

THE DIRECT RESPONSIBILITY OF FIRM MANAGERS

and not to be taken lightly...

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This series is based on actual cases that were brought before the syndic. We hope it will help you to reflect on the quality of your professional practice, specifically with respect to your ethical obligations.

The Complaint

A family lodges a complaint with our office alleging negligence and lack of professionalism on the part of the claims adjusters it had hired to negotiate on its behalf with the insurer in the wake of a residential fire. Amongst other things, the complainants allege that they had to attend to much of the claims settlement process themselves.

The Investigation

At the very outset, it was determined that the claims adjustment firm had assigned the claims file to a public claims adjuster who was not certified—the very adjuster who, for a year, negotiated the settlement of their claim. You can imagine how surprised the insureds were to learn this during the investigation!

The adjuster was reported to the Autorité des marchés financiers for illegally practicing claims adjustment, since the *Act respecting the distribution of financial products and services* (the Act) stipulates that the Authority is responsible for investigating cases involving non-certified individuals.

Our investigation thus focused on the claims adjuster in charge of both the firm and the non-certified employee.

The Obligations of Firm Managers

At issue here are sections 2 and 58(14) of the *Code of ethics of claims adjusters*. Senior managers within a firm must ensure that their employees comply with the Act. They must also make sure that their firm pursues its activities with duly certified individuals. Sections 84 and 85 of the Act stipulate that a firm's senior managers must not only act with care and competence, but must also oversee the discipline of their representatives in order to ensure that they comply with the Act and its regulations.

The Formal Complaint

I filed a formal complaint before the discipline committee of the Chambre de l'assurance de dommages against the claims adjuster in charge of the firm. This complaint included the following two charges, of which he was found guilty.

- Between 2007 and 2008, allowed the individual to act as the claims adjuster responsible for the insureds' claim file, opened in February 2007 in the wake of a fire at their residence, although he was not attached to any firm and his certificate was inactive.
- Between 2007 and 2008, as manager in charge of the firm, personally failed or allowed his mandataries or employees to fail to act with professionalism in performing services rendered in the course of carrying out the mandate granted by the insureds following a fire at their residence, in particular by:
 - failing to act and report with diligence to the insureds;
 - failing to rapidly submit the insurer's offer of settlement to the insureds;
 - failing to follow up on the insureds' requests and instructions.

Conclusion: The senior manager must be accountable for his employees' behaviour.

Supervising employees should not be taken lightly. It is a responsibility that is unique to managers and essential to the protection of the public. The public must be served by a qualified, competent professional who is properly supervised and respects the regulations. If this is not the case, the firm's senior manager must be held accountable.

Moreover, in May 2008, the Court of Appeal of Quebec¹ disposed of three cases involving the senior managers of brokerage firms, stating that [unofficial translation] "*the firm's senior managers have a direct responsibility for ethical faults committed by employees*" and that "*it is not up to the syndic to prove that the offenders [the firm's senior managers] had been negligent in supervising their employees.*" Thus, "*the employee's ethical fault [...] is the personal fault of the [certified] representative*" in charge of the firm.

¹ 2008 QCCA 922: Chauvin v. Beaucage, Pageau et Ducharme