3.7

Décisions administratives et disciplinaires

3.7 DÉCISIONS ADMINISTRATIVES ET DISCIPLINAIRES

Aucune information.

3.7.1 Autorité

Aucune information.

3.7.2 TMF

Les décisions prononcées par le Tribunal administratif des marchés financiers (anciennement « Bureau de décision et de révision en valeurs mobilières » et « Bureau de décision et de révision ») sont publiées à la section 2.2 du Bulletin.

3.7.3 OAR

Veuillez noter que les décisions rapportées ci-dessous peuvent faire l'objet d'un appel, selon les règles qui leur sont applicables.

3.7.3.1 Comité de discipline de la CSF

COMITÉ DE DISCIPLINE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE DE QUÉBEC

N° : CD00-1384

DATE : 20 novembre 2019

LE COMITÉ :	M[e] Claude Mageau	Président
	M. BGilles Lacroix, A.V.C., Pl. Fin.	Membre
	M. Alain Legault	Membre

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

KEVIN TURGEON, représentant de courtier en épargne collective (numéro de certificat 133524, BDNI 1812851)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

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[1] Le 23 octobre 2019, le comité de discipline de la Chambre de la sécurité financière (le « comité ») s'est réuni au siège social de la Chambre, sis au 2000, avenue McGill College, 12[e] étage, à Montréal, pour procéder à la plainte portée contre l'intimé le 18 juin 2019, ainsi libellée :

LA PLAINTE

1. À Magog, district de St-François, le ou vers le 19 novembre 2013, l'intimé a présenté une fausse réclamation de dommage à son assureur Industrielle Alliance, assurance auto et habitation Inc. en lien avec le vol de son véhicule automobile alors qu'il était rattaché au cabinet Industrielle Alliance, Assurance et services financiers Inc., contrevenant ainsi à l'article 6 *Code de déontologie de la Chambre de la sécurité financière*.

[reproduction intégrale]

[2] Le plaignant était représenté par M^e^ Vincent Grenier-Fontaine et l'intimé, qui était présent, n'était pas représenté.

PLAIDOYER DE CULPABILITÉ

[3] Préalablement à l'audience, l'intimé avait informé le comité et le procureur du plaignant de son intention d'enregistrer un plaidoyer de culpabilité sous l'unique chef d'infraction de la plainte disciplinaire.

[4] Lors de l'audience, l'intimé confirma son intention d'enregistrer un tel plaidoyer et après s'être assuré qu'il comprenait que, par son plaidoyer de culpabilité, il reconnaissait les gestes reprochés et que ceux-ci constituaient une infraction déontologique pour laquelle il serait sanctionné, le comité prit acte de son plaidoyer de culpabilité et demanda au procureur du plaignant de lui présenter un bref sommaire des faits en l'espèce.

[5] Ce dernier déposa, de consentement avec l'intimé, un cahier contenant les pièces P-1 à P-5, dont l'attestation de pratique de l'intimé, démontrant que celui-ci, au moment des faits reprochés, était bien détenteur d'un certificat en assurance de personnes donnant ainsi compétence au comité.

[6] Le procureur du plaignant fit une brève présentation des faits reprochés, après quoi, le comité déclara l'intimé coupable du chef d'infraction unique de la plainte pour avoir contrevenu à l'article 6 du *Code de déontologie de la Chambre de la sécurité financière*.

LES FAITS

[7] Le ou vers le 19 novembre 2013, alors que l'intimé était représentant en assurance de personnes pour Industrielle Alliance, Assurance et services financiers Inc. (« Industrielle Alliance »), à Magog, il a présenté une fausse déclaration de dommage à son assureur Industrielle Alliance, Assurance auto et habitation (« IAAH ») en lien avec le vol de son véhicule automobile.

[8] En fait, l'intimé a alors faussement déclaré avoir été victime du vol de son ordinateur et d'une tablette électronique, lesquels se trouvaient à l'intérieur du véhicule volé, lui permettant ainsi d'obtenir une compensation supplémentaire de 1 072 $ de l'IAAH.

[9] Le vol de la voiture aurait eu lieu le 19 novembre 2013, mais suite à une dénonciation faite à Industrielle Alliance le 5 février 2018, soit plus de quatre (4) ans après les faits, une enquête interne a été effectuée par Industrielle Alliance concernant une allégation du vol prémédité de la voiture de l'intimé de même qu'une fausse déclaration de sa part quant au vol de son ordinateur et d'une tablette électronique.

[10] L'enquête interne d'Industrielle Alliance a déterminé que la déclaration de l'intimé à l'assureur concernant le vol de son ordinateur et de la tablette électronique était fausse, mais cette enquête n'a pas conclu que l'intimé avait prémédité le vol de sa voiture, celui-ci ayant nié cette allégation lors de ses entrevues avec les enquêteurs de son employeur.

[11] L'enquête a cependant déterminé que l'intimé avait donné des versions contradictoires quant aux circonstances du vol de sa voiture.

[12] Suite à ladite enquête, le 2 avril 2018, Industrielle Alliance mit fin au contrat de représentant qui la liait à l'intimé depuis le 13 octobre 2006[1].

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[1] Pièce P-5.

[13] Par la suite, l'intimé répondit aux questions de l'enquêteuse du plaignant et admit avoir fait une fausse déclaration quant au vol de son ordinateur et de sa tablette électronique.

[14] La plainte disciplinaire fut émise le 18 juin 2019 et l'intimé informa immédiatement le secrétariat du comité de son intention de plaider coupable à l'infraction reprochée.

[15] Les gestes commis par l'intimé en l'espèce n'étaient pas des gestes posés dans l'exercice de ses activités de représentant, mais ils constituent néanmoins un manquement déontologique, car ils sont liés à l'exercice de la profession[2].

[16] D'ailleurs, la Cour d'appel a déjà statué que même les gestes de la vie privée peuvent être considérés des manquements déontologiques s'ils sont liés à la profession :

> « [43] À mon avis, le fondement de la responsabilité disciplinaire du professionnel réside dans les actes posés à ce titre tels qu'ils peuvent être perçus par le public. Les obligations déontologiques d'un ingénieur doivent donc s'apprécier *in concreto* et ne sauraient se limiter à la sphère contractuelle; elles la précèdent et la transcendent. Sinon, ce serait anéantir sa responsabilité déontologique pour tous les actes qu'il pose en dehors de son mandat, mais dans l'exécution de ses activités professionnelles et, de ce fait, circonscrire de façon indue la portée d'une loi d'ordre public qui vise la protection du public.
>
> [44] La faute disciplinaire professionnelle est liée à l'exercice de la profession (*Ingénieurs (Corp. Professionnelle des)* c. *Lévy*, [1991] D.D.C.P. 278 (T.P.); *Béliveau* c. *Comité de discipline du Barreau du Québec*, précité; Sylvie POIRIER, "La plainte disciplinaire", (1999) 122 *Développements récents en droit professionnel et disciplinaire,* Cowansville, Yvon Blais, 17, à la p. 31; André POUPART, "État de la question" dans *Le contentieux disciplinaire sous le Code des professions*, Barreau du Québec, Formation permanente, Montréal, 1978 aux p. 32-33). Lorsque ce lien existe, il peut même arriver que la faute inclue "des actes de sa vie privée dans la mesure ou ceux-ci sont suffisamment liés à l'exercice de la profession et causent un scandale [portant] atteinte à la dignité" de celle-ci (Jacques BEAULNE, "Déontologie et faute disciplinaire professionnelle", (1987) 89 R. du N. 673, à la p. 685, no 81; Jean SAVATIER, *La profession libérale, Étude juridique et pratique*, Paris, L.G.D.J., 1947 à la p. 125). Il en va autrement de la responsabilité contractuelle du professionnel. Son fondement réside dans le contrat qui le lie à son client et qu'il faut nécessairement qualifier et interpréter pour

[2] *Riendeau* c. *Deschamps*, 2018 QCCQ 5663 (CanLII), paragr. 58-60.

> cerner les obligations contractées (Eric DUNBERRY, "La responsabilité des professionnels" dans *La construction au Québec : perspectives juridiques*, sous la direction d'Olivier F. KOTT et de Claudine ROY, Montréal, Wilson & Lafleur, 1998, p. 461, à la p. 535). [3]» [l'italique est de l'auteur, nos soulignés]

REPRÉSENTATIONS DU PLAIGNANT

[17] Le procureur du plaignant, après avoir révisé les pièces résumant les faits du présent dossier, suggéra au comité qu'une radiation temporaire pour une période d'un (1) an de même que la publication aux frais de l'intimé d'un avis de la décision à venir et le paiement des déboursés soient ordonnés par le comité.

[18] À titre de facteur aggravant, celui-ci énuméra les éléments suivants :

- Les gestes reprochés à l'intimé sont au cœur de l'activité de représentant et liés à l'exercice de la profession;
- Le caractère malhonnête des gestes posés;
- Un enrichissement de la part de l'intimé pour approximativement 1 000 $;
- Le bris de confiance entre l'intimé, son employeur et son assureur.

[19] À titre de facteur atténuant, il énuméra les éléments suivants :

- Aucun antécédent disciplinaire;
- Plaidoyer de culpabilité à la première opportunité;
- Collaboration avec l'enquêteuse du plaignant;
- Congédiement de l'intimé;
- Fin de la carrière de l'intimé à titre de représentant.

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[3] *Tremblay* c. *Dionne*, 2006 QCCA 1441 (CanLII), paragr. 43-44.

[20] Pour motiver sa recommandation, le procureur du plaignant référa aux décisions du comité rendues dans les affaires *Jacob*, *Labelle-Desbiens* et *Magueny*[4].

[21] Plus particulièrement, il référa à la décision du comité rendue dans *Magueny*[5], où comme en l'espèce, il s'agissait d'un geste isolé et où une radiation temporaire d'un (1) an avait été ordonnée à l'intimé, ce qui, selon le procureur du plaignant, lui apparaissait une sanction raisonnable.

REPRÉSENTATIONS DE L'INTIMÉ

[22] L'intimé a été assermenté et a témoigné devant le comité.

[23] Il expliqua tout d'abord qu'actuellement, il est toujours inscrit comme conseiller en épargne collective.

[24] Il fait l'objet d'une ordonnance de supervision par l'Autorité des marchés financiers pour une période de deux (2) ans, devant se terminer en septembre 2020.

[25] Il expliqua que les gestes reprochés à la plainte disciplinaire ont, en fait, mis fin à sa carrière de représentant, et ce, même s'il avait toujours été respectueux envers ses clients et qu'il n'avait jamais eu de plainte contre lui antérieurement.

[26] Il considère que sa carrière est terminée et qu'une radiation suite à la plainte disciplinaire portée contre lui à l'effet qu'il a fait une fausse déclaration à l'assureur, fait en sorte qu'il ne pourra plus jamais poursuivre honorablement sa carrière.

[27] Compte tenu de ce qui précède, il n'a pas l'intention de continuer à œuvrer dans l'industrie, car il considère qu'il y est maintenant *persona non grata*.

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[4] *Chambre de la sécurité financière* c. *Jacob*, 2015 QCCDCSF 45 (CanLII); *Chambre de la sécurité financière* c. *Labelle-Desbiens*, 2018 QCCDCSF 4 (CanLII); *Chambre de la sécurité financière* c. *Magueny*, 2018 QCCDCSF 54 (CanLII).
[5] *Chambre de la sécurité financière* c. *Magueny*, *id.*

[28] Il a donc perdu ce qu'il avait bâti pendant vingt (20) ans et il sait que la dénonciation faite auprès d'Industrielle Alliance quatre (4) ans après les faits, était celle de sa conjointe, alors qu'ils étaient en instance de divorce.

[29] Il est âgé de quarante-trois (43) ans et est issu d'une famille qui a toujours été impliquée dans la finance.

[30] Il déclara au comité qu'il comprend qu'une radiation d'un (1) an semble être la norme et que la demande faite par le procureur du plaignant n'est pas exagérée, mais considère tout de même qu'il a déjà payé grandement pour son erreur de jugement en ayant été congédié par Industrielle Alliance.

[31] Relativement à la somme de 1 072 $ obtenue pour la fausse déclaration du vol de son ordinateur et de sa tablette électronique, il mentionna qu'il ne l'a pas remboursée à l'assureur, celui-ci ne l'ayant finalement pas réclamée.

[32] Enfin, il déclara qu'il avait été suffisamment sanctionné, mais que de toute façon, il est découragé de toute la situation et fatigué de se battre et que pour lui, sa présence dans l'industrie est chose du passé.

[33] Il indiqua au comité qu'il était d'accord pour qu'une ordonnance de notification par courriel de la décision sur sanction soit émise afin de limiter les frais.

ANALYSE ET MOTIFS

[34] Le procureur du plaignant a recommandé au comité qu'une radiation temporaire d'un (1) an soit ordonnée à l'intimé avec la publication d'un avis de la décision aux frais de l'intimé, de même qu'il soit condamné au paiement des déboursés conformément à l'article 151 du *Code des professions*.

[35] L'intimé, quant à lui, considère qu'il s'agit d'une sanction sévère pour une erreur de jugement, qui a déjà mis fin à sa carrière de représentant.

[36] Cependant, l'intimé reconnaît que la proposition faite par le plaignant semble être conforme aux précédents existant en la matière.

[37] L'intimé a maintenant plus de vingt (20) années d'expérience à titre de représentant.

[38] Il qualifie d'erreur de jugement ces gestes commis il y a plus de cinq (5) ans et considère qu'ils ont brisé à jamais sa carrière dans l'industrie.

[39] Il a témoigné franchement devant le comité et il est bien réaliste que ses gestes posés de même que la sanction qui lui sera ordonnée feront en sorte qu'il lui sera impossible de pouvoir continuer sa carrière dans l'industrie, sa réputation étant à jamais entachée.

[40] Le comité compatit beaucoup avec la situation de l'intimé qui regrette évidemment le geste posé.

[41] Néanmoins, cette fausse déclaration faite par l'intimé a été faite alors qu'il avait plus de quinze (15) années d'expérience comme représentant et elle dénote un manque flagrant de probité et de jugement de sa part.

[42] De plus, le comité constate que lors de son interrogatoire par les services d'enquête d'Industrielle Alliance, l'intimé a donné des versions contradictoires, admettant seulement lors de la deuxième entrevue qu'il avait effectivement fait une fausse déclaration quant au vol de son ordinateur et de sa tablette électronique, mais niant qu'il avait planifié le vol de son auto, tel qu'allégué à la dénonciation reçue par Industrielle Alliance.

[43] Aussi, tel qu'il appert de la preuve documentaire, l'intimé a bénéficié d'un remboursement pour une valeur de 1 072 $ correspondant à la valeur des objets faussement déclarés volés.

[44] L'intimé, lors de son témoignage devant le comité, a mentionné qu'il n'avait pas remboursé ladite somme, laquelle n'a finalement pas été réclamée par Industrielle Alliance suite à des discussions qu'il avait eues à ce sujet avec cette dernière.

[45] Malgré l'existence des facteurs atténuants existant en faveur de l'intimé et énoncés par le procureur du plaignant et de la teneur de son témoignage à l'effet que, selon lui, sa carrière a été brisée par cette erreur de jugement, la gravité objective des infractions reprochées à l'intimé demeure indéniable.

[46] L'intimé a abusé de la confiance existant entre lui et son employeur de même qu'avec son assureur, qui fait partie de la même organisation.

[47] Le plaignant suggère une radiation temporaire d'un (1) an et le comité est d'accord avec cette recommandation.

[48] En effet, l'intimé a fait montre de préméditation dans la commission des gestes reprochés, lesquels, sans contredit, ternissent grandement l'image de la profession lorsque, comme en l'espèce, un représentant en assurance de personnes fait une fausse déclaration pour obtenir une indemnité d'assurance de son assureur.

[49] Cette situation est choquante, ne peut être tolérée et doit être dénoncée.

[50] Un tel comportement doit être sanctionné par une radiation, étant donné que les membres de l'industrie doivent comprendre que de tels gestes ne peuvent être tolérés.

[51] De plus, en l'espèce, l'intimé avait une intention frauduleuse et a profité de son employeur et de son assureur.

[52] Aussi, compte tenu que les sanctions doivent être déterminées en fonction des faits propres à l'espèce, après avoir soupesé ceux-ci ainsi que les facteurs objectifs et subjectifs soumis, le comité est d'opinion que la condamnation de l'intimé à une radiation temporaire d'un (1) an est juste et raisonnable.

[53] En fait, cette radiation temporaire est adaptée à l'infraction et ainsi tout à fait respectueuse des principes d'exemplarité et de dissuasion.

[54] Le comité ordonnera aussi la publication d'un avis de la décision aux frais de l'intimé conformément à l'article 156 (7) du *Code des professions* et il le condamnera aussi au paiement des déboursés conformément à l'article 151 dudit code.

[55] Enfin, vu le consentement de l'intimé à être notifié de la présente décision par courrier électronique, le comité permettra la notification de cette décision par moyen technologique.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

PREND ACTE de nouveau du plaidoyer de culpabilité de l'intimé sous l'unique chef d'infraction contenu dans la plainte disciplinaire;

RÉITÈRE la déclaration de culpabilité de l'intimé sous l'unique chef d'infraction de la plainte disciplinaire pour avoir contrevenu à l'article 6 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, c. D-9.2, r.3);

ET STATUANT SUR LA SANCTION :

ORDONNE sous l'unique chef d'infraction, la radiation temporaire de l'intimé pour une période d'un (1) an pour avoir contrevenu à l'article 6 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, c. D-9.2, r.3);

ORDONNE au secrétaire du comité de faire publier, aux frais de l'intimé, un avis de la présente décision dans un journal circulant dans les lieux où ce dernier a eu son domicile professionnel ou dans tout autre lieu où il a exercé ou pourrait exercer sa profession conformément aux dispositions de l'article 156 (7) du *Code des professions* (RLRQ, c. C-26);

CONDAMNE l'intimé au paiement des déboursés conformément aux dispositions de l'article 151 du *Code des professions* (RLRQ, c. C-26);

PERMET la notification de la présente décision aux parties par moyen technologique conformément à l'article 133 du *Code de procédure civile* (RLRQ, c. C-25.01), à savoir par courrier électronique.

(s) Me Claude Mageau

Me CLAUDE MAGEAU
Président du comité de discipline

(s) BGilles Lacroix

M. BGILLES LACROIX, A.V.C., Pl. Fin.
Membre du comité de discipline

(s) Alain Legault

M. ALAIN LEGAULT
Membre du comité de discipline

Me Vincent Grenier-Fontaine
CDNP AVOCATS INC.
Avocats du plaignant

L'intimé était présent et se représentait seul.

Date d'audience : 23 octobre 2019

COPIE CONFORME À L'ORIGINAL SIGNÉ

COMITÉ DE DISCIPLINE
CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE DE QUÉBEC

Nº : CD00-1381

DATE : 24 novembre 2019

LE COMITÉ :	M^e^ Madeleine Lemieux	Présidente
	M^me^ Dyan Chevrier, A.V.A., Pl. Fin.	Membre
	M^me^ Diane Bertrand, Pl. Fin.	Membre

ALAIN GALARNEAU, ÈS QUALITÉS DE SYNDIC AD HOC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

GUAN XIONG WANG (numéro de certificat 216395, BDNI 3493211)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

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[1] Le plaignant a déposé une plainte contre l'intimé qui comprend un seul chef d'accusation qui se lit comme suit :

LA PLAINTE

> « À Montréal, entre les ou vers les 12 janvier et 9 février 2017, l'intimé n'a pas agi avec intégrité et compétence en se livrant à de la cavalerie de chèques (kiting) pour s'octroyer à plusieurs reprises du crédit à l'insu de son employeur, contrevenant ainsi à l'article 14 du *Règlement sur la déontologie dans les disciplines de valeurs mobilières* (RLRQ, c. D-9.2, r.7.1). »

[2] L'intimé était présent lors de l'audition de la plainte et n'était pas représenté. Il a plaidé coupable au chef d'accusation contenu dans la plainte.

[3] Le Comité a vérifié que l'intimé comprenait bien à la fois la nature de l'accusation portée contre lui et le sens et la portée d'un tel plaidoyer. Le Comité l'a déclaré coupable, séance tenante, d'avoir contrevenu à l'article 14 du *Règlement sur la déontologie dans les disciplines de valeurs mobilières*.

LES FAITS

[4] L'intimé est inscrit comme représentant de courtier pour un courtier en épargne collective du 7 novembre 2016 au 21 février 2017.

[5] Au moment des événements, l'intimé est à l'emploi de Placement CIBC à titre de représentant en services financiers. Il avait débuté son emploi à la CIBC à l'automne 2016. Il a 28 ans.

[6] L'intimé a été congédié le 21 février 2017 suite aux événements qui ont donné lieu à la plainte disciplinaire dont le Comité est saisi. Il n'aura donc travaillé comme représentant que quelques mois.

[7] La preuve produite par le syndic révèle qu'en janvier et février 2017, l'intimé s'est livré à de la cavalerie de chèques à au moins 10 reprises.

[8] L'intimé a tiré des chèques du compte qu'il détenait à la CIBC alors qu'il savait qu'il n'y avait pas suffisamment d'argent dans le compte pour couvrir les chèques. Il déposait immédiatement ces chèques dans le compte de banque qu'il détenait à la Banque Royale et les retirait aussitôt.

[9] L'intimé était en attente d'argent provenant de sa famille et comptait que cet argent arrive assez rapidement pour renflouer son compte à la CIBC avant l'expiration des délais de compensation. L'intimé, bien au fait de ces délais, en profitait pour s'octroyer ainsi du crédit pendant les délais de compensation, et ce, à l'insu de la banque.

[10] L'analyse des relevés bancaires et l'examen des chèques produits par le plaignant démontrent qu'à quatre reprises l'argent qu'il attendait de sa famille n'est pas arrivé aussi rapidement qu'il ne l'avait anticipé. Les chèques tirés de son

compte CIBC et déposés dans son compte de la Banque Royale ont entraîné des découverts dans son compte CIBC.

[11] C'est à la suite d'une enquête interne effectuée par la CIBC que les activités de cavalerie de chèques de l'intimé sont découvertes et que Placement CIBC le congédie.

[12] Aucun client ni aucune institution financière n'a subi de pertes financières suite aux actes de l'intimé.

LA SANCTION

[13] Le syndic recommande au Comité d'imposer à l'intimé une radiation temporaire de cinq ans.

[14] La jurisprudence est unanime pour qualifier de grave ou même très grave l'infraction commise par l'intimé[1].

[1] *Chambre de la sécurité financière* c. *Dutilly*, 2018 QCCDCSF 84;
Chambre de la sécurité financière c. *Umulisa*, 2018 QCCDCSF 45;
Chambre de la sécurité financière c. *Voyer-Sirois*, 2018 QCCDCSF 2.

[15] Il s'agit d'une infraction assimilée à de l'appropriation de fonds puisque l'intimé a utilisé des fonds appartenant à la banque sans autorisation à onze reprises.

[16] Il y a donc gravité objective de la faute, et ce, malgré l'intention de rembourser. Il s'agit d'une conduite contraire aux exigences d'intégrité et d'honnêteté prévues à l'article 14 du *Règlement sur la déontologie dans les disciplines de valeurs mobilières*.

[17] Au moment des infractions, l'intimé avait 28 ans et avait peu d'expérience à titre de représentant. Toutefois, l'intimé savait que ce qu'il faisait n'était pas « correct », mais il a de toute évidence sous-estimé la gravité de ses gestes.

[18] L'intimé a collaboré à l'enquête du syndic, reconnu les faits et plaidé coupable à la première occasion. L'absence d'antécédents disciplinaires est un facteur neutre vu la très courte période d'inscription à titre de représentant. Le Comité est d'accord avec le syndic que le risque de récidive est faible.

[19] L'examen de la jurisprudence nous indique que pour des fautes similaires, il y a toujours une période de radiation temporaire laquelle varie de deux ans à cinq ans et, dans un cas, il y a eu une radiation permanente.

[20] Le Comité est d'avis que dans le présent cas, la sanction appropriée est une radiation temporaire de deux ans et voici pourquoi.

[21] Dans les décisions produites par le plaignant au soutien de sa recommandation, le Comité a imposé des radiations de cinq ans. Le Comité est toutefois d'avis que ces décisions se distinguent de la présente affaire. Le Comité constate également que dans la majorité de ces cas, l'intimé n'est pas représenté.

[22] Ainsi, dans l'affaire *Dutilly*[2], l'intimée s'est livré à de la cavalerie de chèques alors qu'il avait 43 ans d'expérience; les infractions se sont échelonnées sur une période de quatre mois et elle avait eu au préalable un avertissement administratif de son employeur pour les mêmes gestes. La radiation imposée a été de cinq ans.

[23] Dans l'affaire *Umulisa*[3], il y a eu 66 virements inter-institutions en deux mois et les sommes impliquées s'élevaient à 30 000,00 $; au surplus l'intimée avait déjà été assignée à la compensation chez son employeur. Dans cette affaire le plaignant recommandait une sanction de dix ans que le Comité a jugé trop sévère; il lui a imposé une radiation de cinq ans.

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[2] *Chambre de la sécurité financière* c. *Dutilly*, *ibid*.
[3] *Chambre de la sécurité financière* c. *Umulisa*, préc., note 1.

[24] Dans l'affaire *Voyer-Sirois*[4], le Comité a imposé une radiation temporaire de cinq ans, mais là encore l'intimée avait une plus longue expérience à titre de représentant à savoir 27 années d'expérience.

[25] Par contre, dans l'affaire *Cloutier*[5], le Comité a imposé une radiation temporaire de deux ans pour des événements similaires à ceux du présent dossier. L'intimé était âgé de 30 ans au moment des événements. Parmi les facteurs retenus par le Comité dans ce dossier, on note le jeune âge de l'intimé et le fait que l'infraction a été commise alors qu'il débutait sa carrière.

[26] Dans les autres décisions produites par le plaignant, les faits sont différents. Dans l'affaire *Nassif*[6], l'intimé s'était octroyé un crédit de 15 000,00 $ alors qu'il était directeur de succursale.

[27] Dans les affaires *Martinez-Melendez*[7] et *Durand*[8], les faits sont également différents de la présente affaire. Dans ces deux cas, tout comme dans l'affaire *Nassif*, les intimés ont utilisé leurs fonctions à la banque où ils travaillaient pour s'octroyer des fonds sans autorisation, ce qui n'est pas le cas dans le présent dossier.

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[4] *Chambre de la sécurité financière* c. *Voyer-Sirois*, préc., note 1.
[5] *Chambre de la sécurité financière* c. *Cloutier*, 2017 QCCDCSF 57.
[6] *Chambre de la sécurité financière* c. *Nassif*, 2019 QCCDCSF 1.
[7] *Chambre de la sécurité financière* c. *Martinez-Melendez*, 2018 QCCDCSF 26.
[8] *Chambre de la sécurité financière* c. *Durand*, 2017 QCCDCSF 32.

[28] Comme l'écrit la Cour d'appel dans *Pigeon* c. *Daigneault*[9] :

> « [37] La sanction imposée par le Comité de discipline doit coller aux faits du dossier. Chaque cas est un cas d'espèce.
>
> [38] La sanction disciplinaire doit permettre d'atteindre les objectifs suivants : au premier chef la protection du public, puis la dissuasion du professionnel de récidiver, l'exemplarité à l'égard des autres membres de la profession qui pourraient être tentés de poser des gestes semblables et enfin, le droit par le professionnel visé d'exercer sa profession (*Latulippe* c. *Léveillé* (Ordre professionnel des médecins), 1998 QCTP 1687 (CanLII), [1998] D.D.O.P. 311; *Dr J.C. Paquette* c. *Comité de discipline de la Corporation professionnelle des médecins du Québec et al*, 1995 CanLII 5215 (QC CA), [1995] R.D.J. 301 (C.A.); et *R.* c.*Burns*, 1994 CanLII 127 (CSC), [1994] 1 R.C.S. 656.
>
> [39] Le Comité de discipline impose la sanction après avoir pris en compte tous les facteurs, objectifs et subjectifs, propres au dossier. Parmi les facteurs objectifs, il faut voir si le public est affecté par les gestes posés par le professionnel, si l'infraction retenue contre le professionnel a un lien avec l'exercice de la profession, si le geste posé constitue un acte isolé ou un geste répétitif, … Parmi les facteurs subjectifs, il faut tenir compte de l'expérience, du passé disciplinaire et de l'âge du professionnel, de même que sa volonté de corriger son comportement. La délicate tâche du Comité de discipline consiste donc à décider d'une sanction qui tienne compte à la fois des principes applicables en matière de droit disciplinaire et de toutes les circonstances, aggravantes et atténuantes, de l'affaire. »

[29] En appliquant ces principes, le Comité impose une radiation temporaire de deux ans considérant notamment que personne n'a subi de pertes suite à ces

[9] *Pigeon* c. *Daigneault*, 2003 CanLII 32934 (QC CA).

gestes, considérant le jeune âge de l'intimé, sa très courte expérience comme représentant et le très faible risque de récidive.

[30] Le Comité retient la recommandation du syndic que cette radiation soit exécutoire dès l'expiration des délais d'appel comme le prévoit l'article 158 du *Code des professions*. La publication de l'avis de la décision sera faite à ce moment[10].

POUR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

PREND ACTE du plaidoyer de culpabilité de l'intimé quant au chef d'infraction unique contenu à la plainte;

RÉITÈRE la déclaration de culpabilité de l'intimé quant au chef d'infraction unique contenu à la plainte;

ET STATUANT SUR LA SANCTION :

ORDONNE quant au seul chef d'infraction, la radiation temporaire de l'intimé pour une période de deux ans;

[10] *Chambre de la sécurité financière* c. *Boudreault*, 2015 QCCDCSF 65, par. 45.

ORDONNE au secrétaire du comité de faire publier, aux frais de l'intimé, un avis de la présente décision dans un journal circulant dans le lieu où il a exercé ou pourrait exercer sa profession, conformément à ce qui est prévu à l'article 156 (7) du *Code des professions* (RLRQ, c. 26);

COMDAMNE l'intimé au paiement des déboursés conformément aux dispositions de l'article 151 du *Code des professions* (RLRQ, c. 26).

(s) Madeleine Lemieux

_____

M[e] Madeleine Lemieux
Présidente du Comité de discipline

(s) Dyan Chevrier

_____

M[me] Dyan Chevrier, A.V.A., Pl. Fin.
Membre du Comité de discipline

(s) Diane Bertrand

_____

M[me] Diane Bertrand, Pl. Fin.
Membre du Comité de discipline

M[e] Alain Galarneau
POULIOT, CARON, PRÉVOST, BÉLISLE, GALARNEAU
Procureurs de la partie plaignante

L'intimé se représente lui-même.

Date d'audience : 25 octobre 2019

COPIE CONFORME À L'ORIGINAL SIGNÉ

DISCIPLINARY COMMITTEE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUÉBEC

NO: CD00-1281

DATE: December 5, 2019

THE COMMITTEE:	Me George R. Hendy	President
	Mr. BGilles Lacroix, A.V.C., Pl. Fin.	Member
	Mr. Richard Charette	Member

MARC-AURÈLE RACICOT, in his capacity as assistant syndic of the Chambre de la sécurité financière

Plaintiff

v.

CHARLITO HAEL (certificate 137973, BDNI 1468871)

Respondent

DECISION REGARDING GUILT

IN ACCORDANCE WITH ARTICLE 142 OF THE *PROFESSIONAL CODE*, THE COMMITTEE RENDERS THE FOLLOWING ORDER:

- **Orders the non-disclosure, non-publication and non-release of the names of clients contemplated in the Complaint herein, as well as any information which might enable their identification.**

[1] On May 14, 15 and 16, 2018, the Disciplinary Committee of the *Chambre de la sécurité financière* (the "**Committee**") met at the head office of the *Chambre de la sécurité*

financière, located at 2000 McGill College Ave., 12th floor, in Montreal, for the hearing of a disciplinary complaint (the "**Complaint**") against the Respondent, which reads as follows, once translated to English[1]:

THE AMENDED COMPLAINT

As regards C.A.

1. In Pierrefonds, on or about May 6, 2014, the Respondent granted, unbeknownst to the insurer, a discount on the premium for the medical insurance policy (#AAAAAAAA), thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

2. In Pierrefonds, on or about June 6, 2014, the Respondent misappropriated the sum of $2,892.78, which had been entrusted to him by his client, C.A., for the payment of the premium on policy #AAAAAAAA, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D -9.2), section 160 of the *Securities Act* (CQLR, chapter V-1.1) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

3. In Pierrefonds, on or about June 6, 2014, the Respondent failed to pay the premium for policy #AAAAAAAA, thereby creating an absence of coverage for the insured, A.A., during the period November 30, 2014 to March 22, 2015, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

4. In Pierrefonds, on or about November 22, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premium for the medical insurance policy #BBBBBBBB, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

5. In Pierrefonds, on or about November 22, 2015, Respondent misappropriated the sum of $2,900 which had been entrusted to him by his client, C.A., for the payment of the premium on policy #BBBBBBBB, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, R.3);

6. In Pierrefonds, on or about November 20, 2015, Respondent did not pay the premium for policy #BBBBBBBB, thereby creating an absence of coverage for the insured, A.A., during the period November 30, 2015 to July 5, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products*

[1] The only official version of the Disciplinary Complaint is in the French language, as it was filed by the Plaintiff.

and services (CQLR, c D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, C. D-9.2, r.3);

As regards M.S.C.

7. In Pierrefonds, on or about June 2, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premiums for medical insurance policies #CCCCCCCC and #DDDDDDDD, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);

8. In Pierrefonds, on or about June 4, 2015, Respondent misappropriated the sum of $2,200, which had been entrusted to him by his client, M.S.C., for the payment of the premiums on insurance policies #CCCCCCCC and #DDDDDDDD, thereby contravening section 16 the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r. 3);

9. In Pierrefonds, on or about June 4, 2015, Respondent failed to pay the premiums for insurance policies #DDDDDDDD and #EEEEEEEE, thereby creating an absence of coverage for the insured, A.K., during the period July 15, 2015 to October 23, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c V-1.1) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);

10. In Pierrefonds, on or about June 4, 2015, the Respondent failed to pay the premium for policies #CCCCCCCC and #FFFFFFFF, thereby creating an absence of coverage for the insured, S.P.S.C., during the period July 15, 2015 to April 21, 2017, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

As regards N.S.

11. In Pierrefonds, on or about July 14, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premium for medical insurance policy #GGGGGGGG, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

As regards S.B.

12. In Pierrefonds, on or about July 22, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premium for medical insurance policy #HHHHHHHH, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);

13. In Pierrefonds, on or about July 22, 2015, Respondent appropriated the sum of $1,250 which had been entrusted to him by his client, S.B., for the payment of the premium for policy #HHHHHHHH, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and

sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c.D-9.2, r.3);

14. In Pierrefonds, on or about July 22, 2015 and May 24, 2016, Respondent failed to pay the premiums for policies #HHHHHHHH and #IIIIIIII, thereby creating an absence of coverage between March 26 and September 22, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards D.S.J.

15. In *Pierrefonds*, on or about September 21, 2015, Respondent misappropriated the sum of $2,218.18, which had been entrusted to him by his client, D.S.J., for the payment of the insurance premiums for policies #JJJJJJJJ and #KKKKKKKK, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D.9.2, r.3);

16. In Pierrefonds, on or about September 21, 2015, Respondent failed to pay the premiums for policies #JJJJJJJJ and #KKKKKKKK, thereby creating an absence of coverage between November 1, 2015 and October 30, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards E.S.

17. In Pierrefonds, on or about February 6, 2016, Respondent granted, unbeknownst to the insurer, a discount on the stipulated premiums regarding medical insurance policies #LLLLLLLL and #MMMMMMMM, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

18. In Pierrefonds, on or about February 7, 2016, Respondent misappropriated the sum of $1,100, entrusted to him by his client, E.S., for the payment of the premiums for policies #LLLLLLLL and #MMMMMMMM, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r. 3);

19. In Pierrefonds, on or about February 7, 2016, Respondent failed to pay the premiums for insurance policies #LLLLLLLL and #MMMMMMMM, thereby creating an absence of coverage for the insureds, E.S. and L.S., during the period March 10 to July 4, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards K.P.

20. In Pierrefonds, on or about March 16, 2016, Respondent granted, unbeknownst to

the insurer, a discount on the premiums for medical insurance policies #NNNNNNNN and #OOOOOOOO, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

21. In Pierrefonds, on or about March 16, 2016, Respondent misappropriated the sum of $3,397.89, which was entrusted to him by his client, K.P., for the payment of the premiums for insurance policies #NNNNNNNN and #OOOOOOOO, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

22. In Pierrefonds, on or about March 16, 2016, Respondent failed to pay the premiums for policies #NNNNNNNN and #OOOOOOOO, thereby creating an absence of coverage for the insureds, H.M.P. and C.H.P., during the period May 15, 2016 to May 14, 2017, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards the profession

23. In Pierrefonds, between January 31 and February 17, 2017, Respondent obstructed the work of the Syndic by concealing information, thereby contravening sections 42 and 44 of the Code *of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3).

[2] During his final summation, counsel for Plaintiff sought leave to amend Count 23 by replacing the date "April 17" by "February 17", which amendment was authorized by the Committee.

[3] The Plaintiff was represented by Me Mathieu Cardinal, while the Respondent represented himself and filed a plea of not guilty.

[4] At the request of Me Cardinal, the entire trial was conducted in English to accommodate the Respondent, and the parties agreed that this decision be drafted in English.

[5] Essentially, Plaintiff alleges (in Counts 1 to 22) that, during a period of more than two years commencing in May 2014, Respondent was engaged in a scheme whereby he collected premiums for medical insurance policies from seven clients, which payments he

kept for himself while not obtaining the promised insurance coverage in a timely manner (if at all), while misappropriating these clients' premium payments, which were obtained on his misrepresentation that they would benefit from a reduction in premium if they dealt through him, thereby creating situations where the persons insured were deprived of the medical insurance coverage promised to them by the Respondent. Plaintiff also alleges (Count 23) that Respondent obstructed the Syndic's investigation by concealing certain relevant information by altering a document requested by the investigator.

THE EVIDENCE

A. Plaintiff's evidence

Counts 1, 2, 3, 4, 5 and 6

[6] Plaintiff's first witness was Respondent's client, C.A., an industrial mechanic, who testified that his mother had died in January 2013 and that his father (then living in the Philippines), wanted to visit his family in Canada for one year on a tourist visa, which required (pursuant to the relevant immigration rules) the obtention of medical insurance during his stay.

[7] C.A. and his wife (A.A.) shopped around for insurance coverage and, after finding Respondent's name in a newspaper, they realized that A.A. knew Respondent as a patient at the dental clinic where A.A. was employed, and that C.A.'s sister also knew Respondent from her religious community.

[8] In early May 2014, approximately two months before the expected arrival of C.A.'s father in Canada, and while C. A. was preparing the paperwork for his father’s trip to Canada, C.A. corresponded with Respondent about appropriate medical coverage, as appears from the exchange of emails filed as Exhibit P-11, which includes an email from

Respondent to C.A., apparently sent on May 6, 2014, referring to a 10% discount on the premium of $3,214.19 offered by Manulife (the "**stated premium**") for coverage of $100,000.

[9] C.A. was told by Respondent that a 10% discount was available to Manulife employees and that he could arrange for such a discount in favour of C.A. if the cheque in payment of the premium was drawn in favour of the Respondent (see Exhibit P-8).

[10] Respondent then remitted to C.A. a document entitled "Manulife Financial Travel Insurance Confirmation" (Exhibit P-12) for policy number #AAAAAAAA, which confirms the purchase and policy issue date of May 6, 2014, the agreed coverage of $100,000, the expected arrival date in Canada of C.A.'s father on July 20, 2014, and the policy expiration date of July 19, 2015. C.A. stated that Respondent told him that the effective start date of the policy could be adjusted according to the father's actual date of arrival in Canada, based on the production of the corroborating boarding pass and Canadian visa stamp.

[11] Although there is no reference to the agreed 10% discount in Exhibit P-12, C.A. remitted (during a meeting at his home) to Respondent on May 6, 2014 a cheque in the amount $1,446.39 (Exhibit P-13), signed by C.A.'s wife and payable to Respondent personally, representing one-half of the agreed reduced premium ($2,892.78, mentioned in Exhibit P-11), the other 50% having been paid by cheque dated June 5, 2014 (Exhibit P-78) from the son of C.A.'s sister (L.M.), who had agreed to split the cost of the total (discounted) premium.

[12] C.A. testified that Respondent had told him the 10% discount was available only if the premium cheque was payable to Respondent's personal order. He also affirmed that Respondent did not require him to complete an application form for the insurance policy,

but that he gave him a small pamphlet from Manulife (similar to Exhibit P-22) regarding the policy (with no policy number on it).

[13] C.A. testified that he expected Respondent to remit his premium cheque to Manulife and that his sister did in fact pay her share of the abovementioned premium.

[14] C.A's father eventually arrived in Canada on November 30, 2014, as confirmed by C.A.'s email to Respondent dated December 7, 2014 and the father's boarding pass (Exhibit P-19, pages 001107 and 001108), in which C.A. requested Respondent to "adjust the date of our insurance coverage", as had been previously understood.

[15] The same email exchange (Exhibit P-19, page 001106) shows that, on April 4, 2015, Respondent confirmed that the "expiration date of the policy was moved to Nov. 29, 2015" and that a new policy number (#11111111, Exhibit P-20) had been assigned for that coverage, but C.A. affirms that he never received a policy with that (new) number on it.

[16] C.A. claims that he never saw the "Manulife Financial Travel Insurance Confirmation" form (Exhibit P-20) referring to the replacement policy (#11111111) mentioned in Exhibit P-19, which had a policy issue date of March 4, 2015, coverage of $100,000, an arrival date in Canada of November 30, 2014, a policy expiry date of November 29, 2015 and a total premium of $2,322.54. Later evidence (Exhibit P-21) established that the credit card used to pay this premium (on or about April 24, 2015) belonged to Respondent's wife.

[17] Starting in early October 2015, as the first policy C.A. thought he had with Manulife (Exhibit P-12, for 12 months, with an adjusted starting date of November 29, 2014) was approaching expiration, C.A. commenced an exchange of text messages with

Respondent (Exhibit P-23, which contains the text messages recorded in the respective smart phones of C.A., labelled as C-4 in Exhibit P-23, and Respondent, labelled as R-67), with a view to obtaining a renewal policy for his father.

[18] As appears from both sections of Exhibit P-23, the upshot of this exchange was that Respondent confirmed the issuance of a 12-month renewal policy (starting on November 30, 2015) for the discounted premium of $2,900 (which discount C.A. again testified was conditional upon the payment of the premium to Respondent personally).

[19] This was confirmed by the new "Manulife Financial Travel Insurance Confirmation" (Exhibit P-24), remitted by Respondent to C.A., confirming that the new policy (#BBBBBBBB) would be in force for 12 months, commencing on November 30, 2015, for a stated premium of $3,350.70.

[20] The agreed (discounted) premium of $2,900 was paid by way of cheque dated November 22, 2015, issued by C.A.'s wife (Exhibit P-25), payable to the Respondent, which was deposited the next day by Respondent in his personal account (Exhibit P-26), C.A. having again expected that said payment would be transmitted to the insurer.

[21] C.A. then testified that his father fell ill on the morning of April 14, 2016 and that he brought him to the emergency ward of the Jewish General Hospital, where he spent the next few days undergoing various diagnostic tests, and that he was eventually discharged on April 22, 2016, but had follow-up consultations and diagnostic testing for pancreatitis thereafter. The total cost of the treatments the father received amounted to between $30,680 (Exhibit P-8, page 000005) and $41,000 (Exhibit P-28, page 000155).

[22] During that period, C.A. communicated with Active Care Management ("**ACM**"), an agent of Manulife, to advise it of his father's illness and to obtain the appropriate claim

forms for reimbursement of the expenses incurred pursuant to the policy (#BBBBBBBB, Exhibit P-24) which he believed had been issued pursuant to his payment to Respondent (Exhibit P-25).

[23] ACM informed C.A. on June 23, 2016 that his father's treatments were not covered because the premium for policy #BBBBBBBB had never been paid to Manulife, as appears from the chain of emails filed as Exhibit P-28. In that chain of emails between C.A., ACM and Respondent, the latter asserted on June 29, 2016 (Exhibit P-28, page 000153) that he had paid the premium ($3,350.70) for said policy on November 24, 2015, but it appears in subsequent correspondence that he was unable to provide a copy of a cheque proving payment and, on August 8, 2016, Respondent advised ACM (Exhibit P-28, page 000155) that he had informed his professional liability insurer of the matter.

[24] On or about August 11, 2016, ACM advised C.A. that Manulife was closing its file regarding his claim for his father's medical expenses (Exhibit P-28, page 000156) and, on August 12, 2016, this was formally confirmed by ACM's letter to C.A.'s father (Exhibit P-29), which refers to total expenses claimed of $30,679.04, as of that date and the fact that Respondent would be submitting such claim to his professional liability insurer.

[25] In his letter of complaint to the *Autorité des marchés financiers* (“**AMF**”) dated December 4, 2016 (Exhibit P-8, page 000005), C.A. asserted that Respondent ultimately admitted to him that the premium for policy #BBBBBBBB (Exhibit P-24) had never been paid because of an oversight, but that his professional liability insurance policy would cover the unreimbursed medical expenses.

[26] C.A. also testified that Respondent reassured him in early August 2016 that he was still looking for proof that the premium had been paid but, that if it had not been paid, his professional liability insurer would reimburse C.A.'s expenses. However, C.A. asserts

that Respondent ultimately persisted in his refusal to provide details relating to his alleged professional liability policy.

[27] In the exchange of texts between C.A. and Respondent in December 2016 (Exhibit P-23, pages 000166 and 001149), there is a reference to Ms. Frances Germain as being the representative of Respondent's professional liability insurer. C.A. testified that Ms. Germain called him sometime after December 14, 2016 to confirm whether he had filed a complaint with the AMF and that she later informed him that there would be no coverage under Respondent's professional liability policy if it were established that he had acted fraudulently in connection with the insurance coverage for C.A.'s father. C.A. never heard back from Respondent's liability insurer and he received no compensation from said insurer for Respondent's above-described conduct.

[28] On or about July 5, 2016, under pressure from C.A. to provide coverage for the remaining period until November 28, 2016 (for which C.A. had paid $2,900 on November 22, 2015, Exhibit P-25), Respondent obtained a new policy in favour of C.A.'s father (effective on that date and terminating on November 28, 2016) from Allianz Global Assistance for hospital and medical expenses up to $100,000, for a premium of $1,531.51, as appears from Exhibit P-31, which was paid by an Amex credit card which apparently belonged to Respondent's wife. This policy had a deductible of $1,000, as compared to the $500 deductible in policy #BBBBBBBB (Exhibit P-24).

[29] As stated above, C.A. apprised the AMF of this situation by his letter dated December 4, 2016 (Exhibit P-8, page 000005), and he then applied for compensation (based on Respondent's "fraud, fraudulent tactics or embezzlement", Exhibit P-9, page 000169) by application executed on January 6, 2017, claiming the sum of $30,679.04

(Exhibit P-9, page 000170). This claim was ultimately compensated to the extent of $29,039.45 pursuant to a judgment of the AMF dated March 15, 2018 (Exhibit P-75).

[30] Respondent's cross-examination of C.A. did not elicit any new or contradictory evidence relative to the foregoing recitation of his testimony in chief.

[31] The next witness presented by Plaintiff was Me Valerie Gingras, who started and conducted the investigation in this case by the *Chambre de la sécurité financière*, after the AMF transmitted C.A.'s abovementioned complaint letter (Exhibit P-8, page 000005) to the *Chambre de la sécurité financière* on January 5, 2017 (Exhibit P-8, page 000004).

[32] Me Gingras filed Respondent's *Attestation de droit de pratique* (Exhibit P-1), which establishes that he held (*inter alia*) a certificate relating to the insurance of persons from November 18, 2004 until September 22, 2014 and from October 2, 2014 until May 31, 2017.

[33] She then filed Exhibit P-76, two related decisions of the *Tribunal administratif des marchés financiers* rendered on May 3 and 10, 2017, suspending Respondent's accreditation with the AMF for all disciplines, and issuing a comprehensive series of conservatory orders, as a result of his questionable dealings with C.A. and other clients, all of which involved a similar *modus operandi* which resulted in the invalidation of 97 insurance policies ostensibly issued by Manulife (apart from two other insurers) during an approximate period of four years prior to March 2017.

[34] Me Gingras testified that the investigation in this case was instigated by C.A.'s complaint regarding the medical insurance coverage he thought he had obtained through Respondent's efforts.

[35] She stated that, of the four policies issued in connection with C.A.'s father, only two were actually issued pursuant to the payment of premiums to the relevant insurers; namely, the one issued by Manulife on March 4, 2015 (Exhibit P-20) and the policy issued on July 5, 2016 by Allianz Global (Exhibit P-31).

[36] The premiums for the two other policies, Exhibits P-12 (#AAAAAAAA) and P-24 (#BBBBBBBB), were never paid and the corresponding policies never issued by Manulife, as confirmed by Manulife in its correspondence with Me Gingras (Exhibits P-18, page 000051, and P-27, page 000028).

[37] As Me Gingras established in her later testimony regarding Counts 7 to 22 inclusive, other documents received from Manulife demonstrated that several other policies sold by Respondent to his other clients were also never issued, although the clients paid for the premiums quoted by Respondent, and the same *modus operandi* was used by the Respondent in those cases as for C.A.

[38] In recounting her investigation regarding C.A.'s dealings with Respondent, Me Gingras referred to and produced the following documents:

a) Exhibit P-10, an exchange of emails with C.A., in which he provided relevant details regarding his dealings with the Respondent;

b) Exhibit P-14, the CIBC bank statement for Services financiers Apo, an unincorporated business owned by Respondent (Exhibit P-2), proving that C.A.'s cheque for $1,446.39 dated May 6, 2014 (Exhibit P-13) for policy #AAAAAAAA (Exhibit P-12, Count 1) was deposited in Respondent's personal bank account on May 7, 2014;

c) the proceeds of said deposit were then used to fund a cheque dated April

21, 2014 in the amount of $1,750 (Exhibit P-77) issued by Respondent to the order of Leonard Sacvalan, which passed through his said bank account on May 8, 2014, as confirmed by Exhibit P-14 (page 000414), thereby confirming that Respondent misappropriated the proceeds of C.A.'s premium payment (P-13);

d) Exhibit P-78, a cheque dated May 5, 2014 in the amount of $1,446.39, payable to the Respondent by M.M., the first son of C.A.'s sister, L.M., for her 50% share of the agreed (discounted) premium for policy #AAAAAAAA (Exhibit P-12), said cheque having been deposited in Respondent's personal account at the TD Bank on June 6, 2014, as confirmed by Exhibit P-15, which also shows a subsequent withdrawal of $1,400 funded entirely by the said preceding deposit, thereby establishing that Respondent misappropriated the proceeds of the second instalment of the premium payment for policy #AAAAAAAA (Exhibit P-2);

e) Exhibit P-16, an exchange of emails in July 2014 between Respondent and Grace Ramotar, a representative of Manulife, in which the latter reminds Respondent that the premium for policy #AAAAAAAA (P-12) has not yet been received and that coverage will not take effect until it is paid, Respondent replying that he would effect payment of the premium "upon arrival of the client";

f) Exhibit P-17, an email dated December 9, 2014 from Ms. Ramotar to Respondent reminding him that the premium for policy #AAAAAAAA remains unpaid and must be remitted "within 10 business days for this policy to be active";

g) Exhibit P-18 (page 000051), an email dated February 2, 2017 from a representative of Manulife to Me Gingras confirming that policy #AAAAAAAA (Exhibit P-12) was never activated, as the premium was never paid, and that policy #11111111 (Exhibit P-20), in force from March 22, 2015 to November 29, 2015, was activated after payment of the premium by credit card, further details of which appear in Exhibit P-21;

h) Exhibit P-26, the bank statement for Respondent's above-described personal account at the TD Bank, where C.A.'s cheque dated November 22, 2015 in the amount of $2,900 (Exhibit P-25), in payment of the premium for policy #BBBBBBBB (Exhibit P-24), was deposited on November 23, 2015, which deposit funded a contemporaneous cash withdrawal of $3,043.25, thereby establishing that Respondent misappropriated the client's said premium for his personal use;

i) Exhibit P-74, two emails on behalf of Manulife to Respondent, the first dated January 11, 2016, advising him that the premiums for a number of policies (including policy #BBBBBBBB, Exhibit P-24) remained unpaid as of that date and that "coverage will be null and void if the premium is not received", and a second email, dated December 14, 2016, confirming that all of said policies had been cancelled for non-payment of the premiums;

j) Exhibit P-27 (page 0000028), email dated January 19, 2017, from Manulife to Me Gingras confirming that policy #BBBBBBBB (Exhibit P-24) was cancelled for non-payment of the premium;

k) Exhibit P-6 (pages 002599 and 002600), an email to Me Gingras from Manulife dated July 5, 2017, confirming (in paras. 6 and 7) that Manulife

"does not offer rebates" or "support any discounts outside of what our premiums are" and that there was no record of Respondent having ever requested permission from Manulife to grant any discount on premiums.

Counts 7, 8, 9 and 10

[39] Me Gingras' testimony then focused on Counts 7, 8, 9 and 10, which relate to Respondent's client, M.S.C., who filed a complaint with the AMF in early May 2017, claiming the sum of $2,200 which he alleged had been taken from him by Respondent as a result of "fraud, fraudulent tactics or embezzlement" (Exhibit P-33). This complaint was then forwarded by the AMF to the *Chambre de la sécurité financière* for further investigation. Attached to M.S.C.'s complaint were copies of three cheques (totalling $2,200, Exhibit P-33, pages 002642 to 002644) which he had remitted to Respondent in early June 2015. M.S.C. also asserts in said letter (Exhibit P-33, page 002638) that he made an additional cash payment of approximately $600 to Respondent in connection with insurance coverage for his parents.

[40] Me Gingras then produced a series of text messages (provided to her by Respondent) between Respondent and M.S.C., starting in early June 2015, regarding the issuance of a medical insurance coverage for M.S.C.'s parents, who travelled from India to Toronto at different times in 2015.

[41] The three abovementioned cheques from M.S.C to Respondent are reproduced in Exhibit P-35, with bank clearance information showing they were deposited in Respondent's personal account at the TD Bank, on June 3 and 4, 2015, as corroborated by the account statement in Exhibit P-36 (which also appears in Exhibit P-5, at page 000377).

[42] The said account statement (Exhibit P-36) shows that funds from the two deposits made for these three cheques were then dissipated by two cash withdrawals ($160 and $500), two transfers (totalling $840) to account #0509216 (jointly operated by Respondent and his wife, as confirmed by the TD Bank in Exhibit P-79) and a debit card payment ($94.22) at a local grocer.

[43] The insurance certificate for M.S.C.'s father was produced as Exhibit P-37 (policy #CCCCCCCC), with an effective date of July 15, 2015, a policy issue date of June 2, 2015, an expiry date of July 13, 2016, coverage of $100,000, no deductible and a total premium of $1,854.93, which was supposed to be paid by cheque. According to Me Gingras, this type of certificate is prepared online by the agent, who is supposed to send a copy to Manulife, as more fully described in paragraphs 70 to 72 below relating to Exhibit P-82.

[44] On the reverse side of Exhibit P-37 (page 002122), we find an insurance certificate (policy #DDDDDDDD) for M.S.C.'s mother with similar conditions and the same premium.

[45] The total stated premium for both policies amounts to $3,709.86, which is the same number found in the above-cited text exchange (Exhibit P-34, page 002580), which Respondent described as the "regular price", before the 10% discount.

[46] On the same date, Respondent prepared two different insurance certificates (Exhibit P-38) for M.S.C.'s parents (policies #22222222 and #33333333), for the same coverage amounts and periods, but with a different deductible ($5,000) and premium ($1,148.29).

[47] These latter two policies (Exhibit P-38) were cancelled on the next day, pursuant to Respondent's email to Manulife dated June 3, 2015 (Exhibit P-39).

[48] Me Gingras then produced the two following additional policies (Exhibit P-40) prepared by Respondent for M.S.C.'s parents:

a) policy #EEEEEEEE for the mother, issued on December 9, 2015, with coverage of $100,000 and no deductible, expiring on October 23, 2016, for a premium of $1,626.24; and

b) policy #FFFFFFFF for the father, issued on April 17, 2016, with coverage of $100,000 and no deductible, expiring on April 21, 2017, for a premium of $2,272.67.

[49] Me Gingras then referred to Exhibit P-74, whereby Manulife confirmed to Respondent that the father's first policy (#CCCCCCCC, Exhibit P-37) had been cancelled for non-payment of the premium.

[50] Me Gingras also referred to Exhibit P-6 (pages 002054 and 002055), where Manulife confirmed the following regarding the parents' various policies:

a) the father's first policy (#CCCCCCCC, Exhibit P-37) was "not placed" and no premium was ever paid;

b) the father's second policy (#22222222, Exhibit P-38) was "not placed" and Respondent had requested that it be cancelled;

c) the father's third policy (#FFFFFFFF, Exhibit P-40) was "not placed" and the premium never paid;

d) no other policies were placed for the father;

e) the mother's first policy (#DDDDDDDD, Exhibit P-37) was "not placed" and

no premium was ever paid;

f) the mother's second policy (#33333333, Exhibit P-38) was "not placed" and Respondent had requested that it be cancelled;

g) the only other policy regarding the mother was #EEEEEEEE (Exhibit P-40), which "was not issued as the premium payment was not received".

Count 11

[51] Me Gingras commenced her testimony regarding N.S. by referring to a series of text messages (provided by Respondent) between Respondent and N.S. (Exhibit P-41).

[52] In this exchange, which starts on July 13, 2015, Respondent quotes a premium price of $2,200 (compared to the competitors' alleged price of $2,350) and insists on being paid by cheque, "as I giving you discounts" (sic).

[53] An insurance certificate from Manulife for N.S.' father-in-law was prepared on July 16, 2015 for policy #GGGGGGGG (Exhibit P-42), for coverage of $100,000, no deductible, an effective date of August 15, 2015, an expiry date 12 months later and a stated premium of $3,372.60.

[54] On July 16, 2015, N.S. obtained a draft for $2,200 from the TD Bank (Exhibit P-43), which was deposited in Respondent's joint account (#509216, Exhibit P-79) with his wife at the TD Bank on the same day. This bank draft is mentioned in the text exchange between the parties (Exhibit P-41, page 002568).

[55] The deposit receipt (Exhibit P-80) shows that when N.S.' bank draft cheque was deposited in said account, Respondent kept $2,000 in cash and deposited the balance of $200 in his account, which is corroborated by the bank account statement (Exhibit P-81,

page 002710), and a withdrawal of $200 was made from that account on the following day, leaving the account in an overdraft position of $747.89.

[56] The exchange of text messages between the parties (Exhibit P-41, page 002569) further shows that the father-in-law arrived in Canada on October 26, 2015.

[57] On December 9, 2015, Respondent prepared another insurance certificate for N.S.' father (policy #44444444, Exhibit P-44), specifying coverage of $100,000, no deductible, an effective date of December 9, 2015, an expiry date of October 26, 2016, and a stated premium of $2,984.52.

[58] It appears from the exchange of text messages (Exhibit P-41, pages 002572 to 002574) that the father-in-law left Canada on January 22, 2016, which prompted a request from N.S. for a partial refund because of the premature termination of the insurance coverage. In that exchange, Respondent referred to a pro rata calculation of the reimbursement and to an alleged early termination penalty of $250 (Exhibit P-41, page 002574).

[59] On March 20, 2016, Respondent issued a cheque to N.S. from his business account at the CIBC in the amount of $1,118.40 (Exhibit P-45), which was debited from the account on April 8, 2016 (Exhibit P-46). The cheque refers to policy #GGGGGGGG (Exhibit P-42).

[60] Me Gingras then referred the Committee to the previously mentioned letter from Manulife (Exhibit P-6, pages 002605 and 002606), which makes the following affirmations:

a) policy #GGGGGGGG (Exhibit P-42) was never issued and no premium ever paid, as confirmed in Exhibit P-74;

b) policy #44444444 (Exhibit P-44) was never issued and no premium ever paid;

c) Manulife's early termination policy for travel insurance is based strictly on a pro rata calculation of the unused days, with no provision for a termination penalty of any kind (contrary to Respondent's abovementioned reference to a $250 penalty).

Counts 12, 13 and 14

[61] On July 22, 2015, Respondent prepared an insurance certificate (policy #HHHHHHHH, Exhibit P-47) at the request of S.B. for J.K., her mother-in-law, which refers to an effective date of August 31, 2015, an expiry date of August 29, 2016, coverage of $100,000, no deductible and a stated premium of $1,854.93.

[62] A cheque in the amount of $1,250 (Exhibit P-48), payable to Apo Financial Group was issued on July 22, 2015 by 7638477 Canada Inc. (of which S. B. was the major shareholder and sole director, Exhibit P-49), said cheque having been deposited on the same day in Respondent's abovementioned CIBC account (Exhibit P-50, also found in Exhibit P-4).

[63] The said bank statement (Exhibit P-50) shows that the balance in the account before the deposit of $1,250 was $74.10 and that a series of withdrawals resulted in a balance of $150.48 at the end of July 2015 (Exhibit P-50, page 000108).

[64] This initial policy (Exhibit P-47) was cancelled for non-payment of the premium, as appears from Exhibit P-74 and Manulife confirmed in its letter to Me Gingras dated June 27, 2017 (Exhibit P-6, page 002503) that this policy was "not placed" and that the premium was never paid.

[65] On May 24, 2016, Respondent prepared a second certificate (policy #IIIIIIII, Exhibit P-51) regarding J.K. for the same coverage ($100,000) and no deductible, with an effective date of May 24, 2016, an anticipated arrival date of March 22, 2016, an expiry date of March 22, 2017 and a stated premium of $1,886.63.

[66] On September 22, 2016, Respondent prepared a third policy regarding J.K. (#55555555, Exhibit P-52) with an effective date of September 22, 2016, an expiry date of March 22, 2016, coverage of $100,000, no deductible and a stated premium of $1,133.22. The payment was made using an Amex card belonging to Respondent's wife.

[67] After J.K. made an early return to India on September 26, 2016, S.B. wrote to Manulife on October 26, 2016, requesting a partial refund of the premium she had paid pursuant to policy #IIIIIIII (Exhibit P- 51), as appears from the email chain filed as Exhibit P-53 (pages 002165 to 002167).

[68] Manulife eventually advised S.B. that the second policy (#IIIIIIII, P-51) never came into force because of the non-payment of the premium and, despite some confusion on this point in the correspondence, this was reconfirmed by Manulife to Me Gingras in its email dated July 13, 2017 (Exhibit P-6, pages 002599 and 002600).

[69] Ultimately, Manulife issued a refund of $1,102.69 to the credit card owned by Respondent's wife on November 22, 2016, in respect of policy #55555555 (Exhibit P-52), presumably because her card had been used to pay for this policy, but Respondent refunded S.B.'s company the total sum of $729.58 by way of two cheques issued in January 2017 (Exhibit P-54), which cheques referred to the first and last of the three policies. No justification was provided to explain why S.B. did not receive the entire amount ($1,102.69) refunded by Manulife.

[70] Me Gingras referred to her query to Manulife (Exhibit P-6, page 002016, para. 55) as to how Respondent was able to obtain medical insurance coverage on behalf of his clients and prepare the certificates he sent them in this regard (e.g. Exhibits P-12, P-20, P-24, P-37, etc.).

[71] Manulife responded to this query in paragraph 5 of its email dated June 27, 2017 (Exhibit P-6, page 002058), to which it attached a series of screenshots (Exhibit P-82) of Manulife's online application procedure, which was used by Respondent in obtaining the various insurance certificates in this case.

[72] Simply described, someone using Manulife's online system would click on the "Visitors to Canada" box, seen on page 002097 of Exhibit P-82, then fill in the required information for a free quote on page 002099, choose the appropriate plan and amount of coverage on pages 002100 and 002101, fill in the agent information on pages 002102 and 002103, enter the insured's personal information on page 002104, specify the payment method (cheque or credit card) on page 002106, fill in the email address on page 002110 to which the quote would be sent (Respondent's email address appears on that page of Exhibit P-82), then press the purchase button to obtain the quote.

[73] Thus, the online completion of an application did not suffice to provide valid coverage. Payment had to be made to the insurer in order for the policy to come into force, but a client who received the certificate of insurance and who had made his cheque payable to the agent (personally) had to rely on the agent's good faith that the appropriate payment was then remitted to the insurer. Furthermore, the insurer who received this online application had no way of knowing that the agent had negotiated a premium lower than that specified in the online application.

[74] Me Gingras pointed out the caveat on page 002106 (payment method) which

clearly states that there will be no coverage if the credit card payment is not authorized or if the relevant cheque is not received or returned for insufficient funds (NSF). This caveat also appears in the box regarding payment method in the certificate of insurance prepared by the agent.

[75] As appears from the various certificates prepared by Respondent for his clients, most of them provided for payment by cheque, which explains why Manulife ultimately cancelled the numerous policies for which the premium payment was never received (Exhibit P-74).

Counts 15 and 16

[76] On September 21, 2015, Respondent prepared the two following medical insurance confirmation certificates at the request of D.S.J.:

a) policy #JJJJJJJJ, for S.S., with coverage of $100,000, a deductible of $500, an effective (and arrival) date of November 1, 2015 and an expiration date of October 31, 2016, for a stated premium of $2,730.20 (Exhibit P-55);

b) policy #KKKKKKKK, for G.K., on the same terms and conditions, except that the stated premium was $2,087.98 (Exhibit P-56).

[77] On September 21, 2015, D.S.J. issued a cheque (Exhibit P-57) in the amount of $2,218.18 payable to the order of Respondent, indicating that it was for two different policies, the description of which appears to roughly correspond to the contract numbers on the two abovementioned policies.

[78] This cheque was cashed at the CIBC and deposited in the account of Services Financiers Apo, as confirmed by the bank statement filed as Exhibit P-58 (page 000453).

The balance in the account before this deposit was $4.58 and a series of withdrawals (including a cheque for $888 payable to Respondent's wife, Exhibit P-83) reduced it to $498.56 by September 30, 2015.

[79] Me Gingras again referred to Exhibit P-74 to establish that these two policies never came into force because of non-payment of the premiums and this was again confirmed in Manulife's letter of June 27, 2017 (Exhibit P-6, page 2056).

[80] On January 12 and February 12, 2017, Respondent issued two cheques payable to the order of D.S.J., one in the amount of $1,176.65 and the other in the amount of $1,000, both of which bore the note "Refund Policy" and a reference to the two policies (Exhibits P-55 and P-56).

Counts 17, 18 and 19

[81] In early February 2016, Respondent began exchanging text messages with E.S. about obtaining travel insurance coverage for her parents, as a result of which he gave her a combined quote of $1,100 (after a 10% discount of $122.85, Exhibit P-60, page 002577).

[82] On February 7, 2016, Respondent prepared insurance certificates for both parents, each of which stipulated coverage of $50,000, no deductible, an effective date of March 10, 2016, an expiry date of July 4, 2016, payment by cheque (policies #LLLLLLLL and #MMMMMMMM, Exhibit P-61) and a stated premium of $614.25.

[83] E.S. paid the agreed (discounted) premium of $1,100 by way of cheque dated February 7, 2016 drawn to the order of Respondent (Exhibit P-62), which cheque was deposited the following day in Respondent's personal account at the TD Bank (Exhibits P-63, page 002542, and P-64, page 001304).

[84] The said bank account was overdrawn by $333.92 before the deposit of this cheque and said deposit was immediately followed by a withdrawal of $1,000 (a transfer to Respondent's joint account with his wife at the TD Bank, as confirmed by Exhibits P-79 and P-81), leaving a negative balance of $233.92 (Exhibit P-63, page 002541).

[85] In Exhibit P-64 (pages 001310 and 001311), we find two "Travel Insurance Confirmation" forms, bearing Respondent's email address, referring to two ostensible payments of $614.25 to Manulife on March 24, 2016 (using a 14-digit credit card ending with the number 3007), in settlement of the premiums for these two policies (Exhibit P-61, #LLLLLLLL and #MMMMMMMM). Interestingly, the Amex card used to pay other policies in this case (Exhibits P-31 and P-52) had 15 digits and ended with the number 3007.

[86] However, it appears that these apparent payments did not go through, as appears from Manulife's response to Me Gingras on June 27, 2017 (P-6, pages 002599 and 002600, paras. 1 and 2) because the "credit card information provided was incomplete" (probably due to a missing digit, as appears from Exhibit I-10), as confirmed by Manulife's email to Respondent dated May 17, 2016 (Exhibit P-65, page 002181) and by Exhibit P-7, a list prepared by Manulife for all policies solicited by Respondent in 2016 and 2017 for which no premium was received, which list contains the names of the clients, their addresses and the premium that was due in each case.

Counts 20, 21 and 22

[87] In March 2016, Respondent engaged in discussions with K.P. regarding travel insurance policies for H.P and C.P., which negotiations culminated in an offer to buy the coverage for a combined (discounted) premium of $3,397.89, as appears from the exchange of text messages between Respondent and K.P. produced as Exhibit P-66.

[88] On March 15, 2016, Respondent prepared the following insurance confirmations:

a) policy #NNNNNNNN for H.P., with coverage of $100,000, no deductible, an effective date of May 15, 2016, an expiry date of May 14, 2017, and a stated premium of $3,372.60 (Exhibit P-67, page 002130);

b) policy #OOOOOOOO for C.P., with the same conditions, except that the stated premium was $1,854.93 (Exhibit P-67, page 002132).

[89] The agreed (discounted) premium of $3,379.89 was paid by way of two cheques (Exhibit P-68), both payable to Respondent personally, one in the amount of $2,000 (dated March 15, 2016), and the other in the amount of $1,397.89 (dated March 16, 2016).

[90] These two cheques were deposited by Respondent in his personal account at the TD Bank on March 16 and 17, 2016, as appears from the bank statement filed as Exhibit P-69 (page 002538).

[91] The said bank statement shows that the account had a negative balance of $2,438.64 before the deposit of K.P.'s $2,000 cheque, which was followed by net deposits of $104.66 and debits of $25 before K.P.'s cheque for $1,397.89 was deposited, leaving a net positive balance of $1,038.91. That amount was then reduced to a negative balance of $1.09 after two withdrawals totalling $1,040.

[92] On February 26, 2017, the following two new insurance certificates were issued by Respondent for H.P. and C.P.:

a) policy #6666666 for H.P., with an effective date of February 26, 2017, an expiry date of June 23, 2017, coverage of $100,000, no deductible and a

stated premium of $1,229.09, payment to be made by a Visa card belonging to M.A., Respondent's niece (Exhibit P-70, page 002141);

b) policy #7777777 for C.P., with the same terms and mode of payment, except for the stated premium, which was $743.09.

[93] When Me Gingras inquired about these policies to Manulife (Exhibit P-6, pages 002012 and 002013), the latter advised her as follows (Exhibit P-6, pages 002055 and 002056):

a) policy #NNNNNNNN for H.P. (Exhibit P-67, page 002130) was "not placed" and the premium never paid;

b) two other policies for H.P. were applied for by Respondent, the first (not filed in evidence) never came into effect because of non-payment of the premium and the second (#7777777) policy was issued and paid for by credit card;

c) policy #OOOOOOOO for C.P. (Exhibit P-67, page 002132) was "not placed" and the premium never paid;

d) two other policies were applied for by Respondent for C.P., the first (not filed in evidence) never came into effect because of non-payment of premium and the second (#66666666) was issued and paid for by credit card.

[94] Policies #NNNNNNNN and #OOOOOOOO (Exhibit P-67) appear on the abovementioned list in Exhibit P-7 as among those issued in 2016 which never came into effect because of non-payment of the premiums.

Count 23

[95] On January 31, 2017, Me Gingras and her colleague interviewed Respondent in connection with this case, a partial transcript having been filed as Exhibit P-71. At that point, Me Gingras says that the investigation only concerned Respondent's dealings with C.A. (Counts 1, 2, 3, 4, 5 and 6), as confirmed by her letters to Manulife dated January 11 and 30, 2017 (Exhibits P-27 and P-18), which deal only with C.A.'s case.

[96] Near the end of that interview, Respondent replied "no" when asked the following two questions by Me Gingras:

a) "Is there any other file for any reason, with respect to other clients that you suspect that same situation may have happened, that the insurer didn't receive the check?"

b) "Did you check your statement after that event to confirm?"

[97] On January 31, 2017, Me Gingras wrote an email to Respondent (Exhibit P-72) requesting various information regarding C.A.'s file, including "a copy of the email you received from Manulife advising that they had not received the payment of the premium for policy no. (BBBBBBBB)" (para. 15).

[98] Me Gingras filed as Exhibit P-73 a copy of the document Respondent provided to her on February 17, 2017 in response to her above-cited request in paragraph 15 of her email of January 31, 2017.

[99] The document Respondent sent Me Gingras is a copy of Manulife's email to Respondent dated December 16, 2016, but it does not include the entire list of policies

cancelled for non-payment of premium in the original version of Exhibit P-74, just the last line of the table, which refers to C.A.'s case.

[100] After Me Gingras received the copy of Exhibit P-74 from Manulife in March 2017 (list of policies applied for prior to 2016 that were "cancelled", *i.e*. never came into force for non-payment of the premiums), her follow-up questions led to the reception from Manulife (on March 31, 2017) of the listing of similar cases that had occurred in 2016 and 2017 (Exhibit P-7).

[101] Me Gingras only became aware of this omission when she received the complete version of Exhibit P-74 from Manulife on March 17, 2017.

[102] Respondent chose to not cross-examine Me Gingras after she had completed her testimony, and Plaintiff declared his proof closed.

B. Respondent's proof

[103] The first witness called by Respondent was Mr. Bumani Yembe, who described himself as a project consultant in international projects, who currently acts as an ambassador for a charitable organization and who worked for Manulife from 1994 to 2008.

[104] Mr. Yembe became acquainted with Respondent, starting in 2000 or 2001, while they worked at the same office of Manulife (1501 McGill College Ave., Montreal), as independent agents, and they and their wives developed a friendship, and eventually, they worked together in fundraising activities, such as Vues et Voix.

[105] Mr. Yembe testified that Manulife's travel insurance division was plagued with administrative problems, some caused by the difficulty from the inversion of the numerically designated month and date (in entering the commencement and expiration

dates of policies in insurance application forms) and others by the loss of consumers' cheques which fell out of the envelopes containing insurance applications. Mr. Yembe believes that in 90% of the cases, missing cheques were lost or misplaced by Manulife's head office administrative staff in Waterloo.

[106] Mr. Yembe recalls that Respondent also suffered from the loss or misplacement of consumers' cheques while they worked together at Manulife's office in Montreal.

[107] Mr. Yembe claimed that he visited Manulife's office in Waterloo, Ontario, twice and that its employees were not well-trained.

[108] He described the Respondent as "*un gars honnête, un gars sérieux...et puis sa femme est un vrai ange, elle est l'amie de ma femme*".

[109] Under cross-examination, Mr. Yembe stated that when he received a consumer's cheque, he would place it in a sealed envelope, which he deposited in a box (at the front of the office) designated for such envelopes, and which was then sent to the Waterloo office by the administrative staff, using the services of ICS, a courier firm. He never deposited any client cheques in his personal accounts, but he claimed that certain of his colleagues did so. He remembers only two or three occasions (during his 14 years with Manulife) where premium cheques he directed to Manulife were lost, the last occasion being in 2004 or 2005.

[110] All of the consumers' cheques he handled were payable to Manulife and he always made copies of cheques before sending them to Waterloo, to retain a record of having received them. He admitted that if a cheque was not received by head office, he would eventually receive a notice from Manulife advising him that the premium had not been paid.

[111] He also remembered one occasion where the client complained that his cheque had not been cashed and he managed to resolve the problem.

Counts 1, 2, 3, 4, 5 and 6

[112] Respondent commenced his testimony by apologizing to C.A. and his family for the inconvenience caused to them.

[113] Respondent started his financial security practice in 1998 and built it slowly while focusing on the Filipino community and other ethnic groups. He became a full-time broker in 2004. He claims to have had no client complaints in 19 years.

[114] On May 5, 2017, representatives of the AMF came to his office and seized his files and placed a lien on his property and bank accounts, as a result of C.A.'s complaint. He claims that the AMF found nothing wrong with his life insurance and investment files and that the account seizures were lifted in December 2017.

[115] He claims to have suffered considerable inconvenience from the asset seizures and now works as an Uber driver, with a much-reduced lifestyle.

[116] Respondent said that he was in Vancouver, on his way to the Philippines, when he was first called by C.A. about his father's illness on April 18, 2016, and understood then that C.A. had or was about to file a claim with the AMF, because of the non-payment of the premium. Respondent assured C.A. during that conversation that he was sure he had paid the premium to Manulife and that he had a copy of the cheque stub proving it.

[117] Respondent testified that he immediately called Aon, which he says was the agent for his professional liability insurer (with Northbridge General Insurance Corporation, "**Northbridge**"), as well as Industrial Alliance, the broker for Aon, as confirmed by the

record of these two calls on his cellphone statement (Exhibit I-1). Respondent claims that Mrs. Martine Brisson, of Industrial Alliance, told him during that first call that he was not covered for C.A.'s claim under the Aon/Northbridge policy.

[118] Respondent then filed his email correspondence on May 12, 2016 with Industrial Alliance, who sent him an "E&O application to be completed and returned" and Respondent wanted to know whether "this policy covers Travel Insurance" and "if not, how much it will cost if it is included", to which Industrial Alliance responded "As it's a master policy, we cannot do any change on the coverage. If you need more, you will have to verify with another broker" (Exhibit I-2).

[119] Respondent's position is that Mme Brisson again told him on May 12, 2016 that he had no professional liability coverage with Northbridge at that time.

[120] Respondent then produced an email exchange between himself and Industrial Alliance in July 2016 (Exhibit I-3) in which Industrial Alliance advises him that, for 2016-2017, he was covered by an E & O insurance policy issued by Lloyd's, and that it would verify whether and from whom he might have had such coverage in 2015-2016.

[121] Respondent produced a series of emails between himself, Industrial Alliance and Aon during the period October 17, 2016 and February 9, 2017 (Exhibit I-4) in which Industrial Alliance took the position that the claim by C.A. was not made before the Northbridge policy expired on May 31, 2016, and that Respondent should therefore be looking to Lloyd's, his insurer as of June 1, 2016, for relief, while Respondent is still protesting that he first advised Industrial Alliance (Mrs. Brisson) of the existence of C.A.'s claim on April 18, 2016 (Exhibit I-1).

[122] Respondent blamed the Industrial Alliance representative (Mrs. Brisson), with

whom he spoke on April 18, 2016 (Exhibit I-1), for misleading him about coverage and leading him not to file a claim with Industrial Alliance within the applicable delay, but he also claims that he advised her of the existence of C.A.'s claim on April 18, 2016.

[123] Respondent then testified that, in December 2016, he met a representative of Lloyd's of London (Mrs. France Germain) and that he gave her a copy of the cheque stub for the payment he claims to have sent to Manulife in the amount of $3,350.70 for policy #BBBBBBBB (P-25), copy of which stub was filed as Exhibit I-5, which Respondent affirmed relates to Apo's account at the CIBC (P-4).

[124] On June 1, 2016, Respondent told C.A. that Lloyd's was his agent and that Mme Germain would be calling him. Respondent met Lloyd's agent in December 2016 and he gave them a statement (P-32, not filed).

[125] Respondent then produced a copy of a certificate of insurance regarding an E & O policy from Northbridge General Insurance Corporation (through Aon Parizeau Inc), in favour of *Autorité des marchés financiers* for the period June 1, 2015 to June 1, 2016 (Exhibit I-6) which appears to provide coverage for "DISHONEST OR FRAUDULENT ACT", but Respondent claimed not to have a copy of the terms and conditions thereof.

[126] He also filed a letter from the AMF to him dated April 18, 2018 (Exhibit I-7) claiming the sum of $29,039.45 in virtue of the judgment rendered against him on March 18, 2016 (P-75) regarding C.A.'s claim for compensation.

[127] On May 1, 2018, Respondent responded to the AMF (Exhibit I-8) claiming that C.A. had lied in asserting that his father had no pre-existing condition and noting that a hearing was going to be held at the "Palais de justice" on May 23, 2018 (presumably in connection with the proceedings filed as Exhibit P-76).

[128] Respondent elaborated that the pre-existing condition related to the father's prostate problems, to which C.A. referred in his email dated May 5, 2014 (Exhibits P-11 and I-8), and not the pulmonary problems, which generated the largest part of the C.A.'s claim (about $25,000) and that the AMF had therefore overpaid C.A. by approximately $4,000 for the prostate portion of the claim.

[129] Respondent testified that Mrs. Germain told him in May 2017 that she would await the result of what he described as the decision of the AMF (without specifying if that was a reference to the proceedings in Exhibits P-75 and P-76 or to this case) before making a decision regarding coverage under the Lloyd's policy, and whether the claim was tainted by any allegations of Respondent's fraudulent conduct, and he said that he had received no further word from her since on the issue of coverage.

Counts 7, 8, 9 and 10

[130] Respondent commenced his testimony regarding M.S.C. by denying the latter's allegation in his claim form to the AMF (Exhibit P-33, page 002638, para. 5) that he had been paid $600 in cash by said client or that he had reimbursed him such an amount at a later date, as alleged at page 002639, para. 10.

[131] Respondent claims that he first prepared the policies with a $5,000 deductible (policy #22222222 and #33333333, Exhibit P-38), each of which had a stated premium of $1,148.29, for a total stated premium of $2,296.58.

[132] However, Respondent claims that M.S.C. changed his mind and instead requested policies with a $0.00 deductible, which led to Respondent's preparation of policies #CCCCCCCC and #DDDDDDDD (Exhibit P-37), which had a combined stated premium of $3,709.86, which corresponds to the "regular price" of the policies mentioned in the

text exchange (Exhibit P-34). Respondent said he sent the new policies (Exhibit P-37) to M.S.C. before receiving the additionally requested sum of $1,500.

[133] Respondent said that the $2,200 paid by M.S.C. corresponded to the discounted premium for the first series of policies with the $5,000 deductible (Exhibit P-38) and that he asked M.S.C. to pay him the additional sum of $1,500 to cover the cost of the increased stated premium (presumably the approximate difference between the abovementioned sums of $3,709.86 and $2,200). However, the text exchange does refer to this change of policies, although M.S.C. does allege having paid Respondent the additional cash sum of $600.

[134] Respondent said that he never received the additional $1,500 from M.S.C., that he did not pay Manulife any premium, and that he had telephone conversations with M.S.C. for the additional payment. Respondent says he did not reimburse the $2,200 in the meantime because M.S.C. did not get back to him.

[135] Respondent then says that M.S.C. contacted him again at some later date to advise that his parents had left early and that they would be returning to Canada, and to hold the money previously paid because they would eventually require new insurance coverage.

[136] In fact, it appears that the mother returned to Canada on October 23, 2015 and the father was supposed to return to Canada on April 22, 2016, which led to the issuance of two new policies on December 9, 2015 and April 17, 2016 for both parents (#EEEEEEEE and #FFFFFFFF, Exhibit P-40), for a total stated premium of $3,898.91.

[137] Respondent admits that he cancelled the P-38 policies and that he held on to the $2,200 for the P-37 policies, but did not remit any money to Manulife because he was

waiting for the extra $1,500 in respect of the increased premiums related to Exhibit P-37.

[138] Respondent says that M.S.C. also did not make any additional payment for the P-40 policies, but that he held on to the original deposit of $2,200 throughout.

[139] Respondent admits that none of the three sets of policies (P-38, P-37 and P-40) ever came into force, because M.S.C. never paid Respondent the extra money required for either the P-37 or the P-40 policies.

[140] The end result is that M.S.C. paid Respondent $2,200 for policies that never came into force and Respondent never refunded the $2,200 because he says that, for a while, he was waiting for M.S.C. to pay him the extra $1,500 allegedly required for the latter two sets of policies and that he ultimately did not refund the $2,200 because "he never got back to me and now, he's filing a complaint" (Exhibit P-33).

Count 11

[141] On July 16, Respondent prepared a policy (#GGGGGGGG, Exhibit P-42) at the request of N.S. (for his father-in-law), who paid Respondent $2,200 (Exhibit P-43), although the stated premium was $3,372.60. Respondent explains the difference by saying that he was giving his client the “best rate possible”, and that he effectively lost money in agreeing to a discount of almost 35% on the stated premium.

[142] The policy (Exhibit P-42) refers to an expected arrival date in Montreal of N.S.' father-in-law on August 15, 2015 and the text exchange reflects Respondent's insistence upon payment by cheque (Exhibit P-41, page 002566).

[143] Respondent says that he did not immediately pay the premium to Manulife because he was waiting for the "papers to finalize the arrival date", which includes the

boarding pass and other documents (ticket and itinerary) regarding the father-in-law, whose arrival date was supposed to be August 15, 2015 (Exhibit P-42). However, the boarding pass was furnished to Respondent on October 26, 2015 (Exhibit P-41, page 002569).

[144] In fact, the father-in-law arrived on October 26, 2015 and returned to India on January 22, 2016 (Exhibit P-41, pages 002569 and 002572), after only three months in Canada (rather than the 12 months foreseen in the policy).

[145] Although Manulife claims (Exhibit P-74) that it never received the premium for policy #GGGGGGGG (Exhibit P-42), Respondent claims he paid Manulife by way of his credit card in October 2015, after receiving the boarding pass, but he could not affirm the amount of this alleged payment to Manulife or provide documentary proof of same and Respondent does not recall telling Me Gingras about this alleged payment.

[146] However, Respondent did pay N.S. a refund of $1,118.40 by cheque dated March 25, 2016 (Exhibits P-45 and P-46, page 000466).

[147] Respondent says that he eventually received a partial refund from Manulife by way of credit card, because of his alleged payment of the premium by credit card, but he produced no documentary corroboration of this alleged refund.

[148] Respondent further testified that he only received Exhibit P-74 (Manulife's email to him dated November 1, 2016) at some point in January 2017, possibly because he found it in his spam emails some two months later. He claims to have then called Manulife's agent support department, to advise that this email (Exhibit P-74) incorrectly alleged that the premium for N.S. had not been paid, but he has no documentary corroboration of such a call or a correcting communication from Manulife acknowledging that said

premium had in fact been paid by him to Manulife. Respondent effectively argued that Manulife made a "mistake" in affirming that no premium was ever paid regarding the policy issued at the request of N.S.

[149] In an attempt to demonstrate that Manulife was capable of making erroneous statements as to whether the premiums for certain policies had been paid or not by Respondent, the latter referred to Manulife's list for 2016-2017 of unpaid premiums (Exhibit P-7), which contains (according to Respondent) such an erroneous affirmation.

[150] More particularly, Respondent alleges that the premium for another client listed in Exhibit P-7 (M.F., who is not covered by the Complaint) was paid by the client (M.F.) with his credit card, but the only documentary corroboration he provided in this regard was an insurance certificate (Exhibit I-9), which does not give any details of the credit card number or the name of the cardholder.

[151] Respondent claims he received Exhibit I-9 from Manulife, and he did not explain why the last four digits (at least) of the credit card and the name of the credit card issuer do not appear on the certificate, as was the case for other policies in this case paid by way of credit card (Exhibits P-31, P-52 and P-70). Respondent also alleges that the last four digits of the credit card number which should normally have appeared on Exhibit I-9 were erased by Manulife.

[152] Later, when queried about the detailed credit card information which appears in the insurance certificate filed as Exhibit P-52, Respondent explained that the credit card payment information appears on the policy certificate after it is entered online by him.

[153] Respondent offered no testimony in chief regarding the issuance of the second policy for the father-in-law on December 9, 2015 (Exhibit P-44) for a stated premium of

$2,984.52, which Manulife affirmed was never issued and the premium never paid (Exhibit P-6, page 002057).

Counts 12, 13 and 14

[154] Respondent acknowledged that he (Apo Financial Group Inc.) received payment of $1,250 from the numbered company belonging to S.B., as result of which he prepared three insurance certificates for J.K. (Exhibit P-47, on July 22, 2015, for a premium of $1,854.93; Exhibit P-51, on May 24, 2016, and Exhibit P-52, on September 22, 2016), as stated by Me Gingras in her testimony.

[155] He claims that the premium for the first policy (Exhibit P-47, policy #HHHHHHHH) was never paid, because the insured (J.K.) did not come to Canada on August 31, 2015, but the policy was only cancelled by Respondent when she finally came to Canada in March 2016, after her visa was processed, at which point a new policy was prepared by Respondent.

[156] The second policy (Exhibit P-51) was issued on May 24, 2016, for a stated premium of $1,886.63, citing an arrival date in Canada of March 22, 2016, and Respondent does not dispute that this second policy was also cancelled (or never came into effect), as affirmed by Manulife to Me Gingras. Respondent claims that he only received documents (confirming J.K.'s arrival in Canada) from S.B. in September 2016, at which point he issued the third policy (Exhibit P-52).

[157] Finally, on September 22, 2016, Respondent caused a third policy certificate (Exhibit P-52, policy #55555555) to be issued and the premium (presumably $1,133.22, the stated premium, as appears from Exhibits P-52 and P-53, at page 002261) was paid

using a credit card belonging to Respondent's wife, which he said was normally used by him to obtain credit card points, as confirmed by Manulife (Exhibit P-6, page 002599).

[158] It appears that the insured returned to India on September 26, 2016 (Exhibit P-53, page 002260) which entitled S.B. to a refund because she believed she had paid for almost one year of coverage (August 31, 2015 to August 29, 2016, Exhibit P-47).

[159] In fact, S.B. received a refund from Respondent of only $729.58 (Exhibit P-54), despite the fact that Manulife gave Respondent's wife a credit card refund of $1,102.09, as appears from Exhibit P-53, page 002261.

[160] Respondent admitted that, according to the way in which he typically operated, the client pays him as soon as the first policy certificate is issued but that he did not pay anything to Manulife until he received proof of arrival in Canada (usually the boarding pass) of the insured for whom the policy was issued, because the clients often changed their minds about the travel arrangements and the resulting paperwork was lessened if he withheld payment from Manulife until the person(s) insured actually arrived in Canada. When confirmation of arrival is provided, Respondent would then issue a second policy and (presumably) pay the applicable premium to Manulife. As a result, Respondent acknowledged that this *modus operandi* could result in the insured having no (or delayed) coverage when the client delayed in sending him the documents confirming the insured(s) arrival in Canada, but that "the client knows that".

[161] Respondent said that he cancelled the first policy (Exhibit P-47) for this reason when he received the insured's arrival confirmation, at which point he issued a new policy (Exhibit P-52, on September 22, 2016), which indicates an arrival date of March 22, 2016, the same arrival date indicated in Exhibit P-51, prepared by Respondent on May 24, 2016, which also never came into effect because Respondent did not pay the premium.

Respondent did not explain why he issued the second policy (Exhibit P-51) on May 24, 2016, apparently two months after the insured's arrival in Canada or why he did not pay any premium for said policy, although he did intimate that he only received proof of arrival from the insured when he issued the third policy (Exhibit P-52).

[162] The end result of the foregoing transactions is that S.B. paid Respondent the sum of $1,250 on July 22, 2015 for medical insurance coverage for 363 days, while Respondent pocketed said amount and purchased only four days of effective coverage (September 22 to 26, 2016, Exhibit P-52), 6 months after the insured arrived in Canada, and paid Manulife only $31.13 for this coverage (Exhibit P-53, page 002261), while only refunding S.B. the sum of $729.58.

Counts 15 and 16

[163] As regards policies #JJJJJJJJ (Exhibit P-55) and #KKKKKKKK (Exhibit P-56), requested by D.S.J. for his parents (S.S. and G.K.), Respondent says he accepted a reduced combined premium of $2,218.18 (Exhibit P-57), although the combined stated premium for the two policies was $4,818.18, and that he agreed to such a discount (approximately 53%) "to help the client", even though this discount represented "a total loss" for Respondent, because the client (D.S.J.) was referred to him by a close relative of D.S.J. who had allegedly previously dealt with Respondent, whose name he could not recall.

[164] In answer to a general query from the President of the Committee relating to discounts on premiums, Respondent answered that he once asked someone on Manulife's 1-800 agent support line whether it was possible to grant "rebates" to clients who paid the premium in a single payment, rather than by monthly instalments (which Respondent said was being done by other agents), and that said unidentified person

responded that such a decision was "up to the agent", without expressly authorizing him to "go ahead" and grant a discount. However, Respondent admits that he did not routinely call Manulife for permission to grant a discount each time he issued a new policy, and that he did not advise Manulife of his practice in this regard.

[165] Respondent testified that he "didn't know whether the parents stayed for long" or whether they ever even came to Canada, because he claims to have never received any confirmation of their arrival or stay in Canada, which is the reason invoked by Respondent to explain why he never paid the premium to Manulife.

[166] However, he recalls that the client (D.S.J.) eventually asked for a refund, subsequent to which Respondent paid him a refund of $2,176.65 (Exhibit P-59) in January and February 2017 (after the investigation into his conduct regarding C.A. had commenced), leaving the net sum of $41.53 in Respondent's hands.

Counts 17, 18 and 19

[167] Respondent commenced his testimony in this regard by referring to Exhibit P-64 (pages 0001310 and 001311) and to Exhibit I-10 (a list of attempted credit card payments which Respondent says he received from the AMF and believes must have emanated from Manulife).

[168] Respondent stated that Manulife's list of policies issued in 2016 and 2017 for which no premium (Exhibit P-7) was ever received includes a reference to the two policies issued at the request of E.S. (policies #LLLLLLLL and #MMMMMMMM, Exhibit P-61). It should be recalled that Manulife clearly stated in Exhibit P-6 (pages 002599 and 002600) that the premiums for these two policies were never received by it, adding that an attempt

to pay by credit card on March 24, 2016 was "declined" because the "credit card information provided was incomplete".

[169] Respondent said that the proof of payment of the premiums for these two policies ($614.25 each, which corresponds to the stated premiums) appears in Exhibit P-64 (pages 001310 and 001311), which ostensibly confirms that the payment was made on March 24, 2016, by the use of a credit card ending with the digits 3007. Respondent claimed that if the credit card payment was rejected, the payment confirmation documents in Exhibit P-64 should never have been issued.

[170] Respondent believes that the Amex card referenced in Exhibit P-64 (ending with the number 3007) could have been his own card.

[171] Respondent interprets Exhibit I-10 as another confirmation from Manulife that the credit card payments for these two policies did not go through, presumably for the reasons cited by Manulife in Exhibit P-6 (pages 002599 and 002600).

[172] Respondent offered no other testimony regarding these three counts nor any explanation of the exchange of emails in Exhibit P-65, where he was requested by Manulife, as early as April 16, 2016, to provide "a valid credit card number to recharge the premium" for these two policies.

Counts 20, 21 and 22

[173] Respondent admitted receiving two payments (on March 15, 2016) from the client (K.P.) totalling $3,397.89 (Exhibit P-68) for the discounted premium relating to the policies (#NNNNNNNN and #OOOOOOOO, Exhibit P-67), which had a combined stated premium of $5,227.53, representing a discount of 35%, which Respondent said corresponds to his normal commission on such a transaction.

[174] Respondent stated that the premium for these policies was paid by a credit card belonging to his niece (Exhibit P-70) and he does not recall why his niece's credit card was used. However, the total amount paid for the two policies (#66666666 and #77777777, was $1,972.49, on February 26, 2017, almost one year after the client had paid the premium.

[175] Respondent said that the first two policies (Exhibit P-67, in effect from May 15, 2016 until May 14, 2017) were cancelled and replaced by new policies (#66666666 and #77777777, Exhibit P-70) which were to be in effect from February 26, 2017 until June 23, 2017). Respondent believes that the two insured arrived in Canada on June 23, 2016 (the arrival date mentioned in Exhibit P-70, which was issued by Respondent on February 26, 2017).

[176] Respondent claims that he prepared the second set of policies (Exhibit P-70) only when he received the arrival confirmation documents (which he did not have with him at the hearing), sometime in February 2017, the client having allegedly neglected to send the documents until then, although the insured persons had apparently arrived in Canada eight months earlier, according to the Respondent.

[177] Under questioning from the Committee, Respondent stated that, if either of the insured became ill during the period between their arrival date and the subsequent date of payment by Respondent of the premium to Manulife, which payment he said could be delayed as a result of the insured's failure to provide documentary evidence of their arrival date, his E&O policy would cover them.

[178] To summarize, Respondent received $3,397.89 from the client for 12 months of coverage from May 15, 2016, but Respondent spent only $1,972.49 to cover the insureds

for the period of almost 4 months from February 26, 2017 to June 23, 2017, yet the client does not appear to have received any refund from the Respondent for this disparity.

Count 23

[179] Respondent claims he fully cooperated with Me Gingras during her investigation in this case, as appears from all of the evidence she filed which he says was provided by him to her, and that his work regarding medical insurance policies constituted no more than 20% of the overall work he did as an agent selling life insurance and investment products during the period covered by the complaint, and that he never had any problems with these other activities.

[180] The document (Exhibit P-73) which Respondent sent to Me Gingras in response to request #15 in her email of January 31, 2017 (Exhibit P-72) was manifestly altered to exclude the table of other problematic policies (for which the payment of the premiums was then outstanding) mentioned in the original version of this document, which was sent by Manulife to Respondent on November 1, 2016 (Exhibit P-74).

[181] Respondent's explanation was that "confidentiality applies to that document" (Exhibit P-74), which is why he excluded most of the table of policies (for which the premiums were unpaid) appearing in the original version of the email from Manulife (Exhibit P-74), adding that "she only asked for C.A. [...] and I gave her the list for C.A."

[182] Under cross-examination by Me Cardinal, the following evidence came to light:

a) **Counts 20, 21 and 22**

i) Respondent confirmed the discounted premium ($3,397.89) he offered K.P. in the exchange of texts between them (Exhibit P-66),

compared to the actual stated cost of the first set of policies ($5,227.53) appearing in Exhibit P-67, the whole without informing Manulife, which was never paid any premium for said policies, which were eventually cancelled by Respondent;

ii) the two new policies prepared by Respondent for K.P.'s parents (Exhibit P-70) came into force on the date the premiums were paid on February 26, 2017, using his niece's credit card;

iii) Respondent admitted that K.P.'s parents had no insurance coverage from the apparent date of their arrival in Canada (June 23, 2016) until the issue date of the new policies (Exhibit P-70) on February 26, 2017, because Respondent had not received the arrival confirmation documents from K.P. or his parents.

b) **Counts 17, 18 and 19**

i) Respondent agreed that the credit card number for his card (ending with 3007) on Exhibit I-9 only has 14 digits, contrary to the 15 digits which appear for the credit card belonging to his niece;

ii) Respondent also recognized that the credit card number given to Manulife to pay for the two policies (Exhibit P-61) also ends with 3007 and appears to be comprised of 14 digits (represented by 10 asterisks, and 3007);

iii) in reviewing the email exchange in Exhibit P-65, Respondent recognized having been informed by Manulife that the premiums for the policies (Exhibit P-61) had not been paid, despite Respondent's

affirmation that he had the "transaction confirmation" in his possession;

iv) Respondent also recognized that he charged E.S. a combined stated premium of only $1,100 (Exhibit P-60, page 002577), although the combined premium quoted in the policies (Exhibit P-61) was $1,228.50;

v) although E.S. paid Respondent the premium by way of cheque dated February 7, 2016, Respondent attempted to pay the premium for said policies on March 24, 2016, despite his admission that he relied upon E.S.' verbal confirmation that her parents arrived in Canada, without requiring documentary corroboration, as was ostensibly his normal practice;

vi) Respondent admitted that he did not bring to the hearing his Amex card statements to corroborate his allegation that the "Travel Insurance Confirmations" found in the last two pages of Exhibit P-64 (001310 and 001311) prove that he paid for the policies (Exhibit P-61), because he did not "think it was needed".

c) **Counts 15 and 16**

i) Respondent reiterated his claim that he quoted D.S.J. a discounted combined premium of $2,218.18 (Exhibit P-57) for the two policies regarding his parents (Exhibits P-55 and P-56), where the stated combined premium was $4,818.18, in order to give them a "good

service" and that he assumed responsibility for the difference (towards Manulife);

ii) Respondent admitted that he did not pay any premium to Manulife for these policies because he never received the relevant boarding passes from the client, and that the client asked for a refund on his premium payment, which resulted in a payment of $2,176.65 by Respondent in January and February 2017 (Exhibit P-59).

d) **Counts 12, 13 and 14**

i) Respondent admitted giving a discount to S.B. of the premium quoted on the policies, by charging her the sum of $1,250, rather than the stated premium of $1,854.93 (Exhibits P-47 and P-48);

ii) he admitted that the insured's actual date of arrival in Canada was March 22, 2016, as appears from the second policy (Exhibit P-51) prepared by Respondent, but that he only paid the stated premium ($1,133.22) for her travel insurance coverage in issuing a third policy regarding this client on September 22, 2016 (Exhibit P-52), using his wife's credit card, allegedly after receiving the travel confirmation documents from the client;

iii) Respondent also admitted that his wife received a credit card refund of $1,102.09 on November 17, 2016, as appears from Exhibit P-53, page 002261, such that the net premium paid by Respondent in respect of the third policy (Exhibit P-52) was $31.13;

iv) he also recognized having given S. B. a refund of $729.58, although she had paid (through her company) a premium of $1,250 and the period of effective coverage had been only 4 days (September 22 to 26, 2016), as confirmed by Exhibit P-53, pages 002260 and 002261.

e) **Count 11**

i) Respondent claims that he obtained a copy of Exhibit I-9 from Manulife's website, on May 15, 2015;

ii) Respondent recognized that he received the boarding pass and itinerary from the client (M.S.C.) on October 26, 2015, but he did not immediately pay any premium to Manulife, although he admits he should have done so.

f) **Counts 7, 8, 9 and 10**

i) Respondent asserted that he paid the premium for policy #EEEEEEEE (Exhibit P-40) by credit card on October 20, 2015, although he only received the insured's boarding pass on October 25, 2015 (Exhibit P-34, pages 002583 and 002584);

ii) once again, Respondent admitted that he did not bother to bring his credit card records from Amex to the hearing in order to corroborate his allegations that he had paid some of the premiums in this case to Manulife by way of credit card.

g) **Counts 1, 2, 3, 4, 5 and 6**

i) Respondent admitted that the 10% discount he gave to C.A. appears

in Exhibit P-11, page 001126, and that he was paid the discounted price of $2,892.78 by C.A. However, he did not immediately pay a premium to Manulife, because the client delayed in sending him the travel confirmation documents;

ii) Respondent admitted that he had no reason to doubt that the relevant boarding pass was sent to him by C.A. on December 7, 2014, as confirmed at Exhibit P-19 (pages 001107 and 001108);

iii) Respondent recognized that he could have immediately issued a new policy for C.A.'s father on December 7, 2014, but that he was very busy and took until March 4, 2015 to issue a new policy (Exhibit P-20), with an effective date of March 22, 2015, an arrival date in Canada of November 30, 2014, and a total coverage period of 253 days (starting on March 22, 2015);

iv) Respondent also admitted that the insured therefore had no travel insurance coverage from November 30, 2014 to March 22, 2015 and that, by reducing the coverage period to 253 days, the stated premium payable to Manulife would be lower than if the coverage period had started on November 30, 2014, the premium ($2,322.54) having only been paid by Respondent on April 24, 2015 (Exhibit P-21), using his wife's credit card;

v) when C.A. asked Respondent to renew coverage for an additional year (Exhibit P-23, page 001146), Respondent admits having agreed to grant C.A. a discounted premium price of $2,900, rather than the regular price of $3,350.70, and a new policy (Exhibit P-24) was then

issued by Respondent with an effective date of November 30, 2015, in respect of which C.A. paid Respondent the said sum of $2,900 (Exhibit P-25);

vi) Respondent reiterated that the cheque for $3,350.70 (drawn on Apo's account at the CIBC, Exhibit P-4) corresponding to the cheque stub dated November 24, 2015 (Exhibit I-5) for $3,350.70 was sent by him to Manulife's head office by regular mail, rather than by credit card, as he had done on many other occasions in this case;

vii) Me Cardinal then referred Respondent to page 000457 of Exhibit P-4, the statement for November 2015, which shows the account having a balance of $154.52 on November 18, 2015, followed by a series of transactions that raised the balance to $3,590.08 as of November 30, 2015;

viii) the December 2015 statement (Exhibit P-4, page 000458) shows an Amex payment (for internet services) of $2,000, leaving a balance of $1,590.08 on December 2, 2015, which thereafter steadily decreased to $216.58 (as of December 14, 2015) and settled at -$17.03 on December 31, 2015;

ix) Respondent testified that he thought his cheque to Manulife corresponding to Exhibit I-5 had passed through the account, although he did not regularly verify his bank statements in this regard;

x) in January 2017, Respondent provided to Me Gingras a series of

other cheque stubs (bearing serial numbers 44 to 72) regarding the Apo bank account at the CIBC (Exhibit P-84), all of which bear Respondent's handwriting. He admitted that the check marks in the upper right-hand corner of these stubs indicate that the corresponding cheque had passed through the Apo account. Respondent stated that the absence of a check mark on a stub only means that he had not yet verified his bank account at the time he remitted copies of these stubs to Me Gingras.

xi) Me Cardinal reviewed a number of these cheque stubs with Respondent to point out that a number of them (# 65, 66, 67, 68 and 69) bore dates subsequent to November 24, 2015, the date which appears on cheque stub #70, without requesting an explanation from the Respondent, who only said that cheques #65 and #68 were postdated.

[183] In his re-direct testimony, Respondent made the following points:

a) he maintained that cheque #70 (Exhibit I-5) went through his account, but did not explain why there is no corroboration of that assertion in the bank statements (Exhibit P-4);

b) as regards Exhibit P-65, page 002182, he invoked the email from Bob (of Manulife's broker support centre) on May 6, 2016 (page 002182), stating "Please find attached the attached confirmations" (which Respondent admits refers to the Travel Insurance Confirmations in Exhibit P-64, pages 001310 and 001311) as proof again that the premiums for the policies

issued at the request of E.S. (Exhibit P-61) were paid, even if the contrary assertion was made by Manulife the following day (page 002181);

c) Respondent explained that his inability to give "exact information" at the hearing results from the fact that all of his files were taken from him by the AMF, and never returned to him, despite the fact that his lawyer had requested them;

d) however, he admits that he had not yet called Amex to obtain relevant missing information regarding alleged payments made by him, because he "didn't have time";

e) as regards a few of the transactions that he "maybe omitted", these were done unintentionally, and that he was always trying to give the best service to his clients, all were isolated cases, with no fraud intended by him;

f) Respondent had surrendered his license to practise as of February 1, 2018, because of the stress caused by these proceedings, the whole without admission of guilt.

PLAINTIFF'S REPRESENTATIONS

[184] Me Cardinal said that Respondent's *modus operandi* was clear and obvious from the evidence adduced, although each of the seven cases presented had its own particularity and differences, and described it as follows:

a) Respondent would attract clients with a discount of Manulife's stated premium, sometimes 10%, sometimes much more;

b) in exchange, he insisted upon payment of the discounted premium to his

personal order, rather than to Manulife, and then sent client a confirmation of medical insurance which created an illusion of coverage to the client, although Manulife would not immediately receive payment of the premium required to bring the policy into effect;

c) each case involved a client who wanted to welcome one or more members of their family for a prolonged stay in Canada, which is why insurance coverage was important;

d) the client's cheque would be deposited in his personal account or that operated under the name of Apo Financial Services;

e) in each and every case, the funds so obtained from the client were used for purposes other than payment of the required premium to Manulife;

f) Respondent would then wait for confirmation of the insured's arrival in Canada and then issue a new policy, to maintain the illusion of coverage to the client, without payment of the premium to Manulife for the new policy, although in some cases, such a policy was in fact paid for, for a reduced amount of time and at a lower cost than that originally paid by the client to Respondent;

g) in some cases, Respondent also paid refunds.

[185] In other words, Respondent assumed the role of insurer by receiving the premium, and keeping it for himself rather than paying it to Manulife, hoping that there would be no claim made by the insured, and that nobody would be the wiser.

[186] Respondent's tenuous position was that he was covered by professional liability

insurance, which Me Cardinal argued was Respondent's concept of a safety net if a claim was ever made on the insurance policy (as in the case of C.A.).

[187] Although Respondent claimed that he always acted in good faith and was never motivated by nefarious intent, Me Cardinal pointed out that it is important to remember that, in cases of misappropriation in disciplinary matters, the jurisprudence requires no proof of intent. All is that required is that the Plaintiff establish that the client's funds were used for purposes other than those intended and approved by the client.

[188] The obvious consequence of Respondent's failure to use the funds received from clients to pay Manulife the required premium was that no coverage was provided to the insured.

[189] Although Me Cardinal's position was that proof of dishonest intent was not required, he claimed that it was nevertheless evident from Respondent's questionable conduct and his *modus operandi* herein.

[190] Me Cardinal argued that it was not credible that Respondent would have granted discounts (in one case higher than 50%) to clients he did not know, in one case referred by a client he could not identify to the Committee, and that Respondent intended all along to keep the client's premium for himself and never pay a premium to Manulife.

[191] The clients paid Respondent to provide real insurance coverage, but Respondent systematically failed to do so.

[192] Apart from the accusation of Respondent's interference with the investigation (Count 23), Me Cardinal, said there were three categories of complaints:

a) granting of unauthorized premium rebates or discounts to clients;

b) misappropriation of the funds paid by clients to purchase medical insurance coverage;

c) absence of insurance coverage.

[193] As regards the accusations of rebates granted without the knowledge of the insurer, Me Cardinal said this involved a (i) simple comparison of the premiums quoted online by Manulife (previously described herein as the "stated premium") and the actual premium offered to and paid by the client, Respondent having admitted granting rebates, and (ii) confirming Manulife's lack of knowledge, which was patently obvious from the uncontradicted evidence herein, as confirmed by Exhibit P-6 (page 002600, paras. 6 and 7) by Respondent's admission that he did not consult Manulife about each premium discount he gave, and by the fact that the premium paid by each of his clients herein was paid to Respondent, deposited in his bank account and used for purposes other than payment of the premium to Manulife.

[194] Me Cardinal cited the following authorities regarding the accusations of rebates granted without the knowledge of Manulife:

a) Section 36 of the *Code of Ethics of the Chambre de la sécurité financière*, which expressly prohibits the representative from granting a rebate on the premium quoted in the policy or agreeing to a mode of payment of the premium other than that specified in the policy;

b) section 16 of the *Act respecting the distribution of financial products and services*, which imposes upon representatives a duty to act with honesty and loyalty in his/her relations with a client;

c) *Lévesque* v. *Giroux*, 2011 QCCQ 11691, at paras. 31 to 35;

d) *Chambre de la sécurité financière* v. *El Mehdi El Mana El Bouanani* (CD00-1030, December 16, 2014), at para. 52;

[195] As regards the accusations of misappropriation, Me Cardinal argued that the evidence clearly established in each case that Respondent received the premium payment from the client, deposited it in his bank account and used the proceeds for purposes other than payment of the required premium to Manulife. These payments were intended to buy insurance for the client who made the payment, not to pay the personal expenses of the Respondent.

[196] In this regard, he cited the following authorities:

a) *Archambault* v. *Avocats (Ordre professionnel des)*, 2011 QCTP 130, at paras. 40 to 49;

b) *Notaires (Ordre professionnel des)* v. *Morin*, 2007 QCTP 85, at paras. 63 and 92 to 94.

[197] Me Cardinal took the position that Respondent committed an infraction from the moment he deposited a client's cheque in his personal account, and cited section 4(2) of the *Regulation respecting the pursuit of activities as a representative* (CQLR, c. D-9.2, r. 10), which requires a representative to promptly deposit any funds received by him/her from a client in the exercise of his activities, in a distinct account set up for such purpose.

[198] If Respondent had any concerns about the actual arrival date of the insured, or was truly concerned about receiving documentary confirmation of his/her arrival, he should have placed the client's cheque in a drawer and not cash it until such confirmation was received. He had no business depositing the client's premium cheque in his personal account and using the funds in the interval.

[199] As for the accusations regarding absence of coverage, Me Cardinal's position is that Plaintiff need only prove that the premium was not paid and that an absence of coverage resulted, in the absence of an acceptable justification.

[200] Me Cardinal argued that an absence of promised coverage resulted each time Respondent misappropriated the client's premium payment, because the non-payment of the premium prevented the policy from coming into force. In most of the accusations relating to absence of coverage, the date of Respondent's misappropriation of the client's premium payment is cited, and then associated with the period during which there was no coverage for the insured.

[201] Thus, using Count 3 as an example, where C.A. and his nephew paid the premium for policy #AAAAAAAA (Exhibit P-12) in two instalments (Exhibits P-13 and P-78), C.A.'s father arrived in Canada on November 30, 2014, and C.A. informed Respondent of this arrival one week later (Exhibit P-19, page 001107), but Respondent delayed (ostensibly because he was too busy to do so earlier) until March 22, 2015 to issue a new policy (#11111111, Exhibit P-20) for which the premium was $2,322.54 (Exhibit P-21). Thus, there was no coverage for C.A.'s father during the period November 30, 2014 until March 22, 2015, as alleged in Count 3.

[202] Me Cardinal also cited the decision in *Chambre de la sécurité financière* v. *Harton,* (CD00-0553, November 4, 2005, at para. 75).

[203] As regards N.S. (Count 11), Me Cardinal explained that there was no accusation of misappropriation or absence of coverage because, at the time the Complaint was filed (October 23, 2017), the investigator had not been able to find evidence of the deposit of the client's draft payment of $2,200 (CD00-0553P-43) in Respondent's accounts, because it was only later discovered that when Respondent brought the client's draft to

his bank, he took out $2,000 in cash and only deposited the balance of $200 in his account, as eventually confirmed by Exhibit P-80.

[204] As regards Count 23, Plaintiff contends that Respondent attempted to conceal information from the investigator, and Me Cardinal disputes the sincerity of Respondent's explanation that the investigation at that time (January 2017) concerned only C.A. and that he consequently only provided information relating to C.A., albeit by removing part of the text of the email he was asked to provide.

[205] Me Cardinal's reply to this explanation is that Me Gingras had specifically asked Respondent (CD00-0553P-71) whether there were any "other file" regarding "other clients" where "the same situation may have happened", and the Respondent replied "no".

[206] Thus, when Me Gingras asked Respondent (Exhibit P-72, para. 15) to provide a copy of the email he had received from Manulife advising him that it had not received payment of the premium for C.A.'s renewal policy (#BBBBBBBB, Exhibit P-24), Respondent had to know that providing the entire content of the table of policies for which premiums had not been paid by him would expose the falsity of his abovementioned response to Me Gingras (Exhibit P-71) and open up a can of worms, thereby giving Respondent abundant motive to alter the original email from Manulife (Exhibit P-74) and send Me Gingras an altered version (Exhibit P-73) which omitted all references to the ten other insured where the premium had not been paid.

[207] The Respondent explained that, because the investigator did not know exactly when Respondent altered Exhibit P-74 to produce Exhibit P-73, Count 23 alleges the infraction occurred between January 31, 2017 (the date of Me Gingras' request, Exhibit P-72, to Respondent for Manulife's said email) and April 13, 2017. He then requested

that, because Me Gingras testified at the hearing that she received Exhibit P-73 from the Respondent on February 17, 2017, Plaintiff wished to amend Count 23 by replacing April 13, 2017 by February 17, 2017. This amendment request was granted by the Committee.

[208] Me Cardinal cited the decision in *Chambre de la sécurité financière* v. *Chen* (2017 QCCDCSF 79, at para. 80), where the respondent was found guilty of obstructing the work of an investigator of the CSF by sending her an altered version of an insurance policy.

[209] As regards the cheque stub #71 (Exhibit I-5), Me Cardinal pointed out that the evidence showed that whenever Respondent paid a premium to Manulife for a medical insurance policy, he did so using a credit card, in order to acquire points offered by the card issuer, which raises doubts as to whether he ever sent a cheque to Manulife for C.A.'s renewal policy (#BBBBBBBB, Exhibit P-24).

[210] However, even if Respondent did send such a cheque to Manulife on November 24, 2015, he was still guilty of misappropriating C.A.'s premium payment of $2,900 (Exhibit P-25) because he used the client's funds for purposes other than the payment of the premium to Manulife, in the same manner as the notary was found guilty in similar circumstances in the above-cited case of *Morin*.

[211] As regards the legal provisions under which Respondent should be found guilty ("*dispositions de rattachement*"), Me Cardinal made the following suggestions:

a) for the counts regarding rebates, the only provision invoked was section 36 of the *Code of Ethics of the Chambre de la sécurité financière*;

b) for the counts regarding misappropriation of funds, the appropriate provision was section 17 of the *Code of Ethics of the Chambre de la sécurité*

financière, with a conditional stay of proceedings regarding all other legal provisions cited in said counts;

c) as regards the counts regarding absence of coverage, the appropriate provision was section 24 of the *Code of Ethics of the Chambre de la sécurité financière*, with a conditional stay of proceedings regarding all other legal provisions cited in said counts;

d) as for Count 23, the appropriate provision was section 44 of the *Code of Ethics of the Chambre de la sécurité financière*, with a conditional stay of proceedings regarding section 42 of said Code.

RESPONDENT'S REPRESENTATIONS

[212] Respondent commenced his brief argument by objecting to the use of the word "illusion" (of coverage) by Plaintiff's attorney, arguing instead that the seven clients (and 11 insured) covered by the Complaint herein are "isolated cases"' which should be considered in light of the 200 travel insurance policies he had issued in the past.

[213] As for Count 23, Respondent reiterated his position that he only provided information relating to C.A.'s father when sending Me Gingras an altered version (Exhibit P-73) of Manulife's email (Exhibit P-74) because the *Chambre de la sécurité financière* could always have obtained from Manulife the complete list of policies (regarding unpaid premiums relating to other clients) and that he was bound by a duty of confidentiality to clients, a fundamental condition of his right to practise.

[214] As for the accusations of misappropriation, Respondent minimized the importance of the fact that he may have used clients' funds prior to the arrival of the insured in Canada, as long as he paid when "the time comes".

[215] Respondent closed his argument with a general denial of guilt on all counts.

ANALYSIS AND REASONS

Introductory Remarks

[216] It is important to commence our analysis by recalling Respondent's following testimony as to his general *modus operandi* regarding the issuance of Manulife's medical insurance policies to provide medical coverage for relatives of the clients he solicited during the period 2014 to 2017:

a) Respondent offered his clients discounts on the premium prices which were offered by Manulife, said discounts ranging between 10% and 53% in the various cases covered by the Complaint;

b) in order to benefit from such discounts, Respondent insisted that the clients pay him the discounted premium by way of cheque payable to him or his unincorporated business, Apo Financial Services;

c) Respondent admits that he did not consult Manulife or obtain its consent before granting such discounts, although he claims to have once called its 1-800 agent's service line to inquire about the possibility of granting rebates, during which he was allegedly told that such a decision was "up to the agent", while conceding that he did not interpret this call as permission from Manulife to grant discounts;

d) Manulife clearly stated in Lucinda Douglas' email to Me Valerie Gingras dated July 13, 2017 (Exhibit P-6, page 002600, at paras. 6 and 7) that:

" We do not offer rebates. If we were asked such a question the answer would be no, we do not offer or support any discounts outside of what our premiums are."

" Based on our searches, we were not asked this question (i.e. whether Respondent contacted Manulife with respect to giving such discount to his clients) and all emails we have on file have been shared (with the CSF)";

e) The clients' cheques were immediately deposited by Respondent in one of his two accounts (with the exception of N.S., where he took $2,000 in cash and deposited only $200 in his account, Exhibits P-80 et P-81) and, in all cases, the proceeds were then used by Respondent to pay his personal expenses, rather than using the proceeds to pay the applicable premium to Manulife;

f) Respondent would give the client an initial document purporting to confirm the policy coverage agreed upon (Exhibits P-12, P-37, P-42, P-47, P-55, P-56, P-61 and P-67);

g) these policy confirmation certificates cited the regular (undiscounted) premium prices which the online application procedure quoted (as described by Me Gingras and reflected in Exhibit P-82) and contained a section entitled "Payment Method" which warned the reader as follows:

" Coverage will not take effect if the premium is not received, not honoured for any reason or your credit card charges are invalid or if no proof of your payment exists";

h) Respondent did not pay the applicable premiums to Manulife because his avowed practice was to wait for confirmation from the client that the insured had arrived in Canada, at which point he would cancel the initial policy and replace it with one or more successive policies (most of which also never came into force because of non-payment of the premium), as appears from the summary of evidence which appears below;

i) Respondent's practice of waiting for receipt of confirmation of arrival in Canada of the insured person(s) sometimes resulted in situations where the replacement policy was not issued until weeks or months after the arrival date, and even then, Respondent did not always pay the relevant premium to Manulife in a timely fashion, such that the insured person had no valid insurance coverage during that interval;

j) Respondent always blamed his client for any delay in providing confirmation of arrival;

k) when he did pay for a replacement policy, Respondent used a credit card belonging to his wife or niece (Exhibits P-31, P-52, P-70), in order to gain credit card points, except in the case of C.A., where Respondent claims to have sent a cheque to Manulife (which never passed through the relevant account, Exhibit P-6, and for which he could only produce a questionable cheque stub, I-5), and a couple of putative credit card payments regarding E.S. using Respondent's own Amex card (Exhibit P-64, at pages 001310 and 001311), which Manulife says did not go through because the "payment was rejected" (Exhibit P-6, page 002056), probably because the credit card number entered was missing a digit (Exhibit I-10);

l) sometimes the persons insured left Canada earlier than originally planned, which generated a request for partial reimbursement of the premium, which the Respondent did not always pay in full.

[217] As submitted by Me Cardinal, the first 22 counts of the Complaint herein may be divided into the three following categories, which we will treat as such in our analysis of the evidence:

a) granting a discount of the policy premium, unbeknownst to Manulife (Counts 1, 4, 7, 11, 12, 17 and 20);

b) misappropriating the premium payment by the client (Counts 2, 5, 8, 13, 15, 18 and 21);

c) creating an absence of coverage for the insured (Counts 3, 6, 9, 10, 14, 16, 19 and 22).

Unauthorized Premium Discounts

[218] The evidence shows that Manulife's premium is generated by the online application procedure and appears in the Manulife Financial Travel Insurance Confirmation form prepared by the Respondent and sent to his clients.

[219] The following is a presentation of the discounts granted by Respondent to his clients in the case of each of the abovementioned counts:

Count #	Client	Policy #	Exhibit	Manulife Premium	Premium paid by client
1	C.A.	AAAAAAAA	P-12	$3,214.19	$2,892.78 (Exhibits P-13 & P-78)
4	C.A.	BBBBBBBB	P-24	$3,350.70	$2,900 (Exhibit P-25)
7	M.S.C.	CCCCCCCC & DDDDDDDD	P-37	$3,709.86	$2,200 (Exhibit P-35)
11	N.S.	GGGGGGGG	P-42	$3,372.60	$2,200 (Exhibit P-43)
12	S.B.	HHHHHHHH	P-47	$1,854.93	$1,250 (Exhibit P-48)
17	E.S.	MMMMMMMM & LLLLLLLL	P-61	$1,228.50	$1,100 (Exhibit P-62)
20	K.P.	NNNNNNNN & OOOOOOOO	P-67	$5,227.53	$3,397.89 (Exhibit P-68)

[220] The foregoing table clearly establishes the discount granted by Respondent in each case and, as demonstrated above, Manulife's total ignorance of these discounts was affirmed by it and admitted by the Respondent himself.

[221] The fact that Respondent called Manulife’s 1-800 line and may have been told that it was "up to the agent" to decide whether to grant rebates is questionable, Respondent having made several unsubstantiated allegations of payment in this case, and in any event, Respondent himself admitted that he did not interpret this alleged conversation as a license or permission to grant discounts or that he did not verify with Manulife each time he granted a premium discount to a client.

[222] Furthermore, the size of some of the discounts granted and Respondent's suspicious and repeated failure to pay Manulife the appropriate premium in a timely fashion, even after the arrival in Canada of the insured persons, raise serious questions as to whether he ever intended to obtain proper coverage for his clients' relatives, because he instead appeared to be acting as the insurer, using his E&O professional liability policy as his backstop in case a claim for medical expense was ever filed by the insured.

[223] In this regard, it is rather curious that when C.A. advised Respondent on April 18, 2016 that his father-in-law had been hospitalized, Respondent's first reaction was to place three calls to his insurers (Exhibit I-1), which one would not expect him to do if he truly believed that he had sent Manulife a cheque for $3,350.70 on November 24, 2015 (Exhibit I-5).

[224] Furthermore, the Committee does not believe Respondent when he says he paid Manulife the required premium by cheque (Exhibit I-5), in the case of C.A., or by credit card (Exhibit P-64), in the case of E.S., as he could easily have produced credible written corroboration (the cancelled cheque or bank statement, or the credit card statement if they existed), but chose not to or was unable to do so.

[225] The testimony of Mr. Yembe (dealing with events and alleged administrative deficiencies prior to 2009) cannot be credibly invoked to explain or justify Respondents failure to pay C.A.'s premium to Manulife for policy #BBBBBBBB (Exhibit P-24), the only one he claims was paid by cheque. In any event, if Respondent did send a cheque for $3,350.70 (Exhibit I-5) in payment of said policy #BBBBBBBB (Exhibit P-24), it does not mitigate his culpability under Count 6, as it was his responsibility to verify that said cheque was received by Manulife and passed through his account.

[226] There are simply too many troubling failures (to promptly pay the appropriate premium) by Respondent apparent from the evidence to believe that each failure on his part to purchase binding coverage from Manulife in a timely fashion was (as Respondent alleged) an isolated incident committed without any fraudulent intent on his part, which, in any event, is not a necessary ingredient required to make a finding of guilt in disciplinary matters.

[227] Furthermore, it defies logic that the Respondent would have systematically granted so many (often substantial) premium discounts to clients he had never met before with the intention of then paying a higher premium to Manulife (as discounts were not allowed by it), thereby incurring a personal financial loss on the transaction.

[228] His conduct can only logically be explained by a dishonest and premeditated intention of pocketing most, if not all, of the premiums for himself and not paying any premium (or, at worst, a reduced premium) to Manulife, and using his professional liability policy as a backstop (as he tried to do with C.A.) in case a claim was ever made by the insured under the bogus policy he had issued.

[229] The Committee therefore finds that Respondent is guilty as charged of the infractions alleged in Counts 1, 4, 7, 11, 12, 17 and 20, the whole pursuant to section 36 of the *Code of Ethics of the Chambre de la sécurité financière*.

Misappropriation of clients' funds

[230] The evidence herein is uncontradicted to the effect that Respondent requested and received payment of the policy premiums he quoted to C.A., M.S.C., S.B., D.S.J., E.S. and K.P., that he did not pay Manulife the required premium in a timely fashion (if at all, in most cases) and that such funds (deposited in his personal bank accounts) were

then used by Respondent for purposes other than payment of the corresponding premium to Manulife, as appears from the following table which references the relevant corroborating exhibits:

Client	**Count #**	**Payment by client (Exhibit)**	**Personal use of funds (Exhibit)**	**Manulife not paid (Exhibit)**
C.A.	2	P-13 & P-78	P-14, P-15 & P-77	P-18, page 000051
C.A.	5	P-25	P-26	P-27, page 000028
M.S.C.	8	P-35	P-36	P-6, page 002054
S.B.	13	P-48	P-50	P-6, page 002053
D.S.J.	15	P-57	P-58	P-6, page 002056
E.S.	18	P-62	P-63	P-6, pages 002056 & 002057
K.P.	21	P-68	P-69	P-6, pages 002055 & 002056

[231] As regards Count 2, the premium for policy #AAAAAAAA (Exhibit P-12) was never paid to Manulife (Exhibit P-18, page 000051), although Respondent did pay Manulife the sum of $2,322.54 on April 24, 2015 for a replacement policy (#11111111, Exhibit P-20), but the Respondent had nevertheless appropriated the proceeds of the total premium payment of $2,892.78 (Exhibits P-13 and P-78) by C.A and his sister for policy #AAAAAAAA (Exhibit P-12) in May and June of 2014 (Exhibits P-14 and P-15).

[232] Respondent's explanation that what mattered was that he paid the premiums after receiving confirmation from his clients that the insured had arrived in Canada does not

exonerate him of liability as regards the charges of misappropriation, even in the few cases where he did eventually pay a premium to Manulife.

[233] The clients whose funds were misappropriated were entitled to believe that the insurer was paid in a timely fashion after receiving the insurance policy confirmations from Respondent (Exhibits P-12, P-24, P-37, P-38, P-40, P-47, P-51, P-55, P-56, P-61 and P-67) and, if the Respondent wanted to risk waiting until the insured arrived in Canada before paying the premiums, he had no authority to deposit the clients' premium cheques in his personal account and use the proceeds for his personal benefit in the interval.

[234] As demonstrated by Me Cardinal, the jurisprudence in disciplinary matters has long recognized that the concept of misappropriation must receive a broad interpretation and does not require proof of mens rea or a malicious or dishonest intent, as clearly set forth in the above-cited decisions in *Archambault* and *Morin*.

[235] Finally, the Respondent does not deny the misappropriation. Instead, he attempted to justify it by saying that there was no misconduct if he paid the premium when the insured arrived in Canada, while blaming the clients for any delays in this regard.

[236] The Committee therefore finds the Respondent guilty under Counts 2, 5, 8, 13, 15, 18 and 21 pursuant to section 16 of the *Act respecting the distribution of financial products and services*, and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*.

[237] As recommended by Me Cardinal, we will issue a conditional stay of proceedings regarding section 16 of the *Act respecting the distribution of financial products and services*, as well as sections 11 and 35 of the *Code of Ethics of the Chambre de la sécurité*

financière, because section 17 of the *Code of Ethics* is the most directly applicable provision to Respondent's conduct.

Absence of insurance coverage

[238] The persons insured under the various policies issued by the Respondent were entitled to effective medical insurance coverage from the moment they arrived in Canada. If the Respondent had purchased such coverage from Manulife as soon as he was paid the premiums by his clients, rather than wait for the uncertain arrival dates and allegedly impose upon the clients the duty to advise of the insureds' arrival, there would not have been any problem in assuring coverage from the moment of arrival.

[239] However, because of Respondent's scheme to secretly act as the insurer and delay the start of coverage in the few cases where he did provide it, coverage was not purchased in a timely fashion for the insureds, exposing them to serious financial prejudice, as in the case of C.A.'s father-in-law.

[240] The following is a summary of the uncontradicted evidence of Respondent's failure to obtain the coverage he promised to his various clients, and the period(s) during which there was no coverage:

a) **Count 3**

i) C.A.'s father-in-law was originally promised coverage for the period July 20, 2014 to July 19, 2015 (Exhibit P-12, policy #AAAAAAAA), and the discounted premium quoted by Respondent was fully paid by June 6, 2014 (Exhibits P-13, P-14, P-15 and P-78);

ii) he arrived in Canada on November 30, 2014 (Exhibit P-19, page

001108), but the first policy (Exhibit P-12) was not then in force, because Respondent never paid the premium for it (Exhibit P-18, page 000051);

iii) on March 4, 2015, Respondent issued policy #11111111 (Exhibit P-20), which had an effective date of March 22, 2015, although it refers to an arrival date of November 30, 2014, with a policy expiration date of November 29, 2015, and Respondent appears to have paid a premium of $2,322.54 on April 24, 2015, using his wife's credit card (Exhibit P-21);

iv) the end result is that the insured was not covered during the period November 30, 2014 to March 22, 2015, as alleged in Count 3, although coverage during that period had been promised by the first policy (Exhibit P-12).

b) **Count 6**

i) On November 22, 2015, Respondent issued policy #BBBBBBBB (Exhibit P-24), with an effective date of November 30, 2015 and an expiry date of November 30, 2016, and C.A. paid Respondent the discounted premium of $2,900 on the same day (Exhibits P-25 and P-26);

ii) Respondent claims he sent Manulife a cheque for $3,350.70 (the stated premium in Exhibit P-24) on November 24, 2015, but only has a cheque stub (Exhibit I-5) to support his claim, with no such cheque having ever passed through his bank account and Manulife denies

having received payment of this premium (Exhibit P-27, page 000028);

iii) on July 5, 2016, Respondent issued a new policy through Allianz Global Assistance (Exhibit P-31) with an effective date of July 5, 2016 and an expiry date of November 28, 2016, the premium of $1,513.51 having been paid using an Amex credit card belonging to Respondent's wife;

iv) thus, Respondent's failure to pay the premium for policy #BBBBBBBB (Exhibit P-24) resulted in an absence of coverage during the period November 30, 2015 until July 5, 2016, as alleged in Count 6;

v) whether or not Respondent actually sent a cheque to Manulife on November 24, 2015 (Exhibit I-5), which is highly doubtful, it is clear that no such payment was ever received by Manulife and that Respondent must bear the consequences;

vi) the testimony of Mr. Yembe is irrelevant because the alleged tendency of Manulife to lose premium cheques sent to its head office (assuming, for the sake of argument that it was indeed sent by Respondent) does not excuse Respondent's failure to verify his bank statements to confirm that his alleged cheque was received and cashed by Manulife from late November 2015 until mid-April 2016.

c) **Counts 9 and 10**

i) On June 2, 2015, Respondent issued travel policy certificates for the

parents of M.S.C.; namely S.P.S.C (policy #CCCCCCCC, Exhibit P-37) and A.K. (policy #DDDDDDDD, Exhibit P-37) for a coverage period of 363 days, starting on July 15, 2015, which was indicated as the expected arrival date for both parents;

ii) Respondent requested and was paid a combined discounted stated premium of $2,200 (Exhibits P-35 and P-36), although Manulife's combined premium for these two policies was $3,709.86;

iii) Respondent did not pay Manulife any premium for either of these two policies (Exhibit P-6, page 002054);

iv) on the same date Respondent issued a new policy certificate for the parents (#22222222 and #33333333, Exhibit P-38) for the same coverage period and arrival date, but the lower stated premiums for these two policies were again not paid to Manulife (Exhibit P-6, pages 002054 and 002055);

v) on December 9, 2015, Respondent issued a new policy for the mother (#EEEEEEEE, Exhibit P-40), with an effective date of December 9, 2015, an arrival date of October 23, 2015 and expiry date of October 23, 2016;

vi) on April 17, 2016, Respondent issued a new policy for the father (#FFFFFFFF, P-40), with an alleged arrival and effective date in Canada of April 22, 2016, and an expiry date of April 21, 2017;

vii) Manulife was not paid the premiums for these two latter policies (Exhibit P-40), as confirmed by Exhibit P-6, at page 002055;

viii) thus, although the mother (A.K.) was promised coverage pursuant to policies #DDDDDDDD and #EEEEEEEE (Exhibits P-37 and P-40) from July 15, 2015 to October 23, 2016, she received no coverage whatsoever because Respondent never paid any portion of the corresponding premiums to Manulife, as alleged in Count 9;

ix) similarly, although the father was promised coverage pursuant to policies #CCCCCCCC and #FFFFFFFF (Exhibit P-37 and P-40) from July 15, 2015 to April 21, 2017, he received no coverage whatsoever because Respondent again never paid any portion of the required premiums to Manulife, as alleged in Count 10.

d) **Count 14**

i) On July 22, 2015, Respondent issued policy #HHHHHHHH (Exhibit P-47) at the request of S.B. for her mother-in-law (J.K.), for coverage from August 31, 2015 to August 29, 2016, the anticipated arrival date then being August 31, 2015;

ii) on May 24, 2016, Respondent issued another policy for J.K. (#IIIIIIII, Exhibit P-51), for coverage from March 22, 2016 (J.K.'s stated arrival date in Canada, as stated in Exhibits P-51 and P-52) until March 22, 2017;

iii) Respondent did not pay the premiums for either of these policies to Manulife (Exhibit P-6, pages 002600, para. 4, and 002601), but he did accept payment of the discounted premium of $1,250 from S.B.'s company on July 22, 2015 (Exhibits P-48 and P-50);

iv) on September 22, 2016, Respondent issued policy #55555555 for J.K., with coverage effective on that date and expiring on March 22, 2017, and paid Manulife a premium of $1,133.22 by credit card belonging to his wife (Exhibit P-52);

v) the evidence establishes that J.K. arrived in Canada on March 22, 2016 (Exhibits P-51 and P-52) and that she left the country on September 26, 2016 (Exhibit P-53, page 002260) and that she was promised coverage during that period;

vi) instead she only received coverage from September 22, 2016, merely 4 days before her return home;

vii) thus, J.K. was deprived of coverage during the period March 26, 2016 until September 22, 2016, as alleged in Count 14.

e) **Count 16**

i) On September 21, 2015, Respondent issued policy certificates (#JJJJJJJJ and #KKKKKKKK, Exhibits P-55 and P-56) for S.S. and G.K. at the request of D.S.J., stipulating an arrival date of November 1, 2015 and a coverage period of one year from that date;

ii) D.S.J. paid the discounted premium of $2,218.18 to Respondent on September 21, 2015 (Exhibits P-57 and P-58);

iii) Respondent did not pay any premium to Manulife for these policies (Exhibit P-6, page 002604), such that the abovementioned insureds

benefitted from no coverage whatsoever during the period November 1, 2015 to October 30, 2016, as alleged in Count 16.

f) **Count 19**

i) On February 7, 2016, Respondent issued two medical insurance policies (#LLLLLLLL and #MMMMMMMM, Exhibit P-61) for the parents of E.S., effective March 10, 2016, based on an arrival date on the same day and with coverage of $50,000 expiring on July 4, 2016, for a combined stated premium of $1,228.50;

ii) E.S. paid the discounted premium of $1,100 to Respondent on February 7, 2016 (Exhibits P-62, P-63 and P-64) and Respondent's attempt to pay the combined stated premium of $1,228.50 (presumably at a loss of $128.50, Exhibit P-64, pages 001310 and 001311), using his own Amex card, was unsuccessful because of an incorrect information regarding the credit card (presumably a missing digit), as confirmed by Manulife (Exhibits P-6, pages 002604 and 002605, P-7, P-65 and I-10) and as discussed above;

iii) thus, the insured was promised coverage during the period from March 10, 2016 to July 4, 2016, but had none whatsoever, as alleged in Count 19.

g) **Count 22**

i) On March 15, 2016, Respondent issued travel insurance confirmations at the request of K.P., for H.M.P. and C.H.P. (policies #NNNNNNNN and #OOOOOOOO, Exhibit P-67) for coverage of one

year, starting on May 15, 2016, the expected arrival date, for a combined stated premium of $5,227.53;

ii) K.P. paid Respondent the agreed discounted premium of $3,397.89 (35% less than the stated premium) on March 15 and 16, 2016 (Exhibits P-68 and P-69);

iii) these two policies never came into effect because Respondent did not pay the required premiums (Exhibits P-6, pages 002055 and 002056, and P-7);

iv) on February 26, 2017, Respondent issued two new policies for said insured (#66666666 and #77777777, Exhibit P-70), based on an arrival date of June 23, 2016, with coverage for one year from that date, for a combined stated premium of $1,972.49, which was paid using a credit card belonging to Respondent's niece;

v) these latter policies could only have taken effect on the date the premiums were paid to Manulife (February 26, 2017), despite the stated arrival date of June 23, 2016;

vi) thus, the insureds were promised coverage from May 15, 2016 to May 14, 2017, but only received it for the period February 26, 2017 until June 23, 2017, such that they were left without coverage for the period May 15, 2016 until June 23, 2016, as partially alleged in Count 19.

[241] Respondent's excuse for most of the cases where coverage was not provided immediately upon arrival of the insured in Canada is unacceptable. He had a duty to take

the necessary steps to assure that the insured benefitted from the coverage promised under their policies from the moment they arrived in Canada.

[242] If Respondent had paid Manulife the required premium as soon as he was paid by the client, he would not have had to rely on notification from clients of the insured's arrival date, but this would have upset Respondent's scheme, which involved attracting clients with discounted premiums (not allowed by Manulife) and using clients' payments for his personal benefit until the insured arrived, at which point Respondent most often neglected to pay any premium to Manulife, in the hope that no claim would ever be made under the policy and that no one would ever become aware of his scheme.

[243] In view of the foregoing, the Committee finds Respondent guilty as charged under Counts 3, 6, 9, 10, 14, 16, 19 and 22 of the Complaint, pursuant to section 16 of the *Act respecting the distribution of financial products and services*, and pursuant to sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*.

[244] However, the Committee agrees with Me Cardinal's recommendation that it issue a conditional stay of proceedings regarding section 16 the *Act respecting the distribution of financial products and services* and sections 12 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* because section 24 of the *Code of Ethics* is the most relevant and directly applicable provision which applies to Respondent's conduct.

Count 23

[245] When Me Gingras interviewed the Respondent on January 31, 2017, she was only aware of the complaint by C.A. However, when she asked Respondent whether there were "any other files for any reason, with respect to other clients that you suspect that

same situation may have happened, that the insurer didn't receive the check", Respondent denied that any such other event(s) had ever occurred (Exhibit P-71).

[246] When requested by Me Gingras to provide her a copy of the "email you received from Manulife advising that they had not received payment of the premium for policy no. BBBBBBBB" (Exhibit P-72), instead of sending Me Gingras the full text of said email (Exhibit P-74), Respondent sent her an altered thereof (Exhibit P-73), which deleted the reference to ten other cases where the client's policy had been cancelled for non-payment of the required premium.

[247] Although Respondent says that he never had any intention of misleading Me Gingras by sending her a truncated version of the email from Manulife (Exhibit P-73, rather than Exhibit P-74), it is obvious to the Committee that Respondent knew that providing an unaltered version of Manulife's email (Exhibit P-74) would expose his denial, during the interview with Me Gingras (Exhibit P-71), that he had failed to pay the premium for any other clients.

[248] Respondent’s explanation that he concealed a large part of the information in Exhibit P-74 to protect the confidentiality of other clients has no merit. He was obliged to cooperate with the investigation and trust the investigator to protect the confidentiality of client names and, if he had sincere confidentiality concerns, he should have advised the investigator of his concerns rather than send her an altered document.

[249] The Committee therefore has no hesitation in finding the Respondent guilty of having obstructed the work of Me Gingras, as alleged in Count 23, the whole pursuant to sections 42 and 44 of the *Code of Ethics of the Chambre de la sécurité financière*.

[250] The Committee agrees with Me Cardinal's recommendation to issue a stay of

proceedings pursuant to section 42 of the *Code of Ethics*, as section 44 of the *Code of Ethics* is the more applicable provision regarding Respondent's deceptive responses to Me Gingras' above-described queries relating to her investigation herein.

FOR THESE REASONS, the Disciplinary Committee:

REITERATES the order of non-disclosure, non-publication and non-release of the names of clients contemplated in the Complaint herein, as well as any information which might enable their identification;

DECLARES the Respondent guilty under Counts 1, 4, 7, 11, 12, 17 and 20 of the Complaint pursuant to section 36 of the *Code of Ethics of the Chambre de la sécurité financière*;

DECLARES the Respondent guilty under Counts 2, 5, 8, 13, 15, 18 and 21 of the Complaint, pursuant to sections 16 of the *Act respecting the distribution of financial products and services*, and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*;

ORDERS a conditional stay of proceedings of Counts 2, 5, 8, 13, 15, 18 and 21 of the Complaint as regards section 16 of the *Act respecting the distribution of financial products and services*, as well as sections 11 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*;

DECLARES the Respondent guilty under Counts 3, 6, 9, 10, 14, 16, 19 and 22 of the Complaint, pursuant to section 16 of the *Act respecting the distribution of*

financial products and services and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*;

ORDERS a conditional stay of proceedings of Counts 3, 6, 9, 10, 14, 16, 19 and 22 of the Complaint, as regards section 16 of the *Act respecting the distribution of financial products and services* and sections 12 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*;

DECLARES the Respondent guilty under Count 23 of the Complaint, pursuant to sections 42 and 44 of the *Code of Ethics of the Chambre de la sécurité financière*;

ORDERS a conditional stay of proceedings regarding Count 23 of the Complaint as relates to section 42 of the *Code of Ethics of the Chambre de la sécurité financière*;

CONVENES the parties, with the assistance of the Secretary of the Disciplinary Committee, to a hearing on sanctions as regards:

a) Counts 1, 4, 7, 11, 12, 17 and 20, pursuant to section 36 of the *Code of Ethics of the Chambre de la sécurité financière*;

b) Counts 2, 5, 8, 13, 15, 18 and 21, pursuant to section 17 of the *Code of Ethics of the Chambre de la sécurité financière*;

c) Counts 3, 6, 9, 10, 14, 16, 19 and 22, pursuant to section 24 of the *Code of Ethics of the Chambre de la sécurité financière*;

d) Count 23, pursuant to section 44 of the *Code of Ethics of the Chambre de la sécurité financière*.

(S) Me George R. Hendy

Me George R. Hendy
President of the Disciplinary Committee

(S) BGilles Lacroix

Mr. BGilles Lacroix, A.V.C., Pl. Fin.
Member of the Disciplinary Committee

(S) Richard Charette

Mr. Richard Charette
Member of the Disciplinary Committee

Me Mathieu Cardinal
CDNP AVOCATS INC.
Attorney for the Plaintiff

The Respondent was self-represented

Dates of the hearing: May 14, 15 and 16, 2018.

TRUE COPY OF THE ORIGINAL SIGNED

3.7.3.2 Comité de discipline de la ChAD

COMITÉ DE DISCIPLINE

CHAMBRE DE L'ASSURANCE DE DOMMAGES

CANADA
PROVINCE DE QUÉBEC

N° : 2019-03-01(C)

DATE : 6 novembre 2019

LE COMITÉ :	Me Daniel M. Fabien, avocat	Vice-président
	M. Bernard Jutras, C.d'A.A., courtier en assurance de dommages	Membre
	Mme Chantal Yelle, B.A.A., courtier en assurance de dommages	Membre

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M^E^ ALAIN GALARNEAU, ès qualités de syndic *ad hoc* de la Chambre de l'assurance de dommages

Partie plaignante

c.
JEAN-PAUL PÉPIN, courtier en assurance de dommages (4A)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

ORDONNANCE DE NON-DIVULGATION, NON-PUBLICATION
ET NON-DIFFUSION DE TOUS LES RENSEIGNEMENTS PERSONNELS
PERMETTANT D'IDENTIFIER LES ASSURÉS MENTIONNÉS AUX
PIÈCES DÉPOSÉES EN PREUVE EN VERTU DE L'ARTICLE 142 DU *CODE DES PROFESSIONS*.

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[1] Le 1er octobre 2019, le Comité de discipline de la Chambre de l'assurance de dommages (« le Comité ») se réunit pour disposer de la plainte logée contre l'intimé Jean-Paul Pépin dans le présent dossier.

[2] Me Alain Galarneau, ès qualité de syndic *ad hoc* de la ChAD est présent et se représente lui-même.

[3] Quant à l'intimé, il est absent mais dûment représenté par son avocate, Me Sonia Paradis.

[4] Dès le début de l'audition, les procureurs nous confirment que M. Pépin entend plaider coupable à une plainte modifiée et qu'il y aura suggestion commune quant à la sanction que le Comité doit imposer.

I. La plainte modifiée et le plaidoyer de culpabilité

[5] Dans sa plainte modifiée, Me Galarneau reproche ce qui suit à l'intimé, à savoir :

> *« 1. Entre les ou vers les 16 février et 8 mars 2016, (l'intimé) a fait défaut d'agir en conseiller consciencieux auprès de S.P. et M.G. clients, à l'occasion de la souscription d'un contrat d'assurance pour un bateau 2015 Axis Core Serie T-22 :*
>
> *a) (…)*
>
> *b) (…)*
>
> *c) En ne prenant pas connaissance du contrat d'achat dudit bateau que les clients lui avaient transmis, sans que cela ne soit requis, ce qui lui aurait permis de constater que ces derniers avaient omis d'inclure les taxes au montant d'assurance initialement déclaré par eux;*
>
> *le tout en contravention avec les articles 16, 27, 28 de la Loi sur la distribution de produits et services financiers (RLRQ, c. D-9.2) et le Code de déontologie des représentants en assurance de dommages (RLRQ, c. D-9.2, r.5), notamment les paragraphes 1 et 6 de l'article 37 dudit Code ;*
>
> *2. Entre le ou vers le 16 février et le ou vers le mois de février 2017, (l'intimé) a exercé ses activités professionnelles de façon négligente en faisant défaut de noter à son dossier client pour S.P. et M.G. chacune de ses interventions les concernant notamment ses échanges, ses communications téléphoniques et leur contenu ainsi que leurs demandes, contrevenant ainsi à l'article 16 de la Loi sur la distribution de produits et services financiers (RLRQ, c. D-9.2) et le Code de déontologie des représentants en assurance de dommages (RLRQ, c. D-9.2, r.5), notamment l'article 9 et le paragraphe 1 de l'article 37 dudit Code et les articles 12 et 21 du Règlement sur le cabinet, le représentant autonome et la société autonome (RLRQ, c. D-9.2, r.2). »*

[6] Me Paradis nous confirme qu'elle est autorisée à plaider coupable pour et au nom de son client à la plainte modifiée. En conséquence, le Comité prend acte du plaidoyer de culpabilité de l'intimé et déclare ce dernier coupable des deux chefs d'accusation qui y sont mentionnés.

[7] Sur le chef 1, l'intimé est déclaré coupable d'avoir enfreint l'article 37 (6º) du *Code de déontologie des représentants en assurance de dommages.*

[8] Quant au chef 2, l'intimé a fait défaut de bien tenir son dossier client. Il est donc reconnu coupable d'avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome.*

[9] Un arrêt conditionnel des procédures est ordonné sur les autres dispositions législatives et règlementaires alléguées au soutien de chacun des chefs d'accusation de la plainte modifiée.

II. Preuve sur sanction

[10] Avec le consentement de Me Paradis, Me Galarneau dépose les pièces P-1 à P-9.

[11] À la demande du syndic *ad hoc*, le Comité rend une ordonnance de non-divulgation, non-publication et non-diffusion des renseignements personnels contenus aux pièces et permettant d'identifier les assurés suivant l'article 142 du *Code des professions*.

[12] Me Galarneau a extirpé de la preuve les pièces documentaires les plus pertinentes. Il s'agit des pièces P-1 à P-9, lesquelles sont déposées en preuve de consentement.

[13] Me Paradis attire notre attention à la pièce P-3, soit le formulaire de soumission que l'intimé transmet usuellement aux assurés qui souhaitent souscrire des garanties d'assurance pour leur bateau. À la page 3 du formulaire, on peut voir que l'assuré doit y inscrire la valeur du bateau et la valeur de la remorque, le tout plus les taxes applicables.

[14] Dans la présente affaire, l'assuré aurait omis d'inclure les taxes dans le montant qu'il a inscrit sur le formulaire, d'où la plainte dans le présent dossier.

[15] Or, les parties conviennent que l'intimé n'avait aucune obligation d'obtenir de l'assuré son contrat d'achat du bateau et de la remorque. À leur avis, c'est uniquement en raison du fait que l'intimé avait le contrat d'achat en main et qu'il n'en a pas pris connaissance qu'il y a faute déontologique dans la présente affaire.

[16] En réalité, dans les circonstances particulières du présent dossier, l'intimé aurait dû

prendre connaissance du contrat d'achat que l'assuré lui avait transmis, ce qui lui aurait permis de constater que son client avait omis d'inclure les taxes dans la valeur des biens à assurer.

[17] Bref, un malheureux concours de circonstances a fait en sorte que l'intimé a enfreint l'article 37 (6º) de son code de déontologie puisqu'il a fait défaut d'éclairer son client sur le fait que la valeur des biens à assurer devait être augmentée des taxes applicables.

[18] Quant au chef nº 2, l'intimé reconnait qu'il a fait défaut de noter dans son dossier chacune de ses interventions, le tout contrairement à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome.*

III. Recommandation commune sur sanction

[19] Les procureurs recherchent l'imposition des sanctions suivantes à l'encontre de l'intimé, à savoir :

- Chef nº 1c) : une réprimande;
- Chef nº 2 : une réprimande;
- Condamner l'intimé aux frais et déboursés du dossier.

[20] Les procureurs des parties requièrent donc l'imposition de deux réprimandes plus le paiement des frais et déboursés de l'instance.

[21] À l'appui de cette suggestion commune, les procureurs nous réfèrent au dossier *ChAD* c. *Bonin*[1].

[22] Quant aux facteurs atténuants, Me Galarneau souligne :

- L'absence d'antécédent disciplinaire de l'intimé;
- La bonne collaboration de l'intimé à l'enquête;
- Son plaidoyer à la première occasion;

1 2018 CanLII 38257 (QC CDCHAD);

- Le fait que l'intimé aurait amélioré son formulaire afin d'éviter toute autre confusion de la part des assurés.

[23] Par ailleurs, Me Paradis réitère que l'intimé n'avait pas à obtenir le contrat d'achat puisque l'assureur qui assume le risque ne le requiert pas.

[24] Autre élément atténuant selon le procureur de l'intimé, ce dernier a été poursuivi devant la division des Petites créances de la Cour du Québec.

IV. Analyse et décision

[25] Dans l'affaire *Pivin c. Inhalothérapeutes*[2], il a été établi *« un plaidoyer, en droit disciplinaire est la reconnaissance par le professionnel des faits qui lui sont reprochés et du fait qu'il constitue une faute déontologique* ».

[26] Au surplus, la jurisprudence[3] est à l'effet que lorsqu'un comité de discipline est saisi d'un plaidoyer de culpabilité, aucune preuve relative à la culpabilité de l'intimé est nécessaire.

[27] Voilà pourquoi le Comité a pris acte du plaidoyer de culpabilité de l'intimé et l'a déclaré coupable.

[28] Par ailleurs, pour les motifs ci-après exposés, le Comité est d'opinion que la sanction juste et appropriée en l'espèce est l'imposition d'une réprimande sur chacun des chefs de la plainte.

[29] À nos yeux, l'intimé doit bénéficier des nombreux facteurs atténuants suivants, à savoir :

- la collaboration de l'intimé avec le syndic;
- son plaidoyer de culpabilité à la première occasion;
- l'absence d'antécédent disciplinaire de l'intimé;
- la faute de l'assuré;
- le fait qu'il s'agit d'un acte isolé et d'un concours de circonstances;
- les modifications apportées au formulaire de soumission;
- la bonne foi de l'intimé.

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2 *Pivin* c. *Inhalothérapeutes*, 2002 QCTP 32 (CanLII);
3 *OACIQ* c. *Patry*, 2013 CanLII 47258 (QC OACIQ) et *OACIQ* c. *Lizotte*, 2014 CanLII 3118 (QC OACIQ);

[30] N'oublions pas par ailleurs que toute cette affaire découle essentiellement d'une malheureuse erreur.

[31] À ce sujet, il convient de citer le passage suivant de la Cour d'appel dans l'affaire *Courchesne*[4]:

> *« [83] L'appelant reproche ensuite au juge de la Cour du Québec d'avoir fait une analyse erronée des précédents en matière de sanction. Le reproche est mal fondé. La détermination de la peine, que ce soit en matière disciplinaire ou en matière pénale, est un exercice délicat, le principe fondamental demeurant celui d'infliger une peine proportionnelle à la gravité de l'infraction et au degré de responsabilité du contrevenant. L'analyse des précédents permet au décideur de s'assurer que la sanction qu'il apprête à infliger au délinquant est en harmonie avec celles infligées à d'autres contrevenants pour des infractions semblables commises dans des circonstances semblables. Mais l'analyse des précédents n'est pas sans embûche, chaque cas étant différent de l'autre. En l'espèce, à la lecture de la décision du comité de discipline et du jugement dont appel, il me semble que le reproche formulé par l'appelant est sans fondement. »*
>
> (notre emphase)

[32] Comme le soulignait la Cour du Québec dans l'affaire *Royer* c. *Rioux*[5], l'objectif de la sanction disciplinaire n'est pas de punir le professionnel, mais de corriger un comportement fautif.

[33] Enfin, le Tribunal des professions rappelait l'importance et l'utilité des suggestions communes dans l'affaire *Ungureanu*[6] :

> *[21] Les ententes entre les parties constituent en effet un rouage utile et parfois nécessaire à une saine administration de la justice. Lors de toute négociation, chaque partie fait des concessions dans le but d'en arriver à un règlement qui convienne aux deux. Elles se justifient par la réalisation d'un objectif final. Lorsque deux parties formulent une suggestion commune, elles doivent avoir une expectative raisonnable que cette dernière sera respectée. Pour cette raison, une suggestion commune formulée par deux avocats d'expérience devrait être respectée à moins qu'elle ne soit déraisonnable, inadéquate ou contraire à l'intérêt public ou de nature à déconsidérer l'administration de la justice.*
>
> (notre emphase)

[34] Bien plus, lorsque des sanctions sont suggérées conjointement par des procureurs d'expérience, le Comité n'a pas à s'interroger sur la sévérité ou la clémence de celles-ci.

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4 *Courchesne c. Castiglia*, 2009 QCCA 2303 (CanLII), demande d'autorisation d'appel à la Cour suprême rejetée, 2010 CanLII 20533 (CSC);
5 2004 CanLII 76507 (QC CQ);
6 *Infirmières et infirmiers auxiliaires (Ordre professionnel de)* c. *Ungureanu*, 2014 QCTP 20 (CanLII);

Il doit y donner suite, sauf s'il les considère contraires à l'intérêt public ou si elles sont de nature à déconsidérer l'administration de la justice, et ce, tel que la Cour suprême le décidait dans l'affaire *Anthony-Cook*[7].

[35] À notre avis, la recommandation commune formulée par les parties est taillée sur mesure au cas de l'intimé. Elle est donc entérinée sans aucune réserve par le Comité.

[36] Il s'agit d'une sanction qui *colle aux faits* du présent dossier.

[37] Quant aux frais et déboursés de l'instance, l'intimé devra les assumer.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

RÉITÈRE l'ordonnance de non-divulgation, non-publication et non-diffusion de tous les renseignements personnels contenus aux pièces déposées en preuve rendue par le Comité en vertu de l'article 142 du *Code des professions*;

PREND ACTE du plaidoyer de culpabilité de l'intimé Jean-Paul Pépin à l'égard des chefs n^{os} 1c) et 2 de la plainte modifiée;

DÉCLARE l'intimé coupable du chef n^{o} 1c) de la plainte modifiée pour avoir enfreint l'article 37 (6^{o}) du *Code de déontologie des représentants en assurance de dommages;*

DÉCLARE l'intimé coupable du chef n^{o} 2 de la plainte pour avoir enfreint l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome;*

PRONONCE un arrêt conditionnel des procédures à l'égard de toutes les autres dispositions législatives et réglementaires alléguées au soutien des chefs d'accusation susdits;

Sur le chef n^{o}1 :

IMPOSE à l'intimé une réprimande;

Sur le chef n^{o}2 :

IMPOSE à l'intimé une réprimande;

CONDAMNE l'intimé à payer les frais et déboursés.

7 *R*. c. *Anthony-Cook*, [2016] 2 R.C.S. 204.

2019-03-01(C)

Me Daniel M. Fabien, avocat
Vice-président du Comité de discipline

M. Bernard Jutras, C.d'A.A., courtier en assurance de dommages
Membre

Mme Chantal Yelle, B.A.A., courtier en assurance de dommages
Membre

Me Alain Galarneau
Procureur de la partie plaignante

Me Sonia Paradis
Procureur de la partie intimée

Date d'audience : 1er octobre 2019

COMITÉ DE DISCIPLINE

CHAMBRE DE L'ASSURANCE DE DOMMAGES

CANADA
PROVINCE DE QUÉBEC

No: 2019-07-01(C)

DATE : 17 octobre 2019

LE COMITÉ :	Me Patrick de Niverville, avocat	Président
	M. Bernard Jutras, C.d'A.A., courtier en assurance de dommages	Membre
	Mme Maryse Pelletier, C.d'A.A., courtier en assurance de dommages	Membre

---

Me MARIE-JOSÉE BELHUMEUR, ès qualités de syndic de la Chambre de l'assurance de dommages

Partie plaignante

c.

ALAIN SÉVIGNY, courtier en assurance de dommages

Partie intimée

DÉCISION SUR CULPABILITÉ

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[1] Le 19 septembre 2019, le Comité de discipline de la Chambre de l'assurance de dommages se réunissait pour procéder à l'audition de la plainte numéro 2019-07-01(C) ;

[2] Le syndic était alors représenté par Me Jean-François Noiseux et, de son côté, l'intimé se représentait seul ;

I. La plainte

[3] L'intimé fait l'objet d'une plainte comportant huit (8) chefs d'accusation, soit :

1. À Repentigny, entre les ou vers les 6 et 24 mars 2018, a négligé ses devoirs professionnels reliés à l'exercice de ses activités et/ou a fait défaut d'agir en conseiller consciencieux, en omettant de communiquer avec l'assurée H.C. notamment pour l'informer des démarches requises, à la suite de la réception de deux (2) Avis de résiliation émis par Royal et Sun Alliance du Canada, Société d'assurances visant respectivement le contrat d'assurance habitation no 01 MR 1015341 et le contrat d'assurance automobile no 01 AP 1015327, en contravention avec les articles 9, 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages (*RLRQ c. D-9.2, r.5);

2. À Repentigny, entre les ou vers les 6 et 24 mars 2018, a négligé ses devoirs professionnels reliés à l'exercice de ses activités et/ou a fait défaut d'agir en conseiller consciencieux, en ne faisant aucune démarche auprès d'un assureur pour replacer le risque, alors qu'il savait ou aurait dû savoir que le contrat d'assurance habitation no 01 MR 1015341 émis par Royal et Sun Alliance du Canada, Société d'assurances au nom des assurés H.C. et D.J. serait résilié au 24 mars 2018, en contravention avec les articles 9, 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

3. À Repentigny, entre les ou vers les 6 mars et 8 avril 2018, a négligé ses devoirs professionnels reliés à l'exercice de ses activités et/ou a fait défaut d'agir en conseiller consciencieux, en ne faisant aucune démarche auprès d'un assureur pour replacer le risque, alors qu'il savait ou aurait dû savoir que le contrat d'assurance automobile no 01 AP 1015327 émis par Royal et Sun Alliance du Canada, Société d'assurances au nom de l'assurée H.C. serait résilié au 8 avril 2018, en contravention avec les articles 9, 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

4. À Repentigny, le ou vers le 26 mars 2018, a fait une déclaration fausse, trompeuse et/ou susceptible d'induire en erreur, en confirmant à l'assurée H.C. qu'elle bénéficiait d'une protection d'assurance jusqu'au 6 avril 2018, alors qu'il savait ou aurait dû savoir que le contrat d'assurance habitation no 01 MR 1015341 émis par Royal et Sun Alliance du Canada, Société d'assurances avait été résilié le 24 mars 2018, en contravention avec les articles 15, 37(1) et 37(7) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

5. À Repentigny, entre les ou vers les 24 mars et 18 juin 2018, a exercé ses activités professionnelles de manière négligente, en omettant de faire les démarches nécessaires pour procurer aux assurés H.C. et D.J. une protection d'assurance pour leur résidence, alors qu'il savait ou aurait dû savoir que le risque était alors à découvert, en contravention avec les articles 9, 26 et 37(1) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

6. À Repentigny, entre les ou vers les 8 avril et 18 juin 2018, a exercé ses activités professionnelles de manière négligente, en omettant de faire les démarches nécessaires pour procurer à l'assurée H.C. une protection d'assurance pour son véhicule automobile, alors qu'il savait ou aurait dû savoir que le risque était alors à découvert, en contravention avec les articles 9, 26 et 37(1) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

7. À Repentigny, entre les ou vers les 13 et 18 juin 2018, a négligé ses devoirs professionnels reliés à l'exercice de ses activités et/ou a fait défaut d'agir en conseiller consciencieux, en refusant d'aider l'assurée H.C. et en la référant à une collègue qui n'était pas disponible en temps utile, malgré l'urgence de la situation, alors que l'assurée H.C. était sans couverture d'assurance habitation et automobile depuis des mois, en contravention avec les articles 8, 9, 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);

8. À Repentigny, entre les ou vers les 26 mars et 18 juin 2018, a négligé ses devoirs professionnels reliés à l'exercice de ses activités dans le dossier de l'assurée H.C., en n'ayant pas une tenue de dossier à laquelle on est en droit de s'attendre d'un professionnel, en omettant d'y noter, notamment, les communications téléphoniques, les conseils donnés, les décisions prises et les instructions reçues, en contravention avec les articles 85 à 88 de la Loi sur la distribution de produits et services financiers (RLRQ, c. D-9.2), les articles 9 et 37(1) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5) et les articles 12 et 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome* (RLRQ c. D-9.2, r.2).

[4] L'intimé ayant enregistré un plaidoyer de non-culpabilité à l'encontre de la plainte, les parties ont alors procédé à l'audition sur culpabilité ;

[5] C'est ainsi que la partie plaignante a fait entendre l'assurée H.C. et l'intimé ;

[6] De son côté, l'intimé a témoigné pour sa défense, en plus de produire comme témoin sa conjointe et collaboratrice, Mme Géraldine Viart ;

[7] L'ensemble de cette preuve a permis d'établir les faits ci-après décrits ;

II. Les faits

[8] Le 26 mars 2018, l'assurée H.C. téléphone[1] à l'intimé pour l'informer qu'elle a reçu un avis de résiliation et, de toute évidence, elle est inquiète;

[9] D'entrée de jeu, il y a lieu de noter que cette conversation téléphonique[2] est alléguée tant au soutien du chef 1 qu'au soutien des chefs 2, 3, 4, 5, 6 et 8, tel qu'il appert du cahier des pièces de la plaignante :

> *P-7 Enregistrements entre H.C. et l'intimé*
> *A. 26 mars 2018 : Chef 1*
> *- De 1m49x à 2m06 : Chef 8*
> *- De 5m40s à 8m18s : Chefs 2, 3, 4, 5 et 6*

[10] Cela dit, l'intimé, lors de son témoignage en preuve principale ainsi qu'en défense, a reconnu ne pas avoir fait un suivi adéquat du dossier de l'assurée H.C. ;

[11] D'ailleurs, dans un aide-mémoire qu'il a produit au soutien de sa défense, il écrit :

> « *Malheureusement pour une raison que je ne suis pas capable de cibler ce retour d'appel m'a glissé entre les doigts.* »

[12] Bref, l'intimé, alors qu'il avait été informé, le 26 mars 2018, par sa cliente H.C. que celle-ci se retrouvait dans une situation fâcheuse en raison de l'annulation de ses deux (2) polices d'assurance, n'a pas pris les mesures nécessaires :

- pour tenter de replacer le risque (habitation) auprès d'un autre assureur (chefs 2 et 5) ;

- Il n'a pas, non plus, fait de démarches en regard de l'assurance-automobile (chefs 3 et 6) ;

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1 Pièce P-7A);
2 Pièce P-7A)

[13] Finalement, cette conversation téléphonique[3] du 26 mars 2018 n'a pas été inscrite à son « registre des notes »[4], d'où l'allégation que ses dossiers sont mal tenus (chef 8) ;

[14] Quant aux faits allégués au soutien des chefs 4 et 7, ceux-ci seront décrits et commentés au moment de l'analyse de ces chefs ;

[15] Pour l'instant, il suffit de mentionner et ce, pour l'ensemble de la plainte, que l'intimé n'a pas réellement nié les faits à l'origine de celle-ci et qu'il regrette la tournure des événements et les problèmes occasionnés par sa négligence ;

III. Analyse et décision

3.1 Chefs nos. 1, 2, 3, 5 et 6

[16] De l'avis du Comité, le syndic s'est déchargé de son fardeau de preuve[5] en démontrant que l'intimé a négligé ses devoirs professionnels[6] :

- En omettant de communiquer avec l'assurée H.C. pour l'informer des démarches requises suite à l'annulation de ses polices d'assurance-habitation et assurance-automobile (chef 1)

- En ne faisant aucune démarche auprès d'un assureur pour replacer le risque (chefs 2, 3, 5 et 6)

[17] D'ailleurs, au cours de l'audition, l'intimé a reconnu qu'il avait été négligent dans le traitement du dossier de l'assurée H.C. ;

[18] À cet égard, il a tenté de fournir diverses explications pour justifier son inaction sans jamais toutefois contredire les faits à l'origine de la plainte ;

[19] En conséquence, l'intimé sera reconnu coupable des infractions alléguées aux chefs 1, 2, 3, 5 et 6, plus particulièrement pour avoir contrevenu à l'article 9 du Code de déontologie[7], pour les motifs ci-après exposés ;

A) Les obligations du courtier d'assurance

[20] Le Comité considère que le présent dossier justifie de rappeler les principaux

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3 Pièce P-7A);
4 Pièce P-6;
5 *Bisson* c. *Lapointe*, 2016 QCCA 1078 (CanLII), par. 63 à 68;
6 Art. 9 du *Code de déontologie des représentants en assurance de dommages* (RLRQ, c. D-9.2, r. 5);
7 Ibid.;

devoirs qui incombent au courtier d'assurance ;

- Avant toute chose, le courtier doit faire preuve de disponibilité[8] et il ne doit pas négliger ses devoirs professionnels[9] ;
- De plus, il doit tenir compte des limites de ses aptitudes et ne pas hésiter à obtenir l'aide appropriée[10], si nécessaire ;
- Il doit, dans les plus brefs délais, donner suite aux instructions qu'il reçoit de son client ou le prévenir qu'il lui est impossible de s'y conformer[11];
- Enfin, il doit exercer de façon honnête et ne pas faire preuve de négligence[12] ;
- De plus, il doit rendre compte de l'exécution de son mandat[13] et toujours agir en conseiller consciencieux[14] ;

[21] Dans le présent cas, si l'intimé avait retourné ses appels et assuré un suivi adéquat de son dossier, il aurait évité un drame humain et une plainte disciplinaire ;

[22] Cela dit, de l'avis du Comité, le présent dossier prend sa source dans le défaut de l'intimé de faire le suivi de l'appel téléphonique du 26 mars 2018 (chef 1) et les autres chefs d'accusation ne sont que le résultat en cascades (chefs 2, 3, 5 et 6) de cette première faute ;

[23] En conséquence, il convient d'appliquer les principes de l'arrêt Kienapple[15] ;

B) Interprétation large des principes de l'arrêt *Kienapple*

[24] Depuis longtemps, la jurisprudence reconnaît l'application en droit disciplinaire des principes relatifs aux déclarations de culpabilité multiples[16] ;

[25] Dernièrement, le Tribunal des professions, dans l'affaire *Vallières*[17], suggérait une application plus souple de la règle interdisant les condamnations multiples ;

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8 Art. 8 du *Code de déontologie*;
9 Art. 9 du *Code de déontologie*;
10 Art. 17 du *Code de déontologie*;
11 Art. 26 du *Code de déontologie*;
12 Art. 37(1) du *Code de déontologie*;
13 Art. 37(4) du *Code de déontologie*;
14 Art. 37(6) du *Code de déontologie*;
15 *R*. c. *Kienapple*, 1974 CanLII 14 (CSC);
16 *Auger* c. *Monty*, 2006 QCCA 596 (CanLII);
17 *Psychologues* c. *Vallières*, 2018 QCTP 121 (CanLII);

[26] Plus précisément, le Tribunal rejetait les prétentions du syndic visant à compartimenter les différents chefs d'accusation afin d'obtenir un plus grand nombre de condamnations et donc, de sanctions, dans les termes suivants :

> *[162] La logique de l'appelant relativement au chef 20 est que celui-ci vise le comportement antérieur de l'intimée, eu égard aux chefs pour lesquels elle a plaidé coupable,* ***le comportement ciblé par le chef 20 se situant en amont des autres chefs****. Selon cette approche, l'intimée commet une première faute en acceptant les mandats et une deuxième en les exécutant, il s'agit donc de deux comportements distincts entraînant des fautes déontologiques distinctes.*
>
> *[163]* ***Cette vision très compartimentée des faits et des chefs n'est pas sans entraîner une multiplication des fautes déontologiques qu'on peut y accoler****. Si l'intimée n'a pas exécuté les tests selon les règles de l'art, c'est parce qu'elle n'avait pas les compétences. Ainsi, puisqu'elle n'avait pas les compétences, elle n'a pas administré les tests selon les règles de l'art.* ***Il s'agit d'un enchaînement de faits qui peut entraîner un certain raisonnement circulaire****.*
>
> *[164]* ***La Cour d'appel du Québec*** *dans un arrêt récent propose une approche plus souple des règles de l'arrêt Kienapple.* ***Dans l'arrêt Sarazin c. R****., les juges majoritaires de la Cour énoncent ce qui suit au sujet des principes de l'arrêt Kienapple :*
>
> > *[28] (…) La jurisprudence récente de la Cour fait une application souple de ce principe quand les éléments constitutifs sont distincts,* ***mais que le même évènement fonde les différentes accusations****. Le principe fondamental dans Kienapple est de ne pas doubler ou multiplier les condamnations et les peines pour le même tort.* ***C'est d'éviter la redondance juridique****. (…).*
> >
> > *(Référence omise)*
>
> *[165] Le Tribunal considère que ces récents propos de la Cour d'appel sont tout à fait appropriés en ce qui concerne les infractions en matière disciplinaire, compte tenu de la nature même de la faute déontologique.* ***Il est fréquent de voir des plaintes déontologiques à l'égard d'un seul événement comportant de multiples chefs d'infraction avec de multiples liens de rattachement****.*
>
> *[166] La présente affaire en est une illustration parfaite. Pour un même enfant à qui l'intimée a fait passer 1 ou 2 tests, l'appelant a porté une plainte comportant 2 ou 3 chefs en lien avec cet enfant et 9 liens juridiques distincts.*
>
> *[167]* ***Cette façon très répandue de rédiger les plaintes déontologiques est souvent de nature à alourdir les débats*** *et à étirer indûment le processus pour parfois en arriver à un résultat qui, concrètement, fait peu de différence relativement à la déclaration de culpabilité.*
>
> *[168] Cependant,* ***cette multiplication des chefs et des condamnations potentielles peut entraîner des conséquences importantes pour le professionnel à l'égard des sanctions****, obligeant parfois les conseils de*

> *discipline à de sérieux ajustements au moment d'imposer les sanctions pour maintenir celles-ci à l'intérieur d'une globalité raisonnable.* (Nos soulignements)

[27] Cela dit, cette interprétation beaucoup plus souple des règles d'application de l'arrêt *Kienapple* fut suivie par de nombreux Conseils de discipline, dont les suivants :

- *Barreau du Québec* c. *Diomande*, 2019 QCCDBQ 54 (CanLII);
- *Chambre de la sécurité financière* c. *Marcoux*, 2019 QCCDCSF 54 (CanLII);
- *Podiatres* c. *Tranchemontagne*, 2019 CanLII 28668 (QC OPODQ);
- *Pharmaciens* c. *Escobar*, 2019 CanLII 20204 (QC CDOPQ);

[28] L'origine de cette nouvelle approche est bien expliquée par le juge Vanchestein dans l'affaire *Collège des médecins du Québec* c. *Labrie*[18] :

> *[331] **Notre Cour d'appel dans une affaire de Dubourg présente les deux approches des principes de l'arrêt Kienapple** :*
>
> *[31] En conclusion, sur le principe dans l'arrêt Kienapple, la jurisprudence a toujours été divisée en deux courants dans son application. Selon un courant, les tribunaux semblent insister plutôt sur un critère d'identité formel entre les éléments de deux infractions. Selon l'autre, ils semblent insister sur une proximité fonctionnelle entre les éléments. Dans le premier, la jurisprudence souligne l'importance de faire preuve de déférence envers le législateur en ce qui a trait à la définition des éléments de culpabilité et des contours de la responsabilité criminelle. Cette approche est plus stricte et technique. Elle souligne également la déférence dont doivent faire montre les tribunaux face à la discrétion de la poursuite dans la sélection de chefs d'accusation. **Dans le second courant**, la jurisprudence souligne une finalité téléologique **qui est d'éviter la redondance inutile dans les condamnations et l'administration de la peine**. Cette approche est entièrement compatible avec la démonstration d'une déférence envers le législateur et envers la poursuite parce que dans son application le principe de l'arrêt* Kienapple ***n'empêche pas une détermination de culpabilité sur plus d'un chef, mais plutôt l'imposition d'une peine sur un chef redondant et moins grave**. Elle a également l'avantage d'être plus flexible. **À mon avis, la jurisprudence actuelle au Québec et en Ontario s'inscrit de manière générale dans le second courant** et donc suit le principe téléologique qui a pour finalité d'éviter la redondance dans l'imposition de la peine. (Soulignements du Tribunal)*
>
> *[332] Cette approche souple a été confirmée à nouveau par notre Cour d'appel dans l'affaire **J.B. c. R.** :*
>
> > *[16] Quant à la règle interdisant les condamnations multiples, l'appelant a raison de dire qu'elle s'applique entre certains chefs d'accusation. Notre Cour adopte une approche souple, fondée sur une analyse des faits qui*

[18] 2019 QCCQ 5048 (CanLII);

> *sous-tendent les infractions* ***et qui cherche avant tout à éviter la redondance dans les condamnations et dans la détermination de la peine*** *: voir récemment* Sarazin c. R.*, 2018 QCCA 1065 (CanLII), par. 27-31; Touchette c. R., 2016 QCCA 460 (CanLII), par. 49; Brais c. R., 2016 QCCA 355 (CanLII), par. 33-36. (Soulignements du Tribunal)*
>
> *[333] Ainsi, pour déterminer s'il y a multiplicité des condamnations dans le présent dossier, le Tribunal adoptera l'approche prônée par la Cour d'appel du Québec.* (Nos soulignements)

[29] Cela étant établi, le Comité ordonnera un arrêt conditionnel des procédures sur les chefs 2, 3, 5, et 6 au motif que ceux-ci découlent tous de la même faute, soit le manque de suivi du dossier de l'assurée H.C. qui débute par le défaut de donner suite à l'appel téléphonique du 26 mars 2018 (chef 1) ;

[30] À cet égard, le Comité prend appui sur les enseignements de la Cour d'appel dans l'arrêt *J.B.* c. *R.* [19] :

> *[16] Quant à la règle interdisant les condamnations multiples,* ***l'appelant a raison de dire qu'elle s'applique entre certains chefs d'accusation****. Notre Cour adopte une* ***approche souple, fondée sur une analyse des faits qui sous-tendent les infractions et qui cherche avant tout à éviter la redondance dans les condamnations*** *et dans la détermination de la peine : voir récemment Sarazin c. R., 2018 QCCA 1065 (CanLII), par. 27-31; Touchette c. R., 2016 QCCA 460 (CanLII), par. 49; Brais c. R., 2016 QCCA 355 (CanLII), par. 33-36.*
>
> *[17] Dans les circonstances, un arrêt conditionnel des procédures s'impose sur les chefs 2, 5, 8 et 9. En l'espèce,* ***le fondement de chacune des infractions réside dans la perpétration d'attouchements sexuels ou d'actes sexuels*** *pouvant constituer à la fois de la grossière indécence ou des attentats à la pudeur ou encore des agressions sexuelles, selon l'époque dans ce dernier cas : R. c. Kienapple, 1974 CanLII 14 (CSC), [1975] 1 R.C.S. 729, 750; R. c. Prince, 1986 CanLII 40 (CSC), [1986] 2 R.C.S. 480, 500. Certes,* ***les gestes sont de gravités différentes, mais la preuve démontre qu'ils sont, lors de chacune de leur manifestation, inextricablement liés à toutes les infractions reprochées****.* (Nos soulignements)

[31] Il convient maintenant d'examiner les autres chefs de la plainte ;

3.2 Chef no. 4

[32] Le chef 4 reproche à l'intimé d'avoir fait une déclaration fausse, trompeuse et/ou susceptible d'induire en erreur sa cliente H.C. en prétendant qu'elle bénéficiait d'une protection d'assurance jusqu'au 6 avril 2018 alors qu'il aurait dû savoir que le

[19] 2019 QCCA 761 (CanLII);

contrat d'assurance-habitation avait été résilié le 24 mars 2018 ;

[33] En défense, l'intimé plaide qu'il s'agit d'une simple erreur puisqu'une fois que la police d'assurance est annulée, celle-ci n'apparaît plus au dossier de l'intimé; il doit alors retourné à l'historique du dossier pour avoir accès aux anciennes polices ;

[34] Bref, il s'agit d'une erreur ou d'un oubli commis par inadvertance et sans arrière-pensée ;

[35] Ce type d'infraction nécessite habituellement la preuve d'une intention coupable, tel que le rappelait dernièrement le Tribunal des professions dans l'affaire *Teixeira*[20] :

> *[20] Maître Teixeira plaide que la nature de l'infraction qu'on lui reproche requiert la preuve d'une intention blâmable. Or,* ***le Conseil en évaluant la preuve, a omis de considérer cet élément pourtant essentiel****. De plus, elle souligne qu'en aucun temps le Conseil n'a remis en question la crédibilité de son témoignage.*
>
> *[21] Qu'en est-il?*
>
> *[22] Il convient d'abord de reproduire l'article 3.02.01 i) du Code sur lequel repose la déclaration de culpabilité :*
>
> > *3.02.01 Les actes suivants, entre autres, contreviennent à l'obligation d'agir avec intégrité :*
> >
> > *(…)*
> >
> > *i) agir de façon à* ***induire en erreur*** *la partie adverse non représentée par avocat.*
> >
> > *(…)*
>
> *[23] Dans Renaud c. Barreau du Québec, notre tribunal a interprété l'article 3.02.01 c) du Code afin de déterminer si* ***la preuve d'une intention blâmable*** *était requise. Notons que la rédaction de cette disposition est similaire à celle dont il est question, en l'espèce, puisqu'elle se lit ainsi :*
>
> > *3.02.01. Les actes suivants, entre autres contreviennent à l'obligation d'agir avec intégrité :*
> >
> > *(…)*
> >
> > *c)* ***induire ou tenter d'induire le tribunal en erreur*** *ou, par des moyens illégaux, créer le doute en faveur du client;*
> >
> > *(…)*
>
> *[24] Dans cette décision, notre tribunal conclut que pour déclarer un professionnel coupable de cette infraction,* ***il est nécessaire de démontrer qu'il a agi intentionnellement dans le but de tromper****. Notre tribunal s'exprime ainsi :*

[20] *Teixeira* c. *R.K.*, 2019 QCTP 39 (CanLII);

> *[105] D'abord, la disposition se trouve dans une section intitulée « intégrité ». Au plan des concepts, le Tribunal trouve difficile de concevoir comment le professionnel peut manquer d'intégrité, ou dit en d'autres mots, d'honnêteté ou de probité, s'il n'est pas animé d'une intention blâmable. Cela ne signifie pas bien sûr que toutes les dispositions de la section commandent la preuve d'un élément d'intention pour qu'il y ait faute déontologique. Il faut simplement, dans chaque cas, s'arrêter au but visé et au choix des termes utilisés.*
>
> *[106]* ***Ensuite, l'expression induire en erreur, et sa parente****, sinon synonyme****, tromper****, évoque l'idée, si l'on s'en remet au dictionnaire de la langue française, le Petit Robert, édition 2002,* ***de mensonge, duperie, dissimulation, ruse****. Un mensonge n'est pas autre chose qu'une assertion sciemment contraire à la vérité et faite dans l'intention de tromper.*
>
> *[107] Certes, l'on ne peut exclure que quelqu'un puisse être induit en erreur involontairement. Toutefois, le Tribunal ne croit pas que la disposition vise une telle situation.*
>
> *[108] La norme en cause fait partie d'un ensemble de règles qui entendent maintenir chez les avocats, en leur qualité d'auxiliaires de la justice, le plus haut standard d'intégrité et de probité. Dans une perspective déontologique, il faut plutôt envisager que l'avocat qui induit le Tribunal en erreur ne peut pas ne pas rechercher un but à atteindre ou provoquer une conséquence dont il entend tirer un avantage.*
>
> *[109] Dès lors que l'article 3.02.01 c) du Code* ***nécessite la démonstration d'un élément intentionnel****, le Comité devait s'y arrêter et se demander si au regard de l'ensemble des faits et de tout le contexte, en incluant le témoignage de l'appelant, il pouvait conclure à la présence d'un état d'esprit blâmable. En ne le faisant pas pour la raison que l'on sait, il commet une erreur de droit.*
>
> *[25]* ***Cette exigence de prouver l'élément intentionnel*** *à l'égard de l'infraction prévue à l'article 3.02.01 c) du Code* ***a été réitérée par notre tribunal dans Vaillancourt c. Avocats (Ordre professionnel des)****.*
>
> *[26] En l'espèce, le Tribunal constate que les mots employés à l'article 3.02.01 i) du Code* ***« agir de façon à induire en erreur » renvoient à la notion de mensonge, duperie, dissimulation ou ruse qui inclut l'intention de tromper****.*
>
> *[27] Par conséquent,* ***le Conseil devait analyser la preuve pour déterminer la présence de l'élément intentionnel****, ce qu'il a omis de faire, commettant ainsi une erreur de droit.* (Nos soulignements)

[36] D'ailleurs, une simple erreur commise par inadvertance n'est pas génératrice d'infraction, tel que le soulignait le Tribunal des professions dans l'arrêt *Constantine* c. *Avocats*[21] :

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[21] 2008 QCTP 16 (CanLII);

> *[80] Pour que l'appelant soit déclaré coupable du second chef, l'article 4.02.01 d) exige que preuve soit faite de sa connaissance de la fausseté de l'affidavit.* ***On ne peut assimiler dans ce contexte, déclaration fausse à déclaration inexacte ou erronée****.* (Nos soulignements)

[37] Dans les circonstances, l'intimé sera acquitté du chef 4 puisque le Comité n'a pas été en mesure de déceler chez ce dernier aucune intention malicieuse ou malhonnête ;

3.3 Chef no. 7

[38] Le chef 7 de la plainte reproche à l'intimé d'avoir référé l'assurée H.C. à une collègue qui n'était pas disponible en temps utile, malgré l'urgence de la situation ;

[39] Qu'en est-il au juste ?

[40] Selon l'assurée H.C., celle-ci aurait placé un appel téléphonique auprès de l'intimé, le 13 juin 2018, lequel lui mentionne que sa collègue, « Géraldine », verra à la rappeler le soir même[22] ;

[41] En pratique, sa collègue, Mme Géraldine Viart, ne rappellera l'assurée H.C. que le lendemain, soit le 14 juin 2018 ;

[42] L'intimé explique ce retard par le fait que, suite à de nombreux orages électriques durant la soirée du 13 juin 2018, ils ont subi une panne d'électricité, l'empêchant, lui et sa collègue, de rejoindre Mme H.C. ;

[43] Toujours est-il que dès le lendemain, soit le 14 juin 2018, Mme Viart communiquait avec l'assurée H.C.[23] ;

[44] Mais il y a plus, la preuve démontre qu'entre le 14 juin 2018 et le 18 juin 2018, Mme Viart a fait de nombreuses démarches pour replacer le risque auprès d'un autre assureur[24] ;

[45] En l'espèce, le dossier de l'assurée H.C. était rendu plus difficile en raison de ses annulations pour non-paiement ;

[46] Finalement, le 18 juin 2018, Mme Viart a réussi à lui obtenir de l'assurance-habitation et automobile dont la protection débutait le 14 juin 2018 (pièce I-2) ;

[47] Dans les circonstances, le Comité est d'avis que le syndic ne s'est pas

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22 Pièce P-7B) : enregistrement de la conversation téléphonique du 13 juin 2018;
23 Pièce P-7B) : enregistrement de la conversation téléphonique du 14 juin 2018;
24 Pièce I-8 : aide-mémoire de Mme Géraldine Viart;

déchargé de son fardeau de preuve ;

[48] Pour ces motifs, l'intimé sera acquitté des infractions reprochées au chef 7 de la plainte ;

3.4 Chef no. 8

[49] Le chef 8 reproche à l'intimé une mauvaise tenue de ses dossiers ;

[50] La preuve démontre que les conversations téléphoniques du 26 mars 2018 et celles des 13 et 14 juin 2018 n'ont pas été notées au dossier[25] ;

[51] Qui plus est, l'intimé a reconnu à l'audition que son dossier n'était pas complet, plusieurs démarches effectuées n'ayant pas été inscrites au dossier ;

[52] En conséquence, l'intimé sera reconnu coupable des infractions reprochées au chef 8 de la plainte ;

IV. Conclusion

[53] Le Comité tient à souligner qu'un arrêt conditionnel des procédures n'est pas un acquittement et que l'intimé devra, à l'avenir, prendre les moyens nécessaires pour éviter la répétition de tels gestes ;

[54] De plus, le Comité demande aux parties, en prévision de l'audition sur sanction, d'examiner la possibilité de recommander, au conseil d'administration de la ChAD, l'imposition d'un ou plusieurs cours de perfectionnement ;

[55] À cet égard, le Comité rappelle que la sanction n'est pas punitive et qu'elle vise plutôt à assurer la protection du public.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

DÉCLARE l'intimé coupable de toutes les infractions reprochées aux chefs 1, 2, 3, 5 et 6 de la plainte et plus particulièrement comme suit :

Chef 1 : pour avoir contrevenu à l'article 9 du *Code de déontologie des représentants en assurance de dommage* (RLRQ, c. D-9.2, r. 5)

PRONONCE un arrêt conditionnel des procédures à l'égard des autres dispositions réglementaires alléguées au soutien du chef 1 ;

[25] Pièce P-6;

Chefs 2, 3, 5 et 6 :

PRONONCE un arrêt conditionnel des procédures à l'égard sur les chefs 2, 3, 5 et 6 de la plainte ;

Chefs 4 et 7 :

ACQUITTE l'intimé de toutes et chacune des infractions reprochées aux chefs 4 et 7 de la plainte ;

Chef 8 :

DÉCLARE l'intimé coupable du chef 8 pour avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome* (RLRQ, c. D-9.2, r. 2) ;

PRONONCE un arrêt conditionnel des procédures des autres dispositions législatives et réglementaires alléguées au soutien du chef 8 ;

DEMANDE à la secrétaire du Comité de discipline de convoquer les parties pour l'audition sur sanction pour les chefs 1 et 8 ;

LE TOUT, frais à suivre.

_____
Me Patrick de Niverville, avocat
Président

_____
M. Bernard Jutras, C.d'A.A., courtier en assurance de dommages
Membre

_____
Mme Maryse Pelletier, C.d'A.A., courtier en assurance de dommages
Membre

Me Jean-François Noiseux
Procureur de la partie plaignante

M. Alain Sévigny (se représentant seul)
Partie intimée

Date d'audience : 19 septembre 2019

COMITÉ DE DISCIPLINE

CHAMBRE DE L'ASSURANCE DE DOMMAGES

CANADA
PROVINCE DE QUÉBEC

N° : 2019-04-01(C)

DATE : 23 octobre 2019

LE COMITÉ :	M^e^ Daniel M. Fabien, avocat	Président
	M. Philippe Jones, courtier en assurance de dommages	Membre
	Mme Anne-Marie Hurteau, MBA, FPAA, CRM, courtier en assurance de dommages	Membre

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M^e^ MARIE-JOSÉE BELHUMEUR, ès qualités de syndic de la Chambre de l'assurance de dommages

Partie plaignante

c.
LIONEL THIFFAULT, courtier en assurance de dommages (4A)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

ORDONNANCE DE NON-PUBLICATION, DE NON-DIFFUSION ET
DE NON-DIVULGATION DE TOUT RENSEIGNEMENT PERSONNEL
CONTENU AUX PIÈCES P-2 À P-32 INCLUSIVEMENT
PERMETTANT D'IDENTIFIER
LES ASSURÉS
(Art. 142 du *Code des professions*)

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[1] Le 11 juillet 2019, le Comité de discipline de la Chambre de l'assurance de

dommages (« le Comité ») s'est réuni pour procéder à l'instruction sur culpabilité et sanction d'une plainte logée contre le courtier en assurance de dommages Lionel Thiffault.

[2] M^e^ Marie-Josée Belhumeur, ès qualité de syndic, est représentée par M^e^ Mathieu Cardinal. Quant à l'intimé, il est présent et se représente seul.

I. Le plaidoyer de culpabilité de l'intimé

[3] L'intimé enregistre un plaidoyer de culpabilité sur chacun des chefs de la plainte du 23 avril 2019, laquelle se lit comme suit :

> *« 1. Le ou vers le 18 juillet 2018, lors de la souscription du contrat d'assurance habitation n^o^ 021837974 pour M.-L.G. et C.F. auprès de L'Unique Assurances générales inc. , a fait défaut de transmettre à l'assureur toutes les informations nécessaires à l'appréciation du risque et/ou a exercé ses activités de façon malhonnête ou négligente en transmettant à l'assureur des renseignements faux, trompeurs ou susceptibles d'induire en erreur, en ce que :*
>
> > *a. dans le compu-quote, à la case « Habitation – Assureur actuel », il a indiqué « Wawanesa Mutual » alors qu'il savait ou devait savoir que telle assurance avait été résiliée par l'assureur suite à deux chèques faits sans provision ;*
> >
> > *b. dans le compu-quote, à la case « Nombre de NSFs », il a indiqué « 0 » alors qu'il savait ou devait savoir que telle information était fausse ;*
> >
> > *c. dans la proposition, à la case « en cas de résiliation par l'assureur, fournir la raison » associée au contrat d'assurance habitation antérieur « Wawanesa HPC822830203 », il a omis d'indiquer que telle assurance avait été résiliée par l'assureur suite à deux chèques faits sans provision ;*
> >
> > *d. dans la proposition, à la question « au cours des cinq dernières années, est-ce qu'une société d'assurance a rejeté, annulé, refusé ou exprimé l'intention de ne pas renouveler une police d'assurance habitation, quelle qu'elle soit? », il a répondu « non » alors qu'il savait ou devait savoir que telle information était fausse ;*
> >
> > *e. dans le compu-quote, dans la proposition ou dans le mémo du client, il a omis de mentionner que les assurés avaient présenté une proposition de consommateur à leurs créanciers ;*
>
> *en contravention avec les articles 15, 29, 37(1) et 37(7) du Code de déontologie des représentants en assurance de dommages (RLRQ c. D-9.2, r.5) ;*
>
> *2. Le ou vers le 18 juillet 2018, dans le cadre de la souscription du contrat d'assurance habitation n^o^ 021837974 pour M.-L.G. et C.F. auprès de L'Unique Assurances générales inc., a fait défaut de rendre compte de l'exécution de son mandat en omettant d'informer les assurés que deux assureurs avaient refusé le risque, en contravention avec les articles 25 et 37(4) du Code de déontologie des représentants en assurance de dommages (RLRQ c. D-9.2, r.5) ;*

3. Le ou vers le 18 juillet 2018, dans le cadre de la souscription du contrat d'assurance habitation nº 021837974 pour M.-L.G. et C.F. auprès de L'Unique Assurances générales inc., a fait une déclaration fausse, trompeuse ou susceptible d'induire en erreur à l'assurée M.-L.G, en lui disant avoir obtenu une prime d'assurance plus avantageuse avec L'Unique Assurances générales inc. qu'avec Assurance Economical, alors que ce dernier assureur avait refusé le risque, en contravention avec les articles 15 et 37(7) du Code de déontologie des représentants en assurance de dommages (RLRQ c. D-9.2, r.5) ;

4. Le ou vers le 18 juillet 2018, dans le cadre de la souscription du contrat d'assurance habitation nº 021837974 pour M.-L.G. et C.F. auprès de L'Unique Assurances générales inc., a négligé ses devoirs professionnels reliés à l'exercice de ses activités, en omettant de noter au dossier client de M.-L.G. et C.F. certains renseignements, notamment la résiliation pour défaut de paiement du contrat d'assurance habitation nº HPC822830203 émis par La Compagnie mutuelle d'assurance Wawanesa, le refus d'accepter le risque par deux assureurs ainsi que le nom et les informations concernant l'emploi de C.F., en contravention avec les articles 85 à 88 de la Loi sur la distribution de produits et services financiers (RLRQ c. D-9.2), 9 et 37(1) du Code de déontologie des représentants en assurance de dommages (RLRQ c. D-9.2, r.5) et 12 et 21 du Règlement sur le cabinet, le représentant autonome et la société autonome (RLRQ c. D-9.2, r.2) ; »

[4] Séance tenante, le Comité a pris acte du plaidoyer de culpabilité de l'intimé et a déclaré celui-ci coupable des infractions reprochées.

[5] Sur chacun des chefs 1a., 1b., 1c., 1d. et 1e., l'intimé est déclaré coupable d'avoir enfreint l'article 29 du *Code de déontologie des représentants en assurance de dommages.*

[6] Cet article stipule ce qui suit :

« Art. 29. Le représentant en assurance de dommages doit donner à l'assureur les renseignements qu'il est d'usage de lui fournir.»

[7] Quant au chef 2, l'intimé est déclaré coupable d'avoir contrevenu à l'article 37 (4º) du *Code de déontologie des représentants en assurance de dommages.* Cette disposition prévoit :

« Art. 37. Constitue un manquement à la déontologie, le fait pour le représentant en assurance de dommages d'agir à l'encontre de l'honneur et de la dignité de la profession, notamment :

(…)

4º de faire défaut de rendre compte de l'exécution de tout mandat; »

[8] Relativement au chef 3, l'intimée est coupable d'avoir contrevenu à l'article 37 (7º) du *Code de déontologie des représentants en assurance de dommages* qui édicte :

« Art. 37. Constitue un manquement à la déontologie, le fait pour le représentant en

> *assurance de dommages d'agir à l'encontre de l'honneur et de la dignité de la profession, notamment :*
>
> *(…)*
>
> *7º de faire une déclaration fausse, trompeuse ou susceptible d'induire en erreur; »*

[9] Finalement, quant au chef 4, l'intimé est déclaré coupable d'avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome*, qui stipule :

> *« Art. 21. Les dossiers clients qu'un cabinet, un représentant autonome ou une société autonome inscrit dans la discipline de l'assurance de dommages doit tenir sur chacun de ses clients dans l'exercice de ses activités doivent contenir les mentions suivantes:*
>
> *1° son nom;*
>
> *2° le montant, l'objet et la nature de la couverture d'assurance;*
>
> *3° le numéro de police et les dates de l'émission du contrat et de la signature de la proposition, le cas échéant;*
>
> *4° le mode de paiement et la date de paiement du contrat d'assurance;*
>
> *5° la liste d'évaluation des biens de l'assuré transmise par celui-ci, le cas échéant.*
>
> *Tout autre renseignement ou document découlant des produits vendus ou des services rendus recueillis auprès du client doit également y être inscrit ou déposé. »*

[10] Considérant ce qui précède, un arrêt conditionnel des procédures est ordonné sur les autres dispositions législatives et règlementaires alléguées au soutien des chefs d'accusation ci-haut mentionnés.

II. Preuve sur sanction

[11] Avec le consentement de M. Thiffault, le syndic dépose les pièces documentaires P-1 à P-32.

[12] La pièce P-1 nous fait voir que l'intimé n'a plus de certificat l'autorisant à exercer la profession depuis le 7 avril 2019.

[13] À la demande du syndic, une ordonnance de non-publication, non-diffusion et non-divulgation est rendue par le Comité en vertu de l'article 142 du *Code des professions*.

[14] L'intimé désire s'expliquer. Dûment assermenté, il déclare essentiellement ce qui

suit :

- C'est à l'âge de 69 ans qu'il est devenu courtier en assurance de dommages;
- Il a terminé son cours en courtage d'assurance de dommages en 2014 et a commencé à travailler uniquement en 2017;
- Précédemment, il œuvrait en restauration et le commerce de vêtements;
- Considérant les événements décrits à la plainte, il fut congédié par son employeur, le cabinet OVC inc.;
- Il aimait beaucoup son travail mais lorsqu'il a commencé à travailler à temps plein, il devait faire environ 70 heures par semaine;
- C'est dans ce contexte difficile et sans soutien de la part du cabinet qu'il a commis les infractions décrites à la plainte;
- Aujourd'hui, il se sent humilié par son comportement dérogatoire;
- Quant à sa situation financière, il la considère précaire et à ce sujet, l'intimé nous remet un document établissant ses sources de revenus;
- Il reçoit en ce moment des prestations d'assurance-emploi qui viennent à échéance au mois de décembre 2019;
- En raison de son âge et considérant le présent dossier, il ne croit pas qu'il pourra se trouver un nouvel emploi dans le domaine du courtage d'assurance;
- Dans une lettre qu'il a transmis à M^{e} Cardinal le 5 juillet 2019, il propose à ce dernier de suggérer au Comité une radiation permanente de son certificat;
- En effet, l'intimé n'aurait pas l'intention de renouveler son certificat et revenir à la profession;
- Finalement, l'intimé considère qu'il n'a pas les moyens de payer l'amende suggérée par la partie plaignante.

III. Recommandations sur sanction du syndic

[15] M^{e} Cardinal est d'avis que la sanction suivante serait juste et appropriée dans les circonstances du présent dossier tout en tenant compte de la situation particulière de M.

Thiffault, à savoir :

- Chefs n^{os} 1a. à 1e. : une radiation temporaire de 3 mois;
- Chef n^{o} 2 : une amende de 3 000 $;
- Chef n^{o} 3 : une amende de 2 500 $;
- Chef n^{o} 4 : une amende de 2 000;
- En vertu du principe de la globalité, réduire les amendes totalisant la somme de 7 500 $ à une somme globale de 2 000 $;
- Accorder un délai de 24 mois à l'intimé pour payer l'amende globale de 2 000 $ et ce, en 24 versements mensuels, égaux et consécutifs, le tout avec une clause de déchéance de bénéfice du terme en cas de défaut.

[16] Puisque l'intimé ne pratique pas actuellement, sa radiation ne sera exécutoire qu'à compter de la remise en vigueur de son certificat[1]. À ce moment, le secrétaire du Comité devra procéder à la publication d'un avis de la radiation temporaire de l'intimé.

[17] M^{e} Cardinal nous explique pour quelles raisons le syndic nous recommande d'imposer les sanctions ci-haut décrites.

[18] Quant aux facteurs aggravants, l'avocat du syndic insiste sur les suivants :

- il s'agit d'infractions qui se situent au cœur de la profession;
- les conséquences néfastes chez certains assurés;
- la mise en péril de la protection du public.

[19] Quant aux facteurs atténuants dont l'intimé doit bénéficier, M^{e} Cardinal souligne :

- l'absence d'antécédent disciplinaire de l'intimé;
- son plaidoyer de culpabilité à la première occasion ;
- la situation financière difficile de l'intimé;

1 *Lambert* c. *Agronomes*, 2012 QCTP 39 (CanLII);

- un risque de récidive inexistant, puisque l'intimé ne souhaite plus revenir à la profession.

[20] À l'appui de cette suggestion de sanction, le procureur du syndic nous réfère notamment aux précédents jurisprudentiels suivants du Comité :

- *ChAD* c. *Bonin*, 2018 CanLII 38257 (QC CDCHAD)
- *ChAD* c. *Dupuis-Richard*, 2018 CanLII 78589 (QC CDCHAD)
- *ChAD* c. V*erret*, 2019 CanLII 47053 (QC CDCHAD)
- *ChAD* c. *Dion*, 2017 CanLII 66281 (QC CDCHAD)

IV. Recommandations sur sanction de l'intimé

[21] M. Thiffault nous mentionne qu'il serait d'accord pour payer l'amende de 2 000 $ en autant qu'il occupe un emploi comme courtier en assurance de dommages.

[22] Questionné par le vice-président, il apparait clairement des propos de l'intimé qu'il ne veut tout simplement pas se faire imposer une ou des amendes.

[23] Si nous avons bien compris l'argumentaire de l'intimé, il prétend qu'il n'aurait pas la capacité financière de payer une somme de 2 000 $ échelonnée sur 2 ans.

[24] M. Thiffault préfère une radiation permanente de son certificat puisque de toute façon il n'entend pas revenir à la profession.

V. Analyse et décision

[9] Considérant que la sanction imposée doit favoriser la réinsertion sociale de l'accusé plutôt que de chercher à le punir outre mesure[2], le Comité est d'opinion que la sanction suggérée par la partie plaignante est taillée sur mesure pour l'intimé.

[10] En tenant compte des représentations des parties, le Comité considère que cette sanction, dans sa globalité, constitue une sanction qui est juste et équitable et ce, après avoir tenu compte et fait l'évaluation de tous les facteurs tant aggravants qu'atténuants[3].

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2 *R*. c. *Pham*, 2013 CSC 15 (CanLII), voir aussi *ChAD* c. *Gouin*, 2016 CanLII 53909 (QC CDCHAD);
3 BERNARD, P. *La sanction en droit disciplinaire : quelques réflexions,* dans « Développement récent en déontologie, droit professionnel et disciplinaire », S.F.P.B.Q., 2004, 2006, pp. 71 et ss.;

[11] Bien sûr, la gravité objective des infractions commises par l'intimé ne fait pas de doute.

[12] Toutefois, dans le cadre de son délibéré, le Comité est venu aisément à la conclusion que la sanction suggérée par le syndic, soit l'imposition d'une amende globale de 2 000 $ payable sur une période de 2 ans, en 24 versements mensuels, égaux et consécutifs, ne sera pas du tout accablante pour l'intimé.

[13] C'est d'ailleurs aussi pour cette raison que le Comité ne peut pas retenir l'argumentaire de l'intimé. En 2 ans, il a manifestement les moyens de payer cette amende globale.

[14] En effet, le syndic tient compte de la situation financière de l'intimé dans l'élaboration de sa suggestion de sanction. Il applique le principe de la globalité de la sanction, tel qu'élaboré par le Tribunal des professions dans *Kenny* c. *Dentistes*[4] :

> *« Quant à la globalité ou à la totalité des amendes imposées (…) elle doit être analysée par le comité de discipline. Ce dernier doit regarder si cette globalité ou totalité ne constitue pas une sanction* accablante *même si les sanctions imposées sur chacun des chefs peuvent par ailleurs apparaître justes, appropriées et proportionnées dans les circonstances. »*

[15] À nos yeux, ce dernier passage s'applique intégralement au cas de l'intimé et c'est pourquoi, en vertu du principe de la globalité, le syndic a réduit le total des amendes à une somme globale de 2 000 $.

[16] Par ailleurs, nous sommes d'avis qu'une radiation temporaire de 3 mois sur les chefs 1a. à 1e. est tout à fait approprié compte tenu de la grande gravité objective de ces infractions.

[17] En effet, il s'agit d'infractions très graves et elles se situent au cœur de la profession de courtier d'assurance. Une période de suspension est pleinement justifiée afin de mettre davantage l'accent sur la dissuasion et ce, particulièrement dans le cas où l'intimé change d'idée et ose un retour à la profession.

[18] Puisque l'intimé ne pratique pas actuellement, sa radiation ne sera exécutoire qu'à compter de la remise en vigueur de son certificat par l'Autorité des marchés financiers[5].

[19] À ce moment, et afin d'informer le public, le secrétaire du Comité devra procéder, aux frais de l'intimé, à la publication d'un avis de la radiation temporaire de ce dernier.

V. Conclusion

4 [1993] D.D.C.P. 214 (T.P.);
5 *Lambert* c. *Agronomes*, 2012 QCTP 39 (CanLII);

[20] Le Comité considère donc que dans sa globalité, l'imposition d'une période de radiation temporaire de 3 mois jumelée avec le paiement d'une amende globale de 2 000 $ constitue une sanction qui satisfait entièrement aux objectifs établis par la Cour d'appel dans l'arrêt *Pigeon* c. *Daigneault*[6].

[21] En effet, selon le Comité, la sanction privilégiée par le Comité atteint chacun des objectifs suivants : la protection du public, la dissuasion du professionnel de récidiver, l'exemplarité à l'égard des membres de la profession qui pourraient être tentés de poser des gestes semblables et finalement, le droit du professionnel visé d'exercer sa profession.

[25] Tel que ci-haut mentionné, considérant la situation financière difficile de l'intimé, le Comité lui accordera un délai de 2 ans pour payer l'amende globale dans le présent dossier. Toutefois, si l'intimé devait être en défaut de payer à échéance l'un ou l'autre des versements mensuels, il perdra le bénéfice du terme et toute somme alors impayée deviendra immédiatement due et exigible.

[26] Quant aux déboursés, en l'absence de représentations à ce sujet par les parties, le Comité décide qu'ils devront être assumés par l'intimé.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

PREND ACTE du plaidoyer de culpabilité de l'intimé Lionel Thiffault sur les chefs n^{os} 1 à 4 de la plainte;

DÉCLARE l'intimé coupable des chefs n^{os} 1a., 1b., 1c., 1d. et 1e. de la plainte pour avoir contrevenu à l'article 29 du *Code de déontologie des représentants en assurance de dommages;*

DÉCLARE l'intimé coupable du chef n^{o} 2 de la plainte pour avoir contrevenu à l'article 37(4^{o}) du *Code de déontologie des représentants en assurance de dommages* ;

DÉCLARE l'intimé coupable du chef n^{o} 3 de la plainte pour avoir contrevenu à l'article 37(7^{o}) du *Code de déontologie des représentants en assurance de dommages* ;

DÉCLARE l'intimé coupable du chef n^{o} 4 de la plainte pour avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome*;

6 2003 CanLII 32934 (QC CA) aux paragraphes 38 et suivants;

PRONONCE un arrêt conditionnel des procédures à l'égard de toutes les autres dispositions législatives et réglementaires alléguées au soutien des chefs d'accusation susdits;

Sur les chefs n^{os} 1a. à 1e. inclusivement :

IMPOSE à l'intimé une radiation temporaire de 3 mois, à être purgée à l'expiration du délai d'appel si l'intimé est titulaire d'un certificat délivré par l'Autorité des marchés financiers ou, à défaut, à compter du moment où son certificat sera remis en vigueur par l'Autorité des marchés financiers;

Sur le chef n^{o} 2 :

IMPOSE à l'intimé une amende de 3 000 $;

Sur le chef n^{o} 3 :

IMPOSE à l'intimé une amende de 2 500 $;

Sur le chef n^{o} 4 :

IMPOSE à l'intimé une amende de 2 000 $;

CONSIDÉRANT le principe de la globalité de la sanction, **RÉDUIT** le montant total des amendes ci-haut mentionnées à la somme globale de 2 000 $;

DÉCLARE que la période de radiation temporaire sera exécutoire à compter de la remise en vigueur du certificat de l'intimé;

ORDONNE la publication d'un avis de radiation temporaire à compter de la remise en vigueur du certificat de l'intimé;

CONDAMNE l'intimé au paiement de tous les déboursés incluant, le cas échéant, les frais de publication de l'avis de radiation temporaire;

ACCORDE à l'intimé un délai de 24 mois pour acquitter les amendes en 24 versements mensuels, égaux et consécutifs, délai qui sera calculé uniquement à compter du 31ième jour suivant la signification de la présente décision;

DÉCLARE que si l'intimé est en défaut de payer à échéance l'un ou l'autre des versements susdits, il perdra le bénéfice du terme et toute somme alors impayée deviendra immédiatement due et exigible.

Me Daniel M. Fabien, avocat
Vice-président du Comité de discipline

M. Philippe Jones, courtier en assurance de dommages
Membre

Mme Anne-Marie Hurteau, MBA, FPAA, CRM
courtier en assurance de dommages
Membre

Me Mathieu Cardinal
Procureur de la partie plaignante

M. Lionel Thiffault, non représenté
Partie intimée

Date d'audience : 11 juillet 2019

3.7.3.3 OCRCVM

Aucune information.

3.7.3.4 Bourse de Montréal Inc.

Aucune information.