



# Code of Ethics of Claims Adjusters

| ANNOTATED

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## FOREWORD

This is the annotated *Code of Ethics of Claims Adjusters*. It is a reference tool designed to make the rules of ethics easier to understand, guide the claims adjuster in his daily work, and maintain the public's trust in the integrity and competence of claims adjusters.

Codes of ethics are the centrepiece of professional legislation. The rules found in a code of ethics establish the minimum standards of professional practice. The purpose of this annotated edition of the *Code of Ethics of Claims Adjusters* is to help claims adjusters clarify issues related to professionalism and thus to increase the public's confidence in their integrity and competence.

The comments in this document are not intended to supplement the regulations currently in force. Rather, their purpose is to clarify concepts that may seem quite abstract or complicated by re-stating them in layman's terms.

The examples provided are not the only possible cases and should not be taken literally. They are intended solely to illustrate the concepts under discussion and make them easier to understand. In addition to consulting this document, readers should not hesitate to contact the *Chambre de l'assurance de dommages (ChAD)* should they have any questions whatsoever regarding the scope of their ethical obligations.

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### CAUTIONARY NOTE

The comments provided herein are not binding on the Discipline Committee of the ChAD, which is an independent tribunal. This code applies to all claims adjusters, regardless of the structure of their practice. Certain sections or comments apply specifically to claims adjusters mandated by insureds, while others apply to those who are mandated by insurers.

In the interests of stylistic clarity, the use of the masculine in this document is gender-neutral and refers to both men and women.

In case of any discrepancy or conflict between the English version and the French version, the French version shall prevail.

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## INTRODUCTION

By the Middle Ages, skilled workers had already begun forming their own organizations in order to both protect and promote the practices of their craft and guarantee their clients the high level of proficiency they expected. No matter what term was used — guild, corporation, chamber or professional order — the primary concern of such groups was to train the next generation, to ensure the quality of work and to maintain client trust in members of the group, be they apprentices, journeymen or master craftsmen. This was the birth of the self-regulatory body.

This concept of peer-driven professional discipline has stood the test of time. Today, professional supervision is a meaningful, coherent system whose sole objective is to protect the public. In Quebec, professional orders are governed by the Professional Code. Many other sectors of activity are governed by legislation or specific regulations designed to promote professional discipline. In the area of damage insurance, the Quebec government has created the Autorité des marchés financiers (AMF) and the ChAD.

The ChAD's duty is to protect the public. This mission has led it to adopt codes of ethics that apply specifically to the professions its members practice. Like the *Code of Ethics of Damage Insurance Representatives*, the *Code of Ethics of Claims Adjusters* provides a number of rules of proper professional conduct. It is thus similar to the codes of ethics of many professional orders.

Unlike an act or a regulation, a code of ethics is written in general terms. The word "code" indicates that it contains a set of rules dealing with a specific topic. The word "ethics" refers to a set of rules and duties that govern a particular profession, the conduct of those who practice it, and the nature of the relationship the professionals have with their clients and with the public.

The *Code of Ethics of Claims Adjusters* (referred to herein as the "Code") is divided into eight (8) Divisions: (I) general provisions, (II) the various duties and obligations of claims adjusters towards the public, (III) towards their clients, (IV) towards claimants, (V) towards insurers, (VI) towards representatives, and (VII), towards the Autorité des marchés financiers and the Chambre de l'assurance de dommages. Division Eight (VIII) lists the most common breaches of the Code of Ethics. In addition to their ethical obligations, claims adjusters must comply, in particular, with all the provisions of the *Act respecting the distribution of financial products and services* as well as any regulations enacted pursuant to the Act.

## DIVISION I



## GENERAL PROVISIONS

- 1. The purpose of the provisions of this Code is to promote the protection of the public and the honest and competent practice of the professional activities of claims adjusters, regardless of the structure of their practice, the nature of their contractual relationship with clients or the class of the claims adjustment sector in which they practice.**

This section states that the Code applies to all claims adjusters (according to the definition of a claims adjuster in section 10 of the *Act respecting the distribution of financial products and services*, hereinafter referred to as the “Act”), regardless of the structure of their practice (independent representative, attached to a firm or employed by an insurer), the nature of their contractual relationship with their client (mandated by a claimant, mandated by or working for an insurer) or the class of claims adjustment sector in which they practice (personal lines or business lines damage insurance). Furthermore, as stipulated in section 28 of the *Regulation respecting the pursuit of activities as a representative*, this code also applies to damage insurance representatives when they act as claims adjusters (for example, those whose certificates are marked with the letter E).

Section 1 reminds the reader that the mission of the ChAD is to protect the public. It states the purpose of the Code, which is to promote integrity and competence (i.e., honesty and compliance with all the rules) in the practice of the profession of claims adjuster.

- 2. Claims adjusters must ensure that they and their mandataries and employees comply with the provisions of the *Act respecting the distribution of financial products and services* (chapter D-9.2) and its regulations.**

A claims adjuster’s duty is to ensure that he, his employees and his mandataries (those who represent him or act for him) comply with the Act and its regulations. Claims adjusters must read the Act and its regulations, including this Code, and to refer to them as required. The importance of doing so cannot be overestimated.

This means that claims adjusters must implement clear policies and procedures to ensure that staff members receive proper training and professional oversight. They must also implement measures to continuously monitor the quality of the services they provide.

Although employees grandfathered under section 547 of the Act are allowed to carry out claims adjustment activities, the certified claims adjuster overseeing them remains liable before the Discipline Committee for any breaches committed by such employees. An employee’s breach of ethics becomes the personal fault of the claims adjuster.

- 3. Claims adjusters must not, directly or indirectly, pay or promise to pay remuneration, compensation or any other benefit to a person who is not a representative in order for that person to act in that capacity or use that title.**

Section 3 is aimed at preventing anyone from acting illegally as a representative (including a claims adjuster) at the request of a certified representative. Only representatives certified by the AMF may introduce themselves as claims adjusters.

Also see section 12 of the Act.

A claims adjuster is therefore prohibited from paying money or giving an advantage (monetary or otherwise) to a non-certified person to induce him to act as a claims adjuster, attempt to act as a claims adjuster or use the title of claims adjuster.

- 4. Claims adjusters must not, directly or indirectly, procure a promise of payment or payment of remuneration, compensation or any other benefit from a person who is not a representative and who acts or attempts to act in that capacity.**

The rule set forth in this section is the corollary of the rule in section 3, but in reverse. In other words, a claims adjuster cannot accept a monetary payment or other advantage from a person who is not a representative but is acting, or attempting to act, as a representative (including a claims adjuster).

A number of situations come to mind: for instance, a claims adjuster who, in exchange for payment, signs a report prepared by someone who is not a claims adjuster.

- 5. Claims adjusters must not, directly or indirectly, procure a promise of payment or payment of remuneration, compensation or any other benefit not authorized by the Act or its regulations from a person other than the person who has retained their services.**

A claims adjuster may not accept money or any other advantage from someone who has not retained his professional services, for example a supplier of goods or services. Only the person who retained the claims adjuster may remunerate him or pay him any other benefit.

Certain secondary remunerated occupations are allowed, as long as they do not contravene sections 2, 3 and 4 of the *Regulation respecting the pursuit of activities as a representative*.

- 6. Claims adjusters must not pay, offer to pay or agree to pay any remuneration, compensation or benefit to a person who is not a representative, except where permitted by law.**

A claims adjuster may not pay anyone who is not a certified representative or offer him other benefits such as gifts, in order to obtain anything whatsoever, nor may he share his fees with that person.

For example, a claims adjuster may not pay a firefighter, a building contractor, a restoration contractor, or any other person in exchange for client referrals

- 7. Claims adjusters must not pay or promise to pay any remuneration, compensation or benefit in order to have their professional services retained, except as provided by the Act or its regulations.**

A claims adjuster may not pay money or any other advantage to a person for the purpose of recruiting clients or obtaining new mandates.

For example, he cannot offer a client a discount, a rebate or a gift (hockey tickets, cigars, etc.) in order to obtain a new claims file.

However, this section does allow claims adjusters to pay for advertising or a promotional campaign in order to build their clientele.

- 8. Claims adjusters must not accept, other than the remuneration or compensation to which they are entitled, any benefit relating to their professional activities, except where permitted by law.**

This prohibition should be broadly interpreted. Aside from his fees or his commission, a claims adjuster is not entitled to accept money, gifts or other benefits for his services.

For example, a claims adjuster may not accept a commission from a restoration contractor for having referred him to a claimant. A claims adjuster is considered to have accepted a benefit if he buys at less than its actual value a vehicle that was found after the insured received compensation.

9. **Claims adjusters must avoid placing themselves, directly or indirectly, in a situation of conflict of interest. Without limiting the generality of the foregoing, a claims adjuster would be in a situation of conflict of interest where**
- 1° **the interests involved are such that the claims adjuster may tend to favour certain interests over those of the client, or the claims adjuster’s judgment and loyalty towards the client may be adversely affected; or**
  - 2° **the claims adjuster obtains a current or future personal benefit, directly or indirectly, for a particular act.**

The rule regarding the absence of a conflict of interest is a fundamental rule of professional ethics.

This section does not spell out all situations where a claims adjuster could be considered to be in a conflict of interest. Paragraphs 1 and 2 are simply two examples of what constitutes a conflict of interest. When a professional puts his knowledge and skills to work for a client, he is creating a relationship based on trust. The duty to settle a claim fairly must be performed without any of the professional’s personal considerations coming into play. The claims adjuster’s duty is to settle the insured’s claim by establishing a fair and reasonable assessment of the losses based on the provisions of the insurance contract. He must do this without receiving anything more than his remuneration.

A claims adjuster must never have an interest in the settlement of a claim. Moreover, a claims adjuster should develop his own personal “early warning system” that alerts him to potential conflicts between his own interests and those of the insured, the claimant, the supplier of goods or services or the insurer. The conflict does not necessarily have to actually exist; the appearance, or the potential for a conflict of interest must also be avoided.

For example, a claims adjuster cannot accept a mandate to settle a claim for a building that he owns or may own in the future, even if he declares his interest to the insurer. Furthermore, a claims adjuster must not curry favour with his mandatary (the insurer) by always attempting to settle the claim for an amount lower than that which the insured is entitled to receive.

See section 27 of this Code.

Lastly, it is common practice in the field of claims adjustment to avoid settling the claims of friends or family members, to avoid the temptation of putting their interests first.

**10. Claims adjusters must not neglect professional duties relating to their professional activities and must carry out such duties with integrity.**

A claims adjuster must never neglect his overall professional duties and obligations. He must perform his daily work as a claims adjuster with integrity and care. Two concepts are paramount: the absence of negligence and the duty to act with integrity.

Negligence is a lack of care, attention or accuracy in fulfilling one’s obligations. Incomplete notes in the file, unreturned phone calls, or neglecting to take the necessary steps to obtain an evaluation of the cause of the loss are all signs of negligence. Every professional act performed by a claims adjuster — no matter how small — must be taken seriously.

Integrity also means that the claims adjuster must scrupulously and honestly fulfill his professional obligations, in other words, in a manner everyone is entitled to expect of any conscientious professional. The notions underlying this duty are rigour and rectitude.

## 11. Claims adjusters must not:

**1° have a personal interest in the settlement of a claim;**

This prohibition is even stricter than the one stipulated in section 9 of the Code, since, regardless of whether or not there is a conflict of interest or the appearance of such a conflict, the simple fact of having an interest constitutes a breach of the Code.

**2° derive or seek to derive personal benefit from a matter entrusted to them, other than their remuneration;**

For example, he cannot purchase damaged property for himself or a third party or resell such property when it comes from a claims file that he or someone in his office is handling.

**3° ask anyone, except a client or client's representatives, to inform them of an event giving rise to a claim;**

This section goes to the heart of how one obtains a mandate. The section is not aimed at preventing a claims adjuster from staying abreast of current events. Rather, it is meant to prevent excessive solicitation of clients; such behaviour would adversely affect the honour and dignity of the profession.

Just as it would be unprofessional of a lawyer to ask an ambulance attendant for the names of the injured in the wake of an accident, it is equally unacceptable for a claims adjuster to ask a firefighter, for example, to notify him when a fire has occurred.

**4° obtain or attempt to obtain details concerning an insurance policy from any person other than a client or client's representatives, with a view to having the settlement of claim entrusted to them;**

According to the same principles as those set out in paragraph 3 of this section, a claims adjuster is prohibited from asking a claimant for details on his insurance policy, unless the claimant has given him a mandate.

This also applies to requests made to the claimant's insurer or any other person who might have such information.

See also sections 30 and 49 of the Code.

**5° advise an insured, a claimant, a client or a third party against consulting another representative or another person of their choice.**

This section concerns the client's freedom to consult anyone he wishes to concerning damage insurance and claims adjustment and specifically, his right to seek a second opinion. This section is all the more important because a claims adjuster is often asked to express an opinion and give it to his client when determining the amount of damages, for example.

Depending upon the specific circumstances of the file, the claims adjuster can even encourage a party to consult someone else (another claims adjuster, a lawyer, an evaluator, etc.) in order to remain well informed at all times.





## DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC

### 12. Claims adjusters must support any measure designed to protect the public.

A claims adjuster must be receptive to any measure designed to protect the public. He is expected to adopt, understand and be able to explain any measure meant to protect the public.

This section refers not only to the adjuster's client, but also to the public in general, in other words, anyone who may need general information on damage insurance and claims adjustment.

### 13. Claims adjusters must support any measure likely to improve the quality of services in their field of professional activities.

Since the public's trust in the profession is at stake, one of the rules of conduct for claims adjusters must be to constantly improve their skills and the services they provide.

For example, a claims adjuster must participate in training, as stipulated in the *Regulation respecting compulsory professional development*. He must also cooperate in good faith with professional inspections and comply with requests from the Syndic's Office regarding corrective measures or undertakings.

Participating in ChAD activities, sitting on committees or being available to give training are also ways to improve the quality of services offered to the public.

Furthermore, claims adjusters should regularly review relevant information circulated by the ChAD or found in industry publications.

### 14. Claims adjusters must promote measures to provide education and information in their field of professional activities.

This section encourages claims adjusters to be proactive and anticipate the consumer's information needs. For example, claims adjusters should give consumers clear, comprehensive answers to questions concerning damage insurance and claims adjustment. They can also provide consumers with information brochures from insurers, the ChAD, the AMF, the Insurance Bureau of Canada, etc.

### 15. The conduct of claims adjusters must be characterized by objectivity, discretion, moderation and dignity.

In their actions, as well as in their oral and written communication, claims adjusters must display restraint. They should maintain a neutral tone, an open-minded attitude and conduct themselves in a generally friendly manner conducive to good interpersonal relations. They should not speak in an angry, insulting or disrespectful manner.

Due to the nature of their activities, claims adjusters must sometimes deal with individuals who are dissatisfied, anxious or even in a state of crisis. They must make an effort to conduct themselves politely and respectfully, even under such difficult circumstances.

**16. No claims adjuster may, in any manner whatsoever, make any representations that are false, misleading or likely to be misleading.**

The section deals with the general principle that prohibits misleading the public. Claims adjusters must be frank and sincere with everyone at all times.

See also sections 20, 48, 51 and 58(5) of the Code and section 14 of the *Regulation respecting the pursuit of activities as a representative*.

When a claims adjuster makes “representations that are false,” it means that he has intentionally lied and said things that he knows to be false.

A “representation that is misleading or liable to be misleading” is a statement that hides part of the truth or omits certain important facts or that, while not necessarily false, could lead someone to draw false conclusions.

**17. In their professional activities, claims adjusters must identify themselves clearly and, where applicable, identify their client. Claims adjusters must show their certificate upon request.**

In the course of his investigation, a claims adjuster may be required to visit the site of the loss and meet with a number of parties. In addition to the claimant, the parties must be informed that he is the claims adjuster and that he is acting for a specific company or person.

It is essential that the claimant know the identity of the insurer in order to take legal proceedings, as stipulated in article 2501 of the *Civil Code of Québec*. The claims adjuster must identify his client, even if the insurer instructs him not to do so.

In addition, a claims adjuster mandated by an insurer must remember that under section 47 of the Act, he is obliged to inform the claimant that he is acting on behalf of an insurer.

**18. Claims adjusters must notify an insured of the approach of a prescription date concerning the insured.**

Prescription extinguishes the rights of the insured towards the insurer or third parties. Given the importance of prescription, the claims adjuster has the duty to inform the insured when a claim is time-barred, regardless of whether he is mandated by the insurer or the claimant.

The word “approach” (indicating that something is about to happen) must be interpreted broadly. It does not mean that the claims adjuster must notify the insured of the prescription date as soon as the claim is filed but neither should he notify the claimant on the eve of the prescription date: for instance, two weeks before the deadline would not be reasonable notification.

The claims adjuster should notify the insured in a timely manner. For example, he should notify the insured in writing of the prescription date when it is taking an unusually long time to settle the file.

**19. Claims adjusters must notify the parties involved, as well as any person that they know has an interest in the compensation requested, of any refusals or any measures that the insurer intends to take regarding a claim.**

This section deals with the claims adjuster’s duty to inform, which in this case applies not only to the insured, but to any person with an interest in the compensation, such as another insured, an insurer, a creditor, a landlord, a co-owner, a third-party claimant, etc.

An insured has the right to know how his claim is being handled and it is the duty of the claims adjuster to give him such information. This is the case, for example, if the insurer refuses a claim, but it also applies if the insurer takes certain measures such as carrying out an investigation without prejudice. In such a case, the claims adjuster must inform the insured by asking him to sign a “non-waiver agreement” or a “reservation of rights letter.”

The duty to provide information should not be confused with the obligation to make full disclosure to all parties involved. Accordingly, though the claims adjuster must notify a third party that the insurer has refused the claim, he does not have to reveal the reason for the refusal to pay compensation. Only the insured has the right to know why the insurer refused to compensate him.

**20. Claims adjusters must act in a manner that does not mislead or abuse the good faith of the parties involved.**

In carrying out his professional activities, a claims adjuster must act with candour and rectitude. He must not seek to deceive or exploit others.

No matter who the claims adjuster is acting for in the claims file, this obligation applies to all parties involved: the insured, the claimant, the person responsible for the loss or any other person who has an interest in the compensation arising from the loss.

See also sections 16, 48, 51 and 58(5) of the Code.

**21. Claims adjusters must provide the insured with the explanations necessary for them to understand the settlement of the claim and services rendered to them.**

Throughout his mandate, a claims adjuster must explain to the insured all the “whys and wherefores” related to the settlement of the claim. Though this obligation is especially important at the beginning of the file, when the insured is generally more vulnerable, it lasts until the claim has been settled.

A claims adjuster must explain to the insured the services he has rendered or will render:

- the measures that he intends to take regarding damaged property once the insured has given his consent;
- the emergency measures that must be taken;
- the identification of the persons who have been hired to carry out the emergency measures;
- the authorization to purchase replacement property;
- the taking of statements;
- the timelines of the settlement;
- the granting of living expenses or business interruption expenses, etc.

The claims adjuster must also explain to the insured how he calculated the amount of the settlement (basis for calculation, methods for calculating depreciation, etc.).

The explanations given to the insured should allow the insured to understand how his claim is proceeding. It is the claims adjuster’s duty to ensure that the explanations he provides are properly understood.

**22. Claims adjusters must respect the confidentiality of all personal information obtained about a client and use the information for the purposes for which it was obtained, unless relieved of that obligation by a provision of a law or an order of a competent court.**

**23. Claims adjusters must not disclose, other than in accordance with the law, personal or confidential information obtained nor use such information to the detriment of one of the parties involved or with a view to obtaining a benefit for themselves or another person.**

Pursuant to the Act and the above two sections (22 and 23) of the Code, claims adjusters must respect the confidentiality of the personal information that they collect and hold. This obligation lasts as long as they hold such information, even if the mandate has ended.

An individual always owns the information pertaining to him. This applies to the insured, the claimant, witnesses, etc. When they disclose such information to the claims adjuster, he becomes its depositary and custodian. The claims adjuster must therefore obtain the person's consent before transmitting or using his personal information. On its website (chad.ca), the ChAD provides claims adjusters with a procedure and a consent form that they can use in such circumstances when settling a claim.

In certain situations provided for in the Act, a claims adjuster need not ask for the insured's permission before disclosing his personal information to another person. For example, if the Syndic's Office of the ChAD is investigating a file, it may ask for and obtain such information without the insured's consent. Similarly, in certain circumstances, a court may allow a claims adjuster to testify regarding an insured's personal information.

**24. Claims adjusters must not accept or continue a mandate if it involves or may involve disclosing or using confidential information or documents obtained from another claimant, unless that claimant consents thereto.**

This section refers not only to the duty to respect personal information, but also to the rule concerning the avoidance of conflicts of interest. Unless he has received the claimant's written consent, a claims adjuster may not accept a new mandate if he realizes that in carrying out the new mandate, he may have to use personal information given to him by the claimant.

In such circumstances, the form available on the ChAD's website (chad.ca) may not be used to obtain the insured's consent, because it applies only to the use of an individual's personal information in his own file and not in someone else's file.

**25. Claims adjusters must avoid any misrepresentations as to their level of competence or the effectiveness of their services or those of their firm or independent partnership.**

A claims adjuster must know the limits of his skills, knowledge and experience. He must not exaggerate the value of his work nor that of the colleagues in his firm or independent partnership. Furthermore, he must not promise his clients results that he knows he cannot deliver.

For example, a claims adjuster must not lead an insured to believe that if he does not retain the adjuster's services, he will not receive all the compensation to which he is entitled, nor may the adjuster advertise that can obtain greater compensation than that to which he knows the claimant is entitled.

In addition, the claims adjuster may not lead his client to believe that he has the competence required to undertake a particular mandate demanding competencies or expertise that he does not possess. This could be the case, for example, in a complex file dealing with soil contamination, damage to a work of art or a fire in a factory.

## DIVISION III



## DUTIES AND OBLIGATIONS TOWARDS CLIENTS

- 26. Before accepting a mandate, claims adjusters must take into account the limits of their abilities and knowledge and the means available to them. They must not undertake or continue a mandate for which they are not sufficiently prepared, without obtaining the necessary assistance.**

No matter who he acts for, a claims adjuster must make sure that he has the necessary ability to effectively deal with the file. Certain types of losses require specific expertise to properly investigate the nature of the claim or assess the losses incurred. In fact, it is common practice for a new claims adjuster to have his work supervised by an experienced claims adjuster.

A claims adjuster should be modest in assessing his own professional skills. When in doubt, he must seek help from qualified claims adjusters, in other words, colleagues who have the requisite skills. If this is impossible, he should not accept the file. Note that this obligation lasts throughout the life of the mandate.

In order to do his job properly, a claims adjuster must often use the professional services of engineers, architects, chemists, accountants, forensic accountants, lawyers, actuaries or other professionals. However, using such services does not dispense the claims adjuster from respecting the obligation stipulated in this section.

This section does not prohibit a claims adjuster from taking on a new type of file, for instance, his first professional liability case. However, if the claims adjuster does not have the necessary experience he must seek the assistance of an experienced claims adjuster. Furthermore, a claims adjuster cannot rely upon this section to refuse to take on a file that his employer has assigned to him, as long as he is given the appropriate assistance.

- 27. Claims adjusters must act promptly, honestly and fairly in providing their professional services under the mandates entrusted to them.**

The obligations in this section are the foundation of the claims adjuster's work. In carrying out all his mandates and with respect to all the parties involved, a claims adjuster must act expeditiously and honestly while respecting the rights of each party. He is expected to apply all the provisions of the insurance contract objectively, diligently and effectively.

It is important to stress the concept of fairness. Acting fairly is a concept that is specific to claims adjusters; it is not mentioned at all with respect to other damage insurance professionals. Even though one party mandates him — often the insurer — the claims adjuster must be fair to the other party.

For example, when settling a claim that is covered under a home insurance policy, it would be unfair to impose a condition on the insured that is not in the contract, such as requiring the insured to have finished the repairs before any amount of compensation is paid out.

- 28. Claims adjusters may not be the mandatary of both the insurer and the insured at the same time.**

This rule, which is inescapable, further clarifies the more general rule that concerns avoiding conflicts of interest (section 9 of the Code). It should be noted that, contrary to section 29 of the Code, the consent of both parties would still not allow the claims adjuster to contravene this rule.

**29. Claims adjusters may not represent opposing interests, except with the consent of their clients.**

This section is one of the rare exceptions to the conflicts of interest rule (section 9 of the Code). A claims adjuster may act for persons or companies with opposing interests as long as they are all aware of this and give their consent. Examples of such a situation are a tenant and his landlord, a co-owner and his condominium association or an insured and a third-party claimant.

Holding a dual mandate is, in and of itself, a tricky matter, especially if the clients have opposing interests. Some aspects of a claims adjuster's work do not generally lead to a conflict of interest. These include fact gathering, assessments of losses and investigating the objective causes of the claim, etc.

However, other situations are trickier—for instance, giving an opinion on, or interpreting the facts, especially if one of the parties involved has had to disclose confidential information to the claims adjuster. Moreover, if the parties' versions do not coincide and the claims adjuster must give his opinion on issues of liability or admissibility, the conflict can become insurmountable.

Even though it may make more economic sense for the persons involved to use the services of a single claims adjuster, if an insurmountable conflict occurs between the parties, the claims adjuster will no longer be able to continue representing them. He will have to completely withdraw from the case in order to avoid any semblance of a conflict of interest or lack of fairness.

**30. Claims adjusters must not under any circumstances undertake appraisal work before receiving a mandate to that effect.**

This rule is designed to prevent a claims adjuster from taking on a file before he has received a mandate to do so. Obviously, the goal is to protect the public, since in the hours immediately following the incident, the claimant is often shaky and overwhelmed by the event.

A claims adjuster mandated by the claimant must have the mandate in writing before acting for the client and undertaking emergency measures. Section 50 of the Act stipulates that the claimant may cancel the contract in writing within ten days of receiving it. In such a case, the claims adjuster is entitled to claim from the claimant the expenses that were incurred to prevent further loss.

**31. Claims adjusters must notify the client promptly of any information in their possession that could affect decisions regarding the settlement of a claim or reduce or compromise an entitlement to compensation, such as breaches of contract, fraud, misrepresentations and the forging of evidence.**

It is the claims adjuster's duty to provide information regarding the factors that could influence the settlement of the claim. To ensure that the client who has retained his services is aware of the overall situation and can make an informed decision, the claims adjuster must disclose all the information he has concerning the situation.

Such information may include facts, doubts or any indication that the insurance contract's conditions of coverage have been breached, questions regarding the very existence of an item or concerns about the cause or the circumstances surrounding the loss, etc.

**32. Claims adjusters must, without delay, act on the instructions received from a client or notify the client that they are unable to comply with them.**

When a claims adjuster accepts a mandate, he must of course follow the instructions of the person who has retained his services. If this is impossible, the claims adjuster must notify this person as soon as possible.

A number of factors may make it impossible to follow these instructions. Some factors may be of a purely practical nature: the claims adjuster has had an accident; the site of the loss has become inaccessible; etc. Other factors may be legal in nature: an issue related to ability or knowledge (section 26 of the Code); a legal impediment; instructions that violate the Code (section 17 of the Code); a conflict of interest (section 9 of the Code); and so forth.

It is important to take note of the words “as soon as possible.” They set the tone for the relationship between the claims adjuster and the person who has engaged his services. The person must be notified quickly if his requests cannot be carried out, so that he can act in full knowledge of the situation.

**33. Claims adjusters must, upon request, report to the client and show diligence in submitting reports, rendering accounts and making remittances.**

It is common practice for a claims adjuster to report to his insurer-clients every 30 or 60 days, depending on his level of authority or his agreement with them. Although common practice does not dictate a specific timeline for reporting, a claims adjuster mandated by an insured should establish such a timeline with the client: he must keep in mind the obligations under article 2139 of the *Civil Code of Québec*, which stipulate that the mandatary must inform his client of the stage reached in the performance of the mandate, where circumstances warrant doing so.

Notwithstanding common practice, as soon as the client requests an update on his claims file, the claims adjuster must promptly provide him with the information.

The best way for a claims adjuster to show diligence in submitting reports is to stay one step ahead of the client’s wishes and report to him before he has even asked for anything. He thus demonstrates his know-how and his high level of attention to the client’s needs.

**34. Claims adjusters must submit every offer of settlement to the client.**

This rule applies to all offers without exception. Even if the offer seems unacceptable, it must be submitted to the person who has retained the claim’s adjuster’s services. This person is the only one entitled to accept or refuse it. Of course, the person is perfectly within his rights to ask the claims adjuster for his opinion on the offer that has been submitted.

Thus, a claims adjuster who has been mandated by a claimant must submit to his client any offer made to him by the insurer, whereas a claims adjuster mandated by an insurer must submit to the insurer any offer made by the insured.

**35. In carrying out a mandate, claims adjusters must avoid multiplying professional acts.**

The claims adjuster must do whatever is useful and necessary to complete his work. He must avoid taking any steps that simply “pad the bill” or unnecessarily slow down the settlement of the claim.

For example, a claims adjuster must not repeatedly request further assessments of damages without ultimately making a decision.

**36. Claims adjusters may, for good and reasonable cause, cease to act on behalf of a client after taking the necessary measures to prevent prejudice to the client.**

A claims adjuster who accepts a mandate must carry it out in its entirety unless he has just and reasonable cause for not doing so. In such a case, the claims adjuster must notify his client so that the client can make arrangements to avoid any adverse effects on the settlement of his claim. He must notify his client in advance and not after the fact.

When he ceases to act for a client, the claims adjuster must send that client all the information that he collected while working on the claims settlement file.

Even in situations where the claims adjuster is justified in ending his mandate immediately due to a conflict of interest or because he has had an accident, he must notify his client that the mandate has been terminated and make the necessary arrangements to protect the client from any adverse consequences until such time as another claims adjuster takes over the mandate.

In addition to this section, claims adjusters should refer to articles 2175 through 2185 of the *Civil Code of Québec* that deal with the termination of a mandate.

**37. Claims adjusters must cease to represent a client if their mandate is revoked.**

When a claims adjuster is instructed by someone to cease representing him, he must accept these instructions. After making arrangements for a smooth transition, he must immediately withdraw from the file.

When the claims adjuster is mandated by the insurer, he must inform the insured that he is no longer in charge of adjusting his claim. Failure to do is an ethical breach.

See also section 58(12) of the Code.

**38. Claims adjusters must not, through fraud, trickery or other deceitful means, avoid or attempt to avoid their professional civil liability or that of the firm or independent partnership within which they carry on their professional activities.**

To err is human. Any professional can make a mistake. When a claims adjuster makes a mistake that could have repercussions, he must not attempt to hide it. He must not attempt to avoid the consequences of his acts by using:

- fraud (an action done in bad faith that is meant to cause harm);
- trickery (calculated deceit);
- other deceitful means (deceit intended to make a person act in the interests of the adjuster).

A claims adjuster must be honest and transparent with respect to his mistakes. For example, he must not try to hide a document that proves he was mistaken. When he makes a mistake that he could be held accountable for in the future, he must also promptly notify his professional liability (errors and omissions) insurer. This will protect the public from the possible consequences of his mistake.

**39. Claims adjusters who have been given a mandate must not require advances that are disproportionate to the nature and circumstances of the claim and the state of the parties. In addition, they must charge fair and reasonable remuneration, justified by the circumstances and proportionate to the services rendered. In setting remuneration, claims adjusters must take particular account of the following factors:**

- 1° their experience;
- 2° the time devoted to the matter;
- 3° the difficulty of the problem submitted;
- 4° the importance of the matter;
- 5° the responsibility assumed;
- 6° the provision of unusual services or services requiring exceptional competence or speed; and
- 7° the result obtained.

Under section 48 of the Act, a claims adjuster who is mandated by a claimant must offer him two payment options: either hourly remuneration or percentage remuneration.

The seven criteria listed in this section are the factors taken into consideration when assessing the fair value of a professional service. If his invoice is questioned, the claims adjuster must be able to show the factors he used in calculating this invoice.

A claims adjuster should not ask for an advance except under exceptional circumstances, and when reasonable under the circumstances. An example of exceptional circumstances would be the travel costs incurred by a claims adjuster in assessing damages to a cottage in an area accessible only by helicopter.



Furthermore, since an advance is paid for services not yet rendered, it is not regarded as belonging to the claims adjuster and must be deposited in a separate account.

**40. Claims adjusters must ensure that a client is informed of the approximate and foreseeable cost for their services.**

A claims adjuster must provide the person who has retained his services with an estimate of how much his services will cost. This obligation to inform lasts throughout the duration of the mandate.

Thus, as soon as the mandate begins, the claims adjuster paid on an hourly basis must provide his client with an estimate of the number of hours that will be required to fully carry out his mandate. If, during the course of the mandate, he realizes that he will have to put in more hours than anticipated, he must immediately notify his client. The client must confirm that he accepts this increase before the claims adjuster incurs any further costs.

**41. Claims adjusters who have entered into a contract with a client providing for hourly remuneration must provide all explanations necessary for the client to understand the statement of remuneration and the terms and conditions of payment.**

The billing of a claims adjuster paid on an hourly basis must include a detailed breakdown of services rendered, showing the time required for each separate act. An invoice that only indicates the number of hours spent carrying out the mandate does not comply with the requirements of this section. In addition, the terms of payment must appear on the invoice for professional fees.

It should be noted that whatever their mode of remuneration, all claims adjusters must keep a log. For claims adjusters paid by the hour, this log is also used for billing. However, a log is not only useful in determining the billing for services rendered. It is part and parcel of the adjuster's professional obligation to act with professionalism (section 16 of the Act) and to keep proper records (sections 10 and 58(1) of the Code.

**42. Claims adjusters may not charge interest on overdue accounts unless they have an agreement to that effect with the client. If there is such an agreement, the interest must be charged at a reasonable rate, which does not exceed the rate determined pursuant to section 28 of the Tax Administration Act (chapter A-6.002).**

As a general rule, a claims adjuster cannot charge interest on an overdue account. An exception is made when, at the time the contract is signed, the claims adjuster makes an agreement with his client regarding interest payments.

The rate of interest charged on a claims adjuster's overdue accounts may not exceed the rate set by the Ministère du Revenu du Québec. This rate is set four times a year (January, April, July and October) and is available on the Revenu Québec website.

**43. Upon completion of their mandate, claims adjusters must repay any part of an advance on their remuneration for which no work was performed.**

In a professional context, an “advance” is a deposit made by the client, which is used to cover the professional’s costs, disbursements and fees incurred to do the work. Until such time as the bill for services (invoice) has been issued and accepted by the client, the advance has not been earned.

See also section 39 of the Code.

If a claims adjuster receives an advance, it must be deposited in a separate account. He may not withdraw any money from this account until one or more invoices for amounts corresponding to the advance(s) have been submitted and accepted. Once the mandate has been completed, any money remaining in the account that the claims adjuster has not earned must be returned to the client.

## DIVISION IV



## DUTIES AND OBLIGATIONS TOWARDS THE CLAIMANT

### 44. Claims adjusters must not withhold a claimant's money, securities, documents or property unless permitted under a legislative or regulatory provision.

Practically speaking, a claims adjuster is not considered the custodian of property belonging to others. If, under exceptional circumstances, he is asked to play this role, he cannot then hold onto property that does not belong to him in order to put pressure on someone, or for any other reason.

For example, a claims adjuster cannot hold onto photos belonging to the insured until the insured agrees to the final settlement of his claim. Nor can he hold onto a compensation cheque because the insured still owes him his fees. Furthermore, he cannot wait until a bodily injury claim is settled before settling the claim for property damages.

### 45. Claims adjusters must take reasonable care of property entrusted to their care during their mandate.

As indicated above, the basic rule is that a claims adjuster is not the custodian of someone else's property.

However, when a claims adjuster does act as the custodian of property belonging to others, it is his legal duty to act with prudence and diligence. He must not dispose of such property, use it or decide what to do with it without the owner's permission.

For example, if the claims adjuster holds the keys to a damaged building, he cannot enter it or allow anyone else to enter without the consent of the owner-insured, except in an emergency. Neither, in this example, can the claims adjuster remove property and give it to a third party for restoration without the insured's permission.

### 46. Claims adjusters must not borrow from a claimant sums of money they have collected for the claimant. Claims adjusters must not endorse a cheque made out to a claimant or to a client unless authorized by the claimant or client and provided that the cheque is endorsed for deposit only into a separate account.

A claims adjuster is never entitled to borrow from an insured or a claimant by "dipping into" the insurance compensation money. Moreover, generally speaking, the claims adjuster should avoid borrowing money from any source whatsoever connected with the claimant as it could risk putting him in a conflict of interest.

The claims adjuster requires written authorization from the claimant allowing him to cash a cheque. Even with such authorization, the funds must be deposited in the separate account. The claims adjuster must promptly remit moneys owing to other beneficiaries and parties who the insurer wishes to pay from the proceeds of the cheque. Only when the claimant has accepted his invoice can the claims adjuster then pay himself his own fees from the separate account and deposit this amount in his operating account.

For example, the mandate between a claimant and a public claims adjuster must specifically provide for the claims adjuster's right to endorse and cash a compensation cheque. In the absence of a written agreement to this effect, the compensation cheque cannot be made out to the claims adjuster.

See also section 58(16) of the Code.



## DUTIES AND OBLIGATIONS TOWARDS INSURERS

### 47. Claims adjusters must notify the insurer of any ties or interests third parties may have in property that is the subject of a claim.

Rather than using the term “ties” in civil law, it is more appropriate to use the term “movable and immovable real rights.” For the most part, we are dealing here with hypothecs or other rights that individuals or companies may hold in property that is the subject of a claim. A “right of use” or a “declaration of family residence” are two examples that come to mind. The term “interests” is broad and may go beyond a simple financial interest. For example, if the damaged building has been classified as a heritage building, the claims adjuster must also flag this fact.

The claims adjuster must obtain and send the insurer the list of rights registered against a property. He can verify these rights by consulting the Register of personal and movable real rights (French acronym: RDPRM). For information concerning rights in buildings and land, consult the Land Register of Québec or go to an office of the Bureau de la publicité des droits (BPD). There are BPDs throughout Quebec.

### 48. Claims adjusters must not mislead an insurer, abuse its good faith or use unfair practices in their dealings with the insurer.

The general principal to remember here is that claims adjusters are prohibited from deceiving the insurer.

This section refers back to sections 16 and 20 of the Code and the duty to act in good faith, honestly and truthfully — but this time towards insurers. The claims adjuster must be loyal and act with rectitude.

For example, he must not hide important facts from the insurer or disseminate incorrect or incomplete information regarding the insurer or information that could lead the public to lose confidence in the insurer.

See also sections 51 and 58(5) of the Code.

### 49. Claims adjusters must not misrepresent to an insurer that they are responsible for settling a claim.

The claims adjuster must have a mandate to act. He cannot intervene with a claimant, an insured or an insurer before receiving the authorization to act.

See also section 30 of the Code.

## DIVISION VI



## DUTIES AND OBLIGATIONS TOWARDS REPRESENTATIVES

The duties and obligations that follow apply to all representatives covered by sections 1 to 11 of the Act.

### 50. Claims adjusters must not denigrate, depreciate or discredit other representatives.

The credibility of the profession is important to the public. By implying that a fellow representative is incompetent or by making negative comments about him, the claims adjuster could adversely affect the public's trust in the profession, in addition to damaging the relationship of trust that exists between the professional and his clients.

For example, if a claims adjuster questions the competence or actions of another representative (such as another claims adjuster) in front of a client, he is in breach of this section.

### 51. Claims adjusters must not mislead other representatives, abuse their good faith or use unfair practices in their dealings with them.

In the course of his work, a claims adjuster often deals with claims adjusters representing other individuals. The claims adjuster must act fairly towards his colleagues. He may not mislead them. Since all claims adjusters must comply with this section, a claims adjuster is entitled to expect a colleague to act towards him in a manner that complies with his professional obligations, in particular the duty to act fairly and honestly.

"Abuse their good faith" means trying to take advantage of another representative. "Unfair practices" refers to using systems or procedures developed in bad faith to achieve one's goals.

Contrary to the old saying, when it comes to professional ethics, the end does not justify the means. See also sections 16, 20, 48 and 58(5) of the Code.

### 52. Claims adjusters must collaborate with other representatives insofar as they cause no prejudice to their client or to the parties involved in a claim.

While the claims adjuster's first duty is to his client, he also has a duty to collaborate with other claims adjusters involved in the claim so that they too may have an accurate picture of what occurred. Of course, in so doing, the claims adjuster must not adversely affect his clients or the parties involved in the claim.

For example, a claims adjuster cannot ignore a request from a colleague concerning one of his claims files. He may, however, simply answer that his client has prohibited him from responding to the request, if this is indeed the case.

### 53. Claims adjusters must not bring a malicious complaint or make a malicious accusation against other representatives.

Once again, the purpose of this section is to maintain the public's trust in the profession by preventing a claims adjuster from lodging unfounded complaints whose sole purpose is to harm a colleague.

A malicious complaint is a complaint made out of spite, revenge, calculation, etc. in order to harm another claims adjuster or representative. If, in the course of its investigation, the Syndic's Office reaches the conclusion that a complaint is malicious, it could turn around and lodge a complaint against the claims adjuster who made the original complaint and investigate him for having breached this section of the Code.

## DIVISION VII



## DUTIES AND OBLIGATIONS TOWARDS THE AUTORITÉ DES MARCHÉS FINANCIERS AND THE CHAMBRE DE L'ASSURANCE DE DOMMAGES

- 54. Claims adjusters must answer without delay any correspondence from the syndic, the co-syndic or an assistant to the syndic of the Chamber in the performance of the duties devolved upon them by the Act respecting the distribution of financial products and services (chapter D-9.2) and its regulations.**

The role of the Syndic's Office is to investigate any information showing that a claims adjuster may have violated the Act or its regulations. The purpose of this investigation is to protect the public. The Syndic's Office is the custodian of good professional practice. The golden rule dictates that the adjuster must fully cooperate with the Office.

When a member of the Syndic's Office contacts a claims adjuster, the adjuster must respond immediately, whether or not he is personally the subject of the complaint. The "right to remain silent" does not apply in this context. If a claims adjuster simply does not respond — even he has done nothing wrong — he has nevertheless committed a breach of the Code that could result in the filing of a disciplinary complaint.

- 55. Claims adjusters must attend any meeting as required by the syndic, the co-syndic, an assistant to the syndic or a member of their personnel.**

The Syndic's Office has broad investigative powers that include the right to summon a claims adjuster to attend a meeting during the course of an investigation. The claims adjuster must attend the meeting.

For information on the powers of the Syndic's Office, see also sections 327 and following of the Act.

- 56. Claims adjusters must not, directly or indirectly, obstruct the work of the Autorité des marchés financiers, the Chamber or one of its committees, the syndic, the co-syndic, an assistant to the syndic or a member of their personnel.**

The claims adjuster must not prevent the AMF, the ChAD or one of its committees, or the Syndic's Office from carrying out the work that they are authorized to do under the Act.

A claims adjuster must act in complete good faith and voluntarily provide any information that could help these individuals and organizations to ascertain the truth. A few examples of obstructing their work include: misdirecting them, hiding documents or denying them access to the workplace.

- 57. Claims adjusters who have been informed that they are the subject of an inquiry or a complaint must not communicate with the complainant or the person who requested the holding of the inquiry, unless required to do so in the performance of their mandate.**

This section is designed to prevent a claims adjuster from interfering with the person who filed the complaint against him, be it through blackmail, intimidation, or persistent demands, etc. This section specifically seeks to prevent the claims adjuster from pressuring the person to withdraw his complaint, for example by threatening to drag out his claim. Furthermore, even if the complainant withdraws his complaint, the Syndic's Office may nevertheless decide to continue its investigation.

A distinction must be made between the prohibition against improper communication with a client in the event of a complaint, and ceasing to serve the client. Thus, although a client may have filed a complaint against him, the claims adjuster must continue to serve his client with professionalism.

## DIVISION VIII



## BREACHES OF THE CODE OF ETHICS

### 58. Acts by claims adjusters that are contrary to the honour and dignity of the profession constitute a breach of the Code of ethics, including

This section refers to the claims adjuster's obligation to protect, through his good conduct, the image of the profession and the public's opinion of that image. It lists a number of situations where the claims adjuster is regarded as having acted contrary to the honour and dignity of the profession. The honour and dignity of the profession may be defined as its respectability.

The word "including" means that the list of breaches is not exhaustive. A complaint concerning acts that are contrary to the honour and dignity of the profession could be lodged against a claims adjuster even if such acts are not listed in this section.

#### 1° carrying on their professional activities dishonestly or negligently;

Dishonesty refers to guilty intent: the claims adjuster knows that he is acting improperly. The fourth and eleventh clauses are examples of dishonesty.

Negligence, on the other hand, refers to shoddy practices that stem from a lack of vigilance, care, attention or accuracy in the performance of one's professional activities. Sometimes it goes hand in hand with a careless attitude. Examples of negligence include: failing to note in the client's file any actions that are taken; failing to provide summaries of meetings and phone calls; failing to record mandates received and carried out, offers and refusals of compensation, etc.

For example, it would be negligent for a claims adjuster who has been sent to the site of a fire to immediately state that the fire damage is covered by the policy when in fact, his investigation will later reveal that the residence had been vacant for the past four months—a violation of the contract's conditions of coverage that would result in the insurer refusing to provide compensation.

See also section 10 of the Code.

#### 2° carrying on their professional activities under conditions or in situations likely to compromise the quality of services;

A claims adjuster must always be in possession of all his faculties when at work. Any condition likely to negatively affect the proper provision of professional services is therefore prohibited. Such conditions include those brought on by substance use (alcohol, drugs, medications that cause mental confusion, etc.) or illness (depression, burnout, etc.).

In order to protect the public, when a claims adjuster is not in full possession of his faculties, he must temporarily cease to practice rather than continuing to work and running the risk of causing harm and making mistakes.

An example of a "condition" that adversely affects the quality of service would be a claims adjuster who practices in a cramped, badly insulated and ventilated office that lacks a coherent filing system and equipped with computer and telephone systems so old and outdated that they have a negative impact on the quality of communications between the adjuster and his clients.

#### 3° taking into account any intervention by a third party that could affect the performance of their professional duties to the detriment of the client or the insured;

The claims adjuster must deal with the insured, the claimant and their respective mandataries. Throughout his mandate, he must make sure to avoid allowing a third party to interfere with his client's file.

Examples of such interference include a parent who gets overly involved in his child's automobile claim; a building owner who intervenes in a claim his tenant made for theft and vandalism; or an insurer who asks a claims adjuster to convince a claimant to delay making a claim for compensation that has been made in compliance with the conditions of the insurance contract.

A claims adjuster's actions should never be guided by a third party. Third party intervention may create a conflict of interest. The claims adjuster must obtain and follow his client's instructions.

See also section 9 of the Code.

**4° knowingly deriving benefit from perjury or false evidence;**

Using evidence or testimony that one knows to be false is clearly a breach of the Code of Ethics.

**5° knowingly making a statement that is false, misleading or likely to be misleading;**

A claims adjuster must spontaneously speak the truth and make it known at all times. He must not intentionally omit information that could shed new light on the situation. This obligation protects not only the client, the insured and the claimant, but in fact everyone involved in the settlement of the claim.

This breach corresponds to non-compliance with the obligation in section 16 of the Code by adding the fact that the claims adjuster has knowingly made a false statement.

For example, a claims adjuster cannot intentionally make an incorrect report to the insurer regarding an insured's deposition.

See also sections 16, 20 and 25 of the Code.

**6° participating in the preparation or preservation of evidence that they know is false;**

This section prohibits the preparation or preservation of evidence that the claims adjuster knows to be false. The expression "that they know to be false" implies guilty intent to make representations that do not correspond to reality.

For example, a claims adjuster who, at the request of a claimant, pads the claim by adding non-existent property is participating in the preparation of false evidence.

An example of preserving false evidence would be submitting invoices for the replacement of property when the claims adjuster knows for a fact that the insured obtained false invoices for non-existent property.

**7° paying or offering to pay a witness compensation conditional on the content of the witness's testimony or on the outcome of a case;**

In the same vein as the preceding paragraph, paying a person to testify in one's favour is prohibited. Be careful! It is important to distinguish between compensating the witness, and giving the witness a financial incentive to say what you would like him to say.

It is prohibited to offer a witness a bonus, a premium, a gift or another advantage to influence him or make him change his statement. Testimony must be truthful: changing the outcome of a file by telling the witness what to testify is totally prohibited.

This prohibition should not be confused with the common practice of compensating a witness for his time testifying or paying an expert witness for his expert report.

See also section 6 of the Code.



**8° unduly withholding, concealing, harbouring, falsifying, mutilating or destroying evidence, whether directly or indirectly;**

In addition to testimonies, objects found at the scene of a loss may also explain why the loss occurred. Hiding an object that may be important to the settling of the claim is a breach of this section.

Furthermore, when a claims adjuster is responsible for keeping evidence until the case goes before the courts, he must take all reasonable means within his power to make sure that the evidence is properly kept. The public is entitled to expect that a claims adjuster will not mutilate any objects or documents in his safekeeping.

Last but not least, a claims adjuster cannot refuse to give the insured back a copy of the statement that he made, read and signed. The insured is considered the owner of the information contained therein.

See also sections 44 and 45 of the Code.

**9° suppressing evidence that they have or a client has a legal obligation to preserve, disclose or produce;**

Intentionally hiding a piece of evidence is another violation of the Code. A piece of evidence is any statement, fact, object or anything else that is relevant to settling the claim. The claims adjuster may not behave in such a manner, nor may he encourage his client to do so.

**10° concealing or knowingly withholding that which a legislative or regulatory provision requires them to disclose;**

Several acts contain provisions that require claims adjusters to disclose what they know. A claims adjuster may never intentionally suppress this information.

For example, section 47 of the Act requires a claims adjuster to inform a claimant that he is acting for an insurer.

Here is another example: section 9 of the *Regulation respecting hazardous materials* requires the claimant to notify the Ministry of Sustainable Development, the Ministry of the Environment and Parks Quebec that soil has been contaminated due to a fuel tank leak. The claims adjuster who advises his claimant not to mention the leak is committing an offense.

**11° advising or encouraging a client to commit an act that they know is illegal or fraudulent;**

A claims adjuster must not knowingly be a party to an illegal act or intentionally encourage his client to commit such an act.

For example, a claims adjuster is prohibited from advising a claimant to pad the declared value of his claim in the wake of a loss, or specifically recommend to an insurer that it refuse to pay compensation on a building even if he knows that the insured made false statements concerning the building's contents.

See article 2472 of the *Civil Code of Québec*.

**12° not informing the client, the insured or the opposing party of any impediment to the continuation of their mandate;**

Many factors can result in an impediment to the continuation of a mandate, as seen in sections 36 and 37 of the Code. In addition to notifying his client, the claims adjuster also has an obligation to inform all interested parties when he is unable to continue his mandate.

For example, when a claims file is withdrawn and transferred to the insurer's litigation department, the claims adjuster who is acting for the insurer must notify the insured and the third party claimant that his mandate has ended.

**13° insistently or repeatedly urging a person to use their professional services;**

The claims adjuster has the right to build and increase his clientele, but he must do so with moderation and dignity, and in a manner that is neither exaggerated nor disproportionate.

The claims adjuster must refrain from harassing a client, either through threats, deception or repeated calls intended to convince the client that he should use the claims adjuster's services.

In particular, a claims adjuster should not repeatedly visit someone who has suffered a fire and pressure that person into signing a representation mandate.

**14° carrying on their activities with persons not authorized by the Act or its regulations to carry on such activities or using their services to do so;**

Not only is a claims adjuster prohibited from involving individuals in his professional activities if they are not legally authorized to do so, but he could also be held liable for any actions carried out by these persons if they have carried out such actions at his request.

This section covers all unauthorized persons, including claims adjusters who have been struck off the membership roll, suspended or whose certificates have not been renewed. It is in the best interests of a claims adjustment firm's manager to verify that every member of his team holds a valid certificate to practice.

See also sections 2 to 8 of the Code.

On the other hand, a claims adjuster can surround himself with suppliers of specialized services and entrust certain specific tasks to third parties. For further information on this topic, please read the ChAD's *Guide to the sharing of roles and responsibilities*, available at [chad.ca](http://chad.ca).

**15° charging for professional services not rendered or falsely described;**

This article reiterates the principles of honesty and integrity. It also refers to the fairness and reasonability of fees charged as outlined in section 39 of the Code.

**16° using or appropriating, for personal purposes, money or securities entrusted to them in their performance of any mandate, whether the activities carried on by them are in the sector of claims adjustment or in another sector governed by the Act.**

A claims adjuster may be called upon to manage a sum of money on behalf of a third party, for example, when he collects an advance from the insured or the insurer, or when he cashes compensation cheques that must be disbursed in part to a supplier. This money must go through the separate account, as stipulated in the second paragraph of section 4 of the *Regulation respecting the pursuit of activities as a representative*.

It is important to remember that this is not his money. A claims adjuster must not succumb to the temptation to borrow or use this money for his personal expenses. Obviously, he must not steal or misappropriate any money.

The definition of appropriating is broad and refers to any sum of money or any property of value that they come into contact with during the carrying out of a mandate. Misappropriation of funds is one of the most serious breaches of professional ethics. A claims adjuster found guilty of this offence is at very least liable to be temporarily struck from the membership roll by order of the Discipline Committee.

See also section 46 of the Code.

**59. This Regulation replaces the Code of ethics of claims adjusters (O.C. 1040-99, 99-09-08).**

The current code of ethics came into force on January 24, 2008 and applies to all claims adjusters.

The previous code, dated Oct 1, 1999, is no longer in force. It ceased to apply as of January 23, 2008.

