

February 14, 2018

Mr. Richard Boivin, Assistant Deputy Minister  
Policies Respecting Financial Institutions and Corporate Law  
Ministry of Finance  
8 Cook Street, 4th Floor  
Québec, QC G1R 0A4

Dear Mr. Boivin,

The Canadian Institute of Actuaries (CIA) is providing the following comments for your consideration with respect to Bill 141 – An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions. Note that we are limiting our comments only to those sections of the Bill that relate to actuarial practices.

### **About the CIA**

The CIA is the national, bilingual organization and voice of the actuarial profession in Canada. Its members are dedicated to providing actuarial services and advice of the highest quality. The Institute holds the duty of the profession to the public above the needs of the profession and its members.

### **Introduction**

Bill 141 is designed “... to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions”. We note that the Bill references the role of the actuary in advising management of deterioration in financial condition of an insurer. It reinforces the role and stature of the actuary and ensures that the actuary has access to records and information so that the actuary may execute effectively.

Although in general it is conceptually consistent in the description of the role of the actuary per Office of the Superintendent of Financial Institutions (OSFI) guidelines and the federal Insurance Companies Act (S.C. 1991, c. 47) (hereinafter the “ICA”), there is a key element lacking on the threshold required for reporting to stakeholders. It leaves open what is deemed a significant event and may result in subjectivity and ambiguity. It also asks the actuary to opine on commercial practice and does not provide protection to the actuary from reprisals.

### **Recommendations**

1. We recommend that the reference to a materiality level for notifications be made pursuant to sections 95 (notification upon becoming aware of a situation) and 125 (provision of a detailed report) of the proposed Insurers Act, consistent with its federal equivalent of the ICA, to remove ambiguity and subjectivity on the obligations stated in those sections. We submit that the proposed Insurers Act be coherent with paragraph 369(1) of the ICA which states that:

**369 (1)** The actuary of a company shall report in writing to the chief executive officer and chief financial officer of the company any matters that have come to the actuary's attention in the course of carrying out the actuary's duties and that in the actuary's opinion have **material adverse effects on the financial condition of the company** and require rectification.

Furthermore, we note that the scope of the reporting contemplated under the proposed Insurers Act (sections 95 and 125) refer to "sound and prudent management practices or is contrary to sound commercial practices". This is broader than the requirement under ICA 369(1) whereby the actuary is required to report on matters which arise in the course of carrying out the actuary's duties only *and* have material adverse effects on the financial condition of the company which require rectification. We recommend that the actuary's opinion and requirement to report be limited to matters specified in ICA 369 (1) only.

2. We recommend that protection from retaliation and reprisals also be offered to the actuary and that the communications contemplated under the proposed Insurers Act (i.e., sections 95 and 125) be confidential and privileged. Chapter XII of said Act does not provide confidentiality, nor privilege, and leaves the actuary open to personal consequences. Thus, we recommend that the proposed Insurers Act be aligned with paragraphs 370(1) and 370(2) of the ICA which provide that

**370 (1)** Any oral or written statement or report made under this Act by the actuary or former actuary of a company has qualified privilege.

**370 (2)** The actuary or former actuary of a company who in good faith makes an oral or written statement or report under section 363 or 369 shall not be liable in any civil action seeking indemnification for damages attributable to the actuary or former actuary having made the statement or report.

## Conclusion

Thank you for the opportunity to provide comments on the proposed Insurers Act to be enacted by Bill 141. We hope that you find this submission helpful. Please do not hesitate to contact Chris Fievoli, CIA staff actuary, communications and public affairs, at (613) 656-1927 or [chris.fievoli@cia-ica.ca](mailto:chris.fievoli@cia-ica.ca) if you require clarification of any element of the submission.

Sincerely,

Sharon Giffen  
President, Canadian Institute of Actuaries