

pursuant to subparagraph d of the first paragraph of section 156 of the Professional Code (R.S.Q., c. C-26) as a penalty by means of a final decision of the committee on discipline or the Court of Québec sitting in appeal from a decision of the said committee;

(5) if he has failed to comply with the rules governing compulsory professional development which are applicable to him.

A broker who remedies the defaults for which his authorization to use either of the titles contemplated in this Regulation has been withdrawn pursuant to the first paragraph shall once again be authorized to use his title.

The provisions of the second paragraph shall not apply to a broker whose certificate has been cancelled by a final decision of the committee on discipline or the Court of Québec sitting in appeal from a decision of the said committee, as the case may be.

CHAPTER V TRANSITIONAL PROVISION

8. A damage insurance broker who, prior to the coming into force of this Regulation, has started to take the training program of the Association des courtiers d'assurances de la province de Québec leading to the title of associate insurance broker (A.I.B.) or the university training program leading to the title of chartered insurance broker (C.I.B.) may, at his option, for the purpose of asking the Chamber for the authorization to use the title sought, satisfy the requirements of the provisions of this Regulation, or the requirements governing the aforesaid program which led to the title sought, provided that in the latter case, he has taken the courses and successfully passed the examinations prescribed by the said program within the following period:

(1) where the authorization request relates to the title of associate insurance broker and its abbreviation "(A.I.B.)", a period of 1 year from the coming into force of this Regulation;

(2) where the authorization request relates to the title of chartered insurance broker and its abbreviation "(C.I.B.)", a period of 5 years from the said date.

However, if the broker is unable to satisfy the requirements of the provisions of the training program mentioned in the first paragraph which are applicable to him due to the fact that one or more of the prescribed courses are no longer offered, in such a case, he may take the courses and successfully pass the examinations deemed to be equivalent by the Chamber.

(omitted)

Draft Regulation

An Act respecting the distribution of financial products and services
(1998, c. 37)

Claims adjusters — Code of ethics

In accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), notice is hereby given that the Regulation of the Chambre de l'assurance de dommages respecting ethics of Claims Adjusters, the text whereof is set forth hereinbelow, will be submitted to the Government which may approve it, with or without any amendments, upon the expiry of 45 days from the present publication.

According to the Chambre de l'assurance de dommages, the proposed regulation sets forth the obligations of Claims Adjusters, including their obligations towards the public, towards clients, insurers, and representatives, and towards the Bureau des services financiers and the Chambre de l'assurance de dommages. The regulation draws on the current rules of ethics set forth in the By-law of the Conseil des assurances de dommages respecting market intermediaries in damage insurance. However, adjustments and amendments have been made in order to clarify the current rules and provide greater detail regarding certain obligations, given the new environment created by An Act respecting the distribution of financial products and services, and in order to fill certain gaps which had been noted.

The Chambre believes that to date, a review of this file has not disclosed any impact upon the public, other than a greater degree of protection through effective monitoring of the Claims Adjusters with whom the public will do business.

Additional information may be obtained by contacting Mrs. Maya Raic, Director General and Interim Secretary, Chambre de l'assurance de dommages, 500, Sherbrooke Ouest, 7^e étage, Montréal (Québec) H3A 3C6, telephone number (514) 842-2591 or 1-800-361-7288, telecopier number (514) 842-3138, e-mail: acapq@videotron.ca.

All interested persons wishing to provide comments with regard to the foregoing are requested to send such comments, in duplicate, prior to the expiry of the 45-day deadline, to the Minister of Finance, 12, rue Saint-Louis, bureau 1.10, Québec (Québec) G1R 5L3.

BERNARD LANDRY,
Minister of State for the Economy and Finance

Code of ethics of claims adjusters

An Act respecting the distribution of financial products and services (1998, c. 37)

CHAPTER I GENERAL PROVISIONS

(omitted)

1. A claims adjuster must take all reasonable steps to ensure that his employees or those of the partnership of which he is a partner comply with the provisions of An Act respecting the distribution of financial products and services (1998, c. 37), the regulations adopted thereunder which are applicable to him and this Code.

The person under whose supervision and responsibility are carried on the activities of an office or a point of sale of a firm, an independent representative or an independent partnership must act in the same manner as regards the employees carrying on their activities in the said office or point of sale, as the case may be.

The training supervisor for a trainee must act in the same manner as regards the trainee.

2. A claims adjuster must not carry on an occupation that runs counter to the dignity of the profession or that is incompatible therewith.

3. A claims adjuster must collaborate with Government institutions, police authorities and insurers' investigation departments by providing to them upon request any information likely to facilitate an investigation of fraud or of any crime.

CHAPTER II DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC

4. A claims adjuster must support any measure designed to protect the public.

5. A claims adjuster must support any measure likely to improve the quality of service in the field in which he carries on activities.

6. A claims adjuster must promote measures designed to provide education and information in the field in which he carries on activities.

7. The conduct of a claims adjuster must be characterized by objectivity, discretion, moderation and dignity.

8. A claims adjuster must avoid placing himself, directly or indirectly, in a situation of conflict of interest.

9. A claims adjuster must not represent the interests of both an insured and the insured's insurer at the same time.

10. In carrying on his activities, a claims adjuster must identify himself clearly and must produce his certificate upon request.

11. A claims adjuster must not falsely claim, by any means whatsoever, that he is chartered, recommended, sponsored, approved by a third party, or affiliated or associated with a third party.

12. A claims adjuster must not neglect to notify an insured of the approach of a prescription date concerning him.

13. A claims adjuster must notify the parties involved, as well as any person that he knows has an interest in the compensation requested, of any refusals or any measures that the insurer intends to take regarding the claim.

14. A claims adjuster must act in such a way as not to mislead or abuse the good faith of the parties involved or of their insurers.

15. In addition to opinions and advice, a claims adjuster must provide a claimant with the explanations necessary for him to understand and appreciate the services rendered to him.

16. Unless he has obtained the written consent of his client and all other interested persons, a claims adjuster must maintain the secrecy of what has been confided to him in the course of his activities, unless he is relieved of that obligation by an express provision of an act, by an order of a competent court or by the carrying on of his activities.

17. A claims adjuster must take all reasonable measures to ensure that employees do not reveal personal information obtained in the course of their activities.

18. A claims adjuster must not use personal or confidential information gathered in the course of his activities for purposes other than those for which he gathered it.

19. A claims adjuster must not accept or continue a mandate if it involves or may involve disclosing or using confidential information or documents obtained from another claimant, unless that claimant so consents.

20. A claims adjuster must not withhold sums of money, securities, documents or property of a claimant unless a legislative or regulatory provision so permits.

21. A claims adjuster must take reasonable care of the property entrusted to his care by the claimant or the client.

22. A claims adjuster must not endorse a cheque made out to a claimant or to a client unless he has been notified by that party in writing that he may do so and provided that he endorses the cheque only for the purpose of depositing it into a separate account.

23. A claims adjuster must not:

(1) have a personal interest in the settlement of a claim;

(2) derive or seek to derive personal benefit, other than his salary or remuneration, from a matter entrusted to him;

(3) ask anyone whomsoever, except the client or his representatives, to inform him of the occurrence of an accident;

(4) obtain or attempt to obtain details concerning an insurance policy from a person other than the client or his representatives, with a view to having the settlement of claim entrusted to him;

(5) advise an insured, a claimant or a third party not to consult another representative or any other person of his choosing;

(6) mislead an interested party as to the identity of his client;

(7) pay or offer to pay a witness compensation that is conditional on the content of his testimony or on the outcome of litigation;

(8) unduly withhold, conceal, harbour, falsify, mutilate or destroy evidence, whether directly or indirectly;

(9) conceal evidence that he or a client has a legal obligation to conserve, disclose or produce.

CHAPTER III DUTIES AND OBLIGATIONS TOWARDS CLIENTS

24. A claims adjuster must avoid any misrepresentations as to his level of competence or the effectiveness of his services.

25. Before accepting a mandate, a claims adjuster must take into account the limits of his abilities and knowledge and the means available to him. In particular, he must not undertake or continue a mandate for which he is not sufficiently prepared, without obtaining the necessary assistance.

26. A claims adjuster must not represent opposing interests, except with the consent of his clients.

27. A claims adjuster must not advise a client not to consult another representative, a member of another discipline or any other person of his choosing.

28. A claims adjuster must act promptly, honestly and equitably in providing his professional services in connection with the mandates entrusted to him.

29. A claims adjuster must inform the client promptly of any violation, fraud or circumstances that could reduce or compromise an entitlement to compensation.

30. A claims adjuster must, without delay, follow up on the instructions that he receives from a client or notify him that he is unable to do so.

31. A claims adjuster must submit to the client any offer of settlement.

32. In carrying out a mandate, a claims adjuster must avoid multiplying professional acts.

33. A claims adjuster must not take into account the intervention of a third party that could affect the carrying out of his professional obligations to the detriment of the client.

34. A claims adjuster may, for good and reasonable cause, cease to act on behalf of a client and unilaterally terminate a mandate after taking reasonable measures to ensure that the client suffers no prejudice therefrom.

Good and reasonable cause includes:

(1) the loss of the client's confidence;

(2) deceit on the part of a client or the client's refusal to collaborate;

(3) pressure from a client to carry out illegal, unfair, immoral or fraudulent acts;

(4) persistent refusal by a client to accept a fair settlement;

(5) a claims adjuster being in conflict of interest or in a situation that casts doubt on his professional independence;

(6) refusal by a client to recognize an obligation relating to costs, disbursements and remuneration or, following reasonable prior notification, his refusal to pay the claims adjuster an instalment towards the fulfilment of that obligation.

35. A claims adjuster must cease to represent a client if his mandate is revoked.

36. A claims adjuster must report to the client upon request and must show diligence in preparing his reports, rendering his accounts and making his remittances.

37. A claims adjuster must not, through fraud, trickery or other deceitful means, avoid or attempt to avoid his professional civil liability.

38. The remuneration set by a claims adjuster must be fair and reasonable. Remuneration is fair and reasonable where it is justified by the circumstances and proportionate to the services rendered. In setting his remuneration, a claims adjuster must take particular account of the following factors:

- (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.

39. A claims adjuster must ensure that a client is informed of the approximate and foreseeable cost of his services.

40. If a claims adjuster has concluded a contract with a client providing for remuneration on an hourly basis, he must provide the client with all explanations necessary for him to understand his statement of remuneration and the terms and conditions for payment.

41. A claims adjuster must not accept, other than the remuneration or compensation to which he is entitled,

any advantage, rebate or commission relating to his activities, except where permitted by the Act. In addition, he must not pay, offer to pay or undertake to pay any advantage, rebate, compensation or other remuneration, except where permitted by the Act.

42. A claims adjuster may charge interest on overdue accounts only if he has an agreement to that effect with the client. Any interest charged must be at a reasonable rate and does not exceed the rate set in accordance with section 28 of the Act respecting the Ministère du Revenu.

43. Upon completion of his mandate, a claims adjuster must repay any part of an advance on his remuneration for which no work was done.

CHAPTER IV SPECIAL PROVISIONS APPLICABLE IN THE CASE OF A MANDATE GIVEN BY A CLAIMANT TO A CLAIMS ADJUSTER

44. A claims adjuster must not under any circumstances undertake appraisal work for a claimant or claim to act on his behalf unless he has been given a prior written mandate to do so by the claimant.

45. A claims adjuster must not borrow from a claimant sums of money that he collects for him.

CHAPTER V SPECIAL PROVISIONS APPLICABLE IN THE CASE OF A MANDATE GIVEN BY AN INSURER TO A CLAIMS ADJUSTER

46. A claims adjuster must not under any circumstances undertake appraisal work for an insurer or claim to act on its behalf unless he has been given a prior written mandate to do so by the insurer.

47. When a claims adjuster informs the insured that he is acting on behalf of an insurer, he must also indicate to the insured that he represents only the interests of the insurer.

48. A claims adjuster must notify the insurer of any ties or interests held by third parties in property that is the subject of a claim and suggest to it settlements that take account thereof.

49. A claims adjuster must disclose to the insurer any information in his possession that could affect decisions regarding the settlement of a claim, particularly breaches of contract, fraud, misrepresentations or forging of evidence.

CHAPTER VI

DUTIES AND OBLIGATIONS TOWARDS INSURERS

50. A claims adjuster must not mislead an insurer, abuse its good faith or use unfair practices in dealing with the insurer.

51. A claims adjuster must not falsely make representations to an insurer to the effect that he is in charge of settling a claim.

CHAPTER VII

DUTIES AND OBLIGATIONS TOWARDS REPRESENTATIVES

52. A claims adjuster must use fair methods of competition and solicitation.

53. A claims adjuster must not discredit another representative.

54. A claims adjuster must not mislead another representative, abuse his good faith or use unfair practices in dealing with him.

55. A claims adjuster must collaborate with other representatives insofar as he causes no prejudice to his client or to the parties involved in a claim.

CHAPTER VIII

DUTIES AND OBLIGATIONS TOWARDS THE BUREAU DES SERVICES FINANCIERS AND THE LA CHAMBRE DE L'ASSURANCE DE DOMMAGES

56. A claims adjuster must answer without delay any correspondence from the Bureau or the Chamber, from their executive officers or inspectors, from the syndic of the Chamber or his assistants, or from an investigator referred to in sections 339 and following of the Act, in the performance of the duties devolved upon them under the Act or its regulations.

57. A claims adjuster must not, directly or indirectly, obstruct the work of the Bureau or the Chamber, of their executive officers or inspectors, of the syndic of the Chamber or of its investigators.

58. Where a claims adjuster has been informed of an investigation concerning him, he must not intervene vis-à-vis the complainant or informer, except within the scope of performing his mandate, where applicable.

59. A claims adjuster must not use judicial proceedings deemed dilatory or excessive by the body seized

thereof in order to prevent the filing or continuance of a complaint against him for a breach of the Act or its regulations or in order to cause such complaint to be withdrawn or abandoned.

CHAPTER IX

BREACHES OF THE CODE OF ETHICS

60. Breaches of the Code of Ethics by a claims adjuster include:

(1) ceasing to fulfil the requirements for becoming a holder of a certificate for a claims adjuster;

(2) carrying on activities dishonestly or negligently;

(3) having been found guilty, by final judgment, of a criminal act related to the activity of representative;

(4) contravening any provision of the Act and its regulations applicable to him;

(5) being an undischarged bankrupt, unless the bankruptcy resulted from causes unrelated to the activity of representative;

(6) carrying on activities under conditions or in situations likely to compromise the quality of his services;

(7) directly or indirectly paying or compensating a person who is not a representative in order for that person to act in that capacity or use that title;

(8) directly or indirectly accepting or obtaining payment or compensation from a person who does not hold a certificate for a claims adjuster and who acts or attempts to act in that capacity;

(9) directly or indirectly accepting or obtaining payment or compensation not authorized by the Act from a person other than the person who used his services;

(10) sharing, offering to share or promising to share his commission with a person who is not a representative in damage insurance or a claims adjuster;

(11) paying or promising to pay remuneration or compensation to a third party in order for his services to be used, except as provided for by the Act or the regulations adopted thereunder;

(12) carrying on activities not authorized by his certificate or by the class indicated thereon, or implying that he is authorized to do so;

(13) falsely implying that he holds a particular certificate;

(14) knowingly deriving benefit from perjury or from false evidence;

(15) knowingly making a false statement;

(16) participating in gathering or in conserving evidence that he knows is false;

(17) concealing or knowingly withholding that which a legislative or regulatory provision requires him to disclose;

(18) advising or encouraging a client to do something that the claims adjuster know is illegal or fraudulent;

(19) not informing the client, the insured or the opposing party of any impediment to the continuation of his mandate;

(20) insistently or repeatedly urging a person to use his professional services;

(21) requiring a client to pay advances that are disproportionate to the nature and circumstances of the claim and the state of the parties;

(22) using or paying a third party to solicit where that party is not authorized by the Act to do so;

(23) unjustifiably refusing or neglecting to appear at the office of the syndic, of one of his assistants or of an investigator referred to in sections 339 and following of the Act, at the request of any of them;

(24) carrying on activities with persons not authorized to carry on such activities by the Act or the regulations adopted thereunder, or using their services to do so;

(25) charging for professional services not rendered or falsely described;

(omitted)

(26) carrying out solicitation or placing advertisements not permitted by the Act or the regulations adopted thereunder, or allowing such solicitation to be carried out or such advertisements to be placed;

(27) out of malice, filing a complaint or making an unfounded accusation against another representative;

(28) 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

claims adjuster are in the discipline of claims adjustment or in another discipline contemplated in the Act.

CHAPTER X SPECIAL RULES APPLICABLE TO A CLAIMS ADJUSTER EMPLOYED BY AN INSURER

DIVISION I GENERAL PROVISIONS

61. The special rules in this Chapter apply only to a claims adjuster employed by an insurer.

Moreover, the said claims adjuster is not subject to the provisions of the other Chapters of this Code, unless the provisions of this Chapter otherwise provide.

DIVISION II DUTIES AND OBLIGATIONS OF A CLAIMS ADJUSTER EMPLOYED BY AN INSURER

62. A claims adjuster must not:

(1) neglect to effect promptly, honestly and fairly the settlement of claims for which responsibility has been determined;

(2) neglect to follow up promptly on a request for compensation arising from an insurance contract;

(3) neglect to accept or refuse a request for compensation within a reasonable period following the filing of the required evidence;

(4) neglect to notify an insured of the approach of the prescription date;

(5) postpone the settlement of property damage until the settlement of bodily injuries.

DIVISION III DUTIES AND OBLIGATIONS TOWARDS THE BUREAU AND THE CHAMBER

63. A claims adjuster employed by an insurer must not breach the provisions of Chapter VIII of this Code.

DIVISION IV BREACHES OF THE CODE OF ETHICS

64. The provisions of section 60 of this Code shall apply to a claims adjuster employed by an insurer, except as regards subparagraphs 7 and following of the said section.