

**BULLETIN DE L'AUTORITÉ  
DES MARCHÉS FINANCIERS**

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Distribution of financial products and services Section



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## **Encadrement des marchés des dérivés au Québec**

Avis est donné par l'Autorité des marchés financiers (l' « Autorité ») à l'effet qu'elle a publié le 25 mai 2006, pour une période de consultation de 60 jours, un document portant sur la réglementation des marchés des dérivés au Québec. Ce document, intitulé *Encadrement des marchés des dérivés au Québec*, présente les orientations que l'Autorité propose pour le développement de la réglementation en cette matière.

Le document est disponible, en français et en anglais, sur le site Web de l'Autorité à l'adresse <http://www.lautorite.qc.ca/industrie/encadrement-produits-derives.fr.html>.

### **Objet**

Les opérations sur les instruments dérivés ont connu une forte expansion, tant sur le plan international qu'à l'échelle du Québec au cours des dernières années. À ce jour, la réglementation québécoise a tenu compte de l'activité de ce marché dans le contexte général des opérations en valeurs mobilières. Toutefois, les développements sur les marchés financiers ont amené l'Autorité à repenser sa réglementation à l'égard des dérivés, et ce, afin de doter le Québec d'instruments réglementaires modernes et souples pouvant accompagner ce secteur en évolution.

### **Consultation**

Toute personne intéressée ayant des commentaires à formuler sur ce document est priée de les faire parvenir par écrit, avant l'expiration du délai de 60 jours de la publication, à savoir le 25 juillet 2006, en s'adressant à :

M<sup>e</sup> Anne-Marie Beaudoin  
Directrice du secrétariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, Square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal (Québec) H4Z 1G3  
Courriel : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

### **Renseignements additionnels**

Des renseignements additionnels peuvent être obtenus en s'adressant à :

Daniel Laurion  
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Autorité des marchés financiers  
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## **AVIS**

### **Pratiques de distribution et de règlement des sinistres se rapportant aux assurances de titres.**

De récentes vérifications ont permis à l'Autorité des marchés financiers (l' « Autorité ») de constater que les assureurs autorisés à pratiquer au Québec dans la catégorie de l'assurance de titres offrent généralement leurs produits aux acheteurs de maisons par l'entremise d'avocats ou de notaires, lesquels ne sont pas autorisés à agir comme « représentant en assurance ».

Ces mêmes assureurs règlent les réclamations se rapportant aux assurances de titres par l'entremise de leurs propres employés, lesquels ne sont pas autorisés à agir comme « expert en sinistres ».

L'Autorité rappelle qu'en vertu de la Loi sur la distribution de produits et services financiers (L.R.Q., c. D-9.2) (la « LDPSF ») nul ne peut agir au Québec comme représentant en assurance ou comme expert en sinistres à moins d'être titulaire d'un certificat délivré par elle à ces fins.

Une telle situation ne peut perdurer et l'Autorité demande aux intervenants concernés de se conformer à la LDPSF d'ici le 1<sup>er</sup> juillet 2007.

## Notice and Request for Comment

### Regulation respecting Mortgage Brokerage Activities

#### Draft Regulation

Act respecting the distribution of financial products and services  
(R.S.Q., c. D-9.2, s. 203.1 and 206; S.Q. 2002, c. 45, s. 400, 403)

#### Regulation respecting Mortgage Brokerage Activities

The *Autorité des marchés financiers* (the "Authority") is publishing today the draft Regulation respecting Mortgage Brokerage Activities.

#### Purpose of Regulation

The draft Regulation was made under sections 203.1 and 206 of the *Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2 (the "Act"), as amended by sections 400 and 403 of the *Act respecting the Autorité des marchés financiers*, R.S.Q., c. A-33.2. It stipulates the conditions and restrictions respecting the exercise of mortgage brokerage activities, the terms for issuing and renewing a licence and attestation provided for therein, the obligations of holders thereof, as well as the rules applicable to client solicitation and to information related to services offered to clients, and it covers various issues such as the period of validity of licences and attestations and disclosures to the Authority. The adoption of the draft Regulation will ensure the coming into force, on January 1, 2007, of new provisions pertaining to mortgage brokerage activities under the Act, specifically Title II.1 – MORTGAGE BROKER (sections 157.1 to 157.6) and amended sections 96 and 141.

#### Request for Comment

Notice is hereby given by the Authority that the draft Regulation respecting Mortgage Brokerage Activities, the text of which is appended hereto, may be made by the Authority and submitted to the government for approval, with or without amendment, after 15 days have elapsed since this publication.

#### Comments

Comments regarding the above may be made in writing, before the 15-day period for this publication elapses on **August 7, 2006**, to the following:

M<sup>e</sup> Anne-Marie Beaudoin  
Director, Secretariat  
Autorité des marchés financiers  
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### **Additional Information**

Additional information is available from:

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**July 21, 2006**

# REGULATION RESPECTING MORTGAGE BROKERAGE ACTIVITIES

Act respecting the distribution of financial products and services  
(R.S.Q., c. D-9.2, sections 203.1 and 206; S.Q. 2002, c. 45, sections 400 and 403)

## Division I

### Purpose and application

1. The purpose of this Regulation is in particular to determine the conditions and restrictions respecting the exercise of brokerage activities related to loans secured by immovable hypothec as well as the rules of conduct applicable to mortgage brokers and their employees.

## Division II

### Mortgage broker's licence

#### 1. *Scope of licence*

2. A mortgage broker's licence authorizes its holder to engage in brokerage activities relating to hypothecary loans.

3. The licence also authorizes the holder to engage in such activities through natural persons acting under his authority. Each of these persons must hold an attestation as an employee of the licence holder issued by the Authority.

4. A mortgage broker shall take all reasonable means to ensure that, with respect to the brokerage activities engaged in under his licence, his employees comply with the conditions and restrictions prescribed under the *Act respecting the distribution of financial products and services* (R.S.Q., c. D-9.2).

For the purposes of enforcement of the preceding provisions by the Authority, any act relating to mortgage brokerage performed by the holder of an employee attestation shall be considered to have been performed by the broker holding the licence to which the attestation is attached.

#### 2. *Issuance and renewal*

5. The licence and employee attestation shall be issued by the Authority to the person or partnership that files a request therefor in writing and meets the requirements prescribed under this Regulation. Each employee attestation shall refer to the licence to which it is attached.



6. To hold a licence, a natural person shall:
- 1) have at least one establishment in Québec;
  - 2) pay the fees payable for the issuance or renewal of the licence prescribed under Division III;
  - 3) not be an undischarged bankrupt;
  - 4) have paid any amount in capital, interest and costs required by any final judgment against him as a result of his liability for an act related to mortgage brokerage activities;
  - 5) not have been found guilty of, by final judgment, or have pleaded guilty to, a criminal act related to mortgage brokerage in the five years preceding his application, unless a pardon has been granted;
  - 6) not be under protective supervision of persons of full age;
  - 7) have taken and passed, in a college-level educational institution referred to in an agreement entered into for such purpose between the Authority and the particular institution, courses pertaining to the following subjects and for the minimum duration indicated below:
    - a) mortgage credit: 45 hours;
    - b) mortgage brokerage and the *Act respecting the distribution of financial products and services*: 45 hours.
7. To hold a licence, a partnership shall meet the following conditions:
- 1) it shall have at least one establishment in Québec;
  - 2) it shall not be an undischarged bankrupt;
  - 3) it shall designate a natural person who, on behalf of the partnership, will be the contact person in respect of the Authority for the purposes of the *Act respecting the distribution of financial products and services*;

4) the partnership and, as the case may be, the partners shall have paid any amount in capital, interest and costs required by any final judgment whereby one or the other was found guilty as a result of liability for an act related to mortgage brokerage activities;

5) neither the partnership nor any of the partners nor the natural person designated as the contact person in respect of the Authority in accordance with paragraph 3 has been found guilty of, by final judgment, or has pleaded guilty to, a criminal offence related to mortgage brokerage in the five years preceding its licence application, unless a pardon has been granted;

6) pay the fees payable for the issuance or renewal of the licence prescribed under Division III.

**8.** To hold a licence, a legal person shall meet the following conditions:

1) it shall have at least one establishment in Québec;

2) it shall not be an undischarged bankrupt;

3) it shall designate a natural person who, on behalf of the legal person, will be the contact person in respect of the Authority for the purposes of the *Act respecting the distribution of financial products and services*;

4) it shall have paid any amount in capital, interest and costs required by any final judgment against it as a result of its liability for an act related to mortgage brokerage activities;

5) neither any of the directors or executive officers of the legal person nor the natural person designated as the contact person in respect of the Authority in accordance with paragraph 3 has been found guilty of, by final judgment, or has pleaded guilty to, a criminal offence related to mortgage brokerage in the five years preceding its licence application, unless a pardon has been granted;

6) it shall pay the fees payable for the issuance or renewal of the licence prescribed under Division III.

### **3. *Information***

**9.** A natural person applying for a licence shall furnish the following information or documents with his application:

1) for himself and for each natural person through whom he plans to engage in mortgage brokerage activities:

a) his name and, in the case of the person who applies for the licence, any other name he intends to use in Québec in the course of his activities;

b) his date of birth;

c) his home address, including the postal code and his telephone number;

d) the class and number of any representative's certificate issued under the *Act respecting the distribution of financial products and services* or any real estate broker's or agent's certificate issued under the *Real Estate Brokerage Act* (R.S.Q., c. C-73.1) and held in the five years preceding the application;

e) If the person has been the subject of a disciplinary sanction under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*, and, as the case may be, any costs and interest related to such sanction paid by him;

2) written evidence of payment, as the case may be, of any amount referred to under sections 6(4) or 9(1) and payable by such person;

3) the address of his principal establishment, of his principal establishment in Québec and of all his other places of business and all his other establishments in Québec, including the postal codes as well as the related telephone numbers and electronic messaging addresses;

4) a copy of the registration, in each district in which he carries on business or plans to carry on business, of his declaration of firm name in accordance with the *Companies and Partnerships Declaration Act* (R.S.Q., c. D-1), or a copy of the declaration of registration in accordance with the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (R.S.Q., c. P-45), as well as a copy of any amending declaration;

5) if he uses another name, trademark or logo that does not belong to him, a copy of any document authorizing use thereof and stating the conditions governing such use;

6) for himself and each natural person through whom he plans to engage in mortgage brokerage activities:

a) in the case of a person who holds Canadian citizenship, the original or a certified true copy of his act of birth, birth certificate or certificate of Canadian citizenship;

b) in the case of a person who does not hold Canadian citizenship, the original or a certified true copy of the document issued by the Canadian immigration authorities attesting to his permanent resident status or of the work permit issued by the Canadian immigration authorities;

c) a certificate confirming that he undertook and completed the training prescribed under section 6(7);

**10.** A partnership applying for a licence shall furnish the following information or documents with its application:

1) for itself:

a) its name, and any other name that it plans to use in Québec in the course of its activities;

b) the class and number of any registration or licence issued by the Authority in the five years preceding the application;

c) if it has been the subject of a disciplinary sanction under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*, as the case may be, any costs and interest related to such sanction paid by it;

2) for each of the partners forming the partnership, for each executive officer of the partnership, for the natural person designated as the contact person in respect of the Authority in accordance with section 7(3) and for each natural person through whom it plans to engage in mortgage brokerage activities:

a) his name;

b) his home address, including the postal code and his telephone number;

c) the class and number of any representative's certificate issued under the *Act respecting the distribution of financial products and services* or any real estate broker's or agent's certificate issued under the *Real Estate Brokerage Act* and held in the five years preceding the application;

- d) if he has been the subject of a disciplinary sanction under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*, as the case may be, any costs and interest related to such sanction paid by him;
- 3) written evidence of payment, as the case may be, of any amount referred to under sections 7(4), 10(1) or 10(2) and payable by him;
- 4) the address of its principal establishment, of its principal establishment in Québec and of each of its places of business and of each of its establishments in Québec, including the postal codes as well as the related telephone numbers and electronic messaging addresses;
- 5) a copy of the partnership contract and any amendments thereto;
- 6) a copy of the registration in each district in which it engages in or plans to engage in its activities, a copy of its declaration in accordance with the *Companies and Partnerships Declaration Act* or a copy of the declaration of registration in accordance with the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* as well as a copy of any amending declaration;
- 7) if it uses another name, trademark or logo that does not belong to it, a copy of any document authorizing use thereof and stating the conditions governing such use;
- 8) for the natural person designated as the contact person in respect of the Authority in accordance with section 7(3) and for each natural person through whom it plans to engage in mortgage brokerage activities:
- a) in the case of a person who holds Canadian citizenship, the original or a certified true copy of his act of birth, birth certificate or certificate of Canadian citizenship, unless such person already holds a representative's certificate issued under the *Act respecting the distribution of financial products and services*;
- b) in the case of a person who does not hold Canadian citizenship, the original or a certified true copy of the document issued by the Canadian immigration authorities attesting to his permanent resident status, or of the work permit issued by Canadian immigration authorities, unless such person already holds a representative's certificate issued under the *Act respecting the distribution of financial products and services*;
- c) a certificate confirming that he undertook and completed the training prescribed under section 6(7).

**11.** A legal person applying for a licence shall furnish the following information or documents with its application:

1) for itself:

*a)* its name and, where applicable, any other name it intends to use in Québec in the course of its activities;

*b)* the class and number of any registration or licence issued by the Authority in the five years preceding the application, where applicable;

*c)* if it has been the subject of a disciplinary sanction under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*, as the case may be, any costs and interest related to such sanction paid by it;

2) for each of the directors and executive officers of the legal person, for the natural person designated as the contact person in respect of the Authority in accordance with section 8(3) and for each person through whom it plans to engage in mortgage brokerage activities:

*a)* his name;

*b)* his home address, including the postal code and his telephone number;

*c)* the class and number of any representative's certificate issued under the *Act respecting the distribution of financial products and services* or any real estate broker's or agent's certificate issued under the *Real Estate Brokerage Act* and held in the five years preceding the application;

*d)* if he has been the subject of a disciplinary sanction under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*, as the case may be, any costs and interest related to such sanction paid by him;

3) written evidence of payment, as the case may be, of any amount referred to under sections 8(4), 11(1)(c) or 11(2)(d) and payable by it;

4) the address of its principal establishment, of its principal establishment in Québec, of each of its places of business and of each of its establishments in Québec, including the postal codes as well as the related telephone numbers and electronic messaging addresses;

- 5) a copy of its constituting act and any amendments thereto;
- 6) a copy of the registration, in each district in which it engages or plans to engage in its activities, of its declaration of firm name in accordance with the *Companies and Partnerships Declaration Act*, or a copy of the declaration of registration in accordance with the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, as well as a copy of any amending declaration;
- 7) if it uses another name, trademark or logo that does not belong to it, a copy of any document authorizing use thereof and stating the conditions governing such use;
- 8) for the natural person designated as the contact person in respect of the Authority in accordance with section 8(3) and for each person through whom it plans to engage in mortgage brokerage activities:
  - a) in the case of a person who holds Canadian citizenship, the original or a certified true copy of his act of birth, birth certificate or certificate of Canadian citizenship, unless such person already holds a representative's certificate issued under the *Act respecting the distribution of financial products and services*;
  - b) in the case of a person who does not hold Canadian citizenship, the original or a certified true copy of the document issued by the Canadian immigration authorities attesting to his permanent resident status, or of the work permit issued by Canadian immigration authorities, unless such person already holds a representative's certificate issued under the *Act respecting the distribution of financial products and services*;
  - c) a certificate confirming that he undertook and completed the training prescribed under section 6(7);

**12.** Unless it is suspended or cancelled, the mortgage broker's licence and each employee attestation attached thereto shall be renewed each year, upon payment of the fees prescribed under Division III with respect to a renewal.

### **Division III**

#### **Fees payable**

**13.** The fees payable for the issuance and the annual renewal of the licence of a mortgage broker and an employee attestation attached thereto is \$74 for each person or partnership and \$74 for each attestation.

14. The fee payable to open a file in the name of the applicant is \$47.
15. The fee payable for any other examination of the file of a mortgage broker is \$41.
16. The fee payable for reprinting a licence or employee attestation is \$36.
17. The fees stipulated under this Division are adjusted annually on January 1 based on the rate of increase of the general consumer price index for Canada for the 12-month period ending on September 30 of the previous year, as determined by Statistics Canada.

The fees thus adjusted are rounded down to the nearest dollar if they include a fraction of a dollar lower than \$0.50 and rounded up to the nearest dollar if they include a fraction of a dollar that is equal to or greater than \$0.50.

The Authority informs the public of the result of the indexation performed hereunder in Part 1 of the *Gazette officielle du Québec* and through any other means, if deemed appropriate.

#### **Division IV**

##### **Obligations of licence holders**

###### ***1 Sums of money on behalf of other persons***

18. A holder of a broker's licence or employee attestation may not receive or hold a sum of money, directly or indirectly, on behalf of another person in the performance of his mortgage brokerage activities.

###### ***2 Security***

19. A licence holder shall at all times maintain security as a guarantee against the pecuniary consequences of the civil liability that may be incurred by reason of any fault, error, negligence or omission committed in the performance of his real estate brokerage activities or any fault, error, negligence or omission that may be committed by his employees in the performance of their duties, whether currently or in the past.

Such security shall consist of professional liability insurance or, where three or more insurers have refused to issue an insurance policy to the holder, a guarantee in the form of an insurance policy in lieu thereof.



**20.** The amount of such security shall be at least \$100,000 per claim and at least \$500,000 for all claims filed over a 12-month period.

**21.** The professional liability insurance policy shall stipulate as follows:

1) the coverage shall apply to pecuniary consequences of the civil liability referred to in section 19;

2) the insurer shall take up the defence of any person or partnership entitled to the insurance benefit and shall defend that person or partnership in any legal action filed against it; the costs and expenses of any legal action, including those of the defence, as well as the interest on the amount of the insurance, shall be borne by the insurer in addition to the amounts provided for in section 20;

3) the coverage shall extend to services rendered prior to the effective date of the insurance policy and to failure to render services;

4) the coverage shall extend to any claim filed with the insurer in the three years following the insurance period during which a licence holder ceases to act as a broker;

5) the insurer shall notify the Authority in writing of any amendment to the contract as soon as it occurs;

6) the insurer shall notify the Authority in writing of any claim received and of any settlement of a claim, including all related details;

7) the insurer shall notify the Authority in writing of the cancellation or non-renewal of the contract, at least 60 days prior to such cancellation and not later than 30 days following such non-renewal, as the case may be; the notice shall be accompanied by written evidence that such notice was also delivered to the holder.

**22.** The insurance contract may provide for a deductible in an amount not exceeding \$5,000.

Notwithstanding the foregoing paragraph, the deductible may be greater than \$5,000, in which case the holder shall at all times maintain net liquid assets at least equal to the amount of the deductible stipulated in the insurance policy.

For the purpose of this section, “net liquid assets” means the amount by which liquid assets exceed total short-term liabilities.

**23.** A holder who is insured under a contract covering professional liability shall, not later than on the expiry date of such contract, provide the Authority with evidence that it has been renewed for at least 12 months, or with a copy of a new insurance contract covering at least 12 months.

**24.** The guarantee shall be furnished by means of an insurance policy issued in favour of the Authority in trust.

**25.** The holder shall, not later than on the expiry date of the insurance policy, provide the Authority with evidence that it has been renewed or with a new insurance policy or with a copy of a professional liability insurance contract covering a period of at least 12 months.

**26.** The insurance policy shall stipulate as follows:

1) the coverage shall apply to the pecuniary consequences of the civil liability referred to in section 19;

2) the coverage shall extend to services rendered prior to the effective date of the insurance policy and to failure to render services;

3) the coverage shall extend to any claim filed within three years following the insurance period during which a licence holder ceases to act as a broker;

4) the guarantor shall notify the Authority in writing of any amendment to the contract as soon as it occurs;

5) the guarantor shall notify the Authority in writing of the cancellation or non-renewal of the contract at least 60 days prior to such cancellation or not later than 30 days following such non-renewal, as the case may be; the notice shall be accompanied by written evidence that such notice was also delivered to the holder concerned.

**27.** Should legal action based on the liability referred to in this section be launched against a licence holder, the latter shall notify the Authority forthwith, furnish it with a copy of the proceedings and demonstrate that the guarantor has been notified of the legal action. He shall proceed in the same manner where a judgment becomes enforceable against him.

### **3      *Continuous disclosure***

**28.** The holder of a mortgage broker's licence shall notify the Authority in writing of any change to information or a document furnished thereto and do so within 30 days following such change.

**29.** If a holder of an employee attestation ceases to be authorized to act on behalf of a licence holder, the broker shall notify the Authority within 10 days of such cessation. The Authority shall cancel the attestation upon receipt of such notice, and it shall enter such cancellation in the register of mortgage brokers.

If the broker acquires the services of a natural person through whom he plans to engage in mortgage brokerage activities, he shall apply to the Authority for an employee attestation for such person, in which case the conditions of issuance and the information to be furnished under the provisions of Division II as well as the provisions of Division III shall apply to such person, with the necessary changes.

### **4      *Books, registers and other documents***

**30.** The holder of a mortgage broker's licence shall keep the following files and registers up to date:

- 1) a file for each brokerage contract;
- 2) a register of his brokerage contracts;
- 3) a file for each transaction in which he participates as a mortgage broker;
- 4) a register of his transactions as a mortgage broker;
- 5) a register of shared compensation;
- 6) accounting registers respecting his mortgage brokerage business.

**31.** The broker shall keep such files and registers at each of his establishments, along with the documents and accounts he must enter therein. However, he may only keep the registers referred to in paragraphs 4 to 6 of section 30 at his principal establishment in Québec.

**32.** The file for each brokerage contract shall contain the following documents:

- 1) the original brokerage contract;
- 2) a copy of any document containing data used to describe the hypothecary loan that is the subject of the contract;
- 3) a copy of any document that the licence holder has in his possession to confirm the accuracy of the information he furnishes concerning the subject of the brokerage contract;
- 4) a copy of any potential compensation sharing agreement;
- 5) the original of any proposed loan secured by immovable hypothec that was not accepted by the borrower or the lender;
- 6) any other document relating to the hypothecary loan covered by the contract, including any correspondence.

**33.** The register of brokerage contracts shall contain the following information for each brokerage contract, which shall be entered by ascending order of the unique numbers assigned by the licence holder to each brokerage contract or by alphanumeric order of the addresses or cadastral designations:

- 1) the address, including the postal code, of the location where the immovable offered or pledged as security on the hypothecary loan that is the subject of the contract is situated or, where applicable, the cadastral designation of the immovable if there is no address;
- 2) the effective date of the brokerage contract;
- 3) the expiry date of the contract;
- 4) the unique number, from a consecutive series of numbers specific to the place of business, assigned to the brokerage contract;
- 5) the name of the person or partnership that entrusted the brokerage contract to the licence holder, as well as the address, including the postal code, and telephone number of such person or partnership.

**34.** The file for each loan transaction shall contain the following documents:

- 1) the content of the file referred to in section 32 for the brokerage contract relating to the transaction;
- 2) the original of the proposed loan secured by immovable hypothec that was accepted or, if the licence holder does not have the original in his possession, a copy thereof;
- 3) a copy of the notice referred to in section 47 respecting the sharing of compensation by the licence holder with another person or partnership;
- 4) any other document relating to the loan transaction, including any correspondence.

**35.** The register of transactions related to loans secured by immovable hypothec shall contain the following information on each transaction, which shall be recorded in ascending order of the unique numbers assigned to each transaction:

- 1) the unique number, from a consecutive series of numbers specific to the place of business, assigned to the transaction by the licence holder;
- 2) the date the proposed transaction was accepted;
- 3) the scheduled closing date of the transaction;
- 4) the address, including the postal code, of the immovable covered by the immovable hypothec that is pledged as security on the loan, or the cadastral designation of the immovable if there is no address;
- 5) the terms and conditions of the loan transaction and related mortgage, including the cost of borrowing expressed as a percentage and the various components thereof;
- 6) a unique number assigned by the licence holder to the brokerage contract from a consecutive series of numbers specific to the place of business;
- 7) the name of the person or partnership borrowing against the immovable hypothec as well as the address, including the postal code, and telephone number of such person or partnership;
- 8) the name of the person or partnership that, through the transaction, is acquiring a right, as well as the address, including the postal code, and telephone number of such person or partnership;

9) the address of the broker licence holder's establishment or place of business concerned;

10) the amount or value, excluding applicable taxes, of the compensation that the licence holder is to receive;

11) the name of the person or partnership that must pay the licence holder's compensation, either by mentioning any of the persons or partnerships referred to in paragraphs 7 or 8 or by indicating the name of such person or partnership, as well as the address, including the postal code, and telephone number of such person or partnership;

12) an indication as to whether or not compensation is shared with another person or partnership referred to in section 45;

13) the date of entry in the register.

**36.** The shared compensation register maintained by the holder of the mortgage broker's licence shall contain the following information on each transaction:

1) the unique number assigned to the transaction by the licence holder;

2) the date the proposed loan secured by immovable hypothec was accepted;

3) the scheduled closing date of the loan transaction;

4) the address, including the postal code, of the immovable covered by the mortgage that is pledged as security on the loan, or its cadastral designation if there is no address;

5) the address of the licence holder's establishment or place of business concerned;

6) details as to the sharing of the licence holder's compensation;

7) the name of the person or partnership with which the compensation is shared, as well as the registration or licence number of such person or partnership issued under the *Act respecting the distribution of financial products and services* or the *Real Estate Brokerage Act*;

8) the date of entry in the register.

37. The accounting registers pertaining to the business of the licence holder shall be integrated into an accounting system maintained according to Canadian generally accepted accounting principles.

## **Division V**

### **Rules of conduct for brokerage activities**

#### ***1 Brokerage contract***

38. A mortgage broker shall, to protect the person or partnership on behalf of which he is acting and all parties to a transaction, ensure that their rights and obligations are set out in writing and adequately reflect their intentions.

39. In carrying on his activities, a broker shall not evade or attempt to evade his professional liability toward his client. In particular, he may not include a clause in a brokerage contract that directly or indirectly excludes such liability, in whole or in part.

40. The broker shall furnish his client-borrower with a copy of the mortgage brokerage contract he is signing with him, unless the client-borrower provides a written waiver.

41. The contract shall in particular set out:

- 1) the name and address of the parties in legible script;
- 2) the date of the contract and the address of the location where it was signed;
- 3) a description of the transaction involved;
- 4) the nature of the compensation that the broker receives from the lender and the manner of payment thereof.

If the client-borrower is a natural person, the brokerage contract shall also stipulate that:

- a)* the mortgage broker must submit to the client-borrower any proposed loan secured by immovable hypothec and any lender's acceptance of a mortgage credit application submitted by the broker on behalf of the client;
- b)* the client may, at his discretion, terminate the contract within three days of the date on which he received a copy of the contract signed by the parties, and the contract shall be

cancelled without further notice as of the sending or delivery of a written notice thereof to the broker.

**42.** A broker may not conclude a brokerage contract with a client that does not stipulate an expiry date and may not stipulate in such contract that it is automatically renewed upon expiry of the term.

**43.** A broker may not agree with a client to waive any of the provisions under sections 38 to 42.

**44.** A mortgage broker shall notify his client in writing of details of the cost of borrowing, expressed as a percentage, related to any proposed hypothecary loan submitted to the client through him.

The cost of borrowing shall include the following components in particular:

- 1) the interest or discount applicable to the mortgage;
- 2) any amount charged in connection with the mortgage that is payable by the borrower to the mortgage broker or lender;
- 3) any amount charged in connection with the mortgage that a person requires from the mortgage broker or lender, directly or indirectly, and must be assumed by the borrower;
- 4) any other charge prescribed by the laws and regulations governing the lender that must be included in the cost of borrowing that the lender must disclose to a borrower to whom he is advancing funds.

To fulfill such disclosure obligation, a broker may base himself on the information provided by the lender and which the lender certifies to be true.

## **2. *Sharing of broker's compensation***

**45.** A mortgage broker may only share his compensation with the following persons:

- 1) another person or partnership authorized to engage in mortgage brokerage activities as a broker;
- 2) a firm, independent representative or independent partnership registered under the *Act respecting the distribution of financial products and services*;



3) a person referred to in the third paragraph of section 157.6 of the *Act respecting the distribution of financial products and services*, including a real estate broker;

4) a mortgage broker engaging in brokerage activities outside Québec that are governed by legislation similar to the *Act respecting the distribution of financial products and services*.

**46.** Compensation received by a person or partnership for referring a client, including a potential client, to a mortgage broker is considered to be shared compensation.

**47.** A mortgage broker who shares his compensation with a third party other than his employee holding an attestation shall disclose such fact in writing to his client. He shall send forthwith, by any means that provides evidence of the date it is received, a notice indicating:

1) the name of the person or partnership with which the broker is sharing his compensation;

2) the registration or licence number of such person or partnership;

3) details as to the sharing of the compensation.

The notice shall also state that the broker certifies the accuracy of the information appearing in the notice and shall include the signature of the broker or his representative and the date of such signature.

**48.** The broker shall in particular place a copy of the notice of shared compensation in the transaction file.

**49.** A mortgage broker shall refrain from:

1) receiving, directly or indirectly, compensation from a person or partnership that engages in or attempts to engage in mortgage brokerage activities without holding a mortgage broker's licence, other than a broker engaging in activities outside Québec referred to in section 45(4);

2) paying, directly or indirectly, compensation to a person or partnership that engages in or attempts to engage in mortgage brokerage activities without holding a licence;

3) paying, directly or indirectly, compensation to a natural person not referred to in section 45.

**50.** A broker shall ensure that the holder of an employee attestation attached to his licence refrains from:

1) sharing his own compensation directly or indirectly;

2) receiving compensation directly or indirectly from a person or partnership other than a person or partnership referred to in section 45, apart from compensation remitted to him on behalf of the broker at the establishment or place of business of the brokerage firm to which he is normally assigned.

### **3. *Transparency***

**51.** Before providing information or making a recommendation to his client, a broker shall seek a full understanding of his financial position and objectives.

**52.** A broker shall collect personally or through the holder of an employee attestation the appropriate information to identify the needs of a client in order to recommend the most suitable product or service.

**53.** Before signing a contract with a client, a broker shall describe to the client the proposed service or product in relation to the identified needs.

**54.** A broker shall fully and objectively explain to his client the nature, advantages and disadvantages of the proposed financial product or service and refrain from giving information that may be inaccurate or incomplete.

**55.** A broker shall provide his client with the information needed to understand and evaluate the services that he is proposing or that he is providing to the client.

**56.** A broker shall disclose to the client to whom he is submitting a hypothecary loan proposal the name of any lender on behalf of which he is also acting and which has an interest in such proposal. He shall inform the client of the nature of his relationship with such lender before submitting the proposal.

**57.** A broker shall avoid any situation that could place him in a conflict of interest and, where such is the case, he shall expose such conflict to the parties concerned.

**58.** A broker shall disclose to a person with whom he is transacting business the fact that he receives any compensation or benefit from another person for the services he is rendering.

#### **4** *Conduct of business*

**59.** A mortgage broker and the persons holding an employee attestation shall act with honesty and loyalty in relations with clients of the brokerage firm.

They shall act with care and competence.

**60.** A broker may not, in the course of his mortgage brokerage activities, require that the conclusion of a brokerage contract be subject to the client's signing a loan secured by immovable hypothec, even if a lender has accepted a credit application submitted on behalf of the client.

The broker may not exert undue pressure on a client or use fraudulent tactics to induce him to contract a hypothecary loan.

**61.** A broker who offers financial products or services directly to the public must be able to present a choice of products or services from several lenders.

**62.** A mortgage broker shall at all times place the interests of his client-borrower ahead of his own or those of any other person or partnership.

**63.** A broker shall be objective when a client asks for information. He shall express opinions and make recommendations objectively and impartially, without regard for his own personal gain.

**64.** A broker shall not abuse the good faith of a lender or use unfair practices against him.

**65.** A broker shall not purport to be able to engage in an activity for which he is not authorized.

**66.** A broker shall use fair competition and solicitation practices.

**67.** A broker shall ignore any intervention by a third party that could influence the manner in which the duties related to his mortgage brokerage activities are performed and that could be detrimental to his client-borrower or any potential client.

## **5     *Advertising***

**68.** A mortgage broker may not, when advertising for a financial product or service offered in connection with his brokerage activities, or when informing potential clients about the mortgage credit available through him, mention the availability of credit other than in any of the following manners:

- 1) by indicating the name, firm name, trademark or corporate symbol of a lender;
- 2) by using the expressions “mortgage credit offered”, “mortgage credit accepted” or “mortgage credit available”.

**69.** Advertising run by a broker regarding the credit terms and conditions contained in a hypothecary loan contract shall include all of the following information where any is mentioned:

- 1) a component of the cost of borrowing;
- 2) the total loan charges;
- 3) the number and duration of the payment periods;
- 4) the amount of each deferred payment;
- 5) the total obligation of the consumer;
- 6) a reference table of the credit charges payable.

**70.** In any advertising, client solicitation or representation relating to mortgage brokerage activities, a broker shall not:

- 1) furnish any information that he knows to be false, misleading or incomplete, particularly with regard to the terms and conditions of possible financing or compensation for his services;
- 2) use any formulation that may lead to confusion, particularly with regard to a name, trademark, slogan or logo.

**71.** In any advertising, client solicitation or representation relating to mortgage brokerage activities, a broker shall indicate clearly, particularly on his business card and letterhead, the following information:

- 1) his licence number as well as the name or names indicated thereon;
- 2) the telephone number of his principal establishment in Québec or of any of his places of business, except in the case of advertising in a periodical or on a poster.

An employee who holds an attestation from the Authority is bound to the same disclosure obligations regarding such information. He shall also indicate his attestation number.

## **6 Confidentiality**

**72.** A broker shall maintain the confidential nature of all personal information obtained from a client and only use such information for the purposes for which it is intended, unless a legal provision or a court order releases him from such obligation.

**73.** Except to the extent prescribed under section 72, a broker shall not disclose personal information obtained in the performance of his duties.

### **Division VI**

#### **Conditions applicable to firms, independent partnerships and independent representatives**

**74.** In order to engage in mortgage brokerage activities, a firm, independent partnership or independent representative shall, in addition to the conditions and restrictions respectively established in regard to each under the *Act respecting the distribution of financial products and services*, comply with the following provisions of this Regulation which, with the necessary changes, govern such activities when conducted by them in their capacity as a broker or holder of an employee attestation:

- 1) section 4;
- 2) for the firm, section 11(8)(c);
- 3) for the independent partnership, section 10(8)(c);
- 4) for the independent representative, section 9(5)(c);

- 5) the provisions under Divisions III to V.

## **Division VII**

### **Transitional, miscellaneous and final provisions**

**75.** The institutions and courses which, on December 31, 2006, were covered by section 2(1) of the *Regulation respecting brokerage activities in connection with loans secured by immovable hypothec* shall be deemed to meet the requirements of section 6(7) of this Regulation until the Authority renews its agreements with such institutions or enters into new agreements with them or with other institutions, and gives notice thereof in the Bulletin.

**76.** An insurance representative and a securities representative who, on December 31, 2006, held a certificate issued under the *Act respecting the distribution of financial products and services* and confirming that he is authorized to engage in mortgage brokerage activities may, until March 31, 2007, obtain at no charge a reprint of such certificate upon remittance thereof and, in accordance with the provisions of this Regulation and upon payment of the fees payable, may be issued an employee attestation if the firm to which he is attached plans to engage in mortgage brokerage activities. Until such reprint and issuance by the Authority or in lieu thereof, the certificate confirming such authorization may, until March 31, 2007, be used as an employee attestation referred to in this Regulation and attached to the firm's broker licence.

**77.** This Regulation shall come into force on January 1, 2007.

**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Monsieur Vincent Pampena (St-Léonard)**

Courtier, intimé

Certificat no : 125599

Plainte no 2005-06-01 (C)

### **LES FAITS REPROCHÉS**

L'assuré est propriétaires de plusieurs immeubles qu'il a assurés par l'intermédiaire du cabinet de monsieur Pampena. Le 3 août 2000, un sinistre survient à l'un des immeubles, lequel était couvert par une police d'assurance biens prise auprès du grossiste William J. Henry et par une police d'assurance responsabilité civile émise par la compagnie AXA. À la suite du sinistre, l'assuré a informé monsieur Vincent Pampena d'une possible réclamation du locataire de l'immeuble sinistré. M. Pampena a avisé l'assureur des biens, mais a fait défaut d'informer l'assureur responsabilité civile. Lors du renouvellement de la police d'assurance en 2000 et en 2001, il a commis la même erreur, soit d'avoir négligé d'informer et de transmettre la réclamation à la compagnie assurant la responsabilité civile de l'assuré et ce, malgré qu'il ait été informé par l'expert en sinistre du locataire que les démarches devaient être faites auprès de la compagnie AXA. Lorsque cette dernière a finalement été mise au courant du sinistre, elle a refusé d'indemniser l'assuré en raison du trop long délai écoulé depuis le sinistre. Une poursuite a été intentée par l'assureur du locataire contre l'assuré et un jugement a été rendu condamnant l'assuré à indemniser l'assureur du locataire. Il est reproché à monsieur Pampena de ne pas avoir transmis la requête introductive d'instance et le jugement rendu par la Cour à l'assureur concerné.

### **PLAINTÉ**

La plainte comporte 9 chefs. Il lui est reproché d'avoir exercé ses activités de façon négligente à plusieurs reprises notamment en faisant défaut d'informer l'assureur responsabilité civile de son assuré d'une éventuelle réclamation d'un locataire de l'immeuble au moment du sinistre et au renouvellement de la police d'assurance en 2000 et 2001 (chefs 1, 2, 3 et 5), d'avoir fait défaut de rendre compte à son assuré que la franchise de la police augmentait de 1 000\$ à 2 500\$ (chef 4), d'avoir été négligent en faisant défaut de transmettre la réclamation à l'assureur responsabilité civile de son assuré suite à une action intentée par le locataire de l'immeuble (chef 6), d'avoir fait défaut

d'agir en conseiller consciencieux envers son client en ne l'informant pas de ses droits et obligations suite à la réception de l'action intentée par le locataire (chef 7), d'avoir agi de façon négligente en communiquant un jugement rendu contre son client à l'assureur des biens plutôt qu'à l'assureur responsabilité civile (chef 8) et d'avoir exercé ses activités de façon négligente en retardant à informer le cabinet grossiste qu'une police d'assurance était requise (chef 9).

### **DÉCISION**

En date du 26 janvier 2006, suite à un plaidoyer de culpabilité sous 7 des 9 chefs, le Comité de discipline a déclaré l'intimé coupable des chefs 1, 2, 3, 5, 6, 8 et 9 de la plainte et a procédé au retrait des chefs 4 et 7.

### **SANCTION**

En date du 26 janvier 2006, le Comité de discipline a imposé des amendes totalisant 4 700\$, 2 réprimandes et le paiement des frais et déboursés.

### **Comité de discipline**

**Présidé par M<sup>c</sup> Patrick de Niverville**

**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Mme Diane Turgeon (Montréal)**

Courtier, intimée

Certificat no : 139121

Plainte no 2005-12-01 (C)

### **LES FAITS REPROCHÉS**

L'assurée, madame Lacoste a vendu sa propriété à sa fille madame Deschênes. Le 23 avril 2004, cette dernière a communiqué avec le courtier d'assurance de sa mère, madame Diane Turgeon, pour lui faire part de la vente de la propriété. Madame Turgeon a fait une demande à l'assureur afin d'émettre un avenant de modification effectif le 26 avril 2004, date à laquelle le contrat de vente notarié devait être passé entre l'assurée et sa fille. Une erreur est cependant commise et l'avenant est entré en vigueur le 23 avril 2006. Le 27 avril 2004, madame Lacoste a fait parvenir une télécopie à l'intimée lui confirmant la vente de la résidence et l'avisant du changement de propriétaire, C'est à ce moment qu'elle apprend que les modifications quant au nom du propriétaire de la résidence et du créancier hypothécaire ont déjà été effectués. Il est reproché à madame Turgeon d'avoir fait modifier la police d'assurance sans préalablement avoir obtenu le consentement de madame Lacoste.

### **PLAINTÉ**

La plainte comporte 1 chef. Il lui est reproché d'avoir fait défaut d'agir avec compétence et professionnalisme envers sa cliente en procédant, sans l'autorisation de cette dernière, à l'émission d'un avenant de modification sur la police d'assurance habitation (chef 1).

### **DÉCISION**

En date du 25 janvier 2006, suite à un plaidoyer de culpabilité, le Comité de discipline a déclaré l'intimée coupable du chef d'infraction de la plainte.

### **SANCTION**

En date du 25 janvier 2006, le Comité de discipline a imposé une réprimande et le paiement des frais et déboursés.

**Comité de discipline**

**Présidé par M<sup>c</sup> Patrick de Niverville**



**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Mme Clementina Ciabrone (Montréal)**

Courtier, intimée

Certificat no : 156597

Plainte no 2005-11-01 (C)

### **LES FAITS REPROCHÉS**

L'assurée, une entreprise qui voit à la gestion de propriétés, a pris une police d'assurance auprès du cabinet grossiste Dave Rochon, par l'entremise de madame Clementina Ciabrone, courtier en assurance de dommages. Madame Ciabrone a transmis un contrat de financement de prime pour l'assurée en indiquant que la prime d'assurance était 19 525\$ alors que le montant réel était de 14 181\$. L'intimée a ainsi tenté d'induire en erreur, d'une part, l'assurée quant au véritable montant de sa prime d'assurance et, d'autre part, la compagnie chargée de financer la prime. Il est également reproché à l'intimée d'avoir omis d'inscrire à son dossier les notes téléphoniques confirmant les différentes conversations des intervenants au dossier.

### **PLAINTÉ**

La plainte comporte 7 chefs. Il lui est reproché d'avoir fait défaut d'aviser son client de tous les frais qui n'étaient pas compris dans la prime d'assurance (chefs 1 et 5), d'avoir exercé ses activités de courtier de façon malhonnête et négligente en transmettant un contrat de financement de prime pour son client en indiquant que la prime était de 19 525\$ alors qu'elle savait que la prime était de 14 181\$ (chef 2), d'avoir fait une déclaration susceptible d'induire en erreur la compagnie de financement en leur transmettant une copie d'un avenant de modification de la police qu'elle avait modifié en indiquant un montant de prime de 19 525\$ alors que l'avenant ne comportait pas cette mention (chef 3), d'avoir fait défaut de rendre compte à son client du coût réel de la police en omettant de donner tous les renseignements pertinents au coût de la prime et des honoraires chargés (chef 4), d'avoir fait défaut d'agir avec compétence et professionnalisme en négligeant de rendre compte d'une façon complète et détaillée à son client des calculs relatifs à la prime chargée et des frais afférents (chef 6) et d'avoir été négligente dans ses activités de courtier en assurance de dommages en omettant d'inscrire des notes à son dossier (chef 7).

### **DÉCISION**

En date du 30 janvier 2006, suite à un plaidoyer de culpabilité, le Comité de

discipline a déclaré l'intimée coupable sous les 7 chefs d'infraction de la plainte.

### **SANCTION**

En date du 30 janvier 2006, le Comité de discipline a imposé des amendes totalisant 7 000\$, une réprimande et le paiement des frais et déboursés.

### **Comité de discipline**

**Présidé par M<sup>e</sup> Patrick de Niverville**

**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Monsieur Daniel Vigneault (Warwick)**

Expert en sinistre, intimé

Certificat no : 139280

Plainte no 2004-12-07 (E)

### **LES FAITS REPROCHÉS**

Le 13 février 2002, un expert en sinistre indépendant a fait une promesse d'achat au montant de 90 000 \$ sur une résidence. Dans la nuit du 16 au 17 février 2002, celle-ci a lourdement été endommagée par un incendie. Monsieur Daniel Vigneault, expert en sinistre à l'emploi de l'assureur et directeur des sinistres, a alors mandaté ce même expert en sinistre indépendant pour régler la réclamation. Ce dernier a accepté le mandat, malgré la promesse d'achat qu'il avait faite sur cette même résidence. L'expert en sinistre indépendant a allégué avoir alors divulgué son intérêt dans la résidence à M. Daniel Vigneault. Une quinzaine de jours plus tard, l'expert en sinistre indépendant a remis son premier et unique rapport à M. Vigneault, rapport dans lequel il a recommandé de payer à l'intimé le plein montant de son assurance soit, 110 000 \$. Le lendemain, l'expert en sinistre indépendant a acquis, par acte de vente notarié, ce qui restait de la propriété pour une somme de 9 250 \$. Le 21 mars 2002, l'assureur, en la personne de M. Daniel Vigneault, a accepté la recommandation de l'expert et a émis un chèque de 110 000 \$ à l'assuré. Il est reproché à l'intimé d'avoir été négligent en favorisant un règlement rapide de la réclamation, alors que plusieurs éléments, dont le fait que la résidence était vacante et que l'assuré avait des antécédents judiciaires, auraient dû l'amener à redoubler de prudence.

### **PLAINTÉ**

La plainte comporte 1 chef incluant 7 sous-paragraphes. Il lui est reproché d'avoir exercé ses activités de façon malhonnête et/ou négligente (chef 1) a) en confiant et/ou en ne supervisant pas la mandat donné à monsieur Normand Bergeron, expert en sinistre, b) en n'investiguant pas ou en ne demandant pas d'investiguer davantage le passé judiciaire de l'assuré, c) en acceptant, avant même de recevoir un rapport écrit de l'expert en sinistre monsieur Normand Bergeron, qu'une offre de règlement correspondant au plein montant de la valeur assurée soit faite à l'assuré, d) en ne tenant pas compte d'une circonstance importante reliée au risque, e) en acceptant de payer à l'assuré des indemnités d'assurances sans justification et preuve suffisante, f) en calculant sommairement et sans rigueur les calculs menant aux montants versés à

l'assuré et/ou en acceptant ces calculs sans autres vérifications et g) de façon générale, en bâclant et réglant rapidement la réclamation de l'assuré.

### **DÉCISION**

En date du 5 décembre 2005, le Comité de discipline a déclaré l'intimé coupable sur les paragraphes a), b), d) et g) du chef 1 et a prononcé un arrêt des procédures sur les paragraphes c), e) et f) du chef 1 de la plainte.

### **SANCTION**

En date du 26 janvier 2006, le Comité de discipline a imposé une amende de 3000\$ et le paiement des frais et déboursés.

### **Comité de discipline**

**Présidé par M<sup>e</sup> Patrick de Niverville**

**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Monsieur Marcel Desormiers (Le Gardeur)**

Courtier, intimé

Certificat no : 109936

Plainte no 2005-10-01 (C)

**Comité de discipline**

**Présidé par M<sup>c</sup> Patrick de Niverville**

### **LES FAITS REPROCHÉS**

En juin 2003, les assurés ont contracté une police d'assurance automobile par l'intermédiaire de monsieur Marcel Desormiers, courtier en assurance de dommages, pour un véhicule motorisé. La compagnie d'assurance a exigé qu'ils installent un anti-démarrreur. L'intimé a avisé ses clients de cette exigence de la compagnie d'assurance. Par contre, les assurés auraient décidé qu'ils n'avaient pas à se conformer à cette demande puisque leur motorisé était pratiquement fixé à demeure du fait d'un perron qui l'entourait. Devant le refus des assurés, monsieur Desormiers a transmis un mémo à l'assureur. Or, ce dernier contenait des informations erronées puisque l'intimé a écrit que le véhicule motorisé était « remis » au lieu de « immobilisé ». À l'échéance de la police en 2004, l'assureur a avisé le courtier que celle-ci n'était pas renouvelée en raison du fait qu'aucune démarche n'avait été faite afin d'installer un anti-démarrreur. Monsieur Desormiers a avisé tardivement les assurés de la décision de l'assureur de ne pas renouveler la police d'assurance, laissant ces derniers sans protection d'assurance pendant quelques jours.

### **PLAINTE**

La plainte comporte 3 chefs. Il lui est reproché d'avoir fait défaut de rendre compte à ses clients de la décision de l'assureur de ne pas renouveler leur contrat d'assurance automobile laissant ces derniers à découvert (chef 1), d'avoir exercé ses activités de façon négligente en laissant sous entendre à l'assureur que le motorisé était inutilisé alors qu'il était plutôt stationnaire (chef 2) et d'avoir été négligeant dans sa tenue de dossier (chef 3).

### **DÉCISION**

En date du 27 janvier 2006, suite à un plaidoyer de culpabilité, le Comité de discipline a déclaré l'intimé coupable des 3 chefs d'infraction de la plainte.

### **SANCTION**

En date du 27 janvier 2006, le Comité de discipline a imposé des amendes totalisant 2 500\$, une réprimande et le paiement des frais et déboursés.

**Syndic de la Chambre de l'assurance de dommages**, plaignant ;

c.

**Monsieur Claude Ducharme (Chambly)**

Courtier, intimé

Certificat no : 111008

Plainte no 2004-07-01 (C)

### **LES FAITS REPROCHÉS**

Lors de l'achat d'un nouveau véhicule, l'assurée a contacté le cabinet Ducharme & Fortier inc afin de faire apporter les modifications nécessaires à sa police d'assurance automobile. Elle a également demandé à obtenir la garantie de valeur à neuf. L'employée du cabinet qui l'a servie lui a plutôt obtenu une garantie de remplacement et ce, sans l'aviser de la différence entre la protection demandée et celle obtenue et sans lui fournir tous les renseignements nécessaires à la compréhension de la nature de la garantie offerte. L'employée aurait également fait défaut d'aviser sa cliente des frais étant rattachés à la garantie. La demande de l'assurée ayant été traitée par madame Roseline Parent, employée non certifiée mais détenant des droits acquis en vertu de l'article 547, la plainte a été portée contre monsieur Claude Ducharme à titre de responsable de cette employée et dirigeant du cabinet. D'autre part, il est également reproché à monsieur Ducharme d'avoir omis de répondre à sa cliente relativement à l'annulation de la garantie de remplacement.

### **PLAINTÉ**

La plainte comporte 2 chefs dont un incluant 4 sous-paragraphes. Il lui est reproché d'avoir fait défaut de s'assurer qu'une de ses employés respecte la *Loi sur la distribution de produits et services financiers* et ses règlements (chef 1) a) en faisant défaut d'agir en conseiller consciencieux en omettant de fournir à sa cliente tous les renseignements nécessaires ou utiles afin que celle-ci puisse apprécier la nature de la protection de garantie de remplacement face à une couverture de valeur à neuf, b) en faisant défaut de rendre compte à sa cliente de l'exécution de son mandat en lui obtenant une couverture de garantie de remplacement que cette dernière ne voulait pas et en n'expliquant pas la nature de cette protection, c) en faisant défaut d'aviser sa cliente de tous les frais qui n'étaient pas inclus dans le montant du contrat de garantie de remplacement et d) en ayant une conduite négligente dans la tenue du dossier de sa cliente en ne notant aucune conversation téléphonique dans son dossier. Également, il lui est reproché d'avoir fait défaut de répondre dans les plus brefs délais aux demandes et instructions de

sa cliente (chef 2).

### **DÉCISION**

En date du 1<sup>er</sup> décembre 2005, le Comité de discipline a déclaré l'intimé coupable du chef 2 et a rejeté les 4 sous-paragraphes du chef 1 de la plainte.

*Le syndic a interjeté appel de la décision sur culpabilité du Comité de discipline devant la Cour du Québec*

### **SANCTION**

En date du 16 février 2006, le Comité de discipline a imposé une amende de 2 000\$ et le paiement des frais et déboursés.

**Comité de discipline**

**Présidé par M<sup>e</sup> Guy Marcotte**

**Syndic de la Chambre de l'assurance de  
dommages, plaignant ;**

c.

**Monsieur Martial Boisjoli (Rivière-du-Loup)**

Courtier, intimé

Certificat no : 146885

Plainte no 2005-10-02 (C)

### **LES FAITS REPROCHÉS**

Lors des faits reprochés, monsieur Martial Boisjoli exerçait des fonctions de courtier en assurance de dommages auprès d'un cabinet d'assurance. Au cours de l'année 2004, monsieur Boisjoli s'est approprié pour ses fins personnelles un montant de 3 091,35\$ provenant des primes perçues de 4 clients. Il a allégué avoir commis ces gestes afin d'acquitter les dettes de jeu de sa conjointe. Par la suite, M. Boisjoli a omis de rembourser les sommes perçues des assurés à son employeur.

### **PLAINTE**

La plainte comporte 1 chef. Il lui est reproché de s'être approprié les sommes confiées par ses clients dans l'exercice de son mandat (chef 1).

### **DÉCISION**

En date du 23 janvier 2006, le Comité de discipline a déclaré l'intimée coupable du chef d'infraction de la plainte.

### **SANCTION**

En date du 8 mars 2006, le Comité de discipline a imposé une amende de 3 000\$, une suspension temporaire de 3 mois, une limitation d'exercice d'une durée de 3 ans, une ordonnance de remboursement au montant de 3 091,35\$, le paiement des frais de publication de l'avis de suspension et de limitation d'exercice et des autres frais et déboursés.

**Comité de discipline**

**Présidé par M<sup>c</sup> Patrick de Niverville**