ICM REPORT

INSURANCE COUNCIL OF MANITOBA

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Agents doing the right thing...

Details and documentation matter.

The ICM receives and investigates consumer complaints as part of its mandate to protect the public. While many consumer complaints lead to investigations where the agent had fallen short in his or her duty to the client or the regulatory framework, there are also many instances where the claim against the agent is found to be unsubstantiated. An unsubstantiated consumer complaint against an agent may be based on the consumer's misunderstanding of *The Insurance Act*, the role an agent plays, and most importantly an agent's ability to affect the outcome of a claim. This article explains a case where a complaint was made by a dissatisfied client, despite the agent's good work.

Agents will often act as an advocate for the client when claims are complex or the loss is large, as it is a difficult and often confusing process for the client. One scenario that came before the General Council involved a complainant and an agent over a loss that was not paid out by the insurer. In this case the complainant was upset with the agent and the adjuster regarding the level of coverage they received from the policy. In this case the agent had worked to receive a report from the adjuster and then provided information to the complainant with the wordings from the policy with acceptable explanations, without using insurance jargon. The agent also provided the complainant with guidance that they were within their rights to file a small claims action against the insurer if the loss was under $10,000.

The agent also contacted the insurer's claims examiner to discuss the claim and the report. In further correspondence the agent explained to the complainant how the wording regarding perils was in line with the adjuster's findings in the claim.

In further correspondence the agent requested a re-inspection by a different party and worked to ensure that the adjuster and the insurance company received the report. After all of this, the agent had discussed the issues with the complainant and the adjuster as well as the insurer's claims supervisor. The agent had initially received an email from the complainant acknowledging that they were indeed looking out for him.

During the course of the claim, the agent had done the following: explained the coverage, made sure that the complainant received

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Mission

The INSURANCE COUNCIL OF MANITOBA is committed to serving and protecting the public by regulating insurance licensees under *The Insurance Act* of Manitoba and by ensuring that licensees act within a professional framework which promotes fair and ethical conduct, integrity and competence.

Mandate

The mandate of the Council is to act in the public interest to protect Manitoba consumers of insurance products, and to regulate all licensees - agents, brokers, sellers of incidental insurance (ISI) and adjusters - to ensure standards are maintained for public protection.

NOTICE: Merger of Insurance Adjusters and General Insurance Councils

As of September 28, 2018, The Insurance Act's Regulation 131/2018 came into effect, which amended the Insurance Councils Regulation 227/91. This amendment amalgamates the General Insurance and Insurance Adjuster Councils. The new Council, The General Insurance Council of Manitoba, consists of 9 members including one licensed adjuster, and is required to have at least half the remaining Council members as licensed agents. As part of this amendment process, through the Financial Institutions Regulation Branch, Government consulted with industry and received their input. Going forward, all licensing and compliance matters relating to adjusters doing business in Manitoba will be within the jurisdiction of the General Insurance Council of Manitoba.

adequate explanations, discussed concerns with the claims adjuster, advised the complainant that he could take legal action if desired, advocated for the right to a second report from another contractor and discussed the complainant's concerns with the insurer's claims supervisor.

The most important aspect of all these actions is that the agent documented these conversations, phone calls, correspondence, and emails thoroughly and without bias. The General Council looked through the facts of the case and had all the relevant documentation from the agent to support her defence regarding the complaint. The General Council considered the possible breaches of *The Insurance Act* and reviewed the agent's actions—and most importantly considered the duty of care that was exercised, and determined that there was no further action to be taken towards the agent regarding a violation of the *Act,* the regulations or the Code of Conduct.

The agent met her obligations to provide service to both parties, insured and insurer, and worked to use all possible tools and actions to find the best resolution for the complainant, while maintaining a professional candor and approach with the insurer and claims adjuster.

While there are times when investigators and Council will look for more information to see if a complaint merits disciplinary action, an agent who is thorough, maintains appropriate documentation, and acts in the best interest of their client will likely help their cause because they will be able to demonstrate they acted appropriately.

Client-Agent Loans

The Life Insurance Council of Manitoba ("Council") has recently seen instances of agents taking loans from their clients. Agents borrowed from clients for their own interest without the clients having the benefit of receiving independent legal and/or tax advice. The terms of the loan(s) are not typically documented and the agent can ultimately default in repaying the loan(s).

Clients are left with the perspective that agents are exerting undue influence through their role as an agent to attempt to obtain or obtain loans from them. Life and Accident and Sickness agents are bound by the Life Insurance and Accident and Sickness Agent's Code of Conduct which identifies the essential duties owed by a life agent to his/her client arising from the relationship. The agent must act in the best interests of the client and must not put the agent's interests over those of the client. It is contrary to the fundamental fiduciary nature of the relationship for the agent to prejudice the interests of a consumer for personal gain or intended personal gain.

Every agent should know that they must always avoid situations where

Industry Councils

General Council:

Peter Tessier **(Chairperson)** (licensed Agent)
Grant Rerie **(Vice Chairperson)** (licensed Adjuster)
Harvey Armstrong (public representative)
Lyndon Friesen (company representative)
Cindy Cassils (licensed Agent)
Irwin Kumka (licensed Agent)
Elenor Nowosad (licensed Agent)
Keith Phillips (licensed Agent)
Lynn Rempel (licensed Agent)

Life Council:

Richard Fillion **(Chairperson)** (licensed Agent)
Carol-Ann Borody-Siemens **(Vice Chairperson)** (licensed Agent)
Gary McPherson (public representative)
Craig Shanks (public representative)
Patricia Horncastle (company representative)
Andrew (Andy) Anderson (licensed Agent)
Kayla Harold (licensed Agent)
James Pollard (licensed Agent)
Carole Urias (licensed Agent)

Manitoba Council:

Richard Fillion **(Chairperson)**
Peter Tessier **(Vice-Chairperson)**
Carol-Ann Borody-Siemens
Cindy Cassils
Gary McPherson
Grant Rerie

the underlying circumstances could prejudice or compromise the advice that he/she provides, and if a conflict does arise, this must be disclosed to the client.

Council has taken the position that loans between agents and clients pose a conflict of interest and are in violation of section 6, Conflicts of Interest, of the Code. The only exception to the prohibition of client-agent loans is when the loan(s) is between immediate family members (agent – spouse/child/grandchild).

Client-agent loans constitute a breach of the duty which lies at the very foundation of the client-agent relationship. Agents have a duty to not take advantage of their clients and are bound to ensure their interests and their clients' interests do not conflict. Client-agent loans create a situation where the interests of each party are in fact diametrically opposed. Situations have come before the Life Council where agents have taken loans from clients when the agent is not financially stable and where repayment of the loan is uncertain.

Council draws to attention the following sections of the Code and *The Insurance Act* of Manitoba:

(a) section 1 of the Code, which requires agents to act in the best interests of their clients and not prejudice the interests of a client for personal gain;
(b) section 4 of the Code, which requires agents to act professionally, with integrity and honesty;
(c) section 6 of the Code, which requires agents to avoid conflicts of interest; and,
(d) section 375(1)(e) of the Act, which requires agents to conduct themselves in a trustworthy manner.

Council takes client-agent loans seriously and views these loans as exercising a serious defect in ethical judgment. Council has taken disciplinary action against agents who have attempted to obtain and/or obtained loans from clients.

Disciplinary action may include, but is not limited to, being fined and assessed costs of an investigation, being subject to a licensing condition, suspension of a licence, and/or permanent cancellation of the licence(s).

Preparation and Execution of Policy Documents

As a licensed Life and/or Accident and Sickness agent, it is important to follow proper procedures when completing and witnessing insurance

applications. You must ensure you explain all details of a product sold and document the process for your clients. This ensures clients understand the risks and benefits of the products you are recommending, as well as the process taken to accomplish their goals. Clients might not recall the exact details of a meeting and it is important to document for them for future reference and for your records.

When completing a sale, there are often multiple documents to review and sign, including illustrations, underwriting forms and applications. The key to this process is to witness your client's signature on these documents in their entirety once they are completed. In the past advisors felt it was sufficient to collect the client's information and review later, possibly making adjustments or additions to complete the application. This is incorrect and is where many advisors can run afoul of *The Insurance Act* section 375(1)(a) - Misrepresentation.

Misrepresentation may occur if you make a change to an application after the client has signed it or if you witness their signature when you were not actually present when they signed the document. Any alterations to a document should be reviewed by the clients again, and the client should initial and date where the amendments were made. If you make an error completing an application, you may cross it out and then have each person signing the application initial any changes.

If you were not present when the client signs a document, you should not witness it. If you are not physically present at time of sale, say in the case of a Non-Face-To-Face Application, documents may need to be witnessed by an independent third party, and this person needs to be someone who is not the policy owner, the beneficiary or relation to the life insured.

As our industry evolves and uses technology to facilitate insurance, many licensed advisors are now using Non-Face-To Face procedures. While the process can at times be convenient, it is also fraught with pitfalls and risks. Caution should be exercised.

It is vitally important that you follow proper execution and documentation processes. Others (including clients and insurers) rely on these documents for information and coverage. Licence holders must comply with not only their contractual obligations to the insurance company, but must also comply with the regulatory framework for licensing in Manitoba; this includes *The Insurance Act*, its Regulations and the Life Insurance and Accident and Sickness Agent's Code of Conduct. The Code provides guidance for agents regarding meeting the interests and needs of the client, and outlines the duty to ensure that all relevant information is disclosed to and documented for clients.

Following a consistent process that puts your clients in the forefront and keeps their concerns your priority will help to prevent future misunderstandings, complaints and claims.

SPOTLIGHT ON E&O: Errors and Omissions Insurance Online Reporting System – The first year.

On June 1st, 2018, ICM implemented an automated Errors and Omissions (E&O) insurance reporting system to ensure all licence holders are compliant with section 371(1.1) and section 385(5.1) of *The Insurance Act.* Under the *Act,* every licence issued by Council is conditional upon the **existence and continual maintenance** of E&O liability insurance; an individual is not eligible to hold a licence without valid E&O insurance in place at all times.

Why a new reporting system?

For many years, Council had been seeing instances where licensed agents or adjusters failed to continually maintain their E&O insurance – these licence holders were not only failing to comply with the *Act*, but were also potentially putting the public at risk by acting as an agent or adjuster without having E&O coverage in place.

Council communicated this legal requirement to the industry and encouraged compliance a number of times over the years. Council had, however, continued to see gaps in coverage by licence holders when a policy or certificate was not renewed or replaced before the old coverage expired. Licence holders have been formally disciplined by Council for failing to continually maintain this coverage and/or falsely declaring to Council that they had maintained coverage when in fact there had been a gap in coverage. An improved reporting and monitoring system was required to improve compliance and to protect the public.

Before implementing the new system on June 1st, 2018, Council sent direct email notices to all licence holders, Operating Agents/Designated Representatives, Sponsors and E&O Carriers explaining the new reporting system. When invited to speak at industry events by Advocis, CAILBA and CLHIA, ICM staff explained the new system to attendees and how it would be implemented. Additionally, as part of the 2018 licence renewal, each licence holder was required to read information regarding the new E&O reporting requirement before being able to renew their licence.

How does it work?

Under the new system, licence holders are required to enter the online portal one additional time per year to update the E&O information for each specific licence they hold. Licence holders must ensure that the updated E&O policy information (carrier, policy/certificate number, effective date and expiry date) is reported and updated in the ICM online portal **before** the expiry date of their existing policy. If the new policy information is not updated in the portal before the expiry date of the old policy, their licence(s) will be automatically disqualified.

Licence holders are able to view on their Dashboard within the online portal whether their E&O information is current (green), due to expire within 15 days (orange), or expired (red). Licence holders are required to enter the updated information for each licence held. Some general licence holders and adjusters who are covered through their organization will rely upon the Operating Agent or Designated Representative to ensure the information is up-to-date. However, their dashboard would still reflect the current status of their E&O information.

The system provides two automated and clear email warnings to licence holders of upcoming expiry of their current policy – 15 days before and 2 days before. Licence holders **must** pay attention to these warnings from ICM and act to update their information immediately. **Failure to update the E&O information in the portal before expiry of the policy *will* result in the automatic disqualification of the licence(s).**

If a licensee is disqualified for a failure to update the system, the licence holder cannot act as an agent or adjuster until the licence is reinstated with the ICM. A fully completed application for reinstatement and $70 fee (per licence) would need to be forwarded to the ICM office; the reinstatement application would be placed in queue with other licensing transactions to be reviewed by the ICM Licensing team on an as-received basis. All licensing transactions are serviced based on date received to ensure fairness to all applicants and licence holders seeking service from the ICM.

Has industry complied with the new system?

Yes, Council has seen strong overall compliance with the system. Once launched, initial industry compliance with the system was monitored for a period of three months before fully implementing the automated disqualification of licences. Council saw that during this initial 3-month monitoring period there was a very strong uptake and use of the reporting system, which is a testament to the industry's focus on ensuring that they are compliant with licensing requirements. Since full implementation of the system eight months ago, there have been instances where information was not updated and some disqualifications occurred, but this has been for a very small percentage of licences. In a number of cases, it was where individuals no longer wished to retain their licence(s), so no reinstatement was desired. Council anticipates that compliance will continue to improve even further over the next year. Council appreciates the diligence of industry in adapting to this new reporting system so well.

For more information on how to update your E&O information: see the User Guide for entry of E&O.

For more information on how to apply for Reinstatement following disqualification due to E&O: see the User Guide for Reinstatement of Licences(s) following Disqualification due to E&O.

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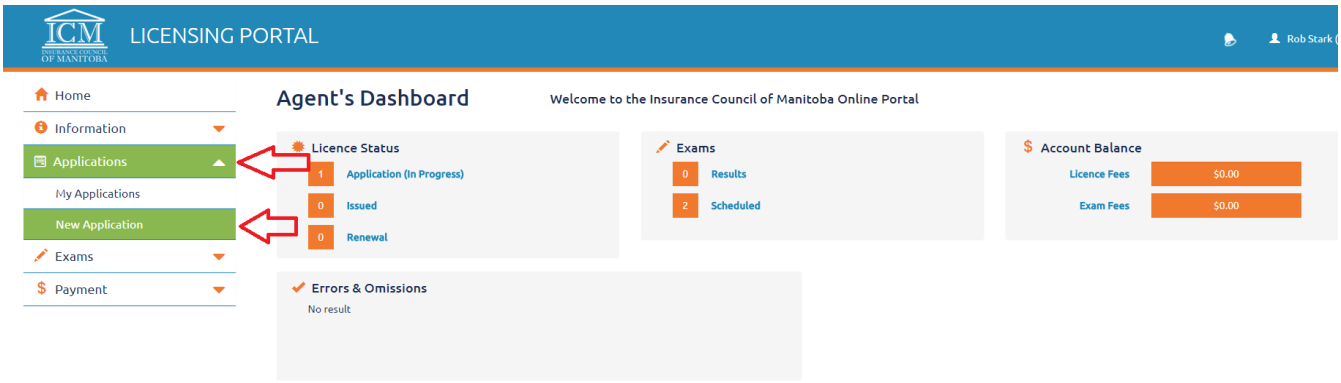
Tools for Licence Holders

There are many tools for licence holders available on the ICM website. These tools include information on the following items:

- How to register for an examination through the online portal
- How to enter current E&O information within the online portal to avoid disqualification of your licence(s)
- How to apply online for a new licence
- How an Authorizer would review an online application and submit it to the ICM for review
- How to enter your continuing education course information online in sufficient time to renew your licence
- How to apply for a reinstatement of a licence following disqualification due to not updating E&O online



These tools, in the form of User Guides, were developed with easy-to-follow pictures, such as the one below. The pictures provide the user with arrows making the user's experience a simple process to follow along.

The User Guides also provide information such as how to understand the flow of the system, how to read notifications, and how to understand the progress bar within the online application (as below):

Progress Bar:

The progress bar (as demonstrated below) at the top of your application will provide you with the stage in which your application currently sits.

- *"Waiting to Submit"* = application is pending with the applicant for information.
- *"Pending Authorizer's Review"* = application is with the sponsoring organization to review and submit to the ICM for consideration of a licence.
- *"Pending ICM Review"* = application is pending with the ICM for review and consideration of a licence.
- *"Approved"* = application has been approved for a licence.

The ICM has had much positive feedback from users with respect to these User Guides. Licence Holders should review these User Guides on the ICM website prior to contacting the ICM office.

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The ICM is also working on creating a User Guide/Frequently Asked Questions document which provides answers to many standard frequently asked questions in licensing. Listed below are a few examples of common questions that will be included in the FAQ User Guide.

- How do I find out if an agent or adjuster is authorized to transact business in Manitoba?
- How does a licence holder change their address?
- How does a licence holder renew their licence?
- How a licence holder obtains Errors & Omissions Insurance?
- I have another occupation or outside employment. Will I still be able to apply for my insurance agent licence?
- I am a current licence holder and need to report another potential occupation or outside employment. How do I report this and obtain approval?
- I would like to obtain an insurance licence. What are the requirements and how do I apply?
- How do I incorporate or register an organization name in Manitoba?
- How do I check my application status?
- How do I transfer my licence?
- How do I reinstate my licence?
- Where do I obtain continuing education credit hours for my annual requirement?
- What is considered a material change?
- When and how to notify the ICM of a material change?
- What are the steps required in notifying the ICM of an organization amalgamation, merger, acquisition, etc.?
- Can I obtain my licence if I am going through a bankruptcy?
- How does an organization apply for accredited course provider status?
- How does an organization apply for continuing education credit hours for a particular course they would like to schedule?

Check back on the ICM website for updates later this year!

Notice: Online Licensing Processes

The following processes are available to be submitted/ updated online through the ICM online licensing portal.

- View current licenses
- Annual licence renewal
- Apply as new applicant
- Apply for a supplementary/2nd licence
- Apply for an amendment or transfer of a currently active licence
- View payment history
- Make payment for a licence application or examination via credit card
- Register for an exam or view your results
- Update personal or business address
- View or update CE hours
- View or update E&O information

Contact ICM

466-167 Lombard Avenue
Winnipeg, MB
R3B 0T6

Phone: 204 988 6800

Fax: 204 988 6801

Email: contactus@icm.mb.ca

Website: ICM.mb.ca