

May 23, 1997

Mr. John Wahl
President
Life Agents Council of Ontario
1 Queen Street East
Suite 1700
Toronto, Ontario
M5C 2X9

**Re: Request for Recognition of the Life Agents
Council of Ontario**

Dear Mr. Wahl:

The Insurance Act was amended in 1995 to give the Commissioner of Insurance authority to "recognize" an organization that would basically take over the responsibilities of the Superintendent of Insurance to administer and enforce the Insurance Act and regulations related to life insurance agents.

On January 23, 1997, my predecessor, Mr. Blair Tully, received a request for recognition from the Board of the non-profit corporation named the Life Agents Council of Ontario. On January 28th, Mr. Tully asked for comment on the Council's proposal from life insurance agents, insurance companies, industry associations, financial services sector associations, consumer associations, and other regulators. As you are aware, I have met with interested parties during April.

I have reviewed the request submitted, considered written comments received from many respondents, and considered advice given at meetings with interested parties.

It is with regret that I inform you that I am not satisfied that recognition of the corporation would be in the public interest. I can assure you that I have carefully reviewed the request and would like to provide you with the fundamental reasons for my decision.

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1. Functions of the organization conflict with Insurance Act framework

I am not satisfied that it would be in the public interest to recognize an organization that has been incorporated with broader powers than those set out for it in the Insurance Act with respect to the regulation of life insurance agents.

The Act provides that:

- A recognized organization shall, in accordance with this Act and the regulations,
- (a) issue, renew, suspend and revoke life insurance agent licences;
- (b) receive and investigate complaints against life insurance agents;
- (c) discipline life insurance agents;
- (d) develop and establish examinations and educational programs for life insurance agent applicants and licensees;
- (e) institute and conduct prosecutions for offences under this Act against life insurance agents; and
- (f) exercise such other powers and perform such other duties as are prescribed by the regulations.

The Council's incorporating documents have

provided it with more powers for life agent regulation than those set out in the Act. They provide that it shall regulate all aspects of life insurance agents' activities, including business and marketing operations, standards of practice, and conduct, and that it shall establish licensing eligibility criteria and licensing standards.

Furthermore, the incorporating documents do not limit the Council's actions with respect to life insurance agents to being undertaken in accordance with the Act and regulations.

In my view, it is not in the public interest for there to be any legal or operational ambiguity with respect to the authority of a regulator.

I appreciate that the Board has indicated a willingness to amend the incorporating documents and by-laws to assure that the Council would operate to only administer and enforce the provisions of the Act and regulations in

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accordance with the framework set out in the Act. If this were the only issue of concern, I would simply ask that the Board make the appropriate changes.

2. No consensus of support

My consultation indicates that there is no consensus of support around the fundamental issue of the corporate governance of the organization: the composition of the Board and the manner of selection of Board members.

The lack of consensus cannot be attributed to any single group of constituents. I have

canvassed key stakeholders on their willingness to accept a compromise but find that although there may be room for movement, some parties remain entrenched in their positions either in support or against the proposal.

While it is to be expected that there will not be a structure that pleases everyone, I believe that for an industry based regulator to operate efficiently and effectively in the public interest, there must be a general consensus of support for the structure among those to be regulated and those who will be affected by its operations.

In addition, with respect to selection of Board members, I am not satisfied that it is in the public interest to have some Board members effectively appointed by any industry association.

3. Harmonization, efficiency, and effectiveness of regulation

In my view, it is in the public interest for a regulator to be efficient and effective, and wherever possible, to coordinate and harmonize regulatory activity with related regulators.

I was advised many times during my consultation that the development of a Life Council actually began over ten years ago. At that time a regulatory model, built on the assumption that life insurance agents formed an isolated group of sellers, probably would have been effective.

Today, life insurance companies, products, and distribution methods are changing rapidly. Many products are now sold by agents who hold other financial services licences and who are regulated by other regulators.

I do not find any evidence that the proposed organization has taken into account these significant changes in the marketplace and attempted to build necessary linkages with other regulators to achieve efficiencies and coordinated regulation.

The consequence may be the creation of a new regulatory solitude governing individuals who are increasingly doing business in a broader context. I am not satisfied that the proposal achieves the harmonization, efficiency and effectiveness of regulation that I consider essential to the public interest.

Where do we go from here?

The Government remains committed to the idea of efficient and coordinated industry based regulation. The OIC will continue to work with the industry to do whatever is necessary to make that happen. Over the next few months, I will be contacting key stakeholders and asking for representatives to work with me and Commission staff on this and a number of other issues. I would like to target having a comprehensive action plan, supported by all industry participants, in place by the end of the year.

To open dialogue, I want to share a few observations and thoughts. There have been many references to different distribution systems in the life insurance sector. I believe that there are essentially two ways that a life insurance company distributes its products. Companies distribute directly or through sales forces that are under their control, that is, through agents that the company recruits, hires under varying contractual arrangements, trains, and directs with respect to sales. Companies can also

distribute through independent agents or brokers who they do not consider "theirs" but with whom the company contracts to sell products. Some companies use both distribution methods.

I think that companies can assume more responsibility for agents who work for and report to them. The company is accountable for the actions of these agents and I think companies should be subject to less regulatory intervention with respect to the suitability of a recruit to act as an agent and the competency of the agent to sell life insurance. I can envision a system that allows companies to certify competency and suitability of new agents and provides an automatic termination of a company agent's licence upon termination of the

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appointment with the single company. I appreciate that this would involve a return to the system of sponsorship for tied agents.

At the same time, I believe that a duty of care on companies to supervise the activities of independent agents or brokers, may be misplaced. Independent agents and brokers are not recruited, hired and directed by an insurance company. Usually they report to a corporate life insurance agency which may be very large or essentially a one or two person business. I think we should consider imposing a duty of care on corporate agencies to certify suitability and competency of their new recruits and supervise conduct of the agents and brokers who work for them.

Many other issues were raised during the consultation that have confirmed my belief that there is a need for some changes to the law

governing life insurance agents. The Ontario Insurance Commission has already identified a need to amend regulations governing corporate agencies and rationalize the law related to undue influence and occupational restrictions. There was also a strong consensus of support for the introduction into regulations of some of the key provisions of the Code of Ethics governing life insurance agents that was published by the Commission in June 1995 (e.g. point of sale disclosure, conflict of interest, anti-churning).

Immediate Action to Coordinate Regulation of Financial Services Intermediaries

There is one action that I intend to take immediately. It is clear that many life insurance agents now hold multiple licences in the financial services sector e.g. as general insurance brokers, mutual fund salespersons, investment advisors, and limited market dealers. I believe that there is a need for the operations of the various regulating bodies to be coordinated. In the longer run, I believe that the law governing all financial services intermediaries should be harmonized. As Deputy Minister, I will be requesting that the Ontario Insurance Commission, the Registered Insurance Brokers of Ontario, and the Ontario Securities Commission identify areas where operational coordination can produce greater efficiencies, effectiveness and harmonization.

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I appreciate the considerable time and effort

that you and your colleagues have put into preparation of your proposal and I thank you for submitting it.

Yours truly,

Dina Palozzi
Commissioner

cc. All Interested Parties