



**Canadian Life
and Health Insurance
Association Inc.**

**Association canadienne
des compagnies d'assurances
de personnes inc.**

Response to the

Competition Policy Review Panel

Consultation Paper
Sharpening Canada's Competitive Edge

by the

**Canadian Life and Health
Insurance Association Inc.**

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I. INTRODUCTION

The Canadian Life and Health Insurance Association Inc. (CLHIA) is pleased to have this opportunity to contribute, on behalf of the industry, comments in response to the Competition Policy Review Panel’s Consultation Paper *Sharpening Canada’s Competitive Edge*.

Established in 1894, the CLHIA is a voluntary association whose member companies account for 99 per cent of Canada’s life and health insurance business. The industry supports the Panel’s mission to provide recommendations to the government on how to enhance Canadian productivity and competitiveness in a fast-changing global economic environment.

Canadians buy their life and health insurance in a highly competitive marketplace, with 106 life and health insurers from Canada, the United States, Britain, and other countries operating in the country. At the same time, Canadian-owned firms represent over 80 per cent of the marketplace, demonstrating that this remains a predominantly Canadian-owned and operated industry.

Canada’s life and health insurance industry has built on its domestic base to expand worldwide since before Confederation. Today, the industry provides one of Canada’s most important exports with Canadian life and health insurance companies operating branches and subsidiaries in more than 20 countries around the globe. The three largest Canadian life and health insurers are now in the top 10 in the world, measured by market capitalization.

Canada’s life and health insurance industry is in the business of personal financial security — helping to protect individuals, their families and their businesses against the financial risks relating to premature death, illness, involuntary job loss and retirement. The industry provides a wide range of financial security products to about 24 million Canadians from all walks of life and different age groups. The industry pays out about \$53 billion a year — over \$1 billion a week — to Canadians for benefits related to life and health insurance and

annuity contracts. Of this, 90 per cent goes to living policyholders in the form of annuity, disability and "living" benefits; reimbursement for health care costs; dividends; cash surrender values; and matured endowments. The balance goes to beneficiaries' death claims.

A key characteristic of Canada's life and health insurance industry is the intense competition among its participants. At the same time, it is essential to emphasize that this intense competition is not at the expense of the industry's financial strength. In the 2006-2007 Annual Report of the Office of the Superintendent of Financial Institutions (OSFI), for example, it is stated that the life insurance industry is well capitalized, with capital ratios (MCCSR ratios) averaging 235 per cent for Canadian life insurers for 2006, significantly above OSFI's target capital level of 150 per cent. The strength of the Canadian life insurance industry is also attested to by Standard & Poor's and by Moody's.

The industry is a significant investor in every region of Canada and a key source of long term investment capital for both the public and private sectors. More than \$400 billion of assets are held in Canada, primarily in government and corporate bonds, corporate stocks, mutual funds, and commercial and residential mortgage loans. The industry is a major employer, with companies that are headquartered in all regions from coast to coast and over 120,000 Canadians earning some or all of their income from the industry.

Given the importance of the life and health insurance industry to the Canadian economy and its need to maintain its competitiveness internationally, the industry is pleased that the Competition Policy Review Panel is taking up this important work and providing stakeholders the opportunity to comment.

II. INDUSTRY PERSPECTIVES AND RECOMMENDATIONS

A. PROMOTING INTERNATIONAL COMPETITIVENESS

The high degree of international competitiveness of Canada’s life and health insurance industry has a number of important benefits to the Canadian economy: the creation of jobs — many functions in the head offices of Canadian insurers with foreign operations relate in whole or in part to their foreign business; contribution to the continued financial strength of the industry; technological innovation; the fostering of Canada's good name and image abroad; and assistance in opening the door to other industries and other sectors seeking to break into those markets where life and health insurers already have a stronghold.

Canadian life and health insurers represent one of Canada's international success stories. The industry’s major companies are widely acknowledged as global leaders and have established a strong presence in foreign markets in over 20 countries — in the United States, Europe, and Asia. In 2006, for example, Canadian life and health insurers received 56 per cent of their worldwide premiums from outside Canada and held 56 per cent of their worldwide assets in foreign jurisdictions.

The industry is generally pleased with the extent to which Canada's public policy framework is supporting its international competitiveness. However, it wishes to make note of the following areas and recommendations respecting competitiveness for the industry in the global marketplace.

1. Promoting Canadian Investment Abroad

a. Opening Foreign Markets

The continued growth of Canadian life and health insurers in exporting their insurance expertise abroad is dependent on foreign governments opening their markets to Canadian companies and allowing them to operate under the same rules as their domestic companies. Canada has adopted a principle of ‘national treatment’ as a

general policy and should continue to support this principle. Canada should also be promoting this concept internationally. Therefore, it is essential that Canada participate actively in bilateral and multilateral trade deals that promote Canadian industry interests. More specifically, in the present Doha Round negotiations of the World Trade Organization (WTO), it is important that there be a successful outcome to the inclusion of a services agreement. Services interests should in no way be held hostage by other negotiations.

The industry recommends that the federal government participate actively in bilateral and multilateral trade deals that promote industry interests and priorities; and that it push for the inclusion of a meaningful services agreement in the current Doha Round of negotiations of the WTO.

b. Supporting Trade and Development

The continued federal and provincial government support in the form of trade policy and special undertakings such as trade missions, as well as assistance from Canadian embassy and consulate staff around the world, are integral to gaining the confidence of foreign governments in markets where the industry is seeking to enter or expand. Canadian life and health insurers operating in foreign markets have been well-served in the past by the support, knowledge and expertise provided by trade and finance officials in our embassies and in departmental offices in Canada. The industry applauds this support and encourages government to continue to provide the level of service required to allow Canadian businesses to continue to thrive and grow in foreign markets.

In addition, Canada has been a world leader in providing technical support for countries that are developing their financial system and regulation. The work of the Toronto Centre for leadership in financial supervision and of Canada's regulators, such as OSFI, to promote international best practices and to raise the overall quality of financial sector regulation is internationally recognized and respected. Canadian life and health insurers can also play an important role in promoting quality regulation through work with various

organizations such as the domestic and international regulatory community and aid agencies such as CIDA.

The industry recommends that the government ensure that Canadian companies operating abroad or expanding into foreign markets are adequately supported by trade and finance experts in Canadian embassies, consulates and missions abroad, as well as providing the necessary support in Canada.

The industry further recommends that the government actively support and promote technical assistance to emerging countries and wherever possible partner with the private sector in encouraging best practices in financial sector regulation.

2. Equal Footing for Canadian Companies

It is essential that Canadian companies carrying on business abroad not be put at a competitive disadvantage vis-à-vis their local or foreign competitors operating in those jurisdictions. Therefore, Canadian regulation must be sensitive to the impact that it may have when Canadian firms are competing abroad. Efforts must be made to ensure that Canadian companies can compete on an equal footing.

Regulation of activity that burdens foreign operations vis-à-vis its competitors will harm business and opportunities for Canadian-owned companies. A possible example may be placing a requirement for adhering to anti-money laundering (AML) rules on Canadian-owned companies that may be significantly more rigorous than those applied to local or foreign competitors. This would put Canadian firms at a significant disadvantage.

As such, the life and health industry supports and promotes risk-based and principles-based approaches to managing how best to achieve required outcomes, which tends to bring a much greater alignment of regulation with good business practice. Promoting and applying a risk-based and principles-based approach, for example to anti-money laundering rules, could contribute to a more level playing field for Canadian firms to operate abroad.

As another example, it is important to maintain tax rules that help to promote Canadian operations abroad. For instance, the anti-tax-haven measures implemented by the federal government late last year will make acquisitions of foreign businesses more costly for Canadian insurance companies (and other corporations) and put them at a significant disadvantage to those from other countries who have greater access to interest deductibility for their investments in foreign affiliates. This will limit the ability of Canadian companies to expand internationally and diversify their business, which in turn could adversely impact their risk profile and profitability. As noted above, Canadian life and health insurers have had considerable success in international markets and now derive 56 per cent of their overall premium income from outside Canada. This success has been hard earned over more than a century. But it cannot be taken for granted as major corporations from the United States, Europe, and Asia compete in this marketplace.

The life and health insurance industry recommends that the government ensure in its policies that affect foreign operations that they do not put Canadian-owned firms at a disadvantage vis-à-vis local or foreign competitors.

In summary, Canada's life and health insurance industry has a strong and longstanding international presence, providing one of the country's most important exports. This has a number of important benefits for Canada's economy. And while the current public policy framework helps to foster this successful competition in foreign markets, it is critical that this framework continue to evolve in a positive fashion in order for the industry to maintain and enhance its ability to grow in an increasingly competitive global marketplace.

B. PROMOTING A COMPETITIVE DOMESTIC CLIMATE

In addition to promoting international competitiveness, it is important to have a domestic climate that enhances Canadian productivity and competitiveness and supports expansion of trade. As such, the government must take into account adjustments and improvements to the domestic public policy environment in several specific areas related to: (1) reducing regulatory burden; (2) eliminating internal trade barriers; (3) reducing taxation; (4) ensuring

a skilled workforce; and (5) not granting business method patents, as outlined in the following:

1. Reducing Regulatory Burden

An important ingredient that has made Canada's life and health insurers successful, both in Canada and abroad, is its strong regulatory and supervisory framework. Canada is blessed with experienced and dedicated regulators who promote sound regulations while attempting to reduce regulatory burden. A key approach to this reduction of regulatory burden is harmonizing laws and regulations across the country, where appropriate. The benefits to consumers in terms of consistent, high quality consumer protection and lower product costs that result from a relatively consistent regulatory regime are considerable. Variations in regulatory treatment increase the cost to companies and make them less competitive and less efficient than they could be otherwise. Some of the key areas where both consumers and the industry would benefit from continued efforts to harmonize are outlined in the following paragraphs.

a. Uniform Insurance Acts

Products sold by life and health insurance companies to the Canadian public are governed by what are commonly referred to as the *Uniform Life Insurance Act* and the *Uniform Accident and Sickness Insurance Act*, which are contained within insurance legislation in the provinces and territories. These statutory laws govern a wide variety of contractual matters. It should be noted that although Quebec has not adopted the Uniform Acts, most of the province's Civil Code provisions governing the "Insurance of Persons" are quite similar to those of the Uniform Acts.

The attainment and preservation of cross-Canada uniformity in the laws governing life and health insurance contracts is a remarkable achievement that has been of immense benefit to the Canadian public and life and health insurers because of the certainty and clarity it has produced in the laws governing insurance contracts. However, it has been many years since the two Uniform Acts were last revised and they must be modernized

to continue to be effective. Indeed, most provinces are now actively updating, or considering updating their provincial legislation.

While these updates are most welcome, and the CLHIA is highly engaged in the consultative process, the potential also exists for the adoption of inconsistent rules and for timing differences in implementation, as not all of the provinces and territories are moving forward to modernize their legislation at the same time. Inconsistencies should be resisted and the industry encourages Ministers responsible for insurance legislation to renew their commitment to harmonize legislation and to develop the necessary institutional machinery to promote and meet this objective.

The industry recommends that provincial and territorial governments proceed as quickly as possible to modernize their insurance laws and that this be done in a way that is consistent and uniform across the country.

b. Pensions

Employer-sponsored pension plans are subject to both federal and provincial legislative regimes in Canada, with the applicable legislation mirroring the constitutional responsibility for regulating particular industries and activities. The desire to address specific consumer concerns has led to significant variations in the details of pension legislation and regulation between provinces, adding substantial compliance costs for plan sponsors, particularly where an employer has operations or plan participants in multiple jurisdictions. This lack of consistency is further evidenced by the confusion that plan participants and their beneficiaries often exhibit with respect to the nature and operation of their pension plans, and the rights they may have as a result of pension statutes.

Within defined contribution pension plans, the Joint Forum of Financial Market Regulators, working with a wide range of industry stakeholders, implemented a principles-based, non-regulatory guideline for the governance and operation of plans that provide members with choice regarding investment options (generically known as

Capital Accumulation Plans) in 2004. This CAP Guideline is an excellent model for a harmonized, competitive pension regime. However, the challenges of inter-provincial legislative and regulatory differences are more obvious in the realm of defined benefit pension plans.

The industry recommends that all governments cooperate to establish harmonized pension regulation across the country.

c. Securities Regulation

Another area that has long been identified as needing regulatory co-ordination has been securities regulation. While there have been great strides in establishing common requirements among the present 13 jurisdictions now involved in regulation of securities activity, clearly more needs to be done.

There is a great deal of debate about what is the best way forward to modernize and streamline securities regulation (passport model or common regulator), but there is little debate that it is vital for Canada to make significant progress in improving on the existing system. It is time to make substantial progress so that Canada can ensure efficient capital markets to support the growth of its industries and provide safe investment opportunities for Canadians.

The industry recommends that all governments make it a priority to work co-operatively to reduce regulatory burden and overlap in the regulation of securities and to develop an ongoing system of securities regulation that ensures efficient and effective regulation in the future.

d. Health Care Rules

About 22 million Canadians are protected by some form of private health benefit coverage. Nearly 11 million workers are covered by private disability contracts (of both short and long term duration, and through both group contracts and individual plans).

Payments to Canadians in total private health and disability insurance benefits amounted to \$18.6 billion in 2006.

Without this extensive array of private health and disability insurance coverage that complements health care provided to individual Canadians through the public system, pressures on already scarce public resources would be even more significant than they are at present.

Canada's public health care system is a significant competitive advantage to businesses operating in Canada. This advantage should be maintained. On the private side, this means that the policy environment must support the efficient delivery of supplementary health services. Health care is a provincial responsibility and important differences do exist in the programs and care that consumers can access, depending on their province of residence.

There are now a number of initiatives being considered that could have an impact on the delivery of supplementary health plans. One initiative is the recognition of the importance of mental health care. Another key example is the national pharmaceuticals strategy that includes the treatment of generic drugs and a catastrophic drug policy, among others. The industry also supports the work being done by the Competition Bureau on the generic drug sector to help encourage a competitive environment in this important sector and to encourage transparency. In consideration of these worthwhile initiatives, there should be every attempt to take a national approach so that costly inefficiencies between provinces are avoided.

The industry therefore urges federal and provincial governments to work together to ensure the effective delivery of health care, including consistent policies and approaches that promote the efficient delivery of supplementary health benefits.

2. Eliminating Internal Trade Barriers

The Agreement on Internal Trade, which came into force in 1995, generally does not apply to financial institutions and financial services, with the exception of provisions regarding cost of credit disclosure. However, its goal of eliminating barriers to economic mobility is a positive one and such objectives should continue to be pursued. The industry is encouraged by two recent developments in this area. The first is Alberta and British Columbia's Trade, Investment and Labour Mobility Agreement, which was signed in 2006 and became operational in April 2007, and which the provinces are considering extending to apply to financial services by 2009. The second is the announcement on November 26, 2007 that Ontario and Quebec are beginning negotiations to eliminate trade barriers and improve labour mobility between the two provinces.

The industry recommends that governments continue and expand their efforts to remove internal trade barriers.

3. Reducing Taxation

While Canada has made progress in reducing its corporate income taxes in recent years, the effective marginal tax rate on corporations, taking into account sales taxes and capital taxes in addition to income taxes, remains high compared to other countries. Taxes on capital investment have the effect of reducing Canada's economic productivity and international competitiveness. Similarly, high personal income taxes discourage people from working, saving, and investing. Moreover, decisions by businesses and individuals should be driven by economic circumstances and not directed by tax policies that favour one sector or type of activity over another, which can lead to economic distortions and inefficiencies. This means that tax cuts should be broadly based, rather than being targeted.

The industry strongly supports government initiatives to lower capital, personal and corporate income taxes.

4. Ensuring a Skilled Workforce

It is widely acknowledged by business leaders that Canada will be facing critical shortages of skilled labour, a factor that could have an impact on the competitiveness of the life and health insurance industry. In its landmark March 2007 report entitled *Talent Matters - A Study of the Toronto Financial Service Industry Talent Market*, released by the Toronto Financial Service Alliance (TFSA), the study's authors forecasted major gaps in critical talent.

While financial services have been relatively successful in the past in providing incentives to attract and retain employees, competition for human resources is increasing in the face of declining labour force growth and an aging population. Finding highly educated professionals will become increasingly competitive and as such, it is imperative that the talent needed to replace our experienced workforce be cultivated now; and that the significant loss of experience due to the large-scale retirement of baby boomers be mitigated by knowledge-transfer to new recruits. Policies and programs respecting training and recruitment are required in order to assist the industry in securing an age-balanced workforce to support its operations.

Attracting students to choose a career in financial services would be greatly enhanced by improvements to the availability of focused courses and training. Greater collaboration between government and industry is required to effect this change.

Attracting skilled immigrants is also critical and there is a need to streamline immigration processes and commit resources to programs aimed at facilitating the integration of immigrants into the labour market and Canadian society.

To ensure that a highly-skilled and highly-educated financial services workforce can continue to be a competitive advantage to Canada, the industry recommends that the government promote greater collaboration between schools, provincial and federal governments and industry with a view to improving financial services education and training and to attract more students to the industry.

The industry also recommends that the government strive to eliminate barriers to hiring and integrating new immigrants in order to take advantage of the skills and knowledge that immigrant workers can bring to the economy.

5. Not Granting Business Method Patents

While business methods — the broad category of ways of doing business which often relate to financial, marketing and other commercial activities such as workflow processes, claims processes, etc. — have not been patentable in Canada in the past, a recent new interpretation by the Canadian Intellectual Property Office, along with recent decisions of the Patent Appeal Board, has been interpreted as evidence that patents may now be available on business methods, including financial services innovations.

The experience in the United States has shown that the expansion of subject matter to include business method patents led to an enormous expansion of patent applications; a loss of public confidence in the patent system; increased litigation; and no evidence of positive impacts on competition, innovation or productivity.

This is a significant and potentially costly issue for businesses. Strategic patenting of insurance products or processes could become necessary as patent holders could bring actions for strategic reasons and financial rewards; patent disputes can be bad for the corporate image; and legal judgments can be costly (e.g., \$612 million in the RIM case). Indeed, Canada’s six largest banks are currently involved in litigation in Canada with a U.S. claimant, dubbed a “patent troll”, in relation to a patent issued last year in the field of cheque clearing. If business method patents were allowed, Canada would face the same pressures as the United States and none of these results would be productive for Canada.

Consequently, the life and health insurance industry recommends that business method patents not be permitted in Canada.

C. OTHER COMMENTS

Finally, the CLHIA is pleased to provide specific comments in response to the themes of Sectoral Investment Regimes and Competition Laws raised in the Consultation Paper.

1. Sectoral Investment Regimes (Theme 3)

Different ownership models apply to life and health insurers and they are working well. These ownership regimes include: mutual companies which are widely held by definition; fraternal benefit societies, which are owned by their members; stock companies, which are owned by their shareholders and are generally held by financial holding companies; and large demutualized companies, which must be widely held.

Since Confederation, Canadian consumers have had the option to buy their life and health insurance from both widely-held and closely-held institutions, an option that was preserved in the 1992 reform of federal insurance legislation and in the subsequent 1997, 2001, and 2007 updates. Federally incorporated life insurers with consolidated capital of \$2 billion or more are required to have at least 35 per cent of their voting shares in public hands.

It is the industry’s view that no single ownership model is correct to the exclusion of all others. The various existing models work well and are appropriate to the circumstances of the relevant companies that have adopted a particular model.

The industry’s governing legislation contains provisions that are sufficient to safeguard against any risks that may flow from having such different ownership models. These provisions include rules for related party transactions; the active participation of the board of directors and the close scrutiny of management activities by the audit and conduct review committees of the board; the responsibility of the auditors of the corporation; and the regulatory and supervisory structure.

Under the current ownership regime, Canadian companies have developed a strong and expanding presence abroad while foreign companies participate actively in Canada, resulting in an extremely competitive Canadian marketplace.

Consequently, the industry recommends that the existing options for ownership be preserved.

2. Competition Laws (Theme 4)

The industry recommends the repeal of section 49 of the *Competition Act* which is a per se conspiracy offence with respect to certain types of agreements entered into between or among financial institutions. This section is not necessary because the *Competition Act* already contains a general conspiracy provision (section 45) and that provision should be made to apply to all industries.

Section 49 was originally a provision in the *Bank Act*, applicable only to banks, which became applicable to all federal financial institutions when it was imported into the *Competition Act* in 1992. It is anomalous in a number of ways. Firstly and fundamentally, it is anomalous to have different conspiracy provisions applicable to firms depending upon the industry in which they operate. This was recognized by the Industry Committee of the House of Commons in its 2003 Report on competition policy.

In addition, section 49 is itself intrinsically problematic. It was designed with banks and only banks in mind. It refers to agreements dealing with, amongst other things, “the rate of interest on a deposit”, “the rate of interest or the charges on a loan” and “the amount or kind of a loan to a customer”. These provisions are reasonably clear with respect to the activities of banks, but rather less clear respecting the activities of, for instance, insurance companies.

Thirdly, section 49 applies only in respect of agreements between or among federal financial institutions. It is unclear what happens if there is an agreement among three or more persons, two or more of which are federal financial institutions and one or more of which are not. This is a realistic possibility, particularly in respect of agreements among provincial and federal insurance companies.

The industry recommends that section 49 of the Competition Act be repealed and that section 45 be left to apply to all industries.

III. CONCLUSION

The life and health insurance industry greatly appreciates this opportunity to contribute to the deliberations of the Competition Policy Review Panel on its Consultation Paper *Sharpening Canada's Competitive Edge* and would look forward to participating further in the consultative process should that be of assistance to the Panel in its work.

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