

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
LAWRENCE DOUGLAS TONER
(“Former 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*.

In response to information received by Council, 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 Former Licensee’s activity violated the *Act*, its *Regulations*, the General Insurance Agent’s Licensing Rules (“*Licensing Rules*”) and/or the General Insurance Agent’s Code of Conduct (“*Code of Conduct*”). During the investigation the Former Licensee was notified of Council’s concerns and given an opportunity to make submissions.

On September 26, 2018 and June 5, 2019, during meetings of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its Intended Decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

ISSUES

1. Did the Former Licensee, who had held a Manitoba General Level 1 licence, violate sections 375(1)(b) and (f) of the *Act*, section 3(2) of the *Licensing Rules* and section 9 (Unauthorized Practice of the Profession) of the *Code of Conduct*, by acting as a insurance agent in sales outside of the office of the general insurance agency and without the supervision of a level 2 or level 3 licence holder?

FACTS AND EVIDENCE

1. Effective February 28, 2012 and at all material times, the Former Licensee, a Saskatchewan resident, was an independent contractor with the Agency and had held a Manitoba General Level 1 licence.
2. The Former Licensee held an All Classes other than Life - Level 1 licence in Saskatchewan and was the holder of a Livestock licence in Alberta.
3. The Agency is a managing general agent (“MGA”) with a head office in Alberta and an office in Saskatoon. The Agency did not have a general insurance agency or office in Manitoba.
4. By letter dated February 28, 2012, ICM provided written confirmation to the Former Licensee that as of February 28, 2012 he was authorized to act in Manitoba as a Level 1 Agent/Broker to transact the business of General Insurance, and that he was subject to the conditions shown on the licence. The February 28, 2012 letter instructed the Former Licensee that he was required to:

“Be supervised on site at all times by a Level 2 or Level 3 licensed agent;”

5. The following conditions were listed on the Former Licensee’s Manitoba General Level 1 licence:
 - Prohibited from selling outside the office of a general insurance agency,
 - Must operate under the supervision of an Agent/Broker 2 or 3,
 - Subject to the requirements of the General Insurance Agents Licensing Rules.
6. On February 16, 2018, the Former Licensee spoke with ICM’s Senior Licensing Officer regarding upgrading his licence from a general insurance licence to a livestock licence and advised ICM’s Senior Officer that he currently sells at cattle sales outside the office in both Saskatchewan and in Manitoba.
7. On February 21, 2018, ICM’s Investigator corresponded with the Former Operating Agent of the Agency requesting a description of the Former Licensee’s agent activity in Manitoba, including the location from which he was operating in Manitoba and the name of his supervisor. A list of his policies/renewals was also requested.
8. On March 26, 2018, the Vice President of Regulatory & Compliance for a company who had recently purchased the Agency, (“Individual A”), indicated to ICM’s Investigator that the Former Licensee:

“is a licensed agent for [the Agency] in Alberta, Saskatchewan and Manitoba. He works out of his home in Saskatoon as well as at our Saskatoon office.”

Individual A indicated that the Former Licensee would sell All Risk Mortality for a bull, where the resident of Manitoba is at a Saskatoon sale. It was also noted that he was invited and attended a Manitoba bull sale on February 18 (2018). Individual A noted that the Conditions of his licence had been stressed and the Former Licensee had acknowledged that he would not be selling insurance in Manitoba.

9. On April 17, 2018, ICM's Investigator mailed a letter to the Former Licensee advising that he was under investigation for the handling of insurance matters for Manitoba residents.
10. On March 21, 2019, Council became aware that the Former Licensee may not have received the written communication from ICM's Investigator due to an error in the mailing address.
11. By letter dated and emailed to the Former Licensee on April 9, 2019, ICM's Investigator notified the Former Licensee that he was under investigation and requested a list of policies he had negotiated and/or written since February 28, 2012 for residents of Manitoba, and the Former Licensee's comments on whether he had acted outside the office of the Agency as an agent in placing Manitoba business, regardless of whether those sales occurred within Manitoba.
12. On April 23, 2019, the Former Licensee, by his own evidence, confirmed that between March 2, 2012 and February 18, 2018, he sold 63 insurance policies to Manitoba residents at bull sales located in Manitoba and sold 130 insurance policies to Manitoba residents at bull sales located in Alberta or Saskatchewan. The Former Licensee renewed 10 of those policies.
13. Of the 130 policies written in Alberta and Saskatchewan, the Former Licensee stated that:

“these policies were sold at sales inside the provinces of Saskatchewan or Alberta where I hold valid licenses which allow me to operate outside my office. The risk and the insured were in Saskatchewan or Alberta. It does not seem relevant where the insured lives.”
14. By email dated May 8, 2019, ICM's Investigator provided the Former Licensee with a definition of a Manitoba contact, from the *Act*, which includes a contract of insurance where property is in transit to the province or makes provision for payment to a resident of the province. The Investigator also provided the Former Licensee with Council's mandate – to protect Manitoba consumers of insurance products.
15. On May 16, 2019, Individual A provided ICM's Investigator with 31 policy applications and declaration pages for policies written by the Former Licensee between February 1, 2017 and February 21, 2018.

16. With regard to the 130 policies negotiated with Manitoba residents while in Alberta or Saskatchewan, the Former Licensee stated to ICM's Investigator on May 19, 2019 that:

"None of the policies would have been negotiated in the Agency's Offices."

17. On May 19, 2019, the Former Licensee provided Council with an annual breakdown of commissions earned between 2012 and 2018 on sales within Manitoba and sales within Alberta and Saskatchewan for Manitoba residents. The total commissions earned were \$15,399.60.

18. By email dated May 24, 2019, the Former Licensee indicated that he believed the livestock was going to Manitoba unless there was shared ownership, and stated:

"However, when I sell insurance on a bull I really have no idea where the bull may go. They often stay at the breeder's [sic] for an extended period."

ANALYSIS

Manitoba General Insurance Agents who hold a Level 1 licence are authorized to sell inside, but not outside, the office of a general insurance agency and under the supervision of a Level 2 or Level 3 licence holder. This was expressly noted on each of the Former Licensee's insurance agent licences and in the letter from the ICM when his initial licence was issued in 2012.

Section 100.1 of the *Act* defines a Manitoba contract as "*Manitoba Contract' means a subsisting contract of insurance that a) has for its subject i) property that, at the time of the making of the contract, is in the province or is in transit to or from the province, or ii) the life, safety, fidelity or insurance interest of a person who, at the time of the making of the contract, is resident in, or has its head office in, the province, or b) makes provision for payment primarily to a resident of the province or to an incorporated company that has its head office in the province.*", and section 116(1) of the *Act* indicates that "*A contract is deemed to have been made in Manitoba if a) it insures an insurable interest of a person who is resident in Manitoba; or b) its subject matter is property that is located in Manitoba.*"

The Former Licensee attended bull sales within Manitoba, Saskatchewan and Alberta, and sold insurance policies to residents of Manitoba while outside the office of a general insurance agency.

Based on the information and evidence reviewed by Council, Council concluded that the Former Licensee violated sections 375(1)(b) and (f) of the *Act*, section 3(2) of the *Licensing Rules*, and section 9 (Unauthorized Practice of the Profession) of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated July 15, 2019 was delivered to the Former Licensee by registered mail on July 22, 2019. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis. Having regards to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*:

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

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former Licensee was advised of this right in the Decision and was provided with the Notice of Appeal form, in accordance with section 389.0.1(2) of the *Act*. As an appeal was not requested in this matter, this Decision of Council is final.

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

Dated in Winnipeg, Manitoba on the 14th day of August, 2019.