program which meets two criteria:

   1. The curriculum must be directly related to knowledge relevant to giving advice about financial products or services, or the operation of a financial services business. This includes programs that are structured for the specific purpose of education, but excludes activities such as programs and meetings primarily based on sales

production, promotion and motivation.

2. The number of hours of acceptable CE must be attested to in writing by a program provider and is measured by the actual time spent in attendance at a program or, where a program is not provided in a face-to-face setting, the time designated by the program provider for completion of a program.

We are enclosing a joint Message to Ontario Life Agents about the accord from the insurance councils, the OIC and life industry groups.

3. **Continuing education audits started**

We have started CE audits to ensure that the system of mandatory CE remains fair to all agents. A fair system is one in which agents can have confidence that all other agents are also meeting the CE requirements.

A CE requirement started on February 1, 1995, and the first reporting of it began February 1, 1997. Agents report on CE compliance by signing a sworn declaration in their application to renew their licences. Since licences expire throughout the year, the number of hours which each agent must report will vary in the first reporting period. Some report on a two-year period; others report on almost a four-year period.

The same situation will apply for agents who were first licensed from February 1, 1995 to December 31, 1995 when licences were issued using the birthday as an expiry date. In those cases, initial licences would be in effect for a period ranging from two to three years, depending on the date of birth. Therefore, the number of CE hours will vary on the first report of CE. (Note: The fee was based on the number of days in the licence term.) After December 31, 1995, all licences have been issued or renewed for two-year terms.

To ensure that the system is fair, the reporting of the CE requirement is based on 1.25 hours per month. It did not make sense to change the existing application form to deal with the differing number of hours on the first reporting of CE and then change the form back for all subsequent reporting. Therefore, after discussion with an industry committee, we have developed a new form for your first reporting of CE, if either of the two situations described above apply to you (that is, you were licensed on or before December 31, 1995). Agents who have already renewed their licence since February 1, 1997 need not complete this form.

The form, called AContinuing Education Declaration for Agents Licensed on or before December 31, 1995" (reference number: A&A No. 2/97), contains easy-to-read charts to help agents do the prorated reporting of the CE requirement. Please attach this form to your application to renew your licence, as the replacement to Item 13 in the Affidavit section

(Part E). Note that you will only ever have to use this form for your first reporting of CE compliance.

We will be returning renewal applications to agents who submit them without this new CE form, starting August, 1997.

The OIC will be providing additional copies of this form to insurers so they may be made available to their agents in the same way that companies provide application forms to agents.

OIC ENFORCEMENT

4. **Disciplinary / enforcement measures by OIC**

One of the key roles of the OIC is to build public confidence in Ontario's insurance industry. To do so effectively, it takes disciplinary and enforcement measures when necessary.

For example, the OIC conducts more than 4,500 police checks on agent applicants each year. It reviews approximately 225 complaints received against agents each year; the complaints are reviewed to see if there is reasonable evidence to support the allegations made. If there is, the complaint is investigated. In this regard, the

OIC conducts about 80 investigations every year. In many cases, the complaints can be resolved without going through OIC hearings or the courts of law.

The most common hearings relate to forgery, theft or misrepresentations. Where appropriate, the OIC takes cases to court. The most common prosecutions relate to making false statements to the OIC or transacting life insurance business without a licence. In the latter case, we note that we are still receiving licence renewal applications after the current licence has expired. **We will now be putting an enforcement emphasis on late renewals.**

Since January 1, 1995, the OIC has prosecuted nine persons in provincial court for furnishing false information in order to obtain an agent's licence. In this period, the OIC also prosecuted five agents for doing business without having a licence in force.

As a regulatory body, the OIC regulates people. Our primary concern is whether a person should be permitted to engage in business as an agent. The courts have authority to resolve disputes about specific transactions or contracts.

AGENT-OIC COMMUNICATIONS

5. **Information sources for agents**

We are continually exploring new technologies to provide information to agents and others. The "Telephone Tree" at the OIC provides answers to the most commonly asked questions raised by agents.

This audio electronic service allows agents 24-hour access by local or 800 numbers, to general information in English and French, about requirements for becoming an agent, maintaining a licence, and making a complaint against an agent. The "Tree" is updated regularly so that agents can obtain relevant information on new developments or requirements that affect them. The Agents and Adjusters Section of the Tree can be accessed by dialling (from Toronto: (416) 250-9209; from the rest of Ontario 1-800-263-0541).

In addition, the OIC's Internet Home Page provides a range of services to agents, the public and companies. The site is new and is constantly being expanded and improved. One of the services provided to agents is a listing of all recently issued licences. Each day the site is updated with a list of licences issued in the previous two weeks. This source of information enables companies and agents to know when licences have been issued immediately without waiting a week for the licences to be received in the mail or having to call the OIC. The site also includes recently issued OIC Bulletins.

If you have Internet access, please check our site at: Http://www.gov.on.ca/OIC

The application form introduced in 1996 is also a useful source of detailed information for life agents. It was designed with the assistance of an industry committee and puts in one place all of the licensing rules. There are no licensing rules beyond those listed on this form. The *Insurance Act* does not permit any exemptions from the licensing rules.

For Level I agents, the head office licensing department of your sponsoring company is an excellent source of information.

LICENCE-RELATED REMINDERS

6. **Errors & Omissions (E&O) insurance**

   All life insurance agents are required by law to have errors and omissions (E&O) insurance. They must carry E&O insurance with limits of at least $1 million to cover a single occurrence, and at least $2 million in the aggregate. In addition, a policy may have a deductible of no more than $1,000. The E&O insurance policy must include extended coverage for loss resulting from fraudulent acts.

7. **Special message to Level I agents regarding Level II status**

   Generally speaking, agents who were licensed on February 1, 1995 have already received their last renewal at Level I. The *Insurance Act* provides no authority to exempt agents from the requirement to move to Level II status. This means that if you do not qualify for Level II, you can no longer sell insurance. Agents licensed since February 1, 1995 can only renew their licence once while they have Level I status.

There are several ways an agent can progress to Level II after having the required two years of licensing in Ontario. An agent can take:

- the Level II Life Insurance Agent qualifying examination;
- the Life Underwriters of Canada (LUAC) Training Course, 101, 102, 103;
- the LUAC Membership Qualifying Examination; or
- the Level II life insurance examination administered by The Insurance Council of British Columbia;
- the FLMI (Fellow of the Life Management Institute) or the FIC (Fraternal Insurance Counsellor) designation.

Agents who have been continuously licensed in Ontario for 10 years can apply to be "grand fathered" to Level II status. They, of course, will have to complete this 10-year period before the expiration of their current Level I licence. Agents must apply for Level II status, using the Life Insurance Agent Application form. (This is the same form used for all agent licensing requests.)

8. **Corporate Agencies**

There has been a great deal of interest expressed about corporate agencies. The law is old and causes problems for many agents. The following information will help you deal with these agencies.

Operational changes have been introduced to eliminate as much red tape as the *Act* and regulations permit.

- Articles of incorporation do not have to be submitted to the Superintendent for approval prior to incorporation, however a complete copy including any amendments must accompany the application.
- If the licence is to be issued under a style name ("doing business as"), a copy of the Business Registration of the style name must accompany the application.
- Articles of incorporation do not have to restrict a corporation's business to acting only as an insurance agency. Applications for corporate licences include a statement with respect to other business that a corporation will carry on. Our policy has been to approve issuance of licences to corporations that carry on other business in the financial services field. Other types of business activities will be reviewed.
- Sponsorship by an insurance company is only required for non-life agencies.
- If any shareholder of a corporate agency owns more than one-half of the total number of issued shares, he, she or it must be licensed. The total number of issued shares includes all classes of shares.
- If any of the shareholders of the corporation are themselves a corporation, then details of their ownership should be provided in a similar format to that outlined on the application for the corporate applicant.
- An application for a corporate licence must include the names of all agents who are authorized to act for the corporation. Please be sure these individual agent licences are up to date to avoid delays.
- Requests for a change of agency name must be accompanied by a copy of the Articles of Amendment or Business Registration as appropriate. There is no charge for a name change.

GENERAL

9. **Retired agents**

When agents no longer conduct any business as agents, they are not required by law to have life insurance agent licences to receive renewal commissions. However, if a licence is maintained, retired agents are subject to all the requirements binding on active agents.

10. **OIC service**

About 18 months ago, the OIC undertook a major reengineering of its licensing function. Prior to the improvements, it had been common, for many years, for new licences to take six to eight weeks to be issued, and for renewals as long as six months. In most cases, licences are now issued in five business days from the date the application is received, if the application is clean (that is, the application is complete, and there are no "yes" answers in Part B of the Life Agent Application form and nothing untoward is disclosed in the police check that is made on a person's background).

While there is, occasionally, the need to fine-tune the system, the change in service levels is significant. We appreciate the assistance of the industry committees who worked with the OIC in bringing these improvements to fruition.

Grant Swanson

Acting Superintendent of Insurance

June 4, 1997

Attachments (PDF):

- Insurance Commissioner's letter to Chair of Life Agent Council of Ontario, dated May 23, 1997.
- Message to Ontario Life Agents on CE Harmonization Standard, dated May 28, 1997.
- A Continuing Education Declaration for Agents Licensed on or before December 31, 1995 form.

To view PDF files, you will require Adobe Acrobat® Reader version 7.0. You can download this free software from Adobe's Web site.

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May 23, 1997

Mr. John Wahl
President
Life Agents Council of Ontario
1 Queen Street East
Suite 1700
Toronto, Ontario
M5C 2X9

Re: Request for Recognition of the Life Agents Council of Ontario

Dear Mr. Wahl:

The Insurance Act was amended in 1995 to give the Commissioner of Insurance authority to "recognize" an organization that would basically take over the responsibilities of the Superintendent of Insurance to administer and enforce the Insurance Act and regulations related to life insurance agents.

On January 23, 1997, my predecessor, Mr. Blair Tully, received a request for recognition from the Board of the non-profit corporation named the Life Agents Council of Ontario. On January 28th, Mr. Tully asked for comment on the Council's proposal from life insurance agents, insurance companies, industry associations, financial services sector associations, consumer associations, and other regulators. As you are aware, I have met with interested parties during April.

I have reviewed the request submitted, considered written comments received from many respondents, and considered advice given at meetings with interested parties.

It is with regret that I inform you that I am not satisfied that recognition of the corporation would be in the public interest. I can assure you that I have carefully reviewed the request and would like to provide you with the fundamental reasons for my decision.

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1. Functions of the organization conflict with Insurance Act framework

I am not satisfied that it would be in the public interest to recognize an organization that has been incorporated with broader powers than those set out for it in the Insurance Act with respect to the regulation of life insurance agents.

The Act provides that:

> A recognized organization shall, in accordance with this Act and the regulations,
> (a) issue, renew, suspend and revoke life insurance agent licences;
> (b) receive and investigate complaints against life insurance agents;
> (c) discipline life insurance agents;
> (d) develop and establish examinations and educational programs for life insurance agent applicants and licensees;
> (e) institute and conduct prosecutions for offences under this Act against life insurance agents; and
> (f) exercise such other powers and perform such other duties as are prescribed by the regulations.

The Council's incorporating documents have provided it with more powers for life agent regulation that those set out in the Act. They provide that it shall regulate all aspects of life insurance agents' activities, including business and marketing operations, standards of practice, and conduct, and that it shall establish licensing eligibility criteria and licensing standards.

Furthermore, the incorporating documents do not limit the Council's actions with respect to life insurance agents to being undertaken in accordance with the Act and regulations.

In my view, it is not in the public interest for there to be any legal or operational ambiguity with respect to the authority of a regulator.

I appreciate that the Board has indicated a willingness to amend the incorporating documents and by-laws to assure that the Council would operate to only administer and enforce the provisions of the Act and regulations in

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accordance with the framework set out in the Act. If this were the only issue of concern, I would simply ask that the Board make the appropriate changes.

2. No consensus of support

My consultation indicates that there is no consensus of support around the fundamental issue of the corporate governance of the organization: the composition of the Board and the manner of selection of Board members.

The lack of consensus cannot be attributed to any single group of constituents. I have canvassed key stakeholders on their willingness to accept a compromise but find that although there may be room for movement, some parties remain entrenched in their positions either in support or against the proposal.

While it is to be expected that there will not be a structure that pleases everyone, I believe that for an industry based regulator to operate efficiently and effectively in the public interest, there must be a general consensus of support for the structure among those to be regulated and those who will be affected by its operations.

In addition, with respect to selection of Board members, I am not satisfied that it is in the public interest to have some Board members effectively appointed by any industry association.

3. Harmonization, efficiency, and effectiveness of regulation

In my view, it is in the public interest for a regulator to be efficient and effective, and wherever possible, to coordinate and harmonize regulatory activity with related regulators.

I was advised many times during my consultation that the development of a Life Council actually began over ten years ago. At that time a regulatory model, built on the assumption that life insurance agents formed an isolated group of sellers, probably would have been effective.

Today, life insurance companies, products, and distribution methods are changing rapidly. Many products are now sold by agents who hold other financial services licences and who are regulated by other regulators.

I do not find any evidence that the proposed organization has taken into account these significant changes in the marketplace and attempted to build necessary linkages with other regulators to achieve efficiencies and coordinated regulation.
The consequence may be the creation of a new regulatory solitude governing individuals who are increasingly doing business in a broader context. I am not satisfied that the proposal achieves the harmonization, efficiency and effectiveness of regulation that I consider essential to the public interest.

Where do we go from here?

The Government remains committed to the idea of efficient and coordinated industry based regulation. The OIC will continue to work with the industry to do whatever is necessary to make that happen. Over the next few months, I will be contacting key stakeholders and asking for representatives to work with me and Commission staff on this and a number of other issues. I would like to target having a comprehensive action plan, supported by all industry participants, in place by the end of the year.

To open dialogue, I want to share a few observations and thoughts. There have been many references to different distribution systems in the life insurance sector. I believe that there are essentially two ways that a life insurance company distributes its products. Companies distribute directly or through sales forces that are under their control, that is, through agents that the company recruits, hires under varying contractual arrangements, trains, and directs with respect to sales. Companies can also distribute through independent agents or brokers who they do not consider "theirs" but with whom the company contracts to sell products. Some companies use both distribution methods.

I think that companies can assume more responsibility for agents who work for and report to them. The company is accountable for the actions of these agents and I think companies should be subject to less regulatory intervention with respect to the suitability of a recruit to act as an agent and the competency of the agent to sell life insurance. I can envision a system that allows companies to certify competency and suitability of new agents and provides an automatic termination of a company agent's licence upon termination of the

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appointment with the single company. I appreciate that this would involve a return to the system of sponsorship for tied agents.

At the same time, I believe that a duty of care on companies to supervise the activities of independent agents or brokers, may be misplaced. Independent agents and brokers are not recruited, hired and directed by an insurance company. Usually they report to a corporate life insurance agency which may be very large or essentially a one or two person business. I think we should consider imposing a duty of care on corporate agencies to certify suitability and competency of their new recruits and supervise conduct of the agents and brokers who work for them.
Many other issues were raised during the consultation that have confirmed my belief that there is a need for some changes to the law

governing life insurance agents. The Ontario Insurance Commission has already identified a need to amend regulations governing corporate agencies and rationalize the law related to undue influence and occupational restrictions. There was also a strong consensus of support for the introduction into regulations of some of the key provisions of the Code of Ethics governing life insurance agents that was published by the Commission in June 1995 (e.g. point of sale disclosure, conflict of interest, anti-churning).

Immediate Action to Coordinate Regulation of Financial Services Intermediaries

There is one action that I intend to take immediately. It is clear that many life insurance agents now hold multiple licences in the financial services sector e.g. as general insurance brokers, mutual fund salespersons, investment advisors, and limited market dealers. I believe that there is a need for the operations of the various regulating bodies to be coordinated. In the longer run, I believe that the law governing all financial services intermediaries should be harmonized. As Deputy Minister, I will be requesting that the Ontario Insurance Commission, the Registered Insurance Brokers of Ontario, and the Ontario Securities Commission identify areas where operational coordination can produce greater efficiencies, effectiveness and harmonization.

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I appreciate the considerable time and effort that you and your colleagues have put into preparation of your proposal and I thank you for submitting it.

Yours truly,

Dina Palozzi
Commissioner

cc. All Interested Parties

JOINT NEWS RELEASE/COMMUNIQUÉ CONJOINT

MESSAGE TO ONTARIO'S LIFE AGENTS

Accord reached on a Harmonized Continuing Education Standard

Life industry groups and provincial jurisdictions requiring or proposing continuing education (CE) for life and health insurance agents have agreed to a common CE standard. The harmonized standard defines what constitutes acceptable CE. In so doing, it provides a single set of rules, which eases administration and compliance by agents, insurers and other course providers.

Participating parties agreed that CE promotes the development of knowledgeable, professional and competent financial practitioners, thereby enhancing consumer protection and quality service.

The harmonized standard was agreed upon by the insurance councils in British Columbia, Manitoba and Saskatchewan, the Ontario Insurance Commission, the Canadian Life and Health Insurance Association Inc., the Life Underwriters Association of Canada (LUAC), and l'Association des intermédiares en assurance de personnes du Québec (l'AIAPQ).

The new standard takes effect immediately in British Columbia and Ontario, where CE is a condition of licence renewal. The insurance councils in Manitoba and Saskatchewan plan to introduce similar requirements in 1998. LUAC and l'AIAPQ have also adopted the new standard in the CE requirements they have or are proposing to their members.

May 28, 1997