

RESPECTING THE PRIVACY OF PERSONAL INFORMATION

When a Damage Insurance Agent Acts Unfairly

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This article is based on actual cases that were brought before the syndic. Its purpose is to help you reflect on the quality of your professional practice, specifically with respect to your ethical obligations.

The Complaint

An insurer terminates its contract with one of its agents and contacts the syndic's office to blow the whistle on the ex-employee.

Why does an employer lodge a complaint?

By blowing the whistle on a former employee, the employer seeks to avoid having a similar situation re-occur with other insurers and clients.

It may seem surprising, but an employer may indeed lodge a complaint with the syndic's office. As you know, the mission of the *Chambre de l'assurance de dommages*, as stipulated in section 312 of the *Act respecting the distribution of financial products and services*, is to protect the public. Insurers are also members of the public. It therefore follows that they too must be protected against the unacceptable professional practices of a representative.

Since one of the responsibilities of the syndic's office is to enforce sections 104 and 188 of the Act, every year it must deal with numerous situations such as the one that we are about to discuss here

Section 104:

A firm that terminates its association with a representative must inform the Authority, in writing, without delay.

If the firm terminates its association with a representative for reasons relating to the

representative's activities, it must inform the Authority of those reasons.

A firm that informs the Authority of such reasons incurs no civil liability thereby.

Section 188

The Authority shall forward every complaint it receives concerning a representative to the syndic having jurisdiction, together with any relevant information or document relating to the complaint.

The Facts of the Case

A personal-lines damage insurance agent decides to change employers. His exit strategy involves transferring certain clients' personal information to damage insurance brokers when their personal-lines insurance contracts come up for renewal, thus enabling the brokers to issue new contracts. His supervisors catch him in the act.

The Investigation

The investigation revealed that the representative's employer had cut his salary. In response, the representative decided to become a damage insurance broker. Since he wished to continue providing services to his current clients, he began transferring their files, despite the fact that this book of business did not belong to him. He did so without asking his clients' permission and in fact, without them even being aware of it.

Furthermore, we observed that on a few occasions, he acted in commercial-lines damage insurance. He would actually visit clients at their place of business, help them to fill in the insurance proposal and hand over the proposal to a broker. The representative maintained that he was simply acting as an interpreter for clients from his ethnic group.

The Formal Complaint

I was responsible for filing a formal complaint made up of 24 charges.

The first 22 charges concerned the files of 12 separate insureds. The charges included not respecting the confidentiality of personal

information; leaving gaps in coverage; and offering substandard coverage. The 23rd charge concerned acting in the field commercial-lines damage insurance although it had been established that the representative was not certified to do so. In the 24th and last charge, the agent was accused of acting unethically towards his former employer.

Here is the text:

From March 13 to June 5, 2009, acted unethically towards his employer, insurer XYZ [fictitious name], by sending to firms ABC Insurance Inc. [fictitious name] and DEF Insurance Brokers Inc. [fictitious name] personal information concerning the 12 insureds identified below [...], having obtained this information while working solely for insurer XYZ as a personal-lines damage insurance agent, all of which is in violation of the provisions of the Act respecting the distribution of financial products and services and the Code of Ethics of damage insurance representatives, in particular the provisions of section 27 of this Code.

The Discipline Committee's Ruling

The representative, duly represented by legal counsel, pled guilty to each of the 24 charges contained in my formal complaint.

In paragraph 29, the committee writes:

The Committee insists on reiterating that violations of confidentiality must be severely reprimanded since the right to have one's privacy respected and the right to confidentiality are both fundamental rights that must be safeguarded and protected under all circumstances.

And what of the brokers who were involved?

You are no doubt wondering what happened to the brokers who were involved in this scheme. To find out, stay tuned for my next column.