

**Remarks to the
NATIONAL INSURANCE CONFERENCE OF CANADA
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I have been concerned about MGA's for some period of time.

My concerns are threefold. Firstly, I am concerned about the amount of unlicensed activity occurring in the market place involving MGA's, including the use of unlicensed persons to solicit and distribute the product and to adjust claims.

One example springs to mind; several years ago an MGA involved in travel insurance, incorporated a subsidiary which was used to adjust claims without proper licensing. One purchaser of a policy became seriously ill in Cuba and the doctor advised that the individual be immediately flown back to Canada. The unlicensed entity denied the claim for reasons which are not all together clear; luckily the credit card company stood up to the plate and arranged for the individual to be flown home.

Can we all imagine what the media might have done with that story?

Secondly, I am concerned over the controls insurers have in place and the potential lack of accountability to the insurers that currently exists in the marketplace. Many of the products we see make it appear that the MGA or administrator is responsible for the insurance obligation and the contracts are not clear as to who the insurer is and the consumer has no idea that in the event of a dispute they have the right to go directly to the insurer.

It has been my experience most inappropriate practices occur because insurers have not adequately considered proper controls, both internal and external, over the distribution channels.

Insurers are the ones responsible to the consumer and the ones who should be held accountable for how their products are being distributed. We have seen a number of insurers only look at their relationship with MGA's from a profit sharing perspective and as a result have very few incentives to ensure good underwriting/claims handling in these arrangements. As a result, the transaction between the consumer and the insurer is clearly not transparent.

An example of the lack of controls can be demonstrated by a case we investigated which ended up costing the insurer a considerable number of resources before it was resolved.

Briefly, the matter came to our attention when we found the MGA was continuing to write contracts of insurance after the termination of the broker agreement with the insurer.

It was also discovered that the MGA was also writing for a line of business the insurer did not want to underwrite and was not remitting any funds for that business.

The insurer had to honour these policies even though they were defrauded of over a million dollars. Criminal convictions were obtained against the principal of the MGA.

I will conclude this example by quoting a sentence from the investigators report; "It became apparent the insurer was not conversant with the actual book of business they were involved in."

And lastly, MGA's are regulated as insurance licensees in BC – not regulated in some parts of Canada, which in my opinion, is sometimes inadequate given their business activities. I believe that a more vigorous regulatory regime including the depth of on-site reviews would dramatically reduce the potential for reputational risk for insurers.

My staff and I feel strongly that most of the current business models with respect to MGA's have the potential to create a huge reputational risk for insurers.

The Canadian Council of Insurance Regulators has formed a working group to look into and how MGA's are regulated elsewhere. I am hopeful this will result in a healthy debate about the way MGA's are regulated.

On January 1st, 2010, Part XIII amendments at the federal level will be implemented. Although I can understand the rationale for such changes, the changes are a significant issue for my office and most of the other provincial insurance regulators.

In my opinion, the rule change which moves the federal regime from location of risk to location of business makes it easier for bogus insurers to operate outside the Canadian regulatory regime.

My organization and I have had considerable experience in dealing with bogus and criminal insurance companies operating within our province from outside jurisdictions.

In the last several years, I have issued two cease and desist orders against companies who incorporated in countries that either did not regulate insurance business or turned a blind eye to their activities. Both companies were bogus companies; one was capitalized by bare land in Costa Rica and synthetic gemstones, and the other was

domiciled in the Island of Anjouan with very little financial information available. Under the Part XIII changes both may be able to comply with the new federal regime.

I believe that consumers are best protected when they can look at a policy and see that it has been issued by an insurer that is authorized in the province and thus can reasonably rely on that insurer to have sufficient assets to meet its obligations and if necessary let the consumers have the ability to rely on the courts to settle contractual disputes.

Any less puts the policyholder at risk and creates a situation where the reputation of the insurance industry is put at risk.

We are also concerned about the confusion and the potential harm that may occur if federally regulated insurers start to move certain business off their Canadian books and treat it as not in Canada business or move out of Canada entirely and attempt to do business from offshore.

Currently we are working to introduce the following legislative changes:

- Authorized insurers insuring risks located in British Columbia will be required to conduct this business in Canada, unless an exemption is granted by Regulation, which are being developed.
- A modern framework for the placement of insurance with unauthorized insurers, through qualified licensed insurance agents and a procurement process that meets certain requirements and conditions will be implemented.

The qualifications for licensed agents will be established by the Insurance Council of British Columbia and I hope will be similar to the special broker licensing scheme in Alberta.

The requirements and conditions for procuring unauthorized insurance for British Columbians by agents will be established by Regulation or Insurance Council Rules and may depend on:

- Whether the policy was solicited;
- The availability of the insurance in Canada;
- Disclosure of financial strength and creditworthiness of the unauthorized insurer;
- Disclosure of capability of the unauthorized insurer's primary regulator;

- Specific reporting to FICOM and the policyholder; and
- Payment of premium taxes and filing fees.

I will close with a word of caution to those of you at the conference. Under British Columbia law there will be a significant difference between the federal and provincial legislation in how we determine whether an insurer is doing business in our province.

Any insurer which directly or indirectly solicits insurance products in British Columbia must have a business authorization from FICOM unless it is exempted by Regulation. Do not solely rely upon federal rulings issued by OSFI. A foreign insurer must contact FICOM to determine whether a provincial authorization is required. There will be situations where foreign insurers will not need a federal authorization but will need a provincial authorization