

**DECISION**  
of the  
**GENERAL INSURANCE COUNCIL OF MANITOBA**  
(“Council”)  
respecting  
**ADVOCIS BROKER SERVICES INC. (“Agency”)**  
**RANDOLPH MCGLYNN (“Licensee”)**

**INTRODUCTION**

The General Insurance Council of Manitoba (the “Council”) derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the “Act”) and the *Insurance Councils Regulation 227/91*.

Following the receipt and review of email from a Manitoba Licensee arranging professional liability (“E&O”) with a representative of the Agency, an investigation was conducted pursuant to sections 375(1) and 396.1(7) (e) of the *Act* and section 7(2) (e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee had violated the *Act*, and/or *its Regulations*, and/or *its Rules*, and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation, the Licensee was provided an opportunity to make submissions.

On November 22, 2017, during a meeting of the Council the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, the Council determined its Intended Decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its Intended Decision and corresponding reasons.

**ISSUE**

1. Did the Licensee, in his role as the Agency’s Operating Agent, violate the *Act*, and *Code of Conduct* by permitting individuals to act as agents in Manitoba without holding a valid licence?

**FACTS AND EVIDENCE**

1. During all material times, the Licensee was the Operating Agent responsible to ensure that the *Licensing Rules* with respect to agency licensing and activities were enforced, and that proper and adequate supervision of employees was provided.

2. On or about April 4, 2016, the Licensee signed and submitted the Agency Attestation Form to the Insurance Council of Manitoba ("ICM") which included the following Attestation:

I understand that I am required:

- to submit an application for a new employee and to ensure that a valid licence has been issued by the Insurance Council of Manitoba prior to that applicant acting as an agent. The ICM website lists all active licenses in real time. To view licensed agents, please visit the [Licence Search](#);
- to ensure that licensing rules with respect to agency licensing and activities are enforced;
- to ensure that proper and adequate supervision of employees is provided at all times

3. On or about March 10, 2017, the Licensee - Operating Agent signed and submitted the Agency Attestation Form which included the following Attestation:

I understand that I am required:

- to submit an application for a new employee and to ensure that a valid licence has been issued by the Insurance Council of Manitoba prior to that applicant acting as an agent. The ICM website lists all active licenses in real time;
- to ensure that no employee, director or partner who is not a licensed insurance agent acts as an insurance agent or broker;
- to ensure that proper and adequate supervision of employees, as detailed with the Rules and in the Code of Conduct, is provided at all times;...
- to ensure compliance of The Insurance Act of Manitoba, its Regulations, its Rules and the Code of Conduct;...

4. Between 2015 and 2017, three agents were licensed for the Agency: Agent A, the Licensee, and Agent B.

5. On April 29, 2016 and on May 2, 2017, the Licensee - Operating Agent signed and submitted his agent licence renewal application. The Additional Screening Questions to which he answered "no" were as follow:

3. Had knowledge of any employees of the agency transacting insurance business without being duly licensed?
4. Had knowledge of any conduct and/or regulatory violation by any licensed employee of the agency not previously reported to ICM?

6. As part of these April 29, 2016 and May 2, 2017, licence renewal submissions, the Licensee - Operating Agent attested to this Declaration:  
“I declare the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action. I agree to notify Council of any material changes contained in this application within 15 days and advise immediately of termination of employment of licensed employees with full particulars.”
7. On August 2, 2017, the Operating Agent confirmed to the Council, by email, that the only (other) Licensee for the Agency was Agent A.

Unlicensed Manitoba activity – Agency Representative A

8. E&O for Manitoba Insured A expired on July 15, 2017. On July 19, 2017, the ICM received notification of the lapsed E&O from the Agency.
9. On July 19, 2017, the ICM Manager, Licensing & Administration, received an email from Manitoba Insured A. Included in this string of emails was an email from Manitoba Insured A to the Agency on July 16, 2017, at 11:57:21 AM CDT stating that he planned on renewing his E&O, but he had been in Manila and subjected to an earthquake. He noted that he did not have his credit card but would be renewing on July 22, 2017, when he returned to Winnipeg. Manitoba Insured A confirmed that he had no claim.
10. A response to this email was sent by Agency Representative A on July 18, 2017, at 9:42:01 AM CDT. The email from Agency Representative A advised Manitoba Insured A that he would be “okay till then. Please give us a call when you can on the 22<sup>nd</sup> of July.”
11. ICM confirmed that Agency Representative A had held a valid licence in his resident jurisdiction since January 5, 2017. While he held a licence in that jurisdiction when he provided advice to Manitoba Insured A, Agency Representative A had never held an agent licence in Manitoba.

Unlicensed Manitoba activity – Agency Representative B

12. The investigator in reviewing Manitoba Insured A's email from the Agency, noted that the last paragraph advised Manitoba Insured A that if he had ceased practice, he may be eligible to purchase an Extended Reporting Period cover.
13. ICM had been assured previously that the coverage provided by the Agency included the requirement under the Manitoba *Regulation 389/87R*, s.12 (2) (a) (i).

14. In an email from Agency Representative B to Manitoba Insured B, on April 21, 2016, Agency Representative B confirmed that Manitoba Insured B was entitled to a five-year extended reporting period and a certificate was being issued.
15. ICM confirmed that Agency Representative B had held a valid licence in his resident jurisdiction since January 6, 2014. While he held a licence in that jurisdiction when he provided advice to Manitoba Insured B, Agency Representative B had never held an agent licence in Manitoba.

## **ANALYSIS**

Council had documents evidencing unlicensed agent activity in Manitoba by representatives of the Agency: Agency Representative B in 2016 and Agency Representative A in 2017. While both Agency Representatives had held valid licences in their home jurisdiction, neither were licensed in Manitoba at the time they performed agent activity in Manitoba.

The Licensee - Operating Agent completed Agency Attestation Forms and licence renewal applications affirming that he had reviewed the agents licenced by the Agency and had no knowledge that employees were transacting insurance without being licensed. By making these statements, the Licensee - Operating Agent violated s. 375 (1) (a) and (b) of the *Act*, and s. 9 of the *Code of Conduct*. He allowed employees to violate the *Act* s. 369 (1) Not to act without a licence.

As a mitigating factor, the unlicensed individuals did hold valid insurance agent licences in their home jurisdiction.

## **PENALTY AND FINAL DECISION**

Council's Decision dated March 14, 2018, was delivered by registered mail to the Licensee on March 19, 2018. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375 (1.1) (c) and (d) of *the Act* and section 7 (1) of Regulation 227/91, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$2,000.00 and assessed partial investigation costs of \$475.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right, chose not to pursue a statutory Appeal, and accepted the Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its Decisions is in the public interest, this will occur, in accordance with sections 7.1(1),(2), and (3) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 11th day of April, 2018.