

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MICHAEL GILCHRIST
(“Licensee”)

INTRODUCTION

With a view to protecting consumers, the mandate of the Insurance Council of Manitoba (ICM) is to regulate the business of insurance in Manitoba and to see that the laws relating to the insurance business are enforced and obeyed.

Council derives its authority from *The Insurance Act* C.C.S.M. c. I40 (the “Act”) and the *Insurance Councils Regulation 227/91* (the “Regulation”).

The *Regulation* specifically provides:

7(1) The superintendent is authorized to delegate to all or any of the insurance councils all or any of the powers, functions and duties that the superintendent has under the Act and the regulations.

7(2) Without restricting the generality of subsection (1), the superintendent may delegate to all or any of the insurance councils all or any of the following powers that the superintendent has under the Act:

- (a) the power to issue or refuse a licence under section 371, 385 or 386 of the Act;
- (b) the power to attach limitations or conditions to a licence under section 396 of the Act;
- (c) the power to cancel or suspend a licence under section 375 or 385 of the Act;
- (d) the power to consult on the reinstatement of a licence under subsection 395(2) of the Act;

(e) the power to carry out investigations.

7(4) In addition to the powers, functions and duties delegated under subsections (1) and (2), each insurance council

(a) subject to the approval of the superintendent, may make rules for its own procedure;

(b) subject to the approval of the superintendent, may prescribe the educational and other standards that an applicant must satisfy and maintain to be eligible for the issue of a licence and to maintain a licence as an agent in the class of insurance being regulated by that insurance council or, in the case of the Insurance Adjusters Council, as an adjuster;

(c) with respect to persons licensed in the class of insurance regulated by that insurance council or, in the case of Insurance Adjusters Council, as adjusters, may exercise the powers conferred by subsections 375(1) and (1.1), 385(7) and 396(1) and (2) of the Act, and shall forthwith report to the superintendent all actions taken under those subsections:

(d) may authorize the Manitoba Council to act on its behalf in certain matters;

(e) may initiate and engage in programs of consumer protection;

(f) may make recommendations to the minister;

(g) may enter into a contract with any person for a purpose related to the exercise of its powers and duties;

(h) subject to the approval of the superintendent,

(i) may establish ethical, operational and trade practices for agents or, in the case of the Insurance Adjusters Council, for adjusters.

(ii) may make rules providing for the establishment and enforcement of the practices referred to in subclause (i), and

(iii) may enforce the practices provided for under subclause (1).

FACTUAL CONTEXT

In partial discharge of ICM's responsibility to protect the public, every application or renewal of the licence requires the licensee to answer certain questions. Among them is whether the applicant/licensee has "been charged with or convicted of a criminal offence." And on every licence 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 within 15 days of any material changes to the information contained in this application. (the "declaration")

This is a very important disclosure obligation. Comparatively early disclosure of the charge permits Council (originally through its staff) to assess whether the charge suggests the public may be at risk and to conduct any necessary inquiries or investigation to aid in that assessment. The nature of the offence would be considered to determine if it is material 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 has possessed a life licence since 1992 and an Accident and Sickness license since 2012. He has on many occasions made the declaration referred to above to report to Council within 15 days and material changes, which includes any charge involving a criminal offence. In January and May 2014, the Licensee was charged with criminal offences. He failed to inform Council of the charges within the required 15 day period. When Council learned of the charges, it conducted an investigation. Council reviewed the matter on December 10, 2014 and determined that the Licensee should be given a formal caution, but that there should be no further discipline in connection with those particular failures to disclose. The Director of Licensing and Compliance accordingly wrote to the Licensee on December 19, 2014. The letter provided a detailed explanation of the chronology and context and stated:

You twice failed to disclose charges for a criminal offence within the mandated 15 day period and failed to report on your May 2014 renewal application that you had been charged previously with a criminal offence.

On May 19, 2015, a renewal application was completed online by the Licensee, which included the declaration referred to above.

On September 15, 2015, the Licensee advised Council that he had on September 8, 2015 entered a guilty plea to one count of assault causing bodily harm. On September 18, 2015, the Licensee was charged with the criminal offences of refusing to provide a sample of his breath, impaired driving and breach of recognizance (in particular, drinking alcohol in breach of a court imposed condition not to do so) and was held in custody until September 22, 2015. With this charge came an automatic suspension of Licensee's driver's licence and no doubt further stress and anxiety.

On or about September 29 or 30, 2015, it was communicated to Council from an outside source that the Licensee had been charged with the additional criminal offence, not yet known to Council. On September 30, 2015, not having heard from the Licensee, Council emailed the Licensee as follows:

The Insurance Council of Manitoba (ICM) would like remind you as a licensed insurance agent of your obligation to fully disclose any material change affecting your licence. Material changes must be disclosed in writing to the ICM within 15 days of such change.

Despite this email, the Licensee disclosed the charge on October 6, 2015 only after a follow up phone call and email by ICM staff on October 6, 2015, that is, beyond the 15 day limitation period. This was the Licensee's third violation of the disclosure requirement and occurred after he had been given a formal caution (December 19, 2014) and after he had been reminded again of his obligation (September 30, 2015).

The foregoing was presented to a meeting of Council on June 15, 2016. Upon reviewing the evidence, and after due deliberation, Council determined that the Licensee had breached section 9 of the Code of Conduct and that disciplinary action was justified. It accordingly formed the intention to order that the Licensee be fined \$2,500.00 and assessed costs of \$500.00.

While not obligated to do so by *Regulation 227/91* section 7(3), the Council communicated its intended decision in writing on July 13, 2016, and offered the Licensee the opportunity to dispute Council's findings and request a hearing before Council. The Licensee subsequently exercised this opportunity to dispute Council's intended decision, and a hearing was held on October 12, 2016.

The Licensee appeared on that day, gave evidence, and was represented by an advocate, who, though not called to the Manitoba Bar, has training as a lawyer.

ISSUE

Has the Licensee established by evidence or argument that the intended decision should be varied?

POSITION OF THE LICENSEE

The Licensee did not deny any of the facts outlined above. He argued:

1. Council's investigator was biased because he was at one time a neighbour of the Licensee's. There are several problems with this argument. Proximity of households could not by itself constitute bias and there is no evidence of more than that in this case. The Licensee acknowledged that he did not know the investigator personally. The investigator played no role in the deliberations or the decision of the Council. And all of the facts uncovered by the investigator are uncontested. This argument is entirely without merit.
2. The Licensee should have been alerted to the fact that an investigation was ongoing. Again, the investigation involved collecting or organizing evidence including requesting information from the Licensee. Input from the Licensee regarding the unreported charge was requested and received. This argument is without merit.
3. It is unclear whether the 15 day limitation period includes only business days or all calendar days. The Licensee had completed the declaration referred to above on multiple occasions and had been cautioned previously about the 15 day time period. Never before had the Licensee manifested any doubt about the meaning of the 15 day requirement. Council is satisfied that it is clear that "15 days" means 15 consecutive calendar days. This argument is without merit.
4. The Licensee substantially complied with the 15 day requirement. There were alternate branches to this argument. One was that being three days late is so insignificant that it was as good as meeting the requirement. No, it was not. The other is that the time began only to accrue when the Licensee was handed his "ticket" upon his release from custody on September 22, 2015. The Licensee knew or should have known that the charge clearly was effective September 18, 2015 and after his release he still had 10 days to make a phone call or send the Council an email to discharge his duty. He failed to do so. This argument is also without merit.

In sum, on the issue of the breach itself, nothing said or submitted by or on behalf of the Licensee justifies alteration of the finding of a violation by him.

The Licensee's advocate provided examples from the ICM website of other disciplinary actions assessed for comparative purposes, and these decisions were considered by Council.

With respect to the amount of the fine, Council was persuaded that it should be reduced. The Licensee appeared to appreciate that the issue is a serious one and Council believes that the Licensee will not make the same error again. The Licensee indicated that the amount of the fine specified in the intended decision would cause him substantial hardship and may impact on his ability to do business. Council also appreciates that the Licensee has had significant personal difficulties to deal with. For these reasons, Council has determined that the Licensee should be fined \$500.00 and assessed costs of \$500.00.

DECISION AND ORDER

Council concluded that the Licensee breached section 9 of the Life Insurance and Accident and Sickness Agent's Code of Conduct in failing to discharge his disclosure obligations.

PENALTY AND FINAL DECISION

Having regard to the determination of the violation aforesaid, and pursuant to sections 375(1.1)(c) and (d) of the *Act*, the following penalty is imposed upon the Licensee, namely:

1. The Licensee is hereby fined \$500.00.
2. The Licensee is hereby assessed investigation costs of \$500.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right and chose not to pursue a statutory Appeal; he instead expressly accepted the terms of the Decision and duly paid the levied fine and investigation costs.

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

Dated in Winnipeg, Manitoba on November 3, 2016.