

***The Canadian Council of Insurance Regulators***

***and***

***The Canadian Insurance Services Regulatory Organizations***

Canadian  
Council of  
Insurance  
Regulators

Conseil  
canadien  
des responsables  
de la  
réglementation  
d'assurance

**INCIDENTAL SELLING OF INSURANCE REPORT**

The opinions expressed do not reflect the official position of any provincial, territorial or federal government or agency.

**November 2008**

Ce document est également disponible en français

## **About CCIR and CISRO**

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.

The Canadian Insurance Services Regulatory Organizations (CISRO) is an organization of licensing and regulatory authorities for insurance intermediaries, including insurance agents and brokers, across Canada.

One of the major goals of both of these organizations 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.

## Background

In spring 2007, the CCIR decided to examine incidental selling of insurance (“ISI”) licensing and consumer issues because of their potential ongoing impacts. The Incidental Selling of Insurance Working Group (“ISI WG”), which includes representatives from CCIR and CISRO, was formed to conduct this examination.

To date, through the work of the ISI WG, regulators have discussed identified issues and shared their concerns pertaining to “ISI”. On February 27<sup>th</sup> 2008, the CCIR and CISRO released a consultation document<sup>1</sup> and subsequently met with different stakeholders. The consultation document was intended to stimulate a constructive discussion with industry and consumer associations.

For the purpose of the consultation, an incidental seller of insurance was defined as :

“a person who, in pursuing activities in a field other than insurance, offers as an accessory, for an insurer, an insurance product which relates solely to goods sold or services offered by the person or secures a client’s enrolment in respect of such an insurance product.”

The definition adopted by the ISI WG does not include the situation of an employer “enrolling” an employee in a group life policy, as it is not considered to be an offer.<sup>2</sup> Warranties were also outside the scope of the review. The ISI WG did not review potential issues related to third party administrators since CCIR has mandated the Agencies Regulation Committee to work on this matter.

For purposes of the consultation, the issues were grouped under four themes:

- ❑ Exclusions, Restrictions and Limitations (“ERL”);
- ❑ Managing potential conflicts of interest;
- ❑ Role and responsibility of the incidental sellers and insurers;
- ❑ Availability of statistical information.

The CCIR received 34 submissions, mainly from insurers and insurers’ associations, insurance broker associations and automobile dealer associations. These submissions are public and are available on the CCIR’s web site<sup>3</sup>. The CCIR received no submissions from consumer associations.

The objectives of this report are to provide feedback on the consultation process and to present recommendations related to the identified issues. In evaluating ISI and issuing

---

<sup>1</sup> *Incidental Selling of Insurance* – This consultation document is available on the CCIR’s web site: <http://www.ccir-ccra.org>.

<sup>2</sup> The definition relates, but is not limited to, insurance sold by automobile dealers, by travel agents and agencies, by mortgage brokers, by retailers and through branches of lending institutions such as banks, credit unions, finance companies and pay-day lenders. These insurance products may pay off the balance of, or make payments on, a loan, a credit card or a credit line in case of disability or death. They may also be out-of-Canada health insurance or even prepaid funeral expenses. The common factor is the context in which the insurance product is offered.

<sup>3</sup> The submissions are available on CCIR’s web site: <http://www.ccir-ccra.org/>

recommendations, the ISI WG followed a risk-based approach. As such, it bore in mind the regulatory outcomes listed in CCIR's released paper: *An approach to Risk-based Market Conduct Regulation*<sup>4</sup>.

## General Findings and Proposed Recommendations

The submissions received commonly asserted that there was room for improvement in respect of the incidental sale of insurance. The proposed recommendations presented in this report could require new regulations, could result from industry initiatives or could be a combination of both. It is understood that each regulator is ultimately free to assess the issues and if appropriate adopt the regulatory regime and approach that meets its desired regulatory outcome.

In this context, the ISI WG agrees on the following four recommendations:

- Improve the application forms and other documents;
- Improve the training and supervision of sellers;
- Provide consumers with an opportunity to reassess purchase of the product; and
- Obtain statistical information.

The ISI WG notes that comments received were mostly focused and polarized according to the interests supported by the different stakeholders. A significant portion of the submissions dealt with whether or not a licensing regime should be implemented and the type of regime. The ISI WG believes that a form of monitoring using licensing, restricted licensing or a distribution guide process brings additional accountability in the distribution process and provides for an additional enforcement mechanism which could prove necessary in properly addressing ISI issues. The intent of the working group is not to recommend a unique regime but rather to address ISI-related issues grouped under the above mentioned four themes.

Given the importance of ISI across Canada and the potential adverse consequences of inadequate coverage for consumers, the ISI WG recommends that regulators keep a close watch on ISI.

## Recommendations

### 1. Improve the Application Forms and other Documents

In ISI, an important portion of the underwriting process is indirectly transferred to the consumer. Consumers are indirectly left to evaluate their eligibility by completing application forms or reviewing the ERLs. Some application forms used in ISI often ask no qualification questions since eligibility criteria are transposed as ERLs or included in the pre-existing conditions. Other application forms have a minimal number of qualification questions. Many consumers may not have the knowledge and ability to understand the scope of this process and the application of complex ERLs, which may result in expectation gaps when a claim is made. This inability to understand may come

---

<sup>4</sup> This paper is available on CCIR's web site: [http://www.ccir-ccrra.org/CCIR/publications/index\\_en.htm](http://www.ccir-ccrra.org/CCIR/publications/index_en.htm).

from either or both of the following complexities: the level of language used or the way in which the information (including the qualification questions) is presented and structured.

Some stakeholders suggested that the documentation related to incidental insurance is often too complex for the average consumer. The use of plain language is extremely important to ensure comprehension of the application forms and the disclosed elements.

The debate generated around post claim underwriting is of significant concern to the ISI WG and is an interesting example of these complexities. It is the understanding of some stakeholders that the consumer's eligibility for coverage is validated at the time of the claim - a practice known as post-claim underwriting. The insurance industry states that this practice does not exist in Canada and that applications are immediately underwritten if eligibility questions are answered correctly. Meanwhile, insurers apply a practice known as claim investigation where they validate the different elements of a claim, including the validity of the answers provided to the eligibility questions. This practice sometimes reveals that eligibility questions should have been answered differently at the time of application and that the proper answers would have initiated a more extensive underwriting process. Insurers then have an opportunity, depending on the situation, to void the contract and, at the same time, the claim.

In some situations, consumers did not fully understand or failed to appreciate the extent of the eligibility questions asked by the insurer. For example, many consumers would fail to disclose they saw a doctor in the last two years unless they were prescribed medication or had positive test results. Furthermore, consumers are not aware of the consequences of inadequate answers. The ISI WG believes that these situations do exist and may result in significant consequences (i.e.: coverage being rescinded). They therefore must be properly addressed and the consequences properly disclosed.

The ISI WG conducted a preliminary review of application forms relating to incidental insurance in order to appreciate their level of complexity. Eligibility questions and disclosure sections containing exclusions, restrictions and limitations ("ERL") of various insurers were reviewed. The ISI WG retained the Flesch reading ease test to conduct this review. The results were in line with the comments obtained from some stakeholders. Many documents reviewed were complex.

The ability of consumers to understand their eligibility, to understand ERL as well as the different elements of disclosure contained in ISI documents inevitably goes through an adjustment in the level of language used, structure of the qualification questions and the way the information is presented to consumers. Even though the bundling of medical questions<sup>5</sup> can seem to be beneficial as it shortens the application forms, the ISI WG believes that it contributes to confusion of the consumer.

---

<sup>5</sup> A bundling of medical questions arises when application forms present a limited number of eligibility questions (4-5) which encompass a much larger set of potential medical issues.

Over the years, the insurance industry has familiarized itself with techniques of plain language. The ISI WG believes that these techniques could be applied to the documents used in ISI. The application of these techniques would need to ensure that:

- Plain language is used so that confusion for the consumers is significantly reduced;
- Consumers will be made clearly aware of consequences associated with improper filing of forms.

The ISI WG encourages the industry to adopt plain language techniques but notes that it ultimately belongs to each regulator to determine if adoption of these techniques should be addressed solely through industry initiatives or by way of regulation.

## **2. Improve the Training and Supervision of Sellers**

When reviewing the submissions, there was a consensus on the importance of training ISI sellers. Yet, no clear details were provided on the content and delivery methods of such training. The ISI WG is concerned that the training provided might be deficient in some respects. The ISI WG also notes that there are different perceptions about the role of the seller and the extent of his involvement in the distribution process.

The ISI WG believes that training programs should focus on enabling the seller to understand the product, elements related to the eligibility of coverage and to understand the extent of the coverage. Training should include information about the coverage exclusions, limitations and restrictions, including pre-existing conditions as well as general elements related to the application and enrollment process. The extent and the nature of the training provided will be directly influenced by the role of the seller. The training should put emphasis on ensuring that sellers direct consumers to the insurer for more information when they detect potential issues. Sellers and consumers should not be left alone to interpret the questions or other elements of the product offered. To this end, the ISI WG suggests that insurers should maintain properly trained staff in call centers to address consumers and sellers inquiries, including those related to eligibility questions, during and after the sales process.

The ISI WG notes that training on products is sometimes given by a third party. While outsourcing some activities to the sellers may be appropriate business practices, the ISI WG feels the accountability for the training should remain at the insurer's level. As such, the insurers should develop or approve the content, delivery method and frequency of training for all sellers. Insurers should also monitor the training to ensure that it is in fact delivered and conduct ongoing monitoring of the sellers to ensure that they apply what they have learned. It is the expectation of regulators that insurers should have a supervision process that allows them to demonstrate that they have developed internal controls and maintained the appropriate level of control over their distribution network. This supervision process should allow insurers to monitor which sellers require more attention.

The ISI WG expects that the insurers will ensure the presence of procedures to train and supervise those offering insurance products through ISI as well as clarifying their role in the process. The validation by regulators of the training, supervision initiatives and internal controls implemented by the industry will influence the nature of the intervention required by regulators. Such interventions could include recommending a monitoring regime (licensing, restricted licensing or distribution guide) with specific training and supervision requirements or developing regulation with regards to training unlicensed sellers.

### **3. Provide Consumers with an Opportunity to Reassess Purchase of the Product.**

The ISI WG has looked at different statistics about the Canadian insurance market such as:

- Among Canadian households, 64% do not have an insurance broker<sup>6</sup>;
- 71% of low to middle income Canadian households have no insurance broker<sup>7</sup>.
- 50% of the Canadian workforce is covered for long term disability<sup>8</sup>;

These statistics show that ISI can fill a part of the insurance needs of many Canadians by allowing them to access a product designed to protect specific financial liabilities. Incidental insurance may be the only insurance product offered to them because they are not targeted by traditional distribution channels.

The ISI WG feels that the sales environment where the incidental sale occurs and the cooling off period may not provide the consumers with enough time and resources to adequately assess suitability of the product according to their global financial situation rather than solely in respect of the risk created by the acquisition of a specific good or service. The ISI WG believes that information should be provided to consumers in order to advise them of the potential relevance to consult with an insurance professional if they feel necessary and to inform them of the existence of potentially “similar” products offered through different channels.

It is current practice in the industry to provide consumers with a cooling off period of 10 days during which the product can be rescinded and refunded. During this period, the consumers may reevaluate the necessity of the insurance coverage in light of other coverage they might already have or could acquire. If consumers feel they should discuss their global insurance needs with a licensed representative, then they must have sufficient time to seek their advice. This relatively short period may create situations where consumers feel pressure because the cooling off period is about to end. Beyond the cooling off period, refund mechanisms provide for the subtraction of administrative fees which can have a substantial impact on the amount of premium refunded.

---

<sup>6</sup> LIMRA 2004 Study – Information provided through the Canadian Association of Financial Institutions in Insurance (CAFII) submission, p 5.

<sup>7</sup> LIMRA 2004 Study – Information provided through CAFII submission, p 5.

<sup>8</sup> Canadian Life and Health Insurance Association Inc. (CLHIA), Statistics Canada, 2006 (derived) – Information provided through CAFII submission, p 5.

The ISI WG believes that the consumers' best interest would be better served by extending the cooling off period long enough for consumers to confirm they made an informed decision and consult with an insurance professional if required. Providing a refund calculation less punitive could also be considered as a complement or an alternative. The ISI WG believes that these approaches could provide consumers with the opportunity to properly reassess the suitability of the insurance product purchased.

It is not the current intent of the ISI WG to recommend imposing a specific cooling off period or refund calculation method at this stage. It is believed that industry may address this situation as some companies already apply a period longer than 10 days. It is agreed that this approach provides value to the consumer only if a disclosure about the existence of such provision is made. Regulators may want to formalize this disclosure requirement.

#### **4. Obtain Statistical Information**

In a risk-based regulatory regime, a key element for identifying issues that warrant greater regulatory attention is the ability for regulators to timely obtain relevant and reliable statistical information, including tracking complaints. Many stakeholders suggested that regulators should obtain statistical information in order to monitor potential issues and efficiently address identified ones.

The ISI WG sees an opportunity for improvement on how complaints information are gathered and statistics are established. The ISI WG recommends that CCIR works on obtaining statistical information on incidental insurance products and related complaints. This information will provide additional support in the assessment of the risks borne by consumers when purchasing incidental insurance products. It will also provide a starting point to monitor how the incidental insurance industry evolves.

Various stakeholders proposed implementing the Canadian system for reporting complaint data<sup>9</sup> in each jurisdiction. While this system was not designed to gather statistical information, this approach may be a viable option. Various improvements to the system would however be required to be effective as the system was not designed to track complaints by distribution network.

Beyond the initial step of adapting the Canadian system for reporting complaint data, the ISI WG recommends that a fuller statistical assessment of the situation be seriously considered either through a change in the annual filings or through a market survey of insurers involved in ISI.

---

<sup>9</sup> The system currently in place in Quebec and Ontario.



## Conclusion

The ISI WG established in the consultation document the fundamental question in evaluating the appropriateness of an incidental insurance sales process:

Is the consumer in a position at the time of sale to make an informed decision about his purchase?

To answer this question positively, each aspect of the incidental insurance industry should be focused on enabling consumers to adequately understand the product, the extent of the coverage, their eligibility for the coverage and if the product meets their needs. The ISI WG believes that the adoption of the recommendations in this paper will help achieve this goal.

The ISI WG emphasizes that even though incidental insurance is offered through a different sales channel than traditional insurance, it remains an insurance product for which insurers bear ultimate responsibility for the sale process.

## Next Steps

The recommendations contained in this paper are the result of the initial concerted efforts to properly address ISI related issues. It is the beginning of a process of monitoring both industry and regulatory initiatives in this area.

As stated at the outset, each regulator is free to assess the issues and adopt the regulatory regime and approach that meets its desired regulatory outcomes; however, the CCIR proposes to take action on its own in the following two areas:

- As the industry has shown interest in improving the forms, industry guidelines and consumer related documents and since such improvements are deemed valuable in enhancing consumer protection, the CCIR has designated the CCIR Standards of Practice Committee as a venue for providing feedback, monitoring progress and addressing issues raised in this paper. The Committee will promptly act and report back to CCIR on progress.
- As existing statistical information on ISI products is incomplete and as several stakeholders have recommended CCIR augment information in this area, CCIR will promptly establish a new committee to determine what further information is required to further assess the conduct of this business and enable regulators to make timely and effective regulatory decisions. The report of this working group will also be reviewed by CCIR in one year's time.