



Insurance Council of Manitoba

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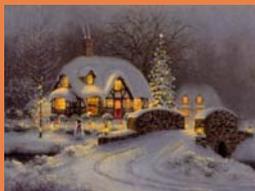
December 2004 Council Report

ICM Staff welcomes two new additions

The Insurance Council of Manitoba is pleased to introduce Allison Marshall, Receptionist and Karen Lehman, Licensing Clerk. Both Allison and Karen are filling in maternity leave positions. We welcome them to the Council.

Season's Greetings

The Insurance Councils of Manitoba wish everyone health, happiness and prosperity during the holiday season and in the new year.



Council Executive 2004 - 2005

At its recent Administrative Meeting, Council selected Dennis Brugger as its Chairperson for the coming year.

Dennis is the owner/manager of Brugger Investment & Insurance Management Ltd. located in Brandon, and has been involved in the life insurance industry for more than 35 years. Dennis was first appointed to Council in 1999 and is completing his second term on Council.

The remaining Manitoba Council executive consists of Randy Viray, Ernie Gilroy, Ellen Duncalfe, Miles Barber and Leann Hathaway.

Inducements to Insure

Section 113(1)(f) states, *“unfair or deceptive acts or practices in the business of insurance includes any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure.”*

The Insurance Council of Manitoba has found that inducements for the opportunity to quote on a piece of business is acceptable, as long as these inducements are not contingent in any way upon the **purchase** of an insurance product.

It would be considered an unfair or deceptive act or practice under the Act for something of value to be offered as an inducement to purchase an insurance product, and **rebating is strictly prohibited.**

Insurance Agents/Brokers Adjusting Claims

The Insurance Adjusters Council would like to remind all insurance agencies and insurance companies that licensed insurance agents/brokers may adjust a first party claim where the value of the claim is **\$2,500.00 or less**, where the claim arises under a policy sold by the agent or agency of which the agent is a member, and only where specific written authority has been granted by the insurer that issued the policy.

Furthermore, there is no provision which allows agents/brokers to employ adjusters on staff. Any violations under Section 385(9) of the Insurance Act of Manitoba should be referred to Council for compliance review.

Congratulations

Congratulations to Lois Broder, General Manager of the Insurance Council of Manitoba on her recent appointment as Vice-Chairperson to the Canadian Insurance Services Regulatory Organizations (CISRO). CISRO is an inter-jurisdictional group of regulating authorities who are dedicated to promoting the harmonization of standards of qualifications and practice for insurance intermediaries.

Its goals and objectives include increasing the profile of CISRO and creating a common voice to deal with issues that may be of interest to other financial services regulators, consumers and intermediaries.

Disciplinary Decisions

Juanito Camungol - Council determined that Life Insurance Agent pay a fine in the amount of \$500.00 and partial investigation costs in the amount of \$500.00 for improper completion of a disclosure statement in a matter of replacement.

Sunny Famakinde - Council determined that Life and Accident & Sickness Insurance Agent Licensee was unsuitable to hold a licence based on multiple infractions of the Insurance Act of Manitoba resulting from altering client cheques and depositing for his own personal use, and failing to secure insurance coverage.

Bradley Heuchert - Council determined Life and Accident & Sickness Insurance Agent pay a fine in the amount of \$500.00 and partial investigation costs of \$500.00 for failing to review the existing policy when recommending replacement, and for improper completion of a disclosure statement in a matter of replacement.

Anni Markmann - Council determined that Life and Accident & Sickness Insurance Agent pay a fine in the amount of \$750.00 and partial investigation costs in the amount of \$250.00 for replacement of insurance with her former company within one year of termination of sponsorship by that company.

Brad Potter - Council determined that this applicant for a life insurance agent licence was unsuitable to hold a licence based on a prior conviction for criminal harassment. This matter was appealed to the Provincial Licensing Appeals Board, who upheld the decision of Council to refuse him a licence, however the Appeals Board indicated that he may reapply for a licence in 2008.

Calvin Richardson - Council determined that Life and Accident & Sickness Insurance Agent Licenses be suspended for a period of two (2) weeks, and a fine in the amount of \$1,000.00 and costs

in the amount of \$1,000.00 be assessed for facilitating the cancellation of a policy of life insurance intended to replace existing coverage prior to ensuring new coverage had been secured and issued.

Leslie Silverman - A fine of \$500.00 and costs of \$500.00 were assessed based on this Accident & Sickness Insurance Agent's failure to accurately disclose pertinent elements of a disability contract intended to replace an existing disability contract. This disciplinary decision was imposed by the Provincial Licensing Appeals Board.

Tolson Wijsekera - Council determined that this applicant for a Life Insurance Agent Licence was unsuitable to hold a licence based on an unsatisfied disciplinary judgment in another jurisdiction. The licence was refused.

Vernelle Unrau - Council determined that Life Insurance Agent Licence be suspended for a period of six (6) weeks and that she be assessed partial investigation costs of \$250.00 for forgery of her manager's signature on the recommendation portion of an application for an Accident & Sickness licence.



Warning - The use of any information in this Council Report to discredit another licensee, or any other person, is not permitted and may result in disciplinary action against a licensee using the information in such a manner.

Criminal Record Checks

Council's April 2004 bulletin advised effective June 1, 2004 Criminal Record Checks were now part of the licence application review process for persons who have never held a licence with Council and those persons who have not held a licence with Council in the past year.

To avoid unnecessary delays in the processing of applications, please ensure you have read the application instructions carefully, disclose in your own words details of any and all convictions or charges and attach all required and supporting documents.

Applications received that are incomplete or do not accompany a Criminal Record Check will not be approved for a licence.

There has also been some confusion regarding the completion of the "Consent - Investigation Authorized". Signing the "Consent - Investigation Authorized" is not intended to indicate that the Council will be responsible for obtaining Criminal Record Checks. This consent provides Council with the authorization to conduct investigations as required. It is the responsibility of the applicant to ensure all required documents have been submitted with his or her application.

Agency succession planning: options for the designated representative

Property and casualty agents who have, for years, faithfully carried the business of insurance are beginning to retire. Unfortunately, the leadership pool is too often empty. With too few **qualified** brokers ready to assume the helm and acquire these businesses, solutions to succession planning are extremely important.

Many agency owners have spent their entire careers in insurance. Now, second and third generation family members are working for the agency. This may lead to some internal conflict with respect to succession plans and perpetuation of the business. How does an owner unlock the liquidity within the agency in order to retire and keep the agency intact for the next generation, without creating an excessive financial burden for the successors?

There are a few basic solutions available to the agency owner, however determining which strategy is best is often more difficult than the plan's actual implementation. It is advisable to seek professional help well in advance of implementing any of these strategies.

Buy-Sell Agreement – The execution of a buy-sell agreement allows for change of control of the business. It is generally used to change control in ownership from one principal to others, based upon agreed to terms, price and timing. It may be drawn up amongst family members to smoothly change the ownership from one party to another, or several others. It is also very effectively supplemented when used with life insurance or Employee Stock Ownership Plans, allowing certain tax advantages to the transfer of ownership, which will lower the financial burden for the successors and create tax advantages to the seller.

Partnership or Joint Venture – An owner may consider partnering with another firm within its geographic area, and there are many opportunities existing with this type of an arrangement. The owner of one business can fund his retirement through partnering with an agency of equal or greater size, evolving into an exit strategy over a number of years. Additional earnings will be derived by both businesses, while an integration and profit sharing plan is implemented. The financial boost from this can create additional cash flow to fund a buy-sell agreement that could be included in the partnership agreement.

Such a joint venture is also flexible enough so that the agency owner may unwind his business in the event the partnership does not work out. It may create the best of both worlds in that there will be flexibility to the agency owner to create his succession plan, while satisfying the need to obtain liquidity from the business.

Key family members within the agency may remain in the operation and potentially awarded ownership in the combined entity after formalization of a sale option included in the

partnership agreement. This will allow for the continuation of family participation in a larger company, while the merger gradually takes place. The joint venture partner may find this to be the best of both worlds as well, for they are able to execute an acquisition strategy but perform it on a gradual basis. This of course will minimize their risk and allow time for both parties to integrate the agencies into a more efficient operating entity.

The key to these strategies, of course, is that there must be a clear plan on the **front end** of the discussions. It is equally important that independent professional advisors be brought into the process early, allowing both parties to assess the financial position, tax implications and any other legal change of control issues. Both parties must utilize industry legal and financial advisors who are neutral and without bias, creating a level playing field wherein the third party recommendations are beneficial to both parties.

Sale of Business – Selling the agency is the most straightforward approach to solving and completing a succession plan. It creates liquidity for the owner and allows for opportunity and reward for family members within the business. It is important to realize that to maximize the sale price, the owner must stay involved with the business for at least three years and therefore should not wait until he is ready to retire to begin the sales process.

Insurance is a relationship business and there is a risk to the purchaser if the owner does not maintain involvement with the organization for a reasonable time period, which would allow for a smooth transition with customers as well as with employees of the agency.

It's advisable to obtain professional advice to assist in evaluation of both the financial and non-financial issues. Planning should begin a least five, and as far as ten years before actually leaving the business. This allows ample time to explore all opportunities, begin the transition process and to segue out of the business. For those who would like to retire at age 55, age 45 is not too early to begin the process of thinking long-term strategy.

Retirement is not the only issue with respect to succession planning. Untimely death or disability of the agency owner can have catastrophic results. A qualified individual must be in place to take over the agency. Without anyone in the leadership pool, the family may not be allowed the time needed to make important decisions with respect to the agency. They may be forced to sell the business at less than market value. They may not have properly qualified individuals on staff, placing the brokerage in a position of non-compliance which can be costly to the survivors.

It is in the best interest of every brokerage firm to have a formal succession plan in place – for one of three events may happen - retirement, disability or death.

Reminders

Responsibilities of Course Providers

The Life Insurance Council of Manitoba has recently revoked the accredited course provider status of an insurer who failed to follow the accreditation guidelines for course providers. As a result, it is important that all accredited course providers be reminded of the accreditation standards and their duties under their agreement.

Course providers must undertake a regular evaluation of course content to monitor the quality of the material and ensure it meets current industry standards. They are responsible for verifying the qualifications of individual instructors and monitoring their continued effectiveness in the delivery of the material. Course providers are also responsible for having and maintaining attendance registers for Council verification.

Acceptable continuing education is a STRUCTURED learning program which is relevant to insurance products and services and the giving of advice on those products and services. It includes programs that are structured for the purpose of education – and does not include programs or meetings which are primarily based on sales production, promotion and motivation.

The number of hours of acceptable continuing education must be attested to in writing by a program provider and is measured by the **actual time** spent at the program (exclusive of coffee breaks and lunch hours) and if not in a classroom setting, the time designated by the program provider for completion of a program. The program must be presented by a qualified instructor, leader or lecturer.

Instructors and course providers must never allow certificates to be signed and given to a licensee who did not attend for the full credit hours shown.

As Council reserves the right to monitor the content and delivery of course material, audits will be conducted and/or course evaluation forms will be distributed to attendees over the following months. Kindly ensure you are in compliance with your agreement and the accreditation guidelines.

Should you have any questions regarding continuing education, please contact Ellen Morin at emorin@icm.mb.ca.

Probationary Life Insurance Agents

It has been 22 months since the LLQP licensing program was introduced.

Pursuant to section 9(1) of the Life Insurance Agents and Accident and Sickness Insurance Agents Licensing Rules all holders of a Probationary Part A Life Licence must have, within 180 days from the date their licence was first issued enrolled in the Life Licence Qualification Program and within two (2) years after the Probationary licence was issued must complete the program and the LLQP provincial examination.

Effective January 1, 2005, there will be holders of a Part A Probationary licence who must comply with completion of the program and the LLQP provincial examination.

Failure to comply with this requirement will result in the agent licence being automatically cancelled. As licensed professionals it is your responsibility to ensure you have met and satisfied all the licensing requirements to maintain your licence as no further reminders will be provided.

Level 1 Life Insurance Agents

As a reminder, all Level 1 life insurance agents must upgrade within three (3) years from their original issue date. If this upgrade is not achieved within this timeframe, your Level 1 Life Insurance Agent licence will be suspended and your sponsoring insurance company will be notified. A Level 1 Life Insurance Agent may upgrade to a "Level 2" (Full) Life Insurance Agent Licence by one of the following methods:

- Successful completion of the Life Licence Qualification Program (LLQP);
- Successful completion of the Insurance and Financial Advisors Training Course (IFATC);
- Successful completion of the Life Insurance Agent Level 2 Qualifying Examination, modified if required, available through the Council office; or
- Successful completion of the Financial Advisors Association of Canada (Advocis) Level 2 Training Course.

Please take notice that some jurisdictions no longer accept any upgrade method other than the LLQP, and other jurisdictions will only be accepting the LLQP after December 31, 2004.

Council urges you to complete your upgrading requirement as soon as possible, as some jurisdictions may only recognize the LLQP if you are applying for a non-resident licence in another jurisdiction.

Continuing Education Credit Hours

It is becoming more apparent that agents and brokers are attempting to carry forward more than 50% of their earned credit hours from the previous licensing year.

The General and Life Insurance Agent Licensing Rules state credit hours earned in excess of the required number may be carried forward to the next year, but a licence holder may not satisfy more than 50% of his or her annual continuing education requirement with hours earned in the previous licensing year.

This means life agents may only carry forward 7½ credit hours in excess of the required 15 and general brokers only 4 credit hours in excess of the required 8 credit hours.

Sponsorship and Duty of Care

Sponsorship and recommendation is required for licensing in the Province of Manitoba. There is also a provision in the legislation which requires any person or insurer who is authorized to approve by recommendation a licensing application, to use reasonable screening procedures to determine if an applicant is suitable to receive a licence.

It should be noted that with that comes "duty of care" obligations which insurers and/or any person authorized to approve an application for licensing. These obligations include **screening** agents for suitability, compliance **monitoring**, and the **reporting** of unsuitable agents to provincial regulators.



Council Report Survey "What's Good; What's Not?"

The following questions and answers arise from the Council Report Survey that was sent out to all licensed agents in September 2003.

Q. Why are all provinces not consistent in licensing requirements such as continuing education requirements and Errors & Omissions Insurance?

A. This is an issue currently being addressed by both the CCIR (Canadian Council of Insurance Regulators) and CISRO (Canadian Insurance Services Regulatory Organizations). Streamlining and Harmonization committees are established to address the issue of concern to the industry. Two priorities include both harmonizing errors and omissions insurance requirements and harmonizing continuing education requirements. If at all possible, the provinces would like to see some consistency.

Q. If I am already licensed as a level 2 life insurance agent, and wish to take the full LLQP, can I claim continuing education credits for successful completion?

A. Yes. Successful completion of the full LLQP course and Council's qualification examination will provide you with 30 hours of continuing education credits.

Q. How are Council Members appointed?

A. Council members are appointed by the Minister of Finance for a three (3) year term pursuant to Regulation under the *Insurance Act of Manitoba*. Each industry Council consists of six (6) persons, at least three (3) of whom must be licensed under the Act. All members appointed may be reappointed for one additional term of three years.

Q. If I am a level 1 life insurance agent and I write Council's LLQP qualification examination can I claim continuing education credits for successful completion of the LLQP?

A. Yes. Successful completion of the full LLQP course and Council's qualification examination will give you 30 hours of continuing education credits. Successful completion of the A&S course and examination will give you 15 hours of continuing education credits.

CE Education Credit Hours 2005/2006 Licensing Year

The Life Insurance Council has determined that the required annual continuing education credits will be increased to 30 hours per year, for the **2005/2006 licensing year**, for all holders of a life insurance agent licence.

For Accident & Sickness only licensees, annual credit hours required will be increased to 15 hours per licensing year, again with first reporting in May, 2006.

This will bring Manitoba into line with the requirements of many other jurisdictions.

Carry forward will be allowed but only to a maximum of 10 credit hours for Life agent licensees and to a maximum of 5 credit hours for Accident & Sickness agent licensees.

Instructors of approved continuing education will be entitled to two continuing education credit hours for every one hour of instruction.

Life and Accident & Sickness agents may obtain continuing education credits by completing internet courses, however only to a maximum of 1/3 of the credits required. i.e. 10 hours for a life agent needing 30 hours, or 5 hours for an Accident & Sickness only licensee.

FIRST REPORTING WILL BE AT LICENCE RENEWAL 2006.



Personal Information Protection and Electronic Documents Act (PIPEDA)

The Federal Privacy Act took effect January 1, 2004. One of the more significant requirements of the new privacy legislation is the need to safeguard personal information and the requirements that organizations secure personal information from unauthorized access, disclosure, use or tampering.

These requirements are mandatory for most members of regulated professions. Offices should not be complacent and will benefit from a review of your existing practices.

Overview

Safeguarding personal and other confidential information will require the following components:

- physical measures (e.g., restricted access areas, locked filing cabinets)
- organizational measures (e.g., need-to-know and other employee policies, security clearances)
- technological measures (e.g., passwords, encryption, virus protection, firewalls)

Location of Paper Information

Practitioners need to consider one or more of the following options for safeguarding information:

- restricting working areas to staff only
- ensuring that non-staff are supervised at all times when in the working area
- obtaining written assurances of privacy and confidentiality from non-staff (e.g., cleaners) with unsupervised physical access
- locking confidential information away when the staff person working on it is not present, (e.g., breaks and overnight)

Staff who remove information from the office or take work home need to ensure that there is no access during transit (e.g., either kept in direct physical possession or kept in a locked space). Given the number of people who come in and out of our homes, there probably needs to be a locked room or cabinet for information kept there.

Location of Electronic Information

Access to the hardware housing electronic information (e.g., computers, laptops, tapes and disks) should probably have protections similar to that of paper information. In addition, both log-on and screen saver passwords should be used. Every computer needs to have both firewall and anti-virus protection. Computers used for work purposes at home need a similar level of protection. Other family members should not have access to work-related information, perhaps through a separate user password.

Transfer of Paper Information

Practitioners need to consider one or more of the following options for sending paper documents:

- in sealed envelope, marked private and confidential, sent by Canada Post or reputable courier
- in sealed envelope, marked private and confidential, delivered by staff
- in sealed envelope to be picked up by person who asks for it by name of recipient (kept out of sight in reception area until picked up)

Transfer of Electronic Information

Safeguarding electronic information transfers will probably be the greatest challenge for most organizations. The Information and Privacy Commissioner has indicated that regular email is not an acceptable means for transferring sensitive personal information. However, the use of unencrypted email has become so convenient that there is a very strong temptation to ignore this expectation. Regulators will have to be vigorous in their education of members that they should use one of the following options:

- with the consent of the person to whom the personal
- information relates (e.g., the client requests email communication) (N.B., the recipient is not necessarily the person to whom the personal information relates)
- where the message is anonymized
- encryption is used

For smaller organizations, finding an encryption program that is easy to use is a problem. Electronic signature protection is probably not sufficient. For all practical purposes, either the recipient has to use the same program or a secure website access program is required.

Even faxes can go astray. Fax number input errors and faxing confidential documents to a machine in an unsecured area are recurring problems. Practitioners will want to consider the following measures.

- securely locating your incoming fax machine
- use a cover sheet identifying the recipient with a privacy clause on it and one of the following safeguards:
 - fax number has been approved by the recipient
 - the recipient has advised that the fax machine is securely located
 - in the context, the privacy of the recipient fax machine can reasonably be inferred (e.g., the fax is to a legal, accounting or health care office)
 - the recipient has a Privacy Policy

Websites require special security measures if they collect or contain personal information (e.g., an appropriate website cookie policy must be in place).

Staff Safeguards

Practitioners should ensure that staff (including temporary workers) are trained in the following:

- the importance of the privacy of personal information
- access to personal information within the organization is on a need-to-know basis
- the organizations Privacy Policy on information handling, including obtaining consent before collecting personal information, only using information for the purpose for which the consent was provided and the name of the Privacy Officer for the organization
- sensitivity in collecting or using personal information verbally where others might overhear
- when providing copies of personal information internally or externally, to remove or mask unnecessary personal information
- to recognize and avoid being pumped for information

- to ensure that any personal information is not accidentally discarded in the regular garbage or blue box disposal system, but rather is shredded
- to avoid discussing personal information in public places (e.g., elevators, restaurants, washrooms, public transit)
- that a breach of the organizations policies will result in discipline up to and including dismissal

Consultants and Contractors

Practitioners need to review their privacy and security agreements with all consultants and contractors who have access to personal or other confidential information. A documented assurance from each of them will state that they will not access personal information except as required in the course of their duties and shall not be collected, used or disclosed for any other purpose without consent. The following consultants and contractors might be involved.

- temporary workers
- cleaners
- information technology
- marketers
- legal
- bookkeeping and accounting
- file storage
- credit card companies
- website manager
- office security
- building maintenance
- landlord

Your responsibilities under the Act as insurance agents/brokers are as follows:

- Appoint a Privacy Officer who will be responsible for your firm's compliance
- Develop and implement privacy policies in accordance with the following 10 principles of the Act:
 1. Accountability
 2. Identifying purposes
 3. Consent
 4. Limiting collection
 5. Limiting use, disclosure and retention
 6. Accuracy
 7. Safeguards
 8. Openness
 9. Individual access
 10. Provide recourse

What does all this mean.....

1) **Accountability**

Personal information would include but is not limited to the following:

- name, age, marital status, home address and phone number
- medical records
- income and purposes
- race / ethnic origin
- education

All personal information handling procedures must be analyzed to ensure that fair information practices are met. A possible checklist to follow is:

- What personal information is collected?
- Why is this information collected?
- How is this information collected?
- What is this information used for?
- Where do we keep this information and how secure is it?
- Who uses or has access to this information?
- To whom is it disclosed?
- When is this information destroyed?

Once the analysis is completed, develop and implement a written privacy policy and procedures to protect this personal information. All brokerages staff must also be trained on the privacy policy and procedures.

2) **Identifying purposes**

Provide your clients with the reasons for collecting their personal information including its use and disclosure. A one page document or a brochure setting out your privacy policy is an easy way to do this (see #8 **Openness**).

3) **Consent**

For new clients to the brokerage, it is recommended that whenever possible, the client's written express consent, rather than implied consent, be obtained at the time of collection of their personal information. For existing clients, the client's written express consent can be obtained at policy renewal. This express consent by the client(s) protects both the individual client and the brokerage.

4) **Limiting collection**

Identify the amount and type of information to be gathered and collect only the information that is required for its purpose.

5) **Limiting use, disclosure and retention**

The personal information collected must only be used or disclosed for the purpose for which it was collected and should only be maintained for as long as necessary to accomplish the purpose.

6) **Accuracy**

Ensure that the information collected or on file is accurate and up to date.

7) **Safeguards**

Security policies, such as appropriate storage, staff training and periodic reviews and updates on the privacy procedures must also be developed to safeguard the client's personal information.

8) **Openness**

Inform your clients of your firm's privacy policy along with the name of your privacy officers. Your clients can be made aware of this information including the purpose for collecting their personal information by letter or brochure.

9) **Individual access**

All clients/individuals must have access to their own personal information. To facilitate this access, we would suggest developing a request form for this specific purpose.

10) **Provide recourse**

The client must be informed of avenues of recourse should they have a complaint. Possible avenues of recourse would include ICM, industry associations and the Privacy Commissioner of Canada. Any and all complaints must be investigated by the firm's privacy officer or their assigned designate.

You may also order the complete guide "Your Privacy Responsibilities: A Guide for Businesses and Organizations to the Personal Information Protection and Electronics Documents Act" compliments of the Privacy Commissioner's Office at 112 Kent Street, Ottawa, Ontario K1A 1H3.

The guide is available for viewing or download at www.privcom.gc.ca/information/02_05_e.asp.

