

Process Renewals with Care: It's Your Professional Obligation

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This article is based on actual cases that were brought before the syndic. We hope it will help you to reflect on the quality of your professional practice, specifically with respect to your ethical obligations.

When renewing your clients' insurance contracts, are you sure that you are aware of the professional obligations related to this important task?

The Professional Obligation

Before answering this question, it is essential to fully understand one's professional obligation, as defined in section 39 of the *Act respecting the distribution of financial products and services* (the Act). This section clearly states:

39. Damage insurance agents and brokers must, when renewing an insurance policy, take the necessary steps to ensure that the coverage provided corresponds to the client's needs.

The Complainant

While shopping around for an insurer that offers the most attractive premiums for his many insurance contracts, a businessman who owns a number of businesses and considerable assets notices that, unbeknownst to him, he has been paying two premiums for an insurance policy on one of his buildings.

The Facts of the Case

In 1999, the complainant transfers the insurance for his entire business portfolio to a new damage insurance representative. He therefore writes "not required" on all the renewal notices for his insurance contracts and sends them back to his former representative.

The (now ex-) damage insurance representative proceeds to cancel each of the commercial lines insurance contracts received "not required" from the client. However, one of the "not required" contracts is not received

and thus remains in force. Furthermore, from July 2000 to July 2006, the representative continues to mail the insured his renewal notice and the premiums continue to be paid monthly by pre-authorized direct debit.

The Investigation

The investigation reveals that when renewal time arrives, the damage insurance representative mails out the complainant's only contract still in force, but never contacts him to "touch base" and review his insurance needs. Every year at renewal time, the representative expects the contract to come back to him marked "not required." However, this never occurs, since the envelopes are misaddressed and never reach the client.

The years go by and the insured continues to be unaware that a commercial lines insurance contract on one of his properties is still in force with his former representative. Nor is he aware that a pre-authorized withdrawal continues to be made to pay for this premium, since his accountant has allowed the payments to continue in the mistaken belief that the premiums are for a life insurance contract.

The investigation also uncovers the fact that the firm to which the representative is attached does not have a formal procedure to respect and enforce section 39 of the Act.

The Formal Complaints

Two formal complaints are filed with the discipline committee of the ChAD, one against the former representative and the other against the damage insurance representative managing the firm. I would like to draw your attention to the first charge of each of the complaints:

Charge against the representative:

1. Between July 23, 1999 and July 23, 2006, failed to act as a conscientious advisor by not taking the necessary steps each time the insurance contract of ABC Insurance came up for renewal to ensure that the coverage offered met the needs of the client (XYZ Management), all in violation, in particular, of sections 39 of the *Act respecting the distribution of financial products and services* and 2 and 37(6) of the *Code of Ethics of damage insurance representatives*.

Charge against the representative managing the firm:

2. Between July 23, 1999 and July 23, 2006, personally and as the manager of the firm, let the employees fail to act with competence and professionalism by not instituting procedures for renewing insurance contracts and reviewing insureds'

needs in keeping with the ethical obligations of a conscientious advisor, thus allowing the insurance contract of ABC Insurance, on behalf of XYZ Management, to be mailed out for renewal throughout this period without making any contact with the client, which would have revealed that the mandate had been terminated, all in violation, in particular, of sections 39 and 85 of the *Act respecting the distribution of financial products and services* and 2 and 37(6) of the *Code of Ethics of damage insurance representatives*.

Decision of the Discipline Committee

The two representatives pled guilty. They also described to the discipline committee all the procedures recently instituted to avoid a recurrence of the situation.

In its ruling, the discipline committee made the following comments:

"Objectively speaking, the gravity of the offences to which the respondents pled guilty cannot be ignored. Section 39 of the Act [...] obliges brokers and agents to take the necessary steps to ensure, every time the policy comes up for renewal, that the coverage offered to the client meets his needs. Evidently, for a number of years, the respondents failed to comply with this obligation—an obligation which is clearly essential to protecting the public."

The former representative was fined a total of \$7,000, and the representative who managed the firm was fined a total of \$9,000.

Conclusion

Before processing the file, it would have been much wiser for the representative to verify the client's actual intentions. Did he really intend to keep this insurance policy in force despite the fact that all the other policies were returned with the note "not required" written on them? Simply contacting the client would have allowed the representative to terminate the mandate and avoid any misunderstanding.

Instituting clear procedures that comply with section 39 and ensuring that all firm employees are aware of these procedures would have enabled the representative to avoid this type of situation.

Since this professional obligation will be ten years old next October, there can no longer be any acceptable excuse for not taking the necessary steps at renewal time to ensure that you review your clients' needs, be it for personal or commercial lines insurance.