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° : CD00-1352

DATE : **6 février 2020**

LE COMITÉ[1] : Me George R. Hendy — Président
M. Armand Ethier, A.V.C. — Membre

LYSANNE TOUGAS, ès qualités de syndique par intérim de la Chambre de la sécurité financière

Partie plaignante

c.

STEVE LABRECQUE (certificat 152982, BDNI 2063981)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

CONFORMÉMENT À L'ARTICLE 142 DU *CODE DES PROFESSIONS*, LE COMITÉ A PRONONCÉ L'ORDONNANCE SUIVANTE :

- **Ordonnance de non-divulgation, de non-publication et de non-diffusion du nom et du prénom des consommateurs visés par la plainte disciplinaire, ainsi que de toute information permettant de les identifier.**

[1] Le troisième membre du comité, M. Louis-André Gagnon, étant empêché d'agir, la présente décision est rendue par les deux autres membres conformément à l'article 371 de la *Loi sur la distribution de produits et services financiers* (RLRQ, c. D-9.2) et à l'article de 118.3 du *Code des professions* (RLRQ, c. C-26).

[1] Le 28 mars 2019, le comité de discipline de la Chambre de la sécurité financière (le « **Comité** ») s'est réuni aux bureaux de la Chambre, sis au 2000, avenue McGill College, 12e étage, à Montréal, et a procédé à l'audition d'une plainte disciplinaire déposée contre l'intimé ainsi libellée :

> **LA PLAINTE**
>
> 1. Dans la province de Québec, entre les ou vers les 4 novembre 2010 et le 30 septembre 2015, l'intimé a falsifié ou permis que soient falsifiés environ dix (10) formulaires « Proposition électronique d'assurance - Déclaration et autorisation », notamment en modifiant des dates et des numéros de contrat ou de proposition afin de les soumettre au soutien de nouvelles propositions d'assurance, contrevenant ainsi aux articles 16 de la *Loi sur la distribution de produits et services financiers* (RLRQ, c. D-9.2), 16, 34 et 35 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, c. D-9.2, r.3);
>
> 2. Dans la province de Québec, entre les ou vers les 19 août 2014 et 5 août 2015, l'intimé a confectionné ou permis que soient confectionnés environ onze (11) formulaires « Déclaration et autorisation », « Proposition d'assurance Solution simple » et « Confirmation des dates concernant la proposition d'assurance électronique » en laissant faussement croire que ses clients les avaient signés, contrevenant ainsi aux articles 16 de la *Loi sur la distribution de produits et services financiers* (RLRQ, c. D-9.2), 11 et 35 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, c. D-9.2, r.3).

PLAIDOYER DE CULPABILITÉ

[2] L'intimé était absent lors de l'audition, mais a déposé un plaidoyer de culpabilité daté du 19 février 2019 (pièce P-5) aux deux chefs d'infraction ci-haut énoncés, dans lequel il renonçait à la signification de l'avis de déclaration de culpabilité suivant l'article 150 du *Code des professions* et consentait à l'imposition d'une radiation temporaire de trois mois comme sanction pour chacun des deux chefs d'infraction, à être purgée de façon consécutive, à compter de sa réinscription, le cas échéant, à la publication d'un avis de la décision, et à sa condamnation au paiement des déboursés.

[3] Vu la déclaration de l'intimé qu'il n'assisterait pas à l'audition, le Comité a alors autorisé la plaignante à procéder *ex parte*, a pris acte du plaidoyer de culpabilité de l'intimé et l'a déclaré coupable des deux chefs d'infraction ci-haut énoncés, séance tenante. Considérant le principe interdisant les condamnations multiples, le Comité déclarera l'intimé coupable des deux chefs d'infraction pour avoir contrevenu à l'article

16 de la *Loi sur la distribution de produits et services financiers* et ordonnera l'arrêt conditionnel des procédures en vertu des articles 11, 16, 34 et 35 du *Code de déontologie de la Chambre de la sécurité financière.*

[4] Après l'enregistrement dudit plaidoyer, la plaignante, alors représentée par M^e^ Julie Piché, mais depuis remplacée par M^e^ Jean-Simon Britten, a présenté au Comité sa preuve et a fait ses représentations sur sanction.

PREUVE DE LA PLAIGNANTE

[5] M^e^ Piché versa alors au dossier une preuve documentaire non contredite qui fut cotée P-1 à P-4. Elle ne fit entendre aucun témoin.

[6] Essentiellement, la preuve non contredite a démontré ce qui suit :

Chef d'infraction #1

a) Afin d'éviter le déplacement de son client (G.M.) pour signer une nouvelle proposition d'assurance après qu'une première proposition ait été refusée par l'assureur pour raisons médicales, les 7 avril 2014 et 14 avril 2015, l'intimé a soumis deux propositions d'assurance (pièce P-3, première section, pages 000044, 000045, 000046 et 000047) pour le même client qui était des photocopies altérées (pas signées à nouveau par le client) d'une première proposition en date du 21 novembre 2013 (pièce P-3, première section, pages 000042 et 000043);

b) L'intimé avait déjà fait la même chose en date du 4 novembre 2010 pour un autre client (J.-C.B.), lorsqu'il s'est servi d'une version altérée d'une première proposition d'assurance (refusée par l'assureur) pour soumettre une autre proposition six mois plus tard (pièce P-3, deuxième section, pages 000048, 000049, 000050 et 000051);

c) L'intimé s'est servi du même *modus operandi* pour faire la même chose à huit autres reprises, comme suit:

i) pour la cliente R.J., en date du 14 octobre 2014 (pièce P-3, troisième section, pages 000054, 000055, 000056 et 000057);

ii) pour le client R.L., en date du 20 janvier 2015 (pièce P-3, quatrième section, pages 000064, 000065, 000066 et 000067);

iii) pour le client P.R., en date du 30 septembre 2015 (pièce P-3, cinquième section, pages 000075, 000076, 000077 et 000078);

iv) pour le client P.R., en date du 3 novembre 2014 (pièce P-3, sixième section, pages 000079, 000080, 000081 et 000082);

v) pour la cliente S.V., en date du 30 octobre 2014 (pièce P-3, septième section, pages 000086, 000087, 000088 et 000089);

vi) pour le client J.L., en date du 2 septembre 2014 (pièce P-3, huitième section, pages 000813, 000814, 000827 et 000828);

vii) pour le client J.P., en date du 17 août 2015 (pièce P-3, neuvième section, pages 000845, 000846, 000867 et 000868);

viii) pour le client R.M., en date du 14 août 2013 (pièce P-3, dixième section, pages 000899, 000900, 000913 et 000914).

Chef d'infraction #2

a) L'intimé a aussi confectionné ou permis que soient confectionnés 11 formulaires d'assurance en laissant faussement croire que les clients les avaient signés, en se servant plutôt de photocopies de signatures antérieures desdits clients, tel que suit :

i) concernant le client M.L., en date du 6 janvier 2015 (pièce P-4, première section, pages 000024 et 000026), ledit client ayant signé un affidavit niant avoir signé la deuxième proposition (pièce P-4, première section, page 000275);

ii) concernant le client G.L., en date du 22 avril 2015 (pièce P-4, deuxième section, pages 000027 et 000029), ce client ayant également nié avoir signé la deuxième proposition (pièce P-4, deuxième section, page 000242);

iii) concernant les clients G.P. et M.P., en date du 4 mars 2015 (pièce P-4, troisième section, pages 000030 et 000032);

iv) concernant le client, D.I., en date du 5 août 2015 (pièce P-4, quatrième section, pages 000033 et 000035);

v) concernant la cliente H.G.-M., en date du 5 janvier 2015 (pièce P-4, cinquième section, pages 000036 et 000038);

vi) concernant le client C.D., en date du 18 février 2015 (pièce P-4, sixième section, pages 000039 et 000041);

vii) concernant la cliente M.L., en date du 20 janvier 2015 (pièce P-4, septième section, pages 000058 et 000062);

viii) concernant la cliente J.L, en date des 19 août 2014 et 19 novembre 2014 (pièce P-4, huitième section, pages 000069, 000070 et 000071);

ix) concernant le client S.N., en date du 11 novembre 2014 (pièce P-4, neuvième section, pages 000072 et 000074), le client ayant nié sa signature sur la deuxième proposition (pièce P-4, neuvième section, page 000671);

x) concernant le client F.T., en date du 17 février 2015 (pièce P-4, dixième section, pages 000083 et 000085).

[7] L'intimé a été congédié par son employeur en date du 5 novembre 2015 à cause de sa conduite ci-haut décrite (pièce P-2).

REPRÉSENTATIONS DE LA PLAIGNANTE

[8] Tel que confirmé au paragraphe 7 du plaidoyer de culpabilité (pièce P-5), M^e^ Piché a informé le Comité que les parties avaient une recommandation commune pour la sanction, soit une radiation temporaire de trois mois pour chacun des deux chefs d'infraction de la plainte, à être purgée de façon consécutive, à partir de la réinscription de l'intimé auprès de l'Autorité des marchés financiers, le cas échéant, avec une condamnation au paiement des déboursés, y compris ceux pour la publication d'un avis de la décision dans les journaux locaux de la région où l'intimé a son domicile professionnel.

[9] M^e^ Piché souligna comme facteurs aggravants la gravité objective des infractions reprochées (réutilisation d'anciennes propositions pour en créer des nouvelles et utilisation de photocopies des signatures de clients à l'appui de nouveaux formulaires contractuels, pratiques qui ne sont pas tolérées dans l'industrie), le fait qu'il s'agit d'actes qui vont au cœur de la profession et qui portent atteinte à l'image de celle-ci, l'expérience de l'intimé (huit à 13 ans au moment des infractions), l'impact de ces gestes illégaux sur l'assureur qui a droit de faire confiance aux affirmations du représentant, la vulnérabilité des clients qui n'étaient pas au courant des gestes de l'intimé, le nombre de clients impliqués (23), le nombre de gestes illégaux prémédités (21) et le fait que cette conduite illégale a perduré pendant une période de presque cinq ans, le tout ayant occasionné une perte de temps et de ressources importante de l'employeur pour le traitement des propositions et formulaires non-autorisés.

[10] Comme facteurs atténuants, elle souligna le fait que l'intimé n'a pas d'antécédents disciplinaires, que les consommateurs concernés n'ont subi aucun préjudice financier, le fait que l'intimé n'a réalisé aucun gain de ses gestes, qu'il a n'a pas agi de mauvaise foi, qu'il a plaidé coupable et a reconnu sa faute, ainsi que le congédiement de l'intimé.

[11] La plaignante a ensuite référé le Comité à la jurisprudence suivante démontrant que, dans des cas similaires, la sanction suggérée était appropriée :

a) *Néron* c. *Médecins (Ordre professionnel des)*, 2015 QCTP 31 (CanLII)

b) *Riendeau* c. *Deschamps*, 2018 QCCQ 5664 (CanLII)

c) *Chambre de la sécurité financière* c. *Boucher*, 2008 CanLII 22567 (QC CDCSF);

d) *Chambre de la sécurité financière* c. *Lembe*, 2008 CanLII 54391 (QC CDCSF);

e) *Chambre de la sécurité financière* c. *Biagioni*, 2011 CanLII 99519 (QC CDCSF);

f) *Chambre de la sécurité financière* c. *Monette*, 2017 QCCDCSF 59 (CanLII);

g) *Chambre de la sécurité financière* c. *Le Corvec,* 2010 CanLII 99886 (QC CDCSF);

h) *Chambre de la sécurité financière* c. *Pitre,* 2012 CanLII 97182 (QC CDCSF);

i) *Chambre de la sécurité financière* c. *Beckers,* 2012 CanLII 97172 (QC CDCSF);

j) *Chambre de la sécurité financière* c. *Gauthier*, 2015 QCCDCSF 6 (CanLII).

ANALYSE ET MOTIFS

[12] Compte tenu de la nature distincte, sérieuse et flagrante des infractions, le Comité est d'avis que l'imposition de sanctions consécutives est justifiée, pour les raisons énoncées dans les décisions *Néron* et *Riendeau* ci-haut.

[13] Considérant ce qui précède, après révision des éléments, tant objectifs que subjectifs, atténuants qu'aggravants, qui lui ont été présentés, le Comité est d'avis que la radiation temporaire de trois mois pour chacun des deux chefs d'infraction, à être purgée de façon consécutive, proposée par les parties serait une sanction juste et appropriée, adaptée à chacune des infractions, conforme aux précédents jurisprudentiels

applicables, ainsi que respectueuse des principes d'exemplarité, de gradation des sanctions et de dissuasion dont il ne peut faire abstraction.

[14] En conséquence, le Comité condamnera l'intimé à une radiation temporaire de trois mois sous chacun des deux chefs d'infraction, à être purgée de façon consécutive, à compter de la date à laquelle il reprendra son droit de pratique à la suite de l'émission d'un certificat en son nom par l'Autorité des marchés financiers ou par toute autre autorité compétente, le cas échéant.

[15] Quant aux déboursés, aucun motif ne lui ayant été soumis qui lui permettrait de passer outre à la règle habituelle voulant que les déboursés nécessaires à la condamnation du représentant fautif lui soient généralement imputés, le Comité condamnera l'intimé à leur paiement, y compris ceux pour les frais de publication d'un avis de la décision dans un journal circulant dans les lieux du domicile professionnel de l'intimé.

PAR CES MOTIFS, le Comité de discipline :

RÉITÈRE l'ordonnance de non-divulgation, de non-publication et de non-diffusion du nom et du prénom des consommateurs visés par la plainte disciplinaire ainsi que de toute information permettant de les identifier;

PREND ACTE à nouveau du plaidoyer de culpabilité enregistré par l'intimé sous les deux chefs d'infraction contenus à la plainte;

RÉITÈRE la déclaration de culpabilité de l'intimé prononcée à l'audience relativement aux deux chefs d'infraction contenus à la plainte disciplinaire pour avoir contrevenu à l'article 16 de la *Loi sur la distribution de produits et services financiers* (RLRQ, c. D- 9.2);

ORDONNE l'arrêt conditionnel des procédures en vertu des articles 11, 16, 34 et 35 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, c. D-9.2, r.3);

ET PROCÉDANT SUR SANCTION :

CONDAMNE l'intimé à une radiation temporaire de trois mois sous chacun des deux chefs d'infraction contenus à la plainte disciplinaire, à être purgée de façon consécutive, laquelle débutera qu'au moment où l'intimé reprendra, le cas échéant, son droit de pratique et que l'Autorité des marchés financiers ou toute autorité compétente émettra un certificat en son nom;

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

ORDONNE au secrétaire du comité de ne procéder à cette publication qu'au moment où, le cas échéant, l'intimé reprendra son droit de pratique et que l'Autorité des marchés financiers ou toute autorité compétente émettra un certificat en son nom;

CONDAMNE l'intimé au paiement des déboursés, y compris les frais d'enregistrement, conformément aux dispositions de l'article 151 du *Code des professions* (RLRQ, c. C-26).

(s) George R. Hendy
Me George R. Hendy
Président du comité de discipline

(s) Armand Ethier
M. Armand Ethier, A.V.C.
Membre du comité de discipline

Me Jean-Simon Britten
THERRIEN COUTURE JOLI-CŒUR S.E.N.C.R.L.
Procureurs de la partie plaignante

L'intimé était absent et non représenté

Date d'audience : 28 mars 2019

COPIE CONFORME À L'ORIGINAL SIGNÉ

DISCIPLINARY COMMITTEE
CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUÉBEC

Nº: CD00-1262

DATE: February 12, 2020

THE COMMITTEE: Me George R. Hendy — President
Mr. Antonio Tiberio — Member
Mr. Jean-Michel Bergot — Member

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

Plaintiff

v.

MURAD Y. HANNOUSH (certificate #174335, NRD 2064751)

Respondent

DECISION REGARDING SANCTIONS

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

- **Orders the non-disclosure, non-publication and non-dissemination of the names and surnames of clients whose initials are mentioned in the 12 counts herein, as well as any information which might enable their identification.**

[1] On June 20, 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 (the "**CSF**"), located at 2000 McGill College Avenue, 12th floor, in Montréal, for the sanctions hearing following a decision rendered on April 3, 2018 finding Respondent guilty of all 12 counts of a disciplinary complaint dated July 19, 2017 (the "**Complaint**"), which reads as follows, once translated into English[1]:

THE COMPLAINT

1. In the Montreal area, during the month of April 2014, the Respondent had his client, E.H., sign a partially blank form entitled "Electronic insurance application declaration and authorization", thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

2. In the Montreal area, during the period from April 2014 to May 2015, the Respondent had his clients, S.L. and V.C., sign blank and/or partially blank forms on several occasions, 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, c. V-1.1), sections 11, 34, 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3) and sections 10 and 14 of the *Regulation respecting the Code of ethics in the securities sector* (CQLR, c. D-9.2, r.7.1);

3. In the Montreal area, on or about April 10, 2014, the Respondent prepared a form entitled "Policy change, reinstatement and/or reconsideration of rating application requiring evidence" by inserting a page from another form and falsely suggesting that A.K. had signed said document, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

4. In the Montreal area, on or about April 10, 2014, the Respondent prepared a form entitled "Policy change, reinstatement and/or reconsideration of rating application requiring evidence" by inserting a page from another form and falsely suggesting that G.K. had signed said document, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2), and sections 11 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

5. In the Montreal area, on or about October 27, 2014, the Respondent had his client, N.T., sign a partially blank form entitled "Personal health insurance - pre-authorized chequing (PAC) authorization for Web applications", thereby

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

contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, R.3);

6. In the Montreal area, between the months of November 2014 and April 2015, the Respondent repeatedly provided false information to the insurer on forms entitled "Electronic insurance application and declaration" (French and English versions) and "*Declaration et autorisation relative à la proposition électronique d'assurance de soins de longue durée*" declaring that he had witnessed the signature of the beneficiaries, P.H., E.H., F.H., J.H. and G.H., when they were in fact not present, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

7. In the Montreal area, approximately during the month of January 2015, the Respondent had his client, S.K., sign a partially blank form entitled "*Formulaire de demande de service de rééquilibrage automatique*", thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

8. In the Montreal area, approximately during the month of January 2015, the Respondent had his clients, V.S.S. and A.S., sign several blank and/or partially blank forms, thereby contravening section 160 of the *Securities Act* (CQLR, c. V-1.1) and sections 10 and 14 of the *Regulation respecting the rules of ethics in the securities sector* (CQLR, c. D-9.2, r. 7.1);

9. In the Montreal area, on or about January 10, 2015, the Respondent had his client, S.K., sign a partially blank form entitled "Transfer authorization for non-registered investments", thereby contravening section 160 of the *Securities Act* (CQLR, c. V-1.1) and sections 10 and 14 of the *Regulation respecting the Code of ethics in the securities sector* (CQLR, c. D-9.2, r.7.1);

10. In the Montreal area, on or about July 22, 2015, the Respondent prepared a form entitled "Transfer authorization for registered investments" by inserting a page from another form and falsely suggesting that G.S. had signed said document, thereby contravening sections 160 of the *Securities Act* (CQLR, c. V-1.1), 10, 14 and 16 of the *Regulation respecting the Code of ethics in the securities sector* (CQLR, c. D-9.2, r.7.1);

11. In the Montreal area, during the period November 18 to 24, 2015, the Respondent appropriated the sum of $1,350 by issuing cheques drawn on his personal account(s), payable to the order of his client, I.K., which cheques were not honoured because of insufficient funds, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2), sections 160 and 160.1 of the *Securities Act* (CQLR, c. V-1.1), sections 11, 17, 18, 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3) and sections 2, 6, 10 and 14 of the *Regulation respecting the Code of ethics in the securities sector* (CQLR, c. D-9.2 , r.7.1);

12. In the Montreal area, between approximately December 21, 2015 and February 8, 2016, the Respondent made to his client, L.S., false, incomplete and potentially misleading statements or representations regarding the investment performance and/or the value of the account of the latter, thereby contravening sections 7, 10 and 14 of the *Regulation respecting the Code of ethics in the securities sector* (CQLR, c. D-9.2, r.7.1).

[2] As was the case for the initial hearing regarding guilt, Plaintiff was represented by Me Nathalie Vuille, while the Respondent represented himself.

INTRODUCTION

[3] As stated in the judgment herein regarding Respondent's guilt, the offences committed by Respondent may be summarized as follows:

(a) having his clients sign partially blank forms and completing them later (Count #1, Exhibit P-10; Count #2, Exhibits P- 19 to P-22; Count #5, Exhibits P-28 and P-29; Count #7, Exhibit P-43; Count #8, Exhibits P-46 to P-56; Count #9, Exhibits P-44 and P-45);

(b) using the client's prior signature on a document to create another document (Count #2, Exhibits P-13 to P-18 and P-23 to P-25; Counts #3 and #4, Exhibits P-26 and P-27; Count #10, Exhibit P-57);

(c) falsely claiming to have witnessed the signatures appearing on insurance forms (Count #6, Exhibits P-30 to P-35);

(d) having appropriated $1,350 from a client (Count #11, Exhibits P-58 and P-59);

(e) having made false, incomplete, and potentially misleading statements and representations as to the investment performance and/or the value of a client's account (Count #12, Exhibits P-60 and P-61).

[4] The Respondent had previously been found guilty in another case (judgment dated April 20, 2016, CD00-1127[2]) of 11 counts for infractions which occurred in August 2013

[2] *CSF* c. *Hannoush*, 2016 CanLII 24456 (QC CDCSF).

involving similar misconduct (copy-pasting the signatures of clients to create new documents, and falsely asserting that he had witnessed clients' signatures and false attestations of his clients' identities).

PLAINTIFF'S REPRESENTATIONS

[5] Me Vuille argued that the appropriate sanction in this case would be a lifetime suspension, with immediate publication of the decision and a condemnation to pay the costs pursuant to sections 151 and 156 of the *Professional Code* for the following reasons:

(a) the various infractions all involved prohibited activities in contravention of section 16 of the *Act respecting the distribution of financial products and services*, section 160 of the *Securities Act*, section 17 of the *Code of Ethics of the Chambre de la sécurité financière*, and section 14 of *Regulation respecting the rules of ethics in the securities sector*, all of the which strike at the very heart of the core activities of the profession and undermine the image of the advisor and the profession;

(b) the client's signature on a transactional document should only be affixed once the document is complete, so as to assure that the client is aware of the entire contents and import of same before signing it;

(c) Me Vuille argued that Respondent's past disciplinary record raises serious concerns as to the risk of recidivism and his ability to correct his way of doing business;

(d) the infractions were not limited to an isolated incident, but rather involved many clients and premeditated transgressions, which give the impression that they were a routine part of Respondent's daily *modus operandi*;

(e) although the complaint in case CD00-1127 was filed on May 28, 2015, and the infractions in Counts 1 to 9 in this case occurred prior to that date, the events relating to Counts 10, 11 and 12 in the current Complaint occurred

after the filing of proceedings in case CD00-1127, and all of the infractions in the Complaint herein occurred after Respondent was dismissed by the Royal Bank of Canada after discovery of the infractions in case CD00-1127, such that Respondent could not have ignored that his conduct in this case was wrong;

(f) Me Vuille argued that the Respondent's conduct herein clearly demonstrates that he appears incapable of comprehending the gravity of his misconduct or of correcting it in the future, which justifies the imposition of the most severe sanction available, a permanent striking off the role, the whole in order to protect the public from what she argues is a serious risk of recidivism by the Respondent and to make an example of the Respondent for his repeated flouting of ethical rules.

[6] In support of her recommendation of a permanent striking off the role, Me Vuille cited the following authorities:

(a) *Paquette* c. *Comité de discipline de la Corporation professionnelle de médecins du Québec*, 1995 RDJ 301 (QC CA)

- Me Vuille cited this decision as authority for the principle that disciplinary tribunals do not always require a graduation in the severity of sanctions before imposing the most severe one. This decision involves an application for judicial review (dismissed by the Superior Court) of a judgment in a disciplinary matter where the *Tribunal des professions* imposed a permanent striking off the role (rather than the temporary striking off the role of two months imposed in first instance) against a doctor who gave his patients therapies which were dangerous and not approved. In dismissing the doctor's appeal from the judgment dismissing his application for judicial review, Mr. Justice Baudouin recognized that he was not absolutely certain that he would himself have imposed the most severe sanction, but nevertheless found that the appellant had not

established the unreasonable nature of the decision, considering his prior disciplinary record. In explaining his decision, Justice Baudouin stated that "the graduation of sanctions, which constitutes one of the guiding principles regarding the choice of appropriate sanctions, cannot overrule the need to protect public health";

(b) *Chevalier* c. *Infirmières et infirmiers (Ordre professionnel des)*, 2005 QCTP 137

- The Disciplinary Committee of the Quebec Order of Nurses imposed (*inter alia*) a temporary striking off the role of five years against a nurse, who appealed the decision to the *Tribunal des professions* on the grounds that the Disciplinary Committee had not respected the principle of graduation of sanctions, as the nurse had been suspended for three months in 1995 for similar infractions. The *Tribunal des professions* dismissed the appeal, in relying upon the extensive disciplinary record of the nurse, the fact that the infraction involved unacceptable and highly reprehensible conduct against elderly patients who suffered from reduced or total lack of autonomy, as well as the fact that the nurse had not attended or otherwise made representations at the sanctions hearing, and because of the Court of Appeal decision in the *Paquette* case (cited above).

(c) *R.* c. *Lacasse*, [2015] 3 RCS 1089

- In this case, the Supreme Court restored the sentence imposed by the trial judge which the Québec Court of Appeal had reduced in severity because it fell outside the sentencing ranges established by the jurisprudence for similar cases. The Supreme Court held that sentencing ranges are useful guidelines, which are meant to insure the parity of sentences, but should not be considered straitjackets which prevent trial judges from exercising their broad discretion based on the particular facts of each case and imposing sentences

which reflect the seriousness of the offence, the offender's degree of responsibility and his/her moral blameworthiness.

(d) *Ouellet* vs. *Médecins (Ordre professionnel des)*, 2006 QCTP 74

- The doctor charged in this case pleaded guilty to two counts of using unprofessional, insulting and threatening language towards a member of the public (who was not a patient) and an attorney, contrary to the honour and dignity of the profession. At the sanctions hearing, the Syndic sought a temporary striking off the roll of 14 days, while the respondent pleaded for a simple reprimand.

- The disciplinary committee instead decided to impose a temporary striking off the roll of one day and a fine of $1,500 for each count, and it furthermore imposed a lifetime ban against the respondent acting as a medical expert. After reviewing the applicable jurisprudence, the *Tribunal des professions* reversed the above decision of the disciplinary committee and imposed a reprimand and a fine of $1,000 for each count, and found that a reprimand alone would not have sufficed in this case because the respondent had failed to correct his abusive conduct after a prior warning in an incident which had occurred 11 years earlier.

- Me Vuille cited this decision in connection with paragraphs 49 to 55 thereof, where the *Tribunal des professions* found that the notion of the protection of the public comes into play not only where the life or health of the public is involved, but a whenever the professionalism of the respondent is called into question.

(e) *CSF* vs. *Pincemin*, 2012 CanLII 97164 (QC CDCSF)

- The representative in this case was charged with 13 different counts for offences committed during a period of at least eight years (1999 to 2007), three of which related to having clients sign forms in blank.

He had built up a heavy disciplinary record over the years, in connection with which he had signed a voluntary engagement with the Syndic in 1999 related to complaints from dissatisfied clients, then was suspended for two months after having been found guilty of seven counts of misconduct in 2001 (including failure to keep certain clients' insurance contracts in force, favouring his interests over those of a client, forging a client's signature and lying to a client about earning a commission on a transaction he recommended). The representative had also lied about his ability to work in order to obtain a postponement of the trial in that case.

- After pleading guilty to the 13 counts, the representative consented to a permanent striking off the roll for the three counts relating to the signing of documents in blank and to two other charges relating to misrepresenting his professional status on documents submitted to the insurer involved in the transaction.

(f) *CSF* vs. *Cossette*, 2013 CanLII 43429 (QC CDCSF)

- The representative in this case, who was 30 years old and had no prior disciplinary record, was charged with eight counts of having clients sign documents in blank (one count involving 59 documents by 33 different clients) and six other counts involving the submission of an insurance proposal without her client's consent, subordinating her clients' interests to her own personal interests and failing to act in a competent and professional manner by delaying the filing of insurance proposals of three other clients.

- The parties made a joint submission regarding sanction, which included a temporary striking off the roll of five years for the eight counts involving the signing of documents in blank, which submission was accepted by the disciplinary committee.

(g) *CSF* vs. *Roche*, 2003 CanLII 57224 (QC CDCSF)

- The representative in this decision was charged with 17 counts, all committed in the first year of his career, seven of which involved the signing of documents in blank, the other counts involving such offences as filing 17 proposals without the customary supporting information, falsely claiming that he had received premiums for 23 proposals from 15 clients, illegally granting premium reductions to 15 clients, filing false answers from a client in a medical questionnaire, not executing the instructions of a client concerning the conversion of an existing policy and suspending preauthorized deductions from a bank account, putting into place a plan for preauthorized deductions without the consent of two different clients and falsely claiming that the beneficiary in another policy was related to the insured person.

- The representative pleaded guilty to all charges and asked for clemency, while the complainant sought a permanent striking off the roll for each of the charges relating to signing of documents in blank, plus a fine or reprimand for the other charges. The disciplinary committee was of the view that the representative had "[…] *dès le début de sa carrière,* [...] *fait un choix, celui de la malhonnêteté et de la tromperie portant ainsi ombrage et créant un sérieux discrédit sur l'ensemble de la profession*"[3] and ruled that it was "[…] *plus approprié d'imposer à l'intimé, sur l'ensemble des chefs sa striking off the roll permanente*"[4].

(h) *CSF* vs. *Ouedraogo*, 2015 QCCDCSF 34

- The representative in this decision pleaded guilty to two counts, one of which involved the misappropriation of $2,360.23 (by the

[3] Par. 25.
[4] Par. 32.

fraudulent use of his client's credit card), and he agreed to the complainant's request for a sanction of permanent striking off the roll on the above count, which was accepted by the disciplinary committee. The Committee justified its decision on the serious nature of the infractions, the vulnerability of the client, the representative's lack of cooperation with the investigation, his initial denial of wrongdoing until confronted by incontrovertible evidence, and the high risk of recidivism arising from the representative's admission that he suffered from kleptomania.

(i) *CSF* vs. *Astouati*, 2015 QCCDCSF 42

- This case involved the misappropriation of $46,840 from a client's account after forging the client's signature on bank account withdrawal forms on 40 occasions during a period of 22 months, to which the representative pleaded guilty. The disciplinary committee accepted the parties' joint recommendation for a permanent striking off the roll, largely because of the intrinsically grave nature of the representative's misconduct, despite the absence of a prior disciplinary record, the reimbursement of the misappropriated funds by the representative and the apparent low risk of recidivism.

(j) *CSF* vs. *Boudreault*, 2015 CanLII 87580 (QC CDCSF)

- The 51-year old representative in this case pleaded guilty to fraudulent misappropriation of $1,785.72 from the accounts of three different clients during a period of six weeks, which she blamed on gambling addiction issues. The parties agreed on a temporary striking off the roll of ten years for the misappropriation (with immediate publication of the decision). The joint recommendation was accepted by the disciplinary committee, which cited several other decisions in which the sanction imposed for misappropriation varied between two and ten years temporary striking off the roll and

stressed the attenuating factors, which included the representative's reimbursement of the misappropriated sums, her lack of a prior disciplinary record, her collaboration with the investigation and her guilty plea, as well as her sincere expression of remorse.

(k) *CSF* vs. *Ferjuste*, 2013 CanLII 43430 (QC CDCSF)

- The representative in this case pleaded guilty to misappropriating the sum of $1,030 from a client, of which $330 had been reimbursed, and agreed to the imposition of a temporary striking off the roll of ten years. As in the other cases, in accepting to impose this sanction, the disciplinary committee stressed that misappropriation is one of the most serious transgressions a representative can commit, even where the amount involved is relatively small, because it violates the fundamental relationship of trust that a client must have in his advisor, whose integrity must at all times be beyond reproach, and thereby tarnishes the image of the profession.

(l) *CSF* vs. *Marapin*, 2014 CanLII 54812 (QC CDCSF)

- In this case, the representative, who had been practising for 24 years at the time of the last alleged infraction, pleaded guilty to three counts of putting himself in a position of conflict of interest by borrowing a total of $65,000 from four clients between 1998 and 2011, and two counts of misappropriation for not reimbursing a total of $13,000 when due pursuant to said loans, the third loan (for $50,000) having also been unreimbursed as of the date of hearing.

- The plaintiff sought a temporary striking off the roll of ten years for the three counts of conflict of interest and a permanent striking off the roll for the two counts of misappropriation, while the representative argued that the circumstances justified a lesser sanction of one to two years striking off the roll, especially since he

was 65 years old and would find it very difficult to return to practice after a temporary striking off the roll of ten years.

- In imposing a temporary striking off the roll of ten years for each of the five counts, the disciplinary committee took into account the fact that the representative had not acted fraudulently or with dishonest intent in contracting the loans (thereby distinguishing a number of decisions involving misappropriation invoked by the plaintiff), which were allegedly used to support a failing restaurant business operated by the representative, that he was trying to reimburse the $50,000 loan at the time of the hearing, he had collaborated with the investigation, pleaded guilty and expressed his sincere remorse for his conduct.

(m) *CSF* vs. *Wishnousky*, 2006 CanLII 59845 (QC CDCSF)

- The representative in this case (cited by Me Vuille in connection with count 12 against the Respondent herein) pleaded guilty to 26 counts of advising and ultimately persuading his clients to invest amounts varying between $5,000 and $635,000 (a total of approximately $1,000,000 over a period of two years) in a private company which had no legal authority to offer such investments, without disclosing that he was an officer of said company, thereby placing himself in a conflict of interest, while falsely representing that such investments were secure, could be withdrawn at any time without penalty, and were endorsed or accepted by the investment firm of which he was an employee. All of the clients involved lost their investments and the disciplinary committee accepted the complainant's recommendation that the appropriate sanction for the counts relating to counselling the investments while in a conflict of interest was a permanent striking off the roll.

(n) *CSF* vs. *Lamadeleine*, 2004 CanLII 59858 (QC CDCSF)

- This decision, also cited by Me Vuille in connection with count 12 against the Respondent herein, involved a representative who was found guilty of falsely representing to two elderly and vulnerable clients the nature and rate of return of an investment he persuaded them to make. The disciplinary committee imposed a temporary striking off the roll of five years.

(o) *CSF* vs. *Turcotte*, 2016 CanLII 29394 (QC CDCSF)

- This decision, again cited by Me Vuille in connection with count 12 against Respondent herein, involved a representative who pleaded guilty (*inter alia*) to (i) placing himself in a situation of conflict of interest by borrowing $50,000 from one of his clients, (ii) on the false pretence that the funds would be used to buy the book of business of another representative, and (iii) lying to his client about his assets by using a statement of account belonging to another client and presenting it as his own. The representative was convicted of criminal charges and sentenced to imprisonment in another case which apparently involved defrauding other clients.

- Amongst the aggravating factors cited were the client's lack of sophistication in financial matters, the representative's abuse of confidence, his manifest dishonesty, the premeditation exhibited, his lack of remorse and the high risk of recidivism. The disciplinary committee imposed a permanent striking off the roll.

(p) *Blanchette* vs. *Psychologues (Ordre professionnel des)*, 1995 CanLII 10864 (QC TP)

- This decision involves a disciplinary case somewhat similar to the Respondent's situation in that there is an overlap in time of two disciplinary proceedings against the same individual.

- The psychologist in this case had been struck off the roll for a period of 12 months by judgment rendered on November 4, 1988 as a result of two complaints relating to misconduct which had occurred between December 1977 and February 1979 and between February 1984 and June 1986.

- In April 1993, a new complaint was filed for similar misconduct which had occurred between September 1986 and May 1987. He pleaded guilty to these new charges on March 31, 1994 and was condemned on June 20, 1994 to another temporary striking off the roll of 12 months. The psychologist appealed this latter sentence on the grounds that there was no recidivism involved between the two cases and that he should have received a lesser sentence in the second case.

- The *Tribunal des professions* held that this was not a case of recidivism because the facts alleged in the second case had occurred before the date of the sanction in the first case. It also decided that the psychologist had established that he had reformed his conduct in the six years since the first sentence and that his sentence in the second case should be reduced (from 12 to two months) to reflect that reality, although the later misconduct still merited an exemplary sanction (two months striking off the roll).

(q) *Pigeon* vs. *Daigneault*, 2003 CanLII 32934 (QC CA)

- This decision of the Quebec Court of Appeal deals with a real estate agent who had pleaded guilty in disciplinary proceedings to falsifying documents regarding the sale of his client's property which inflated the sale price in order to assist the buyer in obtaining greater financing from his mortgage lender. The sanctions imposed by the disciplinary committee were revised by the Court of Quebec and the

appeal involved a discussion of the rules which governed the powers of the Court of Quebec pursuant to the applicable legislation.

- Me Vuille referred the Committee to the following passages from the judgment (paras. 38 and 39) which succinctly enunciate the principles which should guide a disciplinary committee in deciding upon an appropriate sanction:

> "[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 à poser des gestes semblables et enfin, le droit par le professionnel visé d'exercer sa profession (*Latulippe c. Léveillé (Ordre professionnel des médecins)*, (1998) D.D.O.P. 311; *Dr. J.C. Paquette c Comité de discipline de lady Corporation professionnel des médecins du Québec et al*, (1995) R.D.J. 301 (C.A.); et *R. c. Burns*, (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."

(r) *Médecins (Ordre professionnel des)* vs. *Chbeir*, 2017 QCTP 3 (CanLII)

- This decision, filed by Me Vuille in response to the Committee's request for authorities on the burden of proof regarding the risk of recidivism, held that (paras. 88 to 95), while the professional does not formally have the burden of proving that the risk of recidivism is low or inexistent, he/she nevertheless should provide some degree

of evidence to assist the disciplinary committee in its evaluation of this risk, including the reasons which may explain the professional's impugned conduct and why there is little or no risk that it will recur in the future.

(s) *Dentistes (Ordre professionnel des)* vs. *Dupont*, 2005 QCTP 7 (CanLII)

- This decision, also filed by Me Vuille in response to our request for authorities regarding the issue of recidivism, involves a case where a dentist was charged, in July 1992, for professional misconduct which occurred between October 1989 and November 1991, in respect of which he pleaded guilty in January 2004 and was condemned, in April 2004, to various periods of temporary striking off the roll ranging from two weeks to three months, plus two fines of $2,000.

- In the interval, he was charged in July 2001 with 33 counts of misconduct involving ten new patients which allegedly occurred between May 1995 and April 2001, as a result of which a different disciplinary committee ordered his provisional striking off the roll by judgment dated April 2003, pending a hearing on the merits of these new charges. Furthermore, a professional inspection carried out by the Order of Dentists in 1996 had identified a series of shortcomings in the dentist's files and ordered certain corrective measures, which the dentist undertook to adopt.

- At the sanctions hearing held in the first case in January 2004, the dentist declared that his provisional striking off the roll in April 2003 in the second case had incited him to see the errors of his way and plead guilty to the charges in the first case, while offering to restrain the scope of his dental practice in the future.

- The disciplinary committee at the sanctions hearing in the first case refused to consider the facts of the second case in evaluating the objective gravity of the first complaint and imposed the sanctions described above, from which the plaintiff appealed to the *Tribunal des professions*.

- The *Tribunal des professions* overturned the decision imposing sanctions in the first case on the grounds that, while the provisional striking off the roll judgment in the second case did not (strictly speaking) constitute a prior disciplinary record, the disciplinary committee was nevertheless bound to consider evidence of the conduct of the dentist subsequent to the acts impugned (in the first case) in evaluating the risk of recidivism for the purposes of determining the appropriate sanction in the first case. In this regard, the *Tribunal des professions* cited a number of precedents regarding the relevance and importance of the professional's conduct subsequent to alleged misconduct.

- The *Tribunal des professions* was of the view that the frequency and gravity of the dentist's misconduct in the second case raised issues of protection of the public which the first disciplinary committee should not have ignored or set aside. Accordingly, the *Tribunal des professions* set aside the sanctions imposed in the first case and ordered the permanent striking off the roll of the dentist on nine of the 12 counts with which he was charged.

RESPONDENT'S REPRESENTATIONS

[7] Respondent, who was 71 years old at the time of the sanctions hearing herein, and claiming to be suffering from deteriorating health and unable to find gainful employment since his dismissal by Sun Life, commenced his argument by stressing that he was proud of his career in the investment industry for over 45 years, most of which was spent abroad before he came to Canada in 2001, where he worked for Investors

Group (from June 2007 to October 2008), RBC Insurance (from January 2009 to October 2013) and Sun Life (from November 2013 to February 2016).

[8] He dwelt upon the fact that he was the top salesman in Canada for RBC in 2012, and claims that he was "told to go" by RBC in 2013, but that he resigned instead.

[9] He claims to have been "brutally terminated and discriminated" by Sun Life when it terminated his employment in January 2016, and that he was still considering filing a lawsuit against Sun Life because of what he considered as a "conspiracy" against him by three compliance officers at Sun Life whom he claims had opposed his hiring by Sun Life and invoked the misdeeds described in counts 1 to 9 herein, despite the alleged support of his managers.

[10] He claims that everyone at Sun Life, except the compliance officers supported him and that his conduct in this case was not "overtly wrong", despite unspecified "misgivings" regarding the conduct which led to his dismissal, and that an unidentified senior manager at Sun Life had viewed his offences herein as "not serious".

[11] He argued that, in filling out a form, or replacing a paper, it was acceptable that "some red lines could be crossed" if there was no prejudice caused to clients and no intent to harm them. He claims that he was under severe pressure at work and that he did what he had to do in order to get it done. He said that if he were to complete all of the required contractual forms in the presence of his clients, including all questions relating to personal, medical or family issues, "they are going to kick me out of the door...and I would lose my clients".

[12] He argued that nine of the 12 counts in the complaint herein are "worthless of even being mentioned" because "these are simple matters, a pen here, a page here, approved by three managers", and that he was blameless because everything he did was while he was under the supervisory regime imposed by judgment of the *Autorités des marchés financiers* (the "**AMF**") dated January 21, 2014 (Exhibit P-1).

[13] When asked by the President of the Committee how he would change his conduct if allowed to continue practising, Respondent emotionally responded that he was

"outraged to hear that [he] might be permanently revoked, when no error whatsoever was found, such as criminality, forged signatures, diversification, financial needs analysis, know your client, etc.".

[14] He argued that he knew what a "grave error" was and that he committed no "grave errors" in this case, because there was no theft, bribery or fraud involved. He claimed that the client described in count 6 later met him in church and apologized for her complaint, which he said was "full of lies", and that "these people will be living with their conscience". However, he admitted later on during his argument that he had committed an error of judgment in making the false attestations described in count 6 because the client did not want the beneficiaries to know she had taken out insurance in their favour, and that he had not informed his three supervisors of this decision.

[15] When asked again during argument how he would change his conduct regarding the use of "shortcuts" (using photocopies of old signatures, having clients sign forms in blank or partially in blank), he said that (referring to "three silly mistakes of substituting pages") that he would "have to adapt" and that he was "not going to rush anymore, I will take my time, relax, not work 70 hours/week".

[16] He argued that the impugned acts he committed while with Sun Life were not the same as those of which he was accused while with RBC (in case CD00-1127).

[17] In conclusion, he claimed that his misconduct herein constituted a series of "isolated incidents", with no fraud involved and that, despite the fact that his two cases before the Disciplinary Committee of the *Chambre de la sécurité financière* are a "sad chapter" in his life, he "sleeps in peace at night" because he "did nothing seriously wrong to any client". He asked for forgiveness for his "lack of eloquence" and his past misconduct. He added that, if the Committee were to impose a period of striking off the roll, it should be for a period of two to six months, but certainly not a permanent striking off the roll.

[18] In response to Respondent's argument, Me Vuille said that Respondent had clearly failed to appreciate the seriousness of his conduct herein.

ANALYSIS AND MOTIVES

[19] In deciding upon the appropriate sanction herein, it is important to apply the test set forth in *Pigeon* vs. *Daigneault* (cited above).

[20] There is no doubt that the nature and frequency of transgressions committed by Respondent in this case raise grave doubts about his respect for the fundamental ethical rules which exist to assure protection of the public, which is the primary objective to keep in mind when deciding upon the appropriate sanction. The other factors to consider are the dissuasion of the representative from recidivating, the exemplarity of the sanction to incite other professionals to respect the ethical rules and, finally, the right of the professional to practise his profession.

[21] In case CD00-1127, Respondent was found guilty of 11 counts of having breached ethical rules in August 2013 involving five different clients:

(a) using photocopied signatures of clients on new insurance proposal forms;

(b) falsely attesting to the identities of clients and having witnessed their signatures.

[22] The Respondent's explanation for his conduct in this first complaint was that RBC had asked him to use a new version of signature pages in insurance proposal forms for clients who had already signed the old forms. Rather than convene meetings with the clients to sign the new forms, Respondent chose to use photocopied versions of their original signatures and make the above-described false attestations in the new forms, thinking that there was no problem by proceeding in this fashion.

[23] RBC terminated Respondent's employment because of his conduct and filed a complaint with the AMF which led to the issuance of the above-described supervisory order in January 2014 (Exhibit P-1).

[24] The Respondent's hearing relating to culpability in CD00-1127 was held on October 21, 2015 (at which time he was employed by Sun Life) and the judgment confirming his guilt was rendered on April 20, 2016, by which time he had been terminated

by Sun Life for his misconduct in the present case, although this does not seem to have been disclosed to the Disciplinary Committee at the sanctions hearing in CD00-1127, which was held on July 7, 2016.

[25] In the judgment on sanctions in CD00-1127 rendered on July 19, 2016, the disciplinary committee imposed a temporary striking off the roll of two months and invoked the following aggravating factors to justify its decision:

(a) the objective gravity of Respondent's ethical breaches;

(b) Respondent had attended courses on ethics offered by RBC, his former employer, in 2013 and 2014;

(c) Respondent's apparent failure to comprehend the importance of his ethical breaches, even after he had been found guilty, which the disciplinary committee found was concerning.

[26] The acts leading to the filing of the complaint in the present case occurred between April 2014 and February 2016. They involve the following breaches of ethical rules:

(a) inciting eight different clients to sign blank or partially blank forms during the period April 2014 to July 2015 (counts # 1, 2, 5, 7, 8 and 9);

(b) using photocopies of client signatures to create new contractual documents on three different occasions (counts # 3, 4 and 10);

(c) providing false information to an insurer and falsely attesting that he had witnessed the signatures of the beneficiaries of six different insurance policies set up by the same insured (count # 6);

(d) misappropriation of the sum of $1,350 from a client (count # 11);

(e) making false, incomplete and potentially misleading statements or representations to a client regarding the future performance of his investments (count # 12).

[27] There is no question that these acts constitute objectively serious breaches of fundamental ethical rules to which representatives are held and taught to respect, which go to the heart of the profession, and that Respondent knowingly committed them with disregard for said rules, of which he was fully aware and could not have ignored.

[28] Nevertheless, in determining the appropriate sanction, the Committee must take into account the Respondent's lack of dishonest intent in evaluating the danger to protection of the public if he is one day allowed to return to practice.

[29] The Committee must also decide whether the standard sanctions applicable to a first or repeat offender for the misconduct described in counts 1 to 10, coupled with those applicable to counts 11 and 12 should be set aside and replaced by the ultimate sanction, a permanent striking off the roll.

[30] This raises the issue as to whether the nature of the misconduct involved and the particular circumstances of this case pose such a risk to protection of the public, the primary criterion applicable to determining the appropriate sanction (*Pigeon* vs. *Daigneault*), that permanent striking off the roll is the only appropriate sanction

[31] A review of the following relevant jurisprudence leads us to conclude that the normal sanctions for the ethical breaches contemplated by counts 1 to 10 herein are a temporary striking off the roll of one or twelve months and/or fines varying between $2,000 and $5,000:

(a) *CSF* vs. *Ronco*, 2014 CanLII 13312 (QC CDCSF)

- The representative (having no disciplinary record) received a temporary striking off the roll of 12 months (jointly recommended by the parties) after pleading guilty to 22 counts of having incited approximately 23 different clients to sign documents in blank or partially in blank during a period of nine years, the disciplinary committee having found that the representative's conduct was not due to a malicious or dishonest intent, but rather a pathological incapacity to adapt to operational changes in his practice.

(b) *CSF* vs. *Côté*, 2011 CanLII 99528 (QC CDCSF)

- The representative (with no disciplinary record) pleaded guilty to forging one client's signature and inciting another client to sign a blank document and received a temporary striking off the roll of two months for the first count and one month for the second count. The decision cites a number of other precedents where the representative received the following sanctions for inciting clients to sign documents in blank or partially in blank and/or forged signatures:

  i) two months striking off the roll and a fine of $2,000 (*CSF* vs. *Jean*, CD00-0722);

  ii) six months striking off the roll for nine forgeries (*CSF* vs. *Di Fabio*, CD00-0826);

  iii) five months striking off the roll for forgery, in a situation of recidivism (*CSF* vs. *Trottier*, CD00-0678);

  iv) two months striking off the roll for several forgeries (*CSF* vs. *Boucher*, CD00-0700);

  v) three months striking off the roll for forgery on five occasions, causing inconvenience to the clients (*CSF* vs. *Jarry*, CD00-0764).

(c) *CSF* vs. *Belle*, 2014 CanLII 19445 (QC CDCSF)

- The representative (having little experience and no disciplinary record) pleaded guilty to inciting a client to sign a partially blank document and the disciplinary committee imposed the jointly recommended sanction of a temporary striking off the roll of one month.

(d) *CSF* vs. *Bellerose*, 2012 CanLII 97156 (QC CDCSF)

- The representative (having 15 years of experience and no disciplinary record) pleaded guilty to two counts of having falsely attested to witnessing two clients' signatures on the same occasion. The disciplinary committee imposed a fine of $3,000 on one count and a reprimand for the second count, citing two other cases where fines of $3,000 and $4,000 had been imposed.

(e) *CSF* vs. *Chen*, 2019 QCCDCSF 4

- The representative pleaded guilty to eight counts, which included inciting 18 clients to sign documents in blank or partially in blank, forging (or "copy-pasting") the signatures of eight persons, and falsely attesting that she witnessed the signatures of three clients, which infractions were committed over a period of seven years. The disciplinary committee imposed the jointly recommended sanctions of a temporary striking off the roll of nine months for the blank or partially blank documents and two months temporary striking off the roll for the other counts.

(f) *CSF* vs. *Bouchard*, 2017 QCCDCSF 46

- The representative pleaded guilty to having falsely attested witnessing the signature of two clients of another representative to accommodate the latter, and the disciplinary committee imposed the jointly recommended sanction of a fine of $5,000.

(g) *CSF* vs. *Houle,* 2013 CanLII 43414 (QC CDCSF)

- The representative (aged 65, with 20 years of experience and no prior disciplinary record) pleaded guilty to forging the signature of a client and received a temporary striking off the roll of one month.

[32] The following decisions indicate that the sanction for misappropriation (count 11 in the present case) is most often ten years but can, in certain circumstances (where fraud or considerable amounts are involved), be a permanent striking off the roll:

(a) *CSF* vs. *Marleau*, 2017 QCCDCSF 40

- A representative (with more than 19 years of experience and no disciplinary record) who pleaded guilty to misappropriating $40,000 from a minor client (by making eight withdrawals from his account over a period of two years) and had negotiated a reimbursement plan, received a temporary striking off the roll of ten years, pursuant to the joint recommendation of the parties.

(b) *CSF* vs. *Erdogan*, 2017 QCCDCSF 9

- A representative (with no disciplinary record) and was radiated for a period of ten years after pleading guilty to fraudulently misappropriating the sum of $280 (by 11 illegal withdrawals of $20 to $30) from his employer over a period of seven weeks, said sum having not been reimbursed by the representative.

(c) *CSF* vs. *Bradet*, 2017 QCCDCSF 38

- A representative with no disciplinary record and 30 years of service for her employer was struck off the roll for a period of ten years after pleading guilty to misappropriating the sum of $3,080 during a period of 18 months, while she was a branch director.

(d) *CSF* vs. *Raymond*, 2011 CanLII 99457 (QC CDCSF)

- The representative (with no disciplinary record pleaded guilty to fraudulently misappropriating the sum of $1,325 from her employer by making nine unauthorized withdrawals during a period of five months, which amount was ultimately reimbursed by the representative. The complainant sought a permanent striking off the

roll, but the disciplinary committee felt that a temporary striking off the roll of ten years was more appropriate in the circumstances.

(e) *CSF* vs. *Mintor*, 2019 QCCDCSF 32

- A representative (with no disciplinary record) who was found guilty of misappropriating the approximate sum of $75,000 over a period of 20 months from a testamentary succession of which he had been named liquidator received a temporary striking off the roll of ten years (decision currently in appeal).

(f) *CSF* vs. *Balan*, 2011 CanLII 99446 (QC CDCSF)

- A 23-year old representative (with no disciplinary record) who pleaded guilty to misappropriation of $48,000 from his employer and who had reimbursed all but approximately $8,000 of that amount was permanently struck off the role.

(g) *CSF* vs. *Baril*, 2009 CanLII 293 (QC CDCSF)

- A representative who was found guilty (by default) of 43 counts, including the fraudulent misappropriation of approximately $254,000 which was never reimbursed, received the sanction of permanent striking off the roll.

(h) *CSF* vs. *Blais*, 2015 QCCDCSF 2

- A 62-year old notary who was a member of the CSF (with no prior disciplinary record) and misappropriated the sum of $2,316 from his clients received a temporary striking off the roll of ten years, despite the fact that Plaintiff had sought his permanent striking off the roll.

(i) *CSF* vs. *Cartier*, 2011 CanLII 99471 (QC CDCSF)

- A 53-year old bank employee (with no disciplinary record) who

pleaded guilty to misappropriating the sum of $261,000 during a period of seven years (of which only $13,000 had been reimbursed as of the date of hearing) was permanently struck off the role.

(j) *CSF* vs. *Grignon*, 2007 CanLII 37244 (QC CDCSF)

- A representative with five years of experience and no disciplinary record who failed to appear at his sanctions hearing was permanently struck off the role for misappropriating the approximate sum of $95,000 from one or more clients. However, the disciplinary committee felt that the complainant's request for permanent striking off the roll for having unnecessarily convinced a client to redeem $73,000 from his mutual fund investments and incur fees of more than $8,000 was excessive and instead imposed a temporary striking off the roll of one year on that count.

(k) *CSF* vs. *Labonté*, 2012 CanLII 97202 (QC CDCSF)

- A representative with less than one year of experience who pleaded guilty to misappropriating a total of $403 from three clients which he had not reimbursed at the time of his sanctions hearing was condemned to a temporary striking off the roll of ten years.

(l) *CSF* vs. *Lamoureux*, 2014 CanLII 72608 (QC CDCSF)

- A representative with no disciplinary record who misappropriated the sum of $2,500 from a client by forging his signature on a credit card payment form was struck off the role for a period of ten years and received a temporary striking off the roll of two years on a separate count of forging the client's signature on the aforementioned credit card payment form.

(m) *CSF* vs. *Montour,* 2015 CanLII 88199 (QC CDCSF)

- The representative (with ten years' experience and no disciplinary

record) pleaded guilty to conflict of interest for borrowing $10,000 from a client and to misappropriation for failing to reimburse the loan when due, for which he was temporarily struck off the role for five years on the first count (conflict of interest) and ten years for misappropriation.

(n) *CSF* vs. *Pana*, 2013 CanLII 40561 (QC CDCSF)

- In this case, related to that cited by Me Vuille in her arguments, the representative, with four years of experience, had a prior disciplinary record for imitation of client signatures and conflict of interest, contracted loans totalling $34,000 from two clients, which she failed to repay, and she failed to appear at the hearings regarding guilt and sanction. The disciplinary committee characterized the representative's conduct as systematic fraud and struck her off permanently.

[33] Starting with count 11, the Committee is of the view that a temporary striking off the roll of ten years is the appropriate sanction, given the relatively minor amount ($1,350) involved, the absence of a prior disciplinary record involving misappropriation, the lack of dishonest intent and the financial difficulties which apparently drove the Respondent to commit the offence in question.

[34] The preponderance of jurisprudence cited above indicates that the appropriate sanction for misappropriation of a relatively minor amount, in the absence of fraudulent intention, is a temporary striking off the roll of ten years. The decisions (cited by plaintiff's attorney) where a permanent striking off the roll was imposed involve fraudulent conduct, much larger amounts than that involved in this case and (sometimes) a joint recommendation or absence of contestation by the representative.

[35] As regards count 12, regarding which the Respondent was found guilty of making false, incomplete and potentially misleading statements or representations to a client

regarding the investment performance and/or value of his account, there is again no prior disciplinary record of similar conduct.

[36] The Respondent should clearly never have assured his client that he would not incur a loss in his investment account. However, there is no evidence that the client suffered a loss in his investment account and the stellar performance of the stock markets since 2008 (including 2016) make it unlikely that the client suffered any loss if he remained in the market until the end of 2016.

[37] Accordingly, the Committee is of the view that the appropriate sanction for count 12 is a fine of $2,000.

[38] As for the sanction relating to counts 1 to 10 inclusive, it is clear that the finding of guilt of the Respondent in case CD00-1127 (on April 20, 2016, two months prior to his dismissal by Sun Life in the present case) does not constitute a disciplinary record for the purposes of this case. However, the Committee is entitled, pursuant to the principles enunciated in such cases as *Pigeon* and *Dupont*, to consider his conduct in the first case (CD00-1127) in determining the risk of recidivism in determining the appropriate sanction.

[39] In evaluating Respondent's conduct regarding counts 1 to 10, the Committee recognizes the seriousness and repetitive nature of Respondent's conduct, but nevertheless must keep in mind all of the relevant circumstances surrounding the commission of these infractions, including the type of sanction normally imposed in such cases, the Respondent's motivation, the prejudice (if any) caused to clients, the need for appropriate dissuasion of recidivism by the Respondent and the Respondent's right to earn a living.

[40] The above jurisprudence shows that the sanction normally imposed in cases relating to signing documents in blank or partially in blank, forging or otherwise imitating client signatures (including by "copy-pasting") and making misleading statement to insurers is a fine (of up to $5,000) and/or a temporary striking off the roll of up to one year.

[41] The Respondent explained that he committed all of the offences in counts 1 to 10 in order to expedite the processing of his clients' files. Although this explanation does not

excuse him from a finding of guilt for contravening the relevant ethical rules, it is a factor which the Committee may consider in determining the appropriate sanction.

[42] There is no evidence that any of the clients involved suffered actual prejudice from the Respondent's actions. The plaintiff seeks a permanent striking off the roll because of the number of incidents involved and the fact that Respondent did not correct his behaviour or alter his attitude towards ethical rules after having been dismissed by RBC in November 2013 and while he was employed by Sun Life from April 2014 to February 2016.

[43] There is no question that this prior conduct must be considered, but does it merit a lifetime ban from the profession?

[44] Unlike the precedents in *Paquette*, *Chevalier* or *Ouellet* (cited above), we are not dealing with a situation where clients were physically or psychologically harmed by the Respondent's conduct. The Respondent took "shortcuts" to expedite the processing of his client's files, but caused them no prejudice.

[45] The principles of graduation of sanctions requires the Committee to consider a sanction less severe than a lifetime ban, as does the respect which our system of justice places on the principles of redemption and rehabilitation of an offender.

[46] The Respondent obviously suffers from a reluctance to adapt to changing times, which is not unusual for people of his age. His misdeeds are serious and cannot be excused, but he declared, during his argument, that he is prepared to change his ways and adapt, if given a chance.

[47] Given the temporary striking off the roll of ten years imposed regarding count 10, he will have considerable time to reflect upon his conduct herein and resolve to take advantage of the final opportunity he may have to return to the profession at the approximate age of 82.

[48] In view of the foregoing, the Committee's decision regarding the appropriate sanction to impose for each of counts 1 to 10 is a temporary striking off the roll of five

years, to be served concurrently with the foregoing sanction regarding count 11.

[49] As regards costs, no reason having been given to the Committee which would justify an exception to the normal rule that the costs relating to the prosecution of this case be paid by the Respondent, the Committee will condemn the Respondent to the payment of all such costs, including those relating to the publication of a notice of this decision in a newspaper having general circulation in the place of his professional domicile.

FOR THESE REASONS, the Disciplinary Committee:

REITERATES the order of non-disclosure, non-publication and non-dissemination of the names and surnames of the clients whose initials are mentioned in the 12 counts above, as well as any information which might enable their identification;

As regards counts 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10:

ORDERS the temporary striking off the roll of Respondent for a period of five years;

As regards count 11:

ORDERS the temporary striking off the roll of Respondent for a period of ten years;

ORDERS that the foregoing sanctions of striking off the roll be served concurrently;

As regards count 12:

CONDEMNS Respondent to pay a fine of $2,000;

ORDERS the secretary of the Disciplinary Committee to publish, pursuant to section 156 of the *Professional Code* (CQLR, c. C-26), a notice of the present decision in a newspaper having general circulation in the place where Respondent had his professional domicile and in any other place where he practised his profession;

CONDEMNS Respondent to pay all applicable costs, including those contemplated section 151 of the *Professional Code* (CQLR, c. C-26).

_(s) George R. Hendy_____
Me George R. Hendy
President of the Disciplinary Committee

_(s) Antonio Tiberio_____
M. Antonio Tiberio
Member of the Disciplinary Committee

_(s) Jean-Michel Bergot_____
M. Jean-Michel Bergot
Member of the Disciplinary Committee

Me Nathalie Vuille
POULIOT, CARON, PRÉVOST,
BÉLISLE, GALARNEAU, S.E.N.C.
Attorney for the Plaintiff

The Respondent is self-represented

Date of the hearing: June 20, 2018

COPIE CONFORME À L'ORIGINAL SIGNÉ

COMITÉ DE DISCIPLINE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE DE QUÉBEC

N° : CD00-1391

DATE : 17 février 2020

LE COMITÉ	M[e] Marco Gaggino	Président
	M. Alain Legault	Membre
	M. Ndangbany Mabolia	Membre

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Plaignant

c.

VALÉRIE MARTINEAU (certificat numéro 186825, BDNI 2519901)

Intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

CONFORMÉMENT À L'ARTICLE 142 DU *CODE DES PROFESSIONS*, LE COMITÉ PRONONCE LES ORDONNANCES SUIVANTES :

Ordonnance de non-divulgation, non-diffusion et non-publication du nom et prénom du consommateur impliqué dans la plainte disciplinaire, ainsi que de toute information se trouvant dans la preuve qui permettrait de l'identifier, et ordonnance de non-divulgation, non-diffusion et non-publication à l'égard des pièces PS-3 et PS-4, étant entendu que les présentes ordonnances ne s'appliquent pas aux échanges d'informations prévus à la *Loi sur*

***l'encadrement du secteur financier*[1] et à la *Loi sur la distribution de produits et services financiers*[2].**

[1] L'intimée est citée devant le Comité de discipline de la Chambre de la sécurité financière (le « Comité ») à la suite d'une plainte disciplinaire du 5 septembre 2019 libellée comme suit :

> 1. Dans la région de Québec, le ou vers le 21 juin 2018, l'intimée a falsifié un document « Confirmation d'emploi » pour son client M.L.D., contrevenant ainsi à l'article 14 du *Règlement sur la déontologie dans les disciplines de valeurs mobilières*.

[2] Le Comité s'est réuni le 7 février 2020 afin de procéder à l'audience sur culpabilité de cette plainte.

[3] Le plaignant était alors représenté par M^e^ Vivianne Pierre-Sigouin et l'intimée se représentait seule.

I- PLAIDOYER DE CULPABILITÉ

[4] Dès le début de l'audience, le Comité fut avisé de l'intention de l'intimée d'enregistrer un plaidoyer de culpabilité à l'égard du seul chef de la plainte disciplinaire portée contre elle.

[5] À cet effet, un document daté du 3 février 2020 signé de l'intimée et confirmant son plaidoyer de culpabilité fut déposé devant le Comité[3].

[6] De même, un document intitulé « énoncé des faits/admissions factuelles » signé par l'intimée le 3 février 2020, fût également déposé devant le Comité[4].

[7] Après avoir pris connaissance du plaidoyer de culpabilité de l'intimée, le Comité

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[1] RLRQ, c. E-6.1.
[2] RLRQ, c. D-9.2.
[3] Pièce PS-10.
[4] Pièce PS-11.

déclara celle-ci, séance tenante, coupable du seul chef d'infraction de la plainte disciplinaire portée contre elle.

[8] Sur ce, le Comité entendit la preuve et les arguments sur sanction.

II- LES FAITS

[9] Le Comité retient les faits suivants, lesquels découlent des pièces déposées lors de l'audience[5] dont, notamment, l'énoncé des faits du 3 février 2020[6], signé par l'intimée.

[10] L'intimée a détenu un certificat d'exercice délivré par l'Autorité des marchés financiers à titre de représentante de courtier pour un courtier en épargne collective du 30 avril 2010 au 7 août 2018.

[11] Au cours de cette période, elle a été rattachée au cabinet TD INVESTMENT SERVICES INC. (« TD ») à titre de représentante de ce courtier en épargne collective.

[12] Plus particulièrement, l'intimée a débuté son emploi auprès de TD le 1er juin 2009. À compter du 28 août 2013, elle a occupé le poste de conseillère financière (*Financial Advisor*)[7].

[13] À ce titre, l'intimée a été impliquée dans une demande d'emprunt de la part de M.L.D.

[14] Le 21 juin 2018, elle reçoit un courriel de M.L.D. lui transférant, en pièce jointe, une lettre de confirmation d'emploi de son employeur[8], lettre requise pour sa demande de prêt.

[15] Il appert de cette lettre que le consommateur, occupant alors un poste de chargé

[5] La procureure du plaignant déposa les pièces PS-1 à PS-11.
[6] Pièce PS-11.
[7] Pièces PS-2 et PS-3.
[8] Pièce PS-5.

de projets-menuisier, reçoit un taux horaire de 30,00 $ hors décret et un taux horaire de 39,10 $ en décret.

[16] Le même jour, l'intimée fait suivre cette lettre à son adresse courriel personnelle qu'elle se retransmet le lendemain à son adresse professionnelle.

[17] Il est à noter que la lettre ainsi retransmise le 22 juin 2018 a été altérée.

[18] D'abord, la date du 21 juin 2018 a été changée pour le 22 juin 2018.

[19] Au surplus, alors que la lettre initiale faisait état d'un taux horaire en vertu du décret et hors décret, la lettre trafiquée ne fait référence qu'au taux horaire en décret de 39,10 $[9].

[20] Cependant, TD s'apperçoit que cette lettre de confirmation d'emploi produite dans le dossier d'emprunt du consommateur a été altérée. Ceci déclenche une enquête interne.

[21] À cet effet, l'intimée est rencontrée le 2 août 2018 et admet d'emblée avoir falsifié la lettre de confirmation d'emploi du 21 juin 2018. De même elle reconnaît avoir agi de la même façon dans le cas d'un autre client. L'intimée explique alors ses gestes par son désir de vouloir aider les clients, bien qu'elle reconnaisse que sa conduite était fautive[10].

[22] Le 7 août 2018, l'intimée est avisée par lettre de TD de la terminaison de son emploi pour avoir falsifié un document, pour avoir négligé les politiques et procédures de la banque et pour avoir exposé celle-ci à des risques inutiles[11].

[23] Dans son énoncé des faits, l'intimée explique qu'elle a procédé de la sorte, à l'insu de M.L.D., afin d'obtenir une autorisation initiale non officielle de sa demande de prêt et afin d'en accélérer le processus de traitement. L'intimée déclare également qu'elle

[9] Pièce PS-6.
[10] Pièce PS-3.
[11] Pièce PS-4.

subissait de la pression du consommateur à un moment où son directeur de succursale était indisponible[12].

[24] Il est à noter que suite à sa fin d'emploi, l'intimée n'est plus certifiée. De même, celle-ci a déclaré lors de l'audience ne plus avoir l'intention de travailler dans l'industrie.

[25] Finalement, l'intimée est âgée de 38 ans au moment de l'audience et elle n'a pas d'antécédents disciplinaires.

II- REPRÉSENTATIONS COMMUNES SUR SANCTION

[26] Les parties recommandent au Comité d'imposer à l'intimée une radiation temporaire de deux (2) mois avec publication d'un avis de la décision, et ce, en plus de la condamnation aux frais et déboursés.

[27] À cet égard, la procureure du plaignant réfère aux facteurs atténuants suivants :

- L'intimée a plaidé coupable;
- Elle a fait preuve de transparence auprès de son employeur et de l'enquêteur de la Chambre de la sécurité financière;
- Ni son employeur ni le consommateur n'ont subi de préjudice;
- L'intimée n'a tiré aucun bénéfice de l'infraction;
- Elle a perdu son emploi;
- L'infraction a été commise dans un contexte de stress en raison de la pression subie d'un client difficile;
- L'intimée n'avait aucune intention malicieuse;
- L'intimée ne recherchait pas à obtenir un gain personnel.

[28] Quant aux facteurs aggravants, la procureure du plaignant les résume ainsi :

- L'infraction touche la probité et l'intégrité de l'intimée, alors qu'il s'agit là des qualités essentielles que doit posséder tout représentant pour maintenir le lien de confiance avec le public et l'industrie;
- Le client n'a pas subi de préjudice, mais il a porté plainte étant frustré de la

[12] Pièce PS-11.

situation;

- L'intimée a admis avoir déjà procédé de la sorte à l'égard d'un autre client, il ne s'agit donc pas d'un geste isolé;
- Il y a dans les gestes de l'intimée une certaine préméditation puisque ceux-ci ont nécessité plusieurs étapes et qu'ils ont fait l'objet d'une tentative de camouflage par l'utilisation de son adresse courriel personnelle;
- Les gestes ont été posés à l'insu du consommateur;
- Bien que l'intimée admette ses gestes, il n'y a pas de sa part une reconnaissance franche de la gravité de ceux-ci.

[29] Par ailleurs, la procureure du plaignant indique que l'âge de l'intimée et ses huit (8) années de pratique constituent des éléments neutres.

[30] Pour appuyer la recommandation commune, la procureure du plaignant a soumis six (6) décisions du comité de discipline de la Chambre de la sécurité financière, soit :

- *Chambre de la sécurité financière* c. *Rocha*, 2017 QCCDCSF 18;
- *Chambre de la sécurité financière* c. *Diop*, 2018 QCCDCSF 78;
- *Chambre de la sécurité financière* c. *Kanaan*, 2018 QCCDCSF 80;
- *Chambre de la sécurité financière* c. *Cacayuran*, 2016 QCCDCSF 27;
- *Chambre de la sécurité financière* c. *Guernon*, 2015 QCCDCSF 4;
- *Chambre de la sécurité financière* c. *Pitre*, 2012 CanLII 97182 (QC CDCSF).

[31] Invitée à s'exprimer, l'intimée déclara ne rien avoir à ajouter à l'exposé de la procureure du plaignant.

IV- ANALYSE ET MOTIFS

[32] Lorsque des sanctions sont suggérées conjointement par les parties, le Comité n'a pas à s'interroger sur la sévérité ou la clémence de celles-ci. 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 l'a rappelé :

> « [31] Après avoir examiné les diverses possibilités, je crois que le critère de l'intérêt public, tel qu'il est développé dans les présents motifs, est celui qui s'impose. Il est plus rigoureux que les autres critères proposés et il reflète le mieux les nombreux avantages que les recommandations conjointes apportent au système de justice pénale ainsi

> que le besoin correspondant d'un degré de certitude élevé que ces recommandations seront acceptées. De plus, il diffère des critères de " justesse " employés par les juges du procès et les cours d'appel dans les audiences classiques en matière de détermination de la peine et, en ce sens, il aide les juges du procès à se concentrer sur les considérations particulières qui s'appliquent lors de l'appréciation du caractère acceptable d'une recommandation conjointe. Dans la mesure où l'arrêt *Douglas* prescrit le contraire, j'estime avec égards qu'il est mal fondé et qu'il ne devrait pas être suivi. »[13]

[33] Il s'agit donc d'un seuil élevé qui ne peut être franchi à la légère, par exemple parce que le décideur considère qu'il aurait plutôt imposé une autre sanction en appliquant les critères usuels de détermination de la sanction.

[34] Par ailleurs, cela n'empêchera pas un comité d'intervenir si, à première vue, il y a une telle disproportion entre la sanction suggérée et celle normalement applicable, que celle-ci devient controversée et semble porter atteinte à l'intérêt public ou à l'administration de la justice.

[35] Dans ce cas, le comité devrait demander des explications sur les considérations et les concessions qui sont à la base de la recommandation commune en tenant pour acquis, par ailleurs, que les avocats des parties sont bien placés pour arriver à une telle recommandation commune qui reflète tant les intérêts du public que ceux de l'intimé. En principe, ils connaissent très bien la situation de ce dernier, ainsi que les circonstances de l'infraction, et les forces et les faiblesses de leurs positions respectives. À cet effet, la Cour suprême précise ainsi cette démarche :

> « [53] Troisièmement, en présence d'une recommandation conjointe controversée, le juge du procès voudra sans aucun doute connaître les circonstances à l'origine de la recommandation conjointe, en particulier tous les avantages obtenus par le ministère public ou toutes les concessions faites par l'accusé. Plus les avantages obtenus par le ministère public sont grands, et plus l'accusé fait de concessions, plus il est probable que le juge du procès doive accepter la recommandation conjointe, même si celle-ci peut paraître trop clémente. Par exemple, si la recommandation conjointe est le fruit d'une entente par laquelle l'accusé s'engage à prêter main-forte au ministère public ou à la police, ou si elle reflète une faille dans la preuve du ministère public, une peine très clémente peut ne pas être contraire à l'intérêt public. Par contre, si la

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

> recommandation conjointe ne découlait que du constat de l'accusé qu'une déclaration de culpabilité était inévitable, la même peine pourrait faire perdre au public la confiance que lui inspire le système de justice pénale. »[14]

[36] C'est selon ces critères élaborés par la Cour suprême que le Comité examinera la recommandation commune des parties, et ce, afin de déterminer si celle-ci est contraire à l'intérêt public ou à l'administration de la justice.

[37] Les parties suggèrent au Comité d'imposer à l'intimée une radiation temporaire pour une période de deux (2) mois sur le seul chef d'infraction de la plainte disciplinaire.

[38] À cet égard, la recommandation commune est conforme aux sanctions imposées pour de semblables infractions, et ce, considérant l'ensemble des facteurs objectifs et subjectifs en lien avec la présente affaire.

[39] Ainsi, dans la décision *Rocha*[15], citée par la procureure du plaignant et dont les faits sont très similaires à notre affaire, le comité de discipline de la Chambre de la sécurité financière a imposé une radiation temporaire pour une période de deux (2) mois à l'intimé qui avait falsifié une lettre de confirmation d'emploi d'un client en modifiant, notamment, son salaire horaire, le faisant passer de 22,11 $ à 51,11 $, et ce, pour faciliter une demande de ligne de crédit.

[40] Dans les autres affaires qui concernent des infractions liées à la falsification ou à la contrefaçon de documents, la sanction imposée varie d'une radiation temporaire pour une période d'un (1) à deux (2) mois.

[41] Le Comité ne voit donc pas de disproportion telle entre la sanction recommandée par les parties et la gravité objective du geste reproché qui permettrait de croire que l'intérêt public en serait affecté.

[42] Il faut de plus noter que la sanction est en lien avec la gravité objective de l'infraction.

[43] Par ailleurs, un plaidoyer de culpabilité est nettement favorable à l'administration

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[14] *Ibid*.
[15] 2017 QCCDCSF 18.

de la justice, en ce qu'il permet notamment à celle-ci de sauver de précieuses ressources en évitant une audition.

[44] De même, le plaidoyer de culpabilité de l'intimée a pour effet d'éviter que le consommateur impliqué dans cette affaire ait à comparaître et à témoigner devant le Comité.

[45] Le Comité donnera donc suite à la recommandation commune des parties, puisque celle-ci ne contrevient pas à l'intérêt public et ne va pas à l'encontre de l'administration de la justice.

[46] Pour toutes ces raisons, le Comité considère qu'une radiation temporaire pour une période de deux (2) mois pour le seul chef d'infraction de la plainte disciplinaire contre l'intimée constitue une sanction adéquate dans les circonstances.

[47] Par ailleurs, cette sanction ne sera exécutoire qu'au moment où l'intimée reprendra son droit de pratique, le cas échéant, et que l'Autorité des marchés financiers ou toute autre autorité compétente émettra un certificat à son nom.

[48] Le Comité ordonnera la publication d'un avis de la décision aux frais de l'intimée et la condamnera également au paiement des déboursés, conformément à l'article 151 du *Code des professions* (RLRQ, c. C-26).

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

PREND ACTE du plaidoyer de culpabilité de l'intimée à l'égard de l'unique chef d'infraction contenu à la plainte disciplinaire;

RÉITÈRE la déclaration de culpabilité de l'intimée prononcée à l'audience du 7 février 2020 à l'égard de l'unique chef d'infraction contenu à la plainte disciplinaire;

ET STATUANT SUR SANCTION :

ORDONNE la radiation temporaire de l'intimée pour une période de deux (2) mois sous l'unique chef d'infraction contenu à la plainte disciplinaire;

ORDONNE que cette période de radiation temporaire ne commence à courir, le cas échéant, qu'au moment où l'intimée reprendra son droit de pratique à la suite de l'émission à son nom d'un certificat par l'Autorité des marchés financiers ou par toute autre autorité compétente;

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

ORDONNE au secrétaire du comité de ne procéder à cette publication qu'au moment où l'intimée reprendra son droit de pratique ou que l'Autorité des marchés financiers ou toute autre autorité compétente émettra un certificat en son nom;

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

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

(S) Marco Gaggino
Me Marco Gaggino
Président du Comité de discipline

(S) Alain Legault
M. Alain Legault
Membre du Comité de discipline

(S) Ndangbany Mabolia
M. Ndangbany Mabolia
Membre du Comité de discipline

Me Vivianne Pierre-Sigouin
CDNP AVOCATS INC.
Procureurs du plaignant

L'intimée se représentait seule

Date d'audience : 7 février 2020

COPIE CONFORME À L'ORIGINAL SIGNÉ

3.7.3.2 Comité de discipline de la ChAD

Aucune information.

3.7.3.3 OCRCVM

Aucune information.

3.7.3.4 Bourse de Montréal Inc.

Aucune information.