



Steve Howard, CA
President & Chief Executive Officer
E-mail: showard@advocis.ca

Advocis
390 Queens Quay West, Suite 209
Toronto, Ontario M5V 3A2

T 416.444.5251
1.800.563.5822
F 416.444.80
www.advocis.ca

May 1, 2007

Finance and Corporate Sector Policy Branch
British Columbia Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC
V8W 9V1

Re. *Insurance Act* Review Discussion Paper

Advocis appreciates the opportunity to provide comments regarding the Ministry of Finance discussion paper on the *Insurance Act* Review released March 2007.

Advocis, the Financial Advisors Association of Canada, is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public, and government. Advocis is Canada's oldest and largest voluntary professional membership association of financial advisors representing life and health insurance licensees, and mutual fund and securities registrants across the country.

Public policy objectives and principles for the regulation of insurance contracts:

We believe that the objective of *Consumer Protection and Clarity of Contractual Provisions* is paramount in ensuring that consumers' insurance needs are being met effectively and fairly. Advocis is in support of measures that efficiently satisfy these objectives. We are pleased that the Province of British Columbia has developed proposals that focus on enhancing consumer protection under the *Insurance Act* and clarifying the legislation. Our comments are directed at those proposals that are aimed at preserving and enhancing consumer protection and enhancing clarity, certainty and fairness. Moreover, Advocis is supportive of proposals where regulatory harmonization can be achieved.

Before we move to our specific comments on the proposal, we do wish to highlight a key initiative currently under way that is consistent with and very much promotes the principles enunciated in the Discussion Paper. In particular, insurance advisors today articulate clearly the nature of the client-advisor relationship through such tools as engagement letters. Moreover, advisors provide meaningful information to consumers through written disclosure regarding the

product recommendation, relationships with insurers and any potential conflicts of interest to assist consumers in their decision making process. This instills a great degree of confidence that the priority of the client's interest is being satisfied. Advocis believes that this level of transparency regarding the advice offered and product recommendations should be mirrored within insurance contracts themselves so that the consumer has a fulsome understanding of the nature and specifications of the insurance product offering. Notwithstanding, this must also be balanced with the objective of providing consumers with information that is simple to understand and meaningful.

Following its extensive stakeholder consultation process and its own fact-finding activities, the Industry Practices Review Committee (IPRC) of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) proposed in 2006 the three broad principles-based recommendations of priority of the client's interest, disclosure of conflict or potential conflict of interest, and product suitability – the recommended product must be suitable for the needs of the consumer. Advocis believes that the IPRC's principles-based approach to enhance and harmonize best practices across the industry and in all jurisdictions is an appropriate response to achieve its objectives of enhancing consumer confidence through management of conflicts of interest.

The advisor community has responded favourably to each of the IPRC's recommendations to further augment consumer confidence. In support of these recommendations Advocis launched its Best Practices Guideline, *Managing Conflicts of Interest: Product Suitability Principle for Insurance Intermediaries (June 2006)*. Our intermediary disclosure web based tool, developed to assist advisors in preparing disclosure letters on proposed recommendations or transactions, is our association's contribution to promoting widespread best practices. We strongly believe that our approach offers consumers meaningful disclosure, addressing each of the IPRC's recommendations regarding conflicts of interest in a comprehensive manner.

Advocis is aware that each provincial regulator is in the process of evaluating the circumstances in its own jurisdiction to determine what, if any, changes are necessary to implement these recommendations. Advocis is sensitive to regional differences, as it has members across Canada, and is aware that the provinces can implement the recommendations to reflect any local or regional issues. We have encouraged all provincial regulators and their respective governments to implement these principles through industry developed practice standards. Consistency in the implementation of these principles will serve to reinforce harmonization of practice standards across the industry and across Canada, which clearly evolved as the main theme of this regulatory initiative. It is equally important for provinces to attempt to harmonize across jurisdictions key *Insurance Act* provisions where appropriate to achieve a similar objective.

Amendments to preserve and enhance consumer protection:

We agree with *Proposal 5* that statutory conditions be maintained to protect consumers and enhance contractual standardization. It is important that essential contractual terms that set out rights and duties be included in contracts for purposes of clarity and transparency. The stripping away of statutory conditions from contracts forces consumers to seek conditions of their contracts from other sources, which may not be in the consumers' best interest since this

presupposes that consumers are more fully aware that other statutory contractual conditions even exist. We agree however, that updating of statutory conditions will bring in modern terminology and it is hoped that this will provide consumers with a clearer understanding of contracts they are a party to.

We also agree with the proposal that identical statutory conditions be established and implemented across jurisdictions. Statutory conditions that are printed on all insurance policies across all jurisdictions consistently will assist in achieving the objective of regulatory harmonization. While the Provinces of British Columbia and Alberta have formally agreed to harmonize provisions in their respective *Insurance Acts* where appropriate, harmonization of this nature should be expanded where possible across other provincial jurisdictions.

Under *Proposal 7*, consumers would be given a statutory right to obtain, upon request, a copy of a group insurance policy, while insurers would be permitted to withhold personal and commercially sensitive information. We believe that this would put all insurance consumers on equal footing whether they are purchasing insurance products individually or obtaining them through some form of group plan.

In addition, we encourage the Ministry of Finance to review underwriting practices. Currently some group life and health insurance policies may be underwritten at the time of the making of a claim. Advocis proposes that underwriting of all life and health insurance, including creditor life insurance, should take place at time of issue, and not upon receipt of a claim. The current practice could lead to situations where consumers of life and health insurance learn only upon the making of a claim that coverage has not been in force, notwithstanding that the consumer may have understood and/or been advised to the contrary.

Amendments to enhance clarity, certainty and fairness:

With respect to *Proposal 8* regarding limitation periods, Advocis encourages the Ministry of Finance to enhance and clarify current notice provisions regarding the limitation period for claims. Currently, an insured under a group plan could be faced with the closing of a claim period without having been provided adequate notice. Consumers should not be differentiated on the basis of whether they have individual insurance or are part of a group insurance plan. *Proposal 8* states that:

- the limitation period in *Insurance Act* be extended to 2 years
- a single general provision be adopted for the act, with the trigger being “the date the cause of action arises against the insurer” (the trigger found in vehicle insurance legislation and the current B.C. *Limitation Act*). This general trigger would then be refined for certain types of claims, such as the “date of loss” for property claims and the “date of the last payment” for ongoing disability and A&S claims.
- The incapacity and discoverability provisions of the general *Limitation Act* be applied to insurance claims.
- Insurers be required to give notice to the consumer before the expiry of the limitation period.

Advocis agrees with these proposals in principle. We recommend that the Ministry of Finance consider introducing a notice period which would allow for more reasonable notice, and a period of ninety days is proposed. We would also encourage the Ministry of Finance to implement a process which would monitor adherence to the notice provisions.

We agree with *Proposal 9* that insurance companies be required to have in place an internal dispute resolution system and to participate in a dispute resolution service that offers mediation of disputes between consumers and insurers, and that insurance companies be required to notify consumers of their right to take a dispute to a dispute resolution service.

In further developing details to this proposal, we would urge the Ministry of Finance to take into consideration the process already undertaken through mandatory errors and omissions insurance carried by insurance advisors. For example, the dispute resolution process should provide appropriate notification periods to agents, since it may be determined that a particular dispute will be eventually dealt with through the professional liability insurance of the advisor.

We look forward to working with the Ministry of Finance throughout all stages of its *Insurance Act Review* as it further develops details to these proposals and any future amendments to the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Howard', with a stylized flourish at the end.

Steve Howard
President & CEO, Advocis