

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA ("Council")
Respecting
JAMES MCGREGOR ("Licensee")
Operating Agent for
AGENCY A (formerly AGENCY B)
And
AGENCY C
And
AGENCY D

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 a complaint against the Licensee 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 Licensee's activity violated the *Act*, its *Regulations*, the General Insurance Agents Licensing Rules (the "*Licensing Rules*"), and/or the General Insurance Agent's Code of Conduct (the "*Code of Conduct*").

During the investigation the Licensee was notified of Council's concerns and given an opportunity to make submissions.

On November 16, 2020 and January 6, 2021, during meetings of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its then Intended Decision pursuant to section 375(1) of the *Act* and *Regulation 227/91*.

ISSUES

1. Did the Licensee, in his capacity as the Operating Agent, facilitate unlicensed activity when he allowed an equipment dealership (the "Dealership"), who was an unlicensed Manitoba entity, to act as an agent, and allowed an employee (the "Employee") of Agency C, who had never held a Manitoba insurance licence, to sign the consumers' (the "Complainants") insurance application as the broker?
2. Did the Licensee fail to obtain, review and/or maintain all relevant information and documentation to ensure the Complainant's insurance application had been completed accurately, and due to an error on the application resulting in the Complainants not receiving full indemnification from the insurance company (the "Insurer")?
3. Did the Licensee make a material misrepresentation on Agency A's Licensing Renewal application, and on a new Operating Agent's licence application for Agency D?

FACTS AND EVIDENCE

Facilitation of Unlicensed Activity by a Manitoba dealership, and by an employee of Agency C

1. Agency B was the broker for Agency C's Guaranteed Asset Protection ("GAP") program, which had Manitoba automobile dealerships complete the vehicle and loan information on the GAP application, obtain the insurance premiums from the finance company and remit those premiums, after withholding a dealer marketing fee ("Dealer Marketing Fee"), to Agency C.
2. Agency C was the sub-broker to Agency B (now Agency A) and handled the day to day marketing and sales responsibilities for the GAP program.
3. By letter dated July 5, 2019, the Licensee's legal counsel indicated to Council's Investigator that:
 - a. *"In exchange for each successful subscription by the customer to [Agency A/Agency B], the Dealers are paid a promotional fee to cover off their overheads, etc."*
 - b. With regard to the Complainant's GAP policy, the Dealership received a Dealer Marketing Fee of \$593.00.
 - c. The Employee of Agency C (who had never held a Manitoba insurance licence) signed the Complainant's GAP application, dated August 11, 2015, as the broker.
4. By letters dated September 3rd and October 2nd, 2020, the Licensee indicated to Council's Investigator that:

- a. He was the only licensed agent for Agency A/Agency B and Agency C, but that the Employee had processed the GAP applications on the internet.
- b. He believed that a corporate licence was required in Manitoba in order to conduct the sale of GAP through the internet.
- c. *"I assumed, in hindsight, incorrectly, that we were corporately licensed in Manitoba."*

Failed to obtain, review and maintain relevant information and/or documentation with regard to the negotiation of an insurance contract

5. On June 10, 2019, the Complainants submitted a complaint to the Insurance Council of Manitoba ("ICM") which alleged that:
 - a. On January 9, 2019, their vehicle, insured under the GAP policy, sustained a total loss. Due to an error on the GAP application, the Insurer settled the Complainant's claim based on a 60 month coverage term, which resulted in a zero indemnification and left the Complainants with an outstanding balance.
6. The GAP application specified that the selected coverage term *"must equal term of Finance Contract or Amortization Period (whichever is longer)"*.
7. The Complainant's GAP application indicated the coverage term was 60 months.
8. The Complainant's Conditional Sales Contract ("CSC"), which was with the Dealership, indicated that the amortization period was 96 months.
9. The Licensee failed to obtain the CSC from the Dealership and compare the coverage term with the amortization period to ensure the application had been completed accurately by having an equivalent term and period (whichever is longer).
10. By letter dated July 5, 2019, the Licensee's legal counsel indicated to Council's Investigator that:
 - a. *"The term of the financing procured was to be 96 months and 96 months of GAP cover should have been provided."*
 - b. The Dealership *"made an error in term listing on the technical part of the application noting it was 60 month term rather than a 90 [96] month term. Thus the customer signed a form asking for 60 months of cover based upon the dealer's error. Both our client [the Licensee], the insurer and the customer would have all been misled from this document [the GAP*

application] *which all would have normally accepted as a matter of course.*"

11. By letter dated February 6, 2020, the Insurer indicated to Council's Investigator that:

- a. The Insurer *"did not collect or have copies of the applications provided from... [Agency C's] Gap program... It was and remains the responsibility of the insurance broker, in this case, [Agency A/Agency B], to obtain and retain the applications under this program.*

12. The Licensee was unable to provide Council's Investigator with the Complainant's fully completed GAP application and/or GAP policy declaration page, and by letter dated September 3rd and an email dated October 15th, 2020, the Licensee indicated to Council's Investigator that:

- a. The owner, President and COO of Agency C, informed him that: *"We relied on the dealer files to retain the application as that was always available to us..."*
- b. The Dealership was in a unique receivership situation and the records were frozen from their availability.
- c. Copies of the issued policies were placed into off site storage when Agency C ceased doing business.

Misrepresentation(s) on ICM Licensing Applications

13. The Licensee received a May 11, 2018 letter from another provincial regulatory body (the other "Regulator"), which substantiated the existence of an investigation against Agency A, Agency C, and the Licensee.

14. In completing his April 29, 2019 licensing renewal application ("Renewal Application"), to renew his licence as Agency A's Operating Agent, the Licensee answered "No" to question #1 (Questions for Agent), in the context of having been under investigation since he last applied for a licence or renewal to the ICM; that question read:

Since you last applied for a Licence or Renewal to ICM have you been under investigation, or the subject of a disciplinary decision, consensual agreement, administrative penalty, or any other form of disciplinary action by any regulatory or licensing authority, or had any licence held by you suspended, cancelled or revoked?

15. On April 29, 2019, the Licensee submitted a new licensing application to the ICM to obtain an Operating Agent's licence for Agency D ("Agency D's Application"). The Licensee answered "No" to question #4, in the context of having been under investigation, in any jurisdiction, for any business in which he had been involved; that question read:

In any jurisdiction, have you or any business in which you have been involved been subject to any disciplinary action/consensual agreement/administrative penalty by any Regulatory Authority or Regulatory Association, or are you or any business in which you are or have been involved currently under investigation?

16. By letters dated September 3rd and October 2nd, 2020, the Licensee indicated to Council's Investigator that:

- a. The individual (the "Individual"), *"who is responsible for all licensing in all provinces for those companies I am the principle broker"*, completed the Renewal Application and Agency D's Application on his behalf and was not aware of the regulatory matter, as he had not disclosed the matter to her.
- b. *"I regret that I obviously did not review the [Renewal Application] for its accuracy."*
- c. *"In hindsight I did not make a distinction between being disciplined and being investigated. I should have been more aware of the regulations in all jurisdictions and had I considered it more fully, realized I had an obligation to disclose the inquiries from [the other Regulator]..."*
- d. *"I should also have been aware that I needed to disclose this within 15 days to your office, but was not."*

INTENDED DECISION

In its Intended Decision, Council reasoned as follows.

Sections 375(1)(a) of the *Act*, prohibits misrepresentation, deceit or dishonesty, and 375(1)(b) of the *Act* is applicable to any violation of any provision of the *Act* or any rule or regulation under the *Act*, and section 375(1)(e), of the *Act* indicates that a holder or former holder of a licence violates the *Act* if they have demonstrated incompetency or untrustworthiness.

The Licensee was the Operating Agent for the agencies in question – Agency A (formerly Agency B), Agency C, and Agency D. Further, he was the only individual licensed to carry on the business of insurance for Agency A, Agency B, and Agency C in Manitoba.

As the Operating Agent for Agency A (formerly Agency B), Agency C, and Agency D, the Licensee was and is responsible for the management of each Agency and all its insurance activities, including the prohibited use of unlicensed individuals. Any activities falling within the definition of an agent as outlined in section 1 of the *Act*, must be performed by a person who is a licensed insurance agent.

Section 1 of the *Act* defines an agent as:

"agent" means a person who for compensation

- (a) solicits insurance on behalf of an insurer,
- (b) transmits for a person other than the agent an application for or a policy of insurance to or from an insurer, or
- (c) acts, or offers or assumes to act, in the negotiation of insurance or in negotiating the continuance or renewal of an insurance contract other than a life insurance contract; (« agent »)

Council has a mandate to protect the public from unlicensed individuals selling insurance.

ICM began issuing RIA licenses to dealerships for the sale of GAP on December 19, 2016. Prior to December 19, 2016, a Manitoba general insurance licence was required in order to sell GAP coverage in Manitoba.

On August 11, 2015, the Complainants purchased a new vehicle and purchased the GAP policy through the Dealership. The Dealership completed the vehicle and loan information on the GAP application, obtained the insurance premiums from the finance company, retained a Dealer Marketing Fee of \$593.00, which was a form of compensation as outlined in the definition of an agent, and which was dependent on the sale of the GAP policy, and remitted the insurance premiums to Agency C.

The Complainant's GAP application was processed by an employee of Agency C who had never held a Manitoba insurance licence, and it was the Employee who had signed the GAP application, dated August 11, 2015, as the broker. As the Employee had never held a Manitoba insurance licence, she was prohibited from acting as an agent for Manitoba.

As the only licensed agent for Agency A (formerly Agency B) and Agency C, the Licensee was responsible for obtaining, reviewing and maintaining all relevant information and documentation with regard to the negotiation of an insurance contract. The Licensee was unable to provide Council's Investigator with a fully completed GAP application or policy declaration page, as Agency C relied on the dealerships to retain the applications and copies of the printed declarations pages had been placed into deep storage when Agency C ceased operations.

The GAP application specified that the coverage term *"must equal term of Finance Contract or Amortization period (whichever was longer)"*. The Licensee failed to obtain a copy of the CSC from the Dealership, which specified the amortization period was 96 months, and failed to compare the amortization period on the CSC with the coverage term specified on the application. As a result, the Insurer settled the Complainant's claim based on the 60 month coverage period indicated on the GAP application; however, the coverage term should have indicated 96 months per the amortization period. Settling the claim based on a 60 month coverage term resulted in a zero indemnification, and left the Complainants with an outstanding balance.

The Licensee's legal counsel had indicated to Council's Investigator that it was not a broker error; rather, the Dealership had erred when they completed the coverage term on the Complainant's GAP application. Council considered and dismissed the Licensee's legal counsel's assertion that it was the Dealership who erred, as the Dealership was not a licensed entity and the GAP application specified that the appropriate party to contact with regard to the application or the GAP coverage was Agency B, as only the broker was authorized to discuss the program.

As part of its mandate to protect the public, the ICM requires applicants and licensees to answer questions for every application or renewal of a licence relating to suitability. Among these questions is whether the applicant/licensee has been under investigation or subject to any form of discipline by a regulatory or licensing authority.

The individual must read and answer all questions carefully and accurately. On every licensing renewal application is the following declaration, namely:

I declare that 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...

These are very important disclosure obligations. Disclosure of material changes - such as being under investigation by a regulatory authority – on licensing renewal applications permits Council to assess whether the change suggests the public may be at risk and whether any necessary inquiries or investigation need to be conducted to aid in that assessment. The nature of the material change would be considered to determine if it is critical to the person's trustworthiness, competence or intention to carry on the business of insurance in good faith, and whether the person is fit to be licensed.

The Licensee received a letter from another Regulator, dated May 11, 2018, which informed the Licensee directly and clearly that the Licensee, Agency A, and Agency C were all under investigation. The Licensee was required to disclose these investigations to the ICM within 15 days as a material change.

As the Operating Agent for the agencies in question, the Licensee is responsible for the actions of the agencies. This means that the Operating Agent must ensure that appropriate and prudent procedures are in place to allow only licensed individuals to transact insurance in Manitoba on behalf of the agency, and to take all reasonable steps to ensure the agency's full compliance with the regulatory framework. These obligations exist for each agency for which an individual is Operating Agent. Council considers the role of the Operating Agent critical to accountability for an agency.

Having reviewed the evidence, Council (provisionally) determined the following:

- that the Licensee as the Operating Agent facilitated or allowed unlicensed activity;
- that the Licensee had failed to obtain, review and maintain appropriate documentation relating to an insurance policy; and

- that the Licensee falsely declared on his 2019 renewal application for Agency A and the 2019 application for Agency D that he was not currently under investigation.

Based on the information and evidence reviewed, and subject to any new information or arguments submitted if there was a Show Cause hearing, Council concluded that the Licensee violated sections 375(1)(a) Misrepresentation, deceit and/or dishonesty, of the *Act*, 375(1)(b) any violation of any provision of the *Act* or any rule or regulation under the *Act*, 375(1)(e) Incompetency and/or untrustworthiness, of the *Act* and sections 1 – Integrity, 2 – Competence, 3 – Quality of Service, 7 – Manner of Service, 9 – Unauthorized Practice of the Profession, 10 – Conduct Towards Others and 11 – Safekeeping and Preserving of Property and File Records, of the *Code of Conduct* and that disciplinary action is warranted.

On February 18, 2021, Council, for the reasons outlined above, determined on a provisional basis by way of an Intended Decision that:

1. The Licensee be fined \$10,000.00 and assessed partial investigation costs of \$5,000.00.

SHOW-CAUSE HEARING

The Licensee, through his legal counsel, subsequently exercised his right to dispute Council's Intended Decision and requested a hearing before Council. From the outset, it was explicitly stated on behalf of the Licensee that no challenge would be made to the analysis or the determinations within the Intended Decision. Rather, the purpose of the hearing was "solely to ask for some clemency with regard to fines and penalties" in the light of circumstances which had arisen subsequent to the Intended Decision.

On April 22, 2021, counsel for the Licensee attended virtually before Council. The essence of his submission was as follows.

A request was made that the fine and costs provisionally imposed in the Intended Decision be waived on compassionate grounds in the light of certain health challenges faced by the Licensee. The determinations made by Council in its Intended Decision arose from innocent representations. No findings of fraud or deliberate malfeasance were made. The Licensee had had a long, unblemished career in the business, in the course of which the Licensee had also performed significant charitable works.

It was acknowledged that there was a compliance failure in connection with the GAP program, but this arose primarily because the Licensee had relied upon incorrect advice from an insurer and it was not unreasonable for the Licensee to rely upon that advice.

The personal challenges currently being faced by the Licensee are uncertain in their duration and the associated financial burden cannot be foreseen with any certainty.

FINAL DECISION

The Licensee, as the Operating Agent, was responsible for the acts and omissions of his agencies. Those acts and omissions were very serious and caused harm to consumers. This harm was predictable. It is reprehensible to:

1. permit and facilitate unlicensed activities;
2. submit inaccurate information to insurers; and
3. misrepresent one's disciplinary history.

The Licensee breached all of these fundamental obligations and obtained compensation through the unlicensed activities.

While Council was moved to reduce the intended penalty as stated hereafter, it wants to ensure there is no misunderstanding within the industry about its reason for so doing. Its decision regarding the matter is essentially unchanged. Only the extraordinary personal circumstances of the Licensee – which arose after the Intended Decision was communicated to him, have caused the fine and costs to be reduced from the originally intended amounts of \$10,000.00 and \$5,000.00 respectively.

PENALTY

Council's Decision dated May 19, 2021 was delivered to the Licensee by mail on May 21, 2021. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Having regard to the determination of the violations and for the reasons outlined above, pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council ordered the following:

1. The Licensee was fined \$100.00 and assessed partial investigation costs of \$5,000.00.

Pursuant to section 389.0.1(1) of the *Act*, the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The 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*. The Licensee duly paid the levied fine and investigation costs and, 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 is 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 6th day of July, 2021.