



Code of Ethics of Damage Insurance Representatives

| ANNOTATED

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FOREWORD

This is the annotated *Code of Ethics of Damage Insurance Representatives*. It is a reference tool designed to make the rules of ethics easier to understand, guide the representative in his daily work and maintain the public's trust in the integrity and competence of representatives.

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 Damage Insurance Representatives* is to help representatives 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 otherwise appear quite 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.

CAUTIONARY NOTE

The comments provided herein are not binding on the Discipline Committee of the ChAD, which is an independent tribunal. 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.

Updated : January 2019

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 Claims Adjusters*, the *Code of Ethics of Damage Insurance Representatives* 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 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 Damage Insurance Representatives* (hereinafter referred to as the "Code") is divided into seven (7) Divisions: (I) general provisions, (II) the various duties and obligations of representatives towards the public, (III) towards their clients, (IV) towards insurers, (V) and towards the Autorité des marchés financiers and the Chambre de l'assurance de dommages (VI). Division seven (VII) lists the most common breaches of the Code of Ethics. In addition to their ethical obligations, representatives must comply 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 provisions of this Code are designed to promote the protection of the public and the honest and competent practice of the activities of a damage insurance representative.**

In this Code, the expression “damage insurance representative” means a damage insurance agent and a damage insurance broker.

This section states that the Code applies to damage insurance representatives, in other to words agents and brokers. The definition of “agent” and “broker” is set forth in sections 5 and 6 of the *Act respecting the distribution of financial products and services* (hereinafter referred to as “the Act”).

In this section, the reader is reminded that the mission of the ChAD is to protect the public. It states the purpose of the Code, which is to encourage damage insurance agents and brokers to practice their profession in an upright and competent manner (honestly and in compliance with all the rules).

2. **A damage insurance representative shall ensure that he, his mandataries and his employees comply with the provisions of the Act respecting the distribution of financial products and services (chapter D-9.2) and the regulations thereunder.**

A representative’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. Representatives must read the Act and its regulations, including this Code, and to refer them as needed. The importance of doing so cannot be overestimated.

This means that representatives must implement clear policies and procedures to ensure that staff members receive appropriate training and professional oversight. Representatives must implement measures to continuously monitor the quality of the services they provide.

Although employees grandfathered under section 547 of the Act are allowed to perform brokerage acts, the certified representative who oversees them remains liable before the Discipline Committee for any breaches that such employees may commit. The employee’s breach of ethics becomes the personal fault of the representative.

3. **A damage insurance representative must not, directly or indirectly, pay, compensate or give an advantage or allow the payment, compensation or giving of any advantage 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 damage insurance representative at the request of a certified representative. Only representatives certified by the AMF may introduce themselves as damage insurance representatives. (See section 12 of the Act.)

A damage insurance representative is therefore prohibited from paying money or giving an advantage (monetary or otherwise) to a non-certified person to induce that person to act or attempt to act as a representative.

- 4. A damage insurance representative must not, directly or indirectly, be promised or receive a payment, compensation or advantage from a person who is not a damage insurance 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 representative cannot accept a monetary payment or other advantage from a person who is masquerading as a representative.

A number of situations come to mind: for instance, a person who is not authorized to act as a representative might seek to use the services of a representative in good standing to validate his "sales" in exchange for some sort of compensation.

- 5. A damage insurance representative must not, directly or indirectly, be promised or receive a payment, compensation or advantage not authorized by this Act or the regulations thereunder from a person other than the person who used his services.**

A damage insurance representative may not accept money or any other advantage from someone who has not retained his professional services. The only compensation that he is entitled to receive is his commission or fees paid for carrying out a mandate.

There are certain exceptions to this rule under the Act. For example, a representative may receive a prize at work for winning a sales contest. The prize must not affect his role as an advisor and must be consistent with his professional obligations.

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. A damage insurance representative must not pay, offer to pay or undertake to pay to a person who is not a representative any payment, compensation or advantage, except where permitted by the Act.**

A representative may not share his commission or his compensation with anyone who is not a certified representative.

This section therefore prohibits a representative from paying someone for referring clients to him. Of course, this prohibition does not apply between representatives in good standing.

To find out more, representatives should read the AMF's *Avis relatif à l'indication de clients* [in French only].

- 7. A damage insurance representative must not pay or promise to pay any remuneration, compensation or advantage in order for his services to be used, except as permitted by the Act or the regulations thereunder.**

A damage insurance representative 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 pay someone to refer new clients to him. Nor may he offer someone a discount, a rebate or a gift (hockey tickets, cigars, etc.) to become a new client or to refer a client to him.

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

8. A damage insurance representative must make himself available.

A representative must have time to devote to his profession.

He must be available to his clients, insurers, suppliers and other persons to whom he may be asked to provide services.

From the client's point of view, this obligation is satisfied when the representative is present, responsive and accessible, and when he takes the time needed to serve the client properly and take care of his file. Promptly returning a client's calls is another indication that a representative is available.

The test of reasonableness must be applied when assessing whether a representative has met his obligation to be available. For example, it is reasonable to expect to be able to reach a representative during regular office hours.

9. A damage insurance representative must not neglect the professional duties relating to the carrying on of his activities; he must carry out such duties with integrity.

A damage insurance representative must not neglect his overall professional duties and obligations. In his daily practice, he must be honest and attentive to the client's needs. 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 performing one's obligations. Incomplete notes in the file, unreturned phone calls, neglecting to take the necessary steps to properly identify the client's needs, or acting too slowly are all signs of negligence. Every professional act performed by a representative — no matter how small — must be taken seriously.

Integrity means that the representative must scrupulously and honestly fulfil his professional obligations, in other words, in a manner everyone is entitled to expect of any conscientious professional. Integrity implies rigour and rectitude.

10. A damage insurance representative must avoid placing himself, directly or indirectly, in a situation in which he would have a conflict of interest. Without limiting the generality of the foregoing, a representative would be in a situation of conflict of interest where:

- 1° the existing interests are such that he might favour some of them over those of his client or his judgment and loyalty towards his client might be adversely affected;**
- 2° he obtains a current or future personal benefit, directly or indirectly, for a given act.**

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

This section does not spell out all situations where a representative 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 creates an advisory relationship. The relationship between the client and the professional is therefore based upon trust. The duty to advise must be carried out without the professional giving any consideration to his personal interests. The representative's duty to his client is to make recommendations that best suit the client without receiving anything more than the fees due to him.

The client's interest is paramount. The representative should therefore strive to be acutely attuned to any sign that a conflict is developing between his interests and those of his client. The conflict does not necessarily have to actually exist: the representative must avoid even the appearance or the possibility of a conflict of interest.

This section should be read in conjunction with section 19. Being paid on commission does not as such lead to a conflict of interest. However, a representative must not blindly favour his contractual commitments to the insurers or the possibility of a larger commission to the detriment of his client's interests. Representatives must always maintain their professional independence.



DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC

11. A damage insurance representative must support any measure designed to protect the public.

A damage insurance representative 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 representative's client, but also to the public in general, in other words, anyone who may need coverage or general advice on damage insurance.

12. A damage insurance representative must support any measure likely to improve the quality of service in the field in which he carries on his activities.

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

For example, a representative 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 for corrective measures or undertakings.

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

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

13. A damage insurance representative must promote measures designed to provide education and information in the field in which he carries on his activities.

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

14. The conduct of a damage insurance representative must be characterized by objectivity, discretion, moderation and dignity.

In their actions, as well as in their oral and written communication, representatives 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 express themselves in an angry, insulting or disrespectful manner.

Representatives must endeavour to conduct themselves in such a manner, even under difficult circumstances.

15. No representative shall, in any manner whatsoever, make any representations which are false, misleading or liable to be misleading.

This section deals with the general principle that prohibits misleading the public. A representative must be frank and sincere with everyone at all times. See also sections 27, 30, 32 and 37 of the Code and sections 14 and 15 of the *Regulation respecting the pursuit of activities as a representative*.

When a representative makes “representations which are false” (misrepresentations), this 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.

16. A damage insurance representative must avoid any misrepresentations as to his level of competence or the effectiveness of his services or those of his firm or independent partnership.

A representative must know the limits of his skills, knowledge and experience. He must not exaggerate the value of his work or 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 representative who has little experience with carriers’ policies should not lead his client to believe that he is a specialist in the field.

DIVISION III



DUTIES AND OBLIGATIONS TOWARDS CLIENTS

17. Before accepting a mandate, a damage insurance representative must take into account the limits of his abilities and knowledge and the means available to him. He must not undertake or continue a mandate for which he does not have the necessary skills, without obtaining the proper assistance.

All representatives (brokers and agents alike) must ensure that they have the skills required to effectively meet the client’s needs. In the field of damage insurance, in order to properly meet the client’s insurance needs, representatives must have special expertise when dealing with certain types of property or risks. The representative should be modest in evaluating his professional skills.

If a representative has any doubts about his own skills, he must seek help from another qualified representative--in other words, someone who has the requisite skills. If this is impossible, he must refrain from acting. It should be noted that this obligation lasts throughout the life of the mandate. In fact, it is common practice for a new insurance representative to have his work supervised by an experienced colleague.

In addition, the representative must respect the binding authority he received from the insurer and consult the insurer, if need be, in order to avoid confirming insurance coverage that actually may be impossible to provide.

18. A damage insurance representative must not advise his client not to consult another representative or another person of his choosing.

This section concerns the client’s freedom to consult anyone he wishes to concerning damage insurance and specifically, his right to seek a second opinion. The client must not become captive to the representative. The representative must respect his client’s freedom of choice.

In certain cases, a representative may even encourage his client to consult someone else so that the client can stay informed under all circumstances.

19. A damage insurance representative must always place the interests of the insured and of all prospective clients before his own interests and those of any other person or institution.

This section completes the rule on conflicts of interest found in section 10 of the Code. The obligation to place the interests of the insured and of all prospective clients before his personal interests is aimed at preventing conflicts of interest and the appearance of such conflicts.

For example, in an effort to win a contest, a representative must never encourage an insured to add a rider to his insurance contract that he does not actually want or need.

Similarly, at renewal time, the representative must ensure that the contract continues to meet the client's needs. If the representative believes that it is in the client's best interests under the circumstances to change products or insurers, he must suggest this to his client.

20. A damage insurance representative must not, through fraud, trickery or other deceitful means, avoid or attempt to avoid his professional civil liability or that of the firm or independent partnership with which he carries on his activities.

To err is human. Any professional can make a mistake. When a damage insurance representative 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 representative).

A representative must be transparent and honest with respect to his mistakes. He must not try to cover his tracks by hiding or forging documents. When he makes a mistake that he might eventually be held accountable for, he must promptly notify his professional liability (errors and omissions) insurer.

21. Where he is not paid exclusively on a percentage basis, a damage insurance representative must charge and accept remuneration or compensation that is fair and reasonable given the services rendered. In particular, he must take into account the following factors in determining his remuneration or compensation.

- 1° his 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;
- 7° the result obtained.

In addition to his commission or salary, a damage insurance representative may request that his client pay him professional fees. However, such fees must be fair and reasonable.

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

For example, a representative may charge a large corporation or a municipality a higher fee to create a business insurance plan that has several different components and types of coverage. According to the criteria set out in this section, such a file would require more time, experience and skill than an ordinary file. In this case, both the size of the file and the level of difficulty are high.

Since fees are not included in the premium, representatives who charge fees must remember to comply with section 22 of the Code.

22. A damage insurance representative must notify his client of all costs which are not included in the amount of the insurance premium.

The word “costs” may include inspection costs, policy issuance fees or fees for opening a file as well as professional fees charged.

Costs not included in the premium must be accepted by the client at the time of the transaction.

This section should be read in conjunction with Division 2 of the *Regulation respecting information to be provided to consumers*. The client must be informed of the amount of the fees beforehand and in writing: he must not be presented with a *fait accompli*. However, if the fees do not exceed \$50 for personal lines insurance or \$250 for business lines insurance, they may be disclosed after the fact on the invoice, once the services have been provided.

23. A damage insurance representative must respect the secrecy of any personal information that he obtains about a client and use the personal information for the purposes for which he obtained it, unless he is relieved of that obligation by a provision of an act or any order of a competent court.

24. A damage insurance representative must not disclose personal or confidential information he has obtained, other than in accordance with the Act, and he must not use such information to the detriment of his client or with a view to obtaining a benefit for himself or for another person.

Under the Act and the above two sections of the Code, damage insurance representatives must respect the confidentiality of the personal information that they collect and hold. This obligation lasts as long as they have such information, even if the mandate has ended.

An individual always owns the information that pertains to him. This applies to the insured, the claimant, witnesses, etc. When they disclose such information to a representative, the representative becomes its depositary and custodian. The representative must therefore obtain the person’s consent before transmitting or using his personal information. On its website at chad.ca, the ChAD provides representatives with a standard form that they can use under such circumstances.

In certain situations provided for in the Act, a representative need not ask 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 this information without the insured’s consent. Similarly, in certain circumstances, a court may allow a representative to testify regarding the personal information of an insured.

25. A damage insurance representative must carry out the mandate accepted by him in a transparent manner.

Transparency means disclosing any information that is relevant to the other party without beating around the bush or being secretive. Therefore, a representative must give his client all the information regarding his file without hiding anything. Throughout their business relationship, the representative must be proactive, anticipating any questions his client may have even before they are asked. Furthermore, even though he is acting in his client’s best interests, the representative must ensure that the client is aware of all his actions: he cannot act in silence.

For example, when a client notifies his representative several months ahead of time that he will not be renewing his contract when the contract ends, the representative must nevertheless confirm with the client that he will not be renewing it and that this brings his mandate to a close.

See also sections 26 and 37(4) of the Code.

26. A damage insurance representative must, without delay, follow up on the instructions that he receives from a client or notify him that he is unable to do so. He must also inform his client of any impediment to the continuation of his mandate.

When a representative agrees to find insurance coverage for a client, he must act in accordance with the instructions that he has received. This means that the representative must obtain the coverage requested, but also respond to any other request he receives, for example a request for termination or for additional coverage. This section explains that the representative must notify his client as soon as possible if he cannot carry out the instructions he has received.

For example, if a risk cannot be covered as of the date the client has requested, the representative must notify the client rather than pretend that he has bound the insurer on time when, in fact, he had no authority to do so.

This section also deals with being unable to fulfil a mandate. When a representative accepts a mandate, he may revoke it if he has serious grounds for doing so. As soon as a serious material or ethical impediment arises, the representative must notify his client so that the client can make other arrangements. According to the rules governing mandates in the *Civil Code of Quebec* (in particular articles 2175 and following), he must notify the client in advance and not after the fact.

26.1. A damage insurance representative must promptly give to his client, or to any other person his client designates, the books and documents belonging to the client, even though the latter owes him sums of money.

This section, which was added to the Code in 2001, stipulates that at the client's request, the representative must give him any books or documents belonging to the client, such as a copy of the insurance proposal, a copy of the insurance policy and the riders, the wording of the contract, copies of invoices, etc.

The representative is not entitled to hold onto these documents until the premium has been paid.

DIVISION IV



DUTIES AND OBLIGATIONS TOWARDS INSURERS

27. A damage insurance representative must not abuse the good faith of an insurer or use unfair practices in dealing with it.

As is the case for all the other sections of the Code, this section applies to both brokers and agents, even if the agent is employed by and exclusively represents a specific insurer.

Under this section, representatives have an obligation of loyalty and must act with honesty and rectitude towards the insurer. For example, they must not hide important facts from the insurer (see also section 29 of the Code) or spread false or incomplete information about the insurer or information that could lead the public to lose trust in the insurer.

28. A damage insurance representative must not, without good cause, fail to pay an insurer, upon request or upon the expiry of a prescribed period, the premiums that he collects on its behalf.

The premiums a representative collects do not belong to him and must, moreover, be kept in a separate account. They only go through his hands to satisfy the requirements of the insurance contract. The representative must therefore not hold back such premiums and must remit them to the insurer in accordance with the provisions of their agreement, be it as they arrive, at the end of the month, when a statement is issued, etc.

Remember that under section 102 of the Act, any sum of money that the insured remits to the representative is deemed to have been paid to the insurer.

See also section 37(8) of the Code and section 4.2 of the *Regulation respecting the pursuit of activities as a representative*.

29. A damage insurance representative must give insurers the information that it is common practice for him to provide.

A representative must collect all the information required so that the insurer can assess the risk. The insurance proposal plays a crucial role in the disclosure of such information. Although the representative is the client's spokesman, the client must make full disclosure of his situation so that the insurer can properly assess and cover the risk.

The representative must remember to provide any facts that could have a bearing on the insurer's decision on whether or not to cover the risk and on the cost of coverage. The validity of insurance contracts issued through a representative depends on such information. For example, if a representative learns that his client has a criminal record, he must notify the insurer of that fact.

DIVISION V



DUTIES AND OBLIGATIONS TOWARDS REPRESENTATIVES

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

30. A damage insurance representative must not, directly or indirectly, publish or distribute a report or comments which he knows to be false regarding another representative, a firm or an independent partnership carrying on activities governed by the Act.

In practicing his profession, a damage insurance representative must act in good faith, honestly and loyally towards other representatives and towards his firm. This section is designed to protect the public's trust in representatives by prohibiting false accusations.

31. A damage insurance representative must not denigrate, depreciate or discredit another representative.

The credibility of the profession is important to the public. By implying that another representative is incompetent or by speaking ill of him, the representative could adversely affect the public's trust in the profession.

For example, if a representative questions a colleague's competence or actions (for instance, those of a claims adjuster) in front of a client, the representative is in breach of this section.

32. A damage insurance representative must not abuse the good faith of another representative or use unfair practices in dealing with him.

Although he is practicing in a competitive environment, the representative must nevertheless act fairly towards other representatives with whom he is in competition. Since all representatives must comply with this section, every representative is entitled to expect that his fellow representatives with whom he is in competition also respect the rules of fair play.

“Abuse the good faith” means trying to take advantage of another representative. “Unfair practices” refers to using a system or methods developed in bad faith to achieve a specific result.

Contrary to the old saying, when it comes to professional ethics, the end does not justify the means.

33. A damage insurance representative must not file a malicious complaint or make a malicious accusation against another representative.

Once again, the purpose here is to protect the public’s trust in the profession by preventing the filing of frivolous or vexatious complaints, in other words, complaints that are without substance and solely intended to cause harm.

A malicious complaint is a complaint made out of spite, revenge, calculation, etc. in order to harm another representative. If, in the course of its investigation, the Syndic’s Office concludes that a complaint is malicious, it could very well turn around and investigate the representative who made the complaint for having breached this section of the Code.

DIVISION VI



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

34. A damage insurance representative must answer without delay any correspondence from the syndic, the co-syndic or an assistant to the syndic in the performance of the duties devolved upon them under the Act and the regulations thereunder.

The role of the Syndic’s Office is to investigate any information indicating that a representative may have committed a breach of the Act or its regulations. The purpose of the investigation is to protect the public. The Syndic’s Office is the custodian of good professional practice. The golden rule dictates that the representative must fully cooperate with the Office.

When the Syndic’s Office contacts a representative, the representative must respond immediately, whether or not he is the subject of the complaint. The “right to remain silent” does not apply in this situation. Even if the representative has done nothing wrong, simply by not responding to the syndic the representative has committed a breach of this section, which could result in the filing of a disciplinary complaint.

34.1. A damage insurance representative must, in particular, appear before the syndic, an assistant of the syndic or a member of their staff as soon as he is required to do so.

The Syndic's Office has broad powers of investigation, including the power to summon a representative to a meeting in the course of an investigation. The representative must attend this meeting.

See also sections 327 and following of the Act for a description of the powers of the syndic.

35. A damage insurance representative must not, directly or indirectly, obstruct the work of the Authority, the Chamber, one of its committees, the syndic, the co-syndic, an assistant to the syndic of the Chamber or a member of their personnel.

A representative must not prevent the AMF, the ChAD or any of its committees, or the Syndic's office from carrying out the work that they are authorized to do under the Act.

A representative must act in good faith and voluntarily provide any information that could help those persons or organizations to ascertain the truth. A few examples of obstructing their work include: misdirecting them, hiding documents or denying them access to the representative's workplace.

36. Where a damage insurance representative has been informed of an investigation or a complaint concerning him, he must not intervene vis-à-vis the complainant or the person having requested the investigation, except within the scope of performing his mandate, where applicable.

This section is designed to prevent a damage insurance representative from interfering with the person who filed a complaint against him, be it through blackmail, intimidation or persistent demands, etc. In particular, the purpose of this section is to avoid the representative pressuring the person to withdraw his complaint. Furthermore, even if the complainant withdraws his complaint, the Syndic's Office may nevertheless decide to continue his 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 a client. Thus, although a client may have filed a complaint against him, the representative must continue to serve his client in a professional manner.

DIVISION VII



BREACHES OF THE CODE OF ETHICS

37. The fact that a damage insurance representative acts contrary to the honour and dignity of the profession constitutes a breach of the Code of ethics, including:

This section refers to the damage insurance representative's obligation, through his good conduct, to protect the image of the profession and the public's opinion of that image. It lists a number of situations where the representative 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.

"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 representative even if such acts are not listed in this section.

1° carrying on activities dishonestly or negligently;

Dishonesty refers to guilty intent: the representative knows that he is acting improperly.

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 coverage, etc.

See also section 9 of the Code.

2° carrying out activities under conditions or in situations likely to compromise the quality of his services;

A damage insurance representative 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. This includes conditions brought on by substance use (alcohol, drugs, medications that cause mental confusion, etc.) or by illness (depression, burnout, etc.).

In order to protect the public, when a representative 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 representative who practices in a cramped office, without any coherent filing system and equipped with telephone and computer systems so old and outdated that they have a negative impact on the quality of communication between the representative and his clients.

3° taking into account the intervention of a third party that could affect the carrying out of his professional duties to the detriment of his client or the insured;

The representative must work with the potential client to determine his actual needs and situation. In so doing, he will avoid misunderstandings or non-compliance with the spirit of section 27 of the Act.

Furthermore, throughout his mandate, the representative must ensure that he avoids allowing a third party to interfere with his client's file. Examples of such interference include: a father who "steps in" in an effort to find his child the best automobile insurance; a creditor who interferes with an owner's application for insurance; a brother-in-law who tries to help an insured with his claim, etc. The representative should not allow his actions and advice to be influenced by such third parties. The representative must obtain his information and instructions from the client.

Third party intervention may create a conflict of interest. See also sections 10 and 19 of the Code.

4° failing to report on the carrying out of any mandate;

“Report” means informing one’s client of what has been done or not done in accordance with the client’s instructions. A client who asks his damage insurance representative to choose the coverage he requires is showing that he trusts his representative. He is entitled to expect that the representative will make the appropriate choice, tailored to his needs. The representative must come back to him with the conditions, requirements, premium, etc. Reporting must be full, prompt and proactive (the representative must not wait for the client to request the information). Reporting must take place throughout performance of the mandate. The client must be informed of how his file is proceeding: he has the right to know.

For example, if an insurer decides to unilaterally change the conditions of insurance or if the coverage is modified at renewal time, the representative must report this to the insured without delay.

Furthermore, if the representative decides to end his mandate, he must notify his client without delay. See section 26 of the Code.

5° failing to act with integrity towards his clients;

“Integrity” means stringently following the rules and duties inherent in the principles of honesty and justice. It means acting with professional integrity. The representative must show impeccable respect for the ethical principles embodied in the Code, the Act and its regulations.

6° failing to act as a conscientious advisor by not informing his clients of their rights and obligations and not giving them all necessary or useful information;

The duty to advise is central to the representative’s professional acts. Damage insurance contracts are complex, thus making the representative’s advisory role all the more crucial.

As a damage insurance specialist, the representative must provide his client with advice that is complete and tailored to his specific situation. He must give advice in a meaningful and comprehensive manner and provide necessary and useful information.

The duty to advise is not limited to the insurance contract. It also applies to anything arising directly or indirectly from the contract, as well as to the description of specific exclusions in the policy, taking into consideration the client’s stated requirements. For example, if, for financial reasons, the client demands a “no-frills” package, the representative must inform him of the risks not included in this basic coverage and suggest a broader form. Once he has all the information in hand, the client can then make a fully informed decision.

The duty to advise must take precedence over any business practice, for example, the practice of limiting the amount of time spent communicating with a client or not offering an insurance product even though the risk is eligible.

See also sections 28 and 39 of the Act regarding information that must be given to the client when making a new contract or at renewal time.

7° making a statement which is false, misleading or liable to be misleading;

A representative must spontaneously tell the truth and be completely “up front” at all times. In addition to refraining from saying things that he knows to be untrue, he must not intentionally suppress information if to do so would mislead the client.

A representative is considered to have made a false statement if he sings the praises of an insurance product, saying that it is “the best product on the market,” when he knows this to be untrue, or if he verbally confirms with a client that his contract is in effect when in fact this is not the case, or he has failed to submit the risk to the insurer.

See also sections 15, 27, 30 and 32 of the Code.

8° using or appropriating, for personal purposes, money or securities entrusted to him in the carrying out of any mandate, whether the activities carried on by the representative are in the sector of damage insurance or in another sector contemplated in the Act;

A representative may be called upon to manage a sum of money on behalf of a third party, for example, when he collects premiums from his clients or remits a reimbursement from the insurer to the client. 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 representative must not succumb to the temptation to borrow or use this money for his own personal expenses. Obviously, he cannot steal or appropriate any money.

The definition of appropriating is broad and refers to any sum of money or securities that he may 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 representative found guilty of this offence is at the very least liable to be temporarily struck from the membership roll by order of the Discipline Committee.

9° participating in gathering or in conserving evidence or a document that he knows is false;

This refers to falsifying an existing document or creating a new document that the representative knows to be false. It implies guilty intent on the part of the representative.

An example would be the case where a representative issues an interim binder or an automobile insurance certificate (pink card) for a fictitious contract, or changes the premium on a policy to hide his fees or writes a false insurance contract.

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

This obligation is not only limited to the *Act respecting the distribution of financial products and services*. It also appears in other legislation such as the *Automobile Insurance Act*, the *Act respecting the protection of personal information in the private sector* and the *Civil Code of Quebec*. Consequently, a representative must comply with any legislative or regulatory provision that obliges him to disclose information. He must not intentionally suppress it.

A representative who collects information in the course of preparing an insurance proposal must be accurate, attentive to detail and honest. He will not have properly fulfilled his duties and obligations if he makes incomplete disclosure to the insurer. The consequences of hiding or intentionally failing to disclose certain facts are extremely serious and threaten the validity of the insurance contract and the likelihood that the insured will receive compensation.

The duty to provide information exists throughout the life of the contract. For example, if a representative learns that his client has been found guilty of a crime, he must immediately notify the insurer of that fact.

The *Regulation respecting information to be provided to consumers* also contains obligations to disclose, such as those concerning the disclosure of business relationships between firms and insurers and the concentration of volume, as well as fees charged under section 17 of the Act.

11° advising or encouraging a client to do something that the representative knows is illegal or fraudulent;

The representative must not be intentionally complicit in the committing of an act that is prohibited by the Act or voluntarily encourage someone to commit such an act.

For example, advising a client to refrain from disclosing all his previous claims, encouraging a client to pad the declared value of his losses when making a claim, helping the insured to only partially describe the nature or the object of the insurance, etc. are all prohibited acts.

12° carrying on activities with persons not authorized to carry on such activities by the Act or the regulations thereunder, or using their services to do so;

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

Please see sections 2 to 7 of the Code.

13° charging for professional services not rendered or falsely described;

This section reiterates the principles of honesty and integrity. It also refers to the fairness and reasonableness of fees charged as stipulated in section 21 of the Code.

14° insistently or repeatedly urging a person to use his professional services.

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

