



**AUTORITÉ
DES MARCHÉS
FINANCIERS**

GUIDE TO COMPLIANCE AUDIT PROGRAM AND USE OF FCSA DATA

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Introduction

The *Fichier central des sinistres automobiles* (FCSA) is a mechanism established by the *Autorité des marchés financiers* (the “AMF”) under the *Automobile Insurance Act*, CQLR, c. A-25 (the “Act”).

In order to fulfill its mandate under section 178 of the Act and the agreement signed with the AMF, the *Groupement des assureurs automobiles* (GAA) must ensure that users of the FCSA system abide by the compliance rules (the “Rules”).¹ The AMF has therefore established this compliance audit process to ensure that consultations are in accordance with the requirements in sections 177, 179, 179.1, 179.2 and 179.3 of the Act, and has mandated the GAA to apply the process.

Under section 179.1 of the Act, claims data may only be consulted upon request by an insurer and only for purposes of classifying and rating risk when issuing or renewing an automobile insurance policy.

The AMF has given damage insurance brokerage firms the possibility to consult the FCSA as mandataries of a specific insurer for each claims history statement access request. The conditions under which brokers can access the FCSA are therefore similar to those for an insurer’s employees.

The purpose of this Guide to Compliance Audit Program and Use of FCSA Data is to facilitate understanding of the compliance audit process by all users of the system. The program, as described in this guide, was adopted by the AMF on June 16, 2009 and came into effect on January 1, 2010. This guide was revised on December 20, 2018 in order to reflect amendments made on July 13, 2018 to section 179.1 of the Act.²

¹ The compliance rules are set out in section 2 of this guide.

² Section 179.1 was amended following the coming into force, on July 13, 2018, of section 654 of An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions, S.Q. 2018, c. 23.

Definitions

In this guide, unless the context otherwise requires, the following definitions apply:

Audit officer: Person designated by the AMF and employed by the GAA to audit compliance with the established Rules for consulting FCSA data.

Claims file: All physical and electronic documents related to a claim, including documentation supporting settlement of the claim.

Customer file: All physical and electronic documents related to an insured or a customer of the insurer, including the insurance application or information sufficient to issue an automobile insurance policy on behalf of the insured. The customer file should also include, if applicable, the insurance policy and related endorsements.

Insurer: Means an authorized insurer, i.e., an insurer authorized to transact automobile insurance business under the *Act respecting insurance* (CQLR, chapter A-32) and licensed by the AMF, excluding any entity that transacts only reinsurance business. For purposes of this guide, “insurer” also means the agents and representatives of the insurer, as well as brokers that issue automobile insurance policies on behalf of the insurer.

Underwriting: An insurer underwrites the risk presented by a customer or an insured after evaluating and agreeing to assume such risk. This situation arises when a customer or an insured expresses the intention to apply for or renew an automobile insurance policy with the insurer, combined with either of the following:

- The insurer informs the customer or the insured that it is going to obtain the information about their prior claims by consulting the FCSA. After it obtains the information from the FCSA, the insurer must verify the accuracy of the information with the customer or the insured.
- or
- The insurer is able to complete an insurance application based on the information given to it by the customer or the insured. The insurer has informed the customer or the insured that it is going to obtain information about their prior claims by consulting the FCSA. After it has obtained the information from the FCSA, the insurer must verify the accuracy of the information with the customer or the insured.

1. Audit objective

The main objective of the compliance audit process is to ensure that insurers, in accordance with the Act, consult the claims file of a driver's licence holder only for purposes of classifying and rating risk when issuing or renewing an automobile insurance policy.

1.1 Achieving the objective

As part of the program, the AMF has established a detailed audit process to ensure that insurers consult FCSA claims files in accordance with section 179.1 of the Act.

The audit process takes the following into consideration:

- Established criteria must make it possible to detect a breach of the insurer's policies or procedures.
- Insurers must be informed of the items that will be used during audits to evaluate their compliance with the Rules.
- Insurers must be informed of the discrepancies detected during an audit.
- Insurers must amend their policies and procedures, if necessary, in order to bring them into compliance with the Rules within a reasonable period of time.
- Insurers must be able to provide documents or data confirming that their policies and procedures for FCSA consultations are in compliance with the Rules established by the AMF.
- Insurers must satisfactorily demonstrate that their consultation policies and procedures are in compliance with the Rules. If they cannot, the AMF or the GAA will request that they amend their policies and procedures as of a determined date.

1.2 Communication of information to insurers

Insurers were informed of the implementation of the compliance audit process, in respect of the Act, by means of an AMF notice,³ which also stipulated that an inspection mandate had been given to the GAA for this purpose. In addition, insurers received a document from the GAA⁴ setting out, among other things, the requirements with respect to the Rules described in the guide and indicating the date by which they were required to comply with them.

³ Avis relatif à la mise en place d'un programme de vérification de la conformité et de l'utilisation des données du Fichier central des sinistres automobile, November 20, 2009 – AMF Bulletin, Vol. 6, No. 46.

⁴ GAA Bulletin ATP No. G2007-06, June 8, 2007.

2. Compliance rules

Insurers must comply with the Rules established by the AMF concerning:

- FCSA access security;
- consultations and the conditions for accessing the FCSA claims history statement;
- notices to be issued to insureds;
- document and data storage; and
- verification of consent.

During the audit, the audit officer ensures that the insurer is in compliance with all items relating to each compliance rule, as described in sections 2.2 through 2.6.

2.1 Sections of the *Automobile Insurance Act* pertaining to compliance

Sections 177, 178, 179, 179.1, 179.2, 179.3, 189.1, 189.2, 190, 193, 193.1, 193.2 and 193.3 of the Act, which are reproduced in section 6, set out insurers' obligations and the penalties for failures to comply with those obligations.

2.2 FCSA access security

As the information in a claims history statement is confidential, the AMF must verify that insurers are complying with the established security rules. Therefore, for each compliance rule below, one or more control measures have been identified and included in the audit process:

- The insurer must make appropriate use of the *Société de l'assurance automobile du Québec* (SAAQ) validation algorithm for drivers' licences.
 - Check that the insurer received the complete driver's licence number from the insured prior to the consultation and that the SAAQ validation algorithm is used solely to verify the validity of the driver's licence number, as described in the Non-Disclosure Agreement for the Validation Algorithm related to Driver's License Numbers.
- Users must consult the FCSA when underwriting risk.
 - Check the selected files to determine whether the consultation took place during the period in which the insurance policy was issued or renewed.
- User access codes must remain confidential, must not be shared with anyone, and must not be used to consult the FCSA on behalf of an unauthorized user.
 - Visit the users' workplace to ensure that FCSA access codes cannot be easily accessed by another user.

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- Check the insurer's list of active employees and authorized users (item 3, section 5.2) and compare it with the list of FCSA application user codes in order to identify users with the same user code.
 - Access codes must be deactivated when a user leaves his or her employment.
 - Check the insurer's list of active employees and authorized users (item 3, section 5.2) and the list of FCSA application active access codes in order to verify whether the insurer is properly managing its user access codes.
 - The insurer must ensure that all users under its responsibility comply with FCSA security access rules.
 - Check the insurer's guidance materials governing user access codes and passwords (memoranda, guides, etc.) (item 5, section 5.2).

2.3 Conditions for accessing the FCSA claims history statement

Insurers' obligations with respect to consultations are set out in section 179.1 of the Act. Insurers must comply with the Rules stated below pertaining to the conditions for accessing the FCSA claims history statement. Therefore, for each compliance rule described, one or more control measures have been identified and included in the audit process:

- Users may only consult the FCSA in order to issue or renew an automobile insurance policy.
 - Check the consultation date for the drivers' licence(s) on the list of licences consulted for the same customer file (item 2, section 5.2) in the selected files and check the insurance policy issuance or renewal date; if no policy is issued, the file must contain an insurance application or other document to justify the consultation(s).
 - In the selected files, check whether the claims information for each licence consulted for the same customer file was confirmed with the customer or the insured.
- A claims history statement obtained by a damage insurance brokerage firm may not be transferred from one insurer to another.
 - Check the selected files to see whether the risk is placed with the insurer associated with the consultation.
- Insurers may only consult the FCSA after they have obtained the insured's driver's licence number.
 - Check the list of licences consulted for the same customer file (item 2, section 5.2). Each consultation must be associated with a driver named in the policy; the list must not contain two different drivers' licences for the same insured.

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- Check the selected files to see whether the complete driver's licence numbers have been recorded for all insureds.
 - Users may consult the FCSA in order to add a driver during the policy period.
 - In the selected files, check whether the FCSA was consulted during the policy period. If so, the reason for the consultation must have been to add a new driver.
 - Users may not consult the FCSA in order to investigate or settle a claim.
 - Check the related claims file for each selected file (item 1, section 5.2). Since consultations for the purpose of conducting an investigation after a loss occurrence are prohibited, users may not consult the FCSA on a date that is close to the claim reporting or claim settlement date without justification.
 - Users may not consult the FCSA in order to solicit potential customers.
 - In the selected files, check whether the consultation date was prior to the date of an application to issue an insurance policy.
 - Users may not consult the FCSA for personal reasons (on behalf of acquaintances, family members of the insurer's employees, etc.).
 - For each licence selected, check whether a file, insurance application or insurance policy exists. The insurer must be able to give access to all files selected for the audit and justify consultations by its users.
 - Users may not consult the FCSA in order to conduct training or computer tests.
 - For each licence selected, check whether a file, insurance application or insurance policy exists. The insurer must be able to justify consultations by its users.

2.4 Compliance of notices to insureds

Under sections 177, 179.2 and 179.3 of the Act, insurers are required to issue certain notices. These notices must be included among the documents sent to insureds:

- Section 177

"[...] If the Autorité des marchés financiers requires that insurers transmit information concerning the automobile driving experience of the persons they insure, each insurer shall notify in writing the persons insured by him that certain information in that respect may be transmitted to the Autorité des marchés financiers and, possibly to other insurers, and that they have, in respect of such information, the rights of access and correction provided for by the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1)."

In order to verify compliance with this rule, the following control measure has been identified and included in the audit process.

- In the customer file and related claims file for each selected file (item 1, section 5.2), check the notices sent to the insured with respect to the consultation and the claims settlement.
- Section 179.2

“Every insurer must, on issuing or renewing an automobile insurance policy, inform the insured in writing that he has requested and obtained information from the Autorité des marchés financiers under section 179.1, where such is the case, in order to determine the rates applied to him.”

In order to verify compliance with this rule, the following control measure has been identified and included in the audit process.

- In the customer file and related claim file for each selected file (item 1, section 5.2), check the notices sent to the insured with respect to the consultation.
- Section 179.3

“On payment of an indemnity subsequent to a claim, the insurer must notify the insured in writing of the percentage of liability attributed to him pursuant to the direct compensation agreement contemplated in section 173 and specify the amounts paid to him under that part of the policy pertaining to liability insurance and under that part of the policy pertaining to insurance of the damage caused to the insured vehicle.

The notice must also indicate to the insured that he is not bound to accept the indemnity and that he may apply to the court, in accordance with the ordinary rules of law, to contest the percentage of liability attributed to him and the amount of his indemnity.”

In order to verify compliance with this rule, the following control measure has been identified and included in the audit process.

- In the customer file and related claims file for each selected file (item 1, section 5.2), check the notices sent to the insured with respect to the settlement of claims.

2.5 Document and data storage

Since insurers may consult the FCSA only when issuing or renewing an automobile insurance policy or when adding a driver during the term of a policy, they must be able to demonstrate to the AMF that they have complied with the Rules pertaining to consultations. For each storage rule below, one or more control measures have been identified and included in the audit process.

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- The validation algorithm includes confidential information that is proprietary to the SAAQ and is subject to a non-disclosure agreement signed by each insurer.
 - Ensure that the SAAQ validation algorithm cannot be easily accessed; it must be stored in a confidential location and must not be shared without authorization.
 - Applications for all issued or unsold policies, sufficient data and supporting documentation including, where applicable, recorded calls, must be accessible for a three-year period to allow compliance audits to be conducted.
 - Check the storage rules applicable to customer files (item 7, section 5.2).
 - Check the documents contained in the selected files to ensure that each stored file includes a list of licences consulted, an insurance application for all issued or unsold policies or sufficient information to issue an insurance policy on behalf of the insured, notices to the insured, and the insurance policy and applicable endorsements.
 - Where applicable, check the handwritten notes, the indication that the FCSA data obtained by the insurer was confirmed with the customer or the insured or, if required, the recorded calls relating to the selected files in order to ensure that they are available for listening purposes.
 - Policies or sufficient data and complete paper or electronic claims files must be accessible for a six-year period for purposes of auditing FCSA claims files during the claim confirmation process and thereby allow insureds to exercise their rights of access and correction provided under the *Act respecting access to documents held by public bodies and the Protection of personal information*, CQLR, chapter A-2.1 (“Access Act”).
 - Ensure compliance of the insurer’s claims file storage rules (item 8, section 5.2).
 - Ensure that stored files are accessible. The insurer must be able to access files in order to complete and return the FCSA audit request form within 14 days and thus enable the GAA to examine the file and reply to the applicant within the time specified in the Access Act. The reminder process must therefore take this time period into consideration.
 - Check whether electronic files contain all the documents included in the paper claims file in order to provide adequate confirmation of a claim in the FCSA.

2.6 Verification of consent

The claims history statement obtained by the insurer under section 179.1 of the Act belongs to the insurer’s file and may not be released to another insurer unless consent to its release has been obtained from the insured concerned and from all drivers mentioned in the FCSA claims history statement. The *Act respecting the protection of personal information in the private sector* (CQLR, chapter P-39.1) and the Access Act regulate consent and the release of information.

To verify compliance with this rule, the following control measure has been identified and included in the audit process.

- In the case of insurance brokerage firms, check whether the claims history statement in the file being analyzed is associated with the insurer with which the risk is placed. If a customer file contains a claims history statement associated with another insurer, the file must contain the consent of each driver concerned.

3. Analysis process

Using the criteria described in section 4, the GAA analyzes the insurer's files and compiles a list of files to be audited.

This list is compiled based on the following factors:

- The credibility of the insurer's data as a percentage.
- Selected audit criteria.
- The level of severity of the potential issues identified during the analysis process in accordance with the importance given to each audit criterion.

4. Analysis criteria

This section provides a non-exhaustive summary of the main criteria to be used when analyzing and selecting the files to be consulted during an audit. The purpose of the analysis criteria is to ensure compliance with the Rules described in section 2 pertaining to FCSA access security, consultations and the conditions for accessing the FCSA claims history statement, notices to be issued to insureds, document and data storage, and the verification of consent.

Criterion 1 – Consultations by an insurer / Customer file

For the same driver's licence, select all FCSA consultation dates entered for the same insurer and compare the interval between each consultation as well as the name of the licence holder entered at the time of the consultation.

This allows you to ascertain the dates an insurer consulted a file for the same insured. If the dates are substantially the same, it is likely that the insurer consulted the FCSA when issuing or renewing a policy. If the dates differ by several weeks, you should endeavour to find out the reason for the consultation.

Criterion 2 – Consultations / Settlement of claims

For the same driver's licence, select all FCSA consultation dates entered for the same insurer and compare them with the claims reporting dates and the insurer numbers for each claim.

- This will enable you to identify whether an insurer has consulted the FCSA in order to investigate or settle a claim.
- This will enable you to identify whether an insurer has consulted the database because it suspects fraud by the insured and wishes to cancel the insured's policy.
- A consultation that occurred on the same date a claim was reported could indicate a violation of the FCSA access rules.

Criterion 3 – Consultation by all insurers for a specific file / Solicitation

For the same driver's licence, select all FCSA consultations by all insurers and compare the interval between each consultation. Consultations that fall outside a certain interval (policy issuance or renewal) could indicate a violation of the FCSA access rules.

Criterion 4 – Consultation regarding number of vehicles (private passenger vehicles)

Compare the number of FCSA consultations to the industry average for the "private passenger vehicle" risk category. By measuring the deviations of each insurer from the industry average, a severity rating can be assigned. Deviations can then be investigated.

Criterion 5 – Random selection of a driver’s licence for consultation

For the same insurer, select all FCSA consultations that occurred on a given date for the same licence holder and where digits 6 to 11 of the driver’s licence number are identical.

- This will enable you to detect whether an insurer has used the driver’s licence validation algorithm other than for validation purposes and has consulted the insured’s file without having obtained his or her driver’s licence number.

Criterion 6 – Consultations by an insurer during the analysis period / Random selection

Extract a random sampling during the analysis period in order to complete the list of files to be audited.

Criterion 7 – Use of a fictitious name to consult various driver’s licences

For the same insurer, select a predetermined proportion of all its FCSA consultations where the names are identical and the first letter on the driver’s licence is different from the first letter of the name.

- This will enable you to detect whether an insurer is using the database to conduct computer tests or training.

5. Intervention process

The AMF will authorize inspections requested by the GAA based on the schedule submitted to it. An analysis of audit criteria and issues identified during the initial visit will determine the frequency and timing of visits to a particular insurer.

The audit includes advance notice to the insurer, a visit by a GAA audit officer on behalf of the AMF and the post-visit report.

5.1 Designation of GAA representatives as AMF audit officers

Under paragraph 2 of section 9 of the *Act respecting the regulation of the financial sector*, S.Q. 2018, c. 23, s. 603, the AMF may “[...] in writing, authorize a person other than a staff member to carry out an inspection and report to it.”

In accordance with this power, GAA representatives are authorized to act as audit officers on behalf of the AMF.

In designating GAA representatives as audit officers to ensure compliance by insurers with the Act, the AMF does not delegate or outsource the exercise of its powers to the GAA. Accordingly, the AMF may exercise the powers conferred on it under the Act, as well as any other power or function conferred on it under an Act it administers and that could apply to an insurer.

5.2 Audit steps

The audit process comprises the following steps:

- Advance written notice to the insurer specifying the planned date of the audit and including the list of files to be audited and the documents listed below, which the insurer is required to prepare:
 1. the customer file and related claims file for each file selected for the audit;
 2. licences consulted for the same customer file;
 3. a list of the insurer’s active employees and authorized users;
 4. policies and procedures with respect to FCSA consultations;
 5. policies and procedures pertaining to the security of user access codes and passwords (memoranda, guides, etc.);
 6. policies and procedures for sending notices to insureds;
 7. policies and procedures for storing customer files;
 8. policies and procedures for storing claims files;
 9. signed Appendix C.1 to the FCSA Service Subscription Agreement – *Obligations of the Representative concerning access to the FCSA Service* (applicable to brokerage firms).

If the insurer cannot provide written documentation for the policies and procedures stipulated in each of items 4 through 8 above, it must describe them in a questionnaire designed for that purpose. This questionnaire, in the form of a statement, will enable the AMF to audit compliance with and the application of policies and procedures that are not available for consultation.

The questionnaire will be included with the letter sent to the insurer informing it about the audit and must be completed by a person in a position of authority at the insurer.

- Telephone follow-up will be conducted with the person in charge at the insurer a few days before the visit. The person in charge must be available to meet with the audit officer at the start and at the end of the audit in order to discuss the questionnaire and complete and sign the preliminary report. Furthermore, a person must be available throughout the visit to assist the audit officer with the insurer's computer system, if necessary.
- The audit will be conducted at the insurer's premises on the agreed-upon date.

5.3 On-site audit

The audit process comprises four steps:

In the first step, the audit officer meets with the person in charge at the insurer to inform him or her of the items that will be audited and to review the completed questionnaire "Compliance Rules - Part 1". The person in charge must give the audit officer access to the selected files and other documents that are relevant to the audit, as described on the list included with the audit notice (items 1 through 9, section 5.2). The audit officer will also ensure that he or she has remote access to the insurer's computer system.

In the second step, the audit officer, accompanied by the person in charge, visits the premises and conducts an audit of the selected files and other relevant documents. The audit officer may ask to meet with certain users to obtain additional information on particular files and to attend a demonstration of an FCSA file consultation.

In the third step, the audit officer discusses discrepancies detected and compliance or non-compliance with the Rules with the person in charge. At the end of the audit, the audit officer completes the questionnaire "Compliance Rules – Part 2", which summarizes the audit results, and discusses them with the person in charge, who signs the questionnaire to acknowledge that he or she has been informed of the results. This questionnaire also enables the audit officer to complete the final audit report.

Following the visit to the insurer, the audit officer presents his or her observations and recommendations to the GAA and, at the GAA's request, to the AMF. Subsequently:

- The audit officer drafts the audit report, which is then sent to the insurer.
- The GAA informs the insurer in writing that it is or is not in compliance with the Rules.
- Upon receiving the audit report, the insurer must contact the GAA to agree on the implementation date for the corrections.

- The time frames given to correct discrepancies detected will vary depending on the severity of each discrepancy.

Once the implementation dates of the corrections have been agreed upon, the GAA will follow up on the corrective measures taken.

In the fourth step, the GAA follows up on the corrective measures implemented. The insurer must make the requested corrections within the agreed-upon time frame. It must advise the GAA in writing once the changes have been made and provide the necessary documents or evidence. Since the time frame may vary for each discrepancy, the insurer must adhere to each agreed-upon time frame.

A second visit (within four months or as determined by the severity of the discrepancy) is scheduled to ensure that the corrections by the insurer comply with the undertakings made.

5.4 Criteria for determining the next audit

At the end of each audit, the audit officer assigns the insurer a rating, which determines the date of the next audit:

- Rating 1: Visit the following year
- Rating 2: Visit in two years
- Rating 3: Visit in three years

A system allots a number of points, which are then used to assign the rating following the audit. The scoring system is based on the following two items:

- Importance coefficient for each rule
 - An importance coefficient is assigned to each compliance rule defined in section 2 to highlight which Rules are the most critical. The importance coefficients range from 1 to 5, with 5 assigned to the most critical Rules.
- Number of points assigned to each compliance rule
 - The audit officer assigns points to each rule based on the audit results. The insurer can obtain between 0 and 5 points for each rule, according to the following chart:

Audit results	Number of points
Compliant	0
Less than 20% discrepancies	1
20% - 40% discrepancies	2
40% - 60% discrepancies	3

Audit results	Number of points
60% - 80% discrepancies	4
80% - 100% discrepancies	5

- The number of points obtained is multiplied by the importance coefficient in order to obtain the weighted results assigned to the compliance rule.

A rating is assigned according to the insurer's position in relation to the maximum total point score. The following chart shows the ratings based on the total point score obtained by the insurer:

Insurer's total point score	Rating
Over 50	1
26 - 50	2
0 - 25	3

The audit rating determines the date of the next audit for each insurer.

5.5 Penalties

Insurers that violate the Rules must comply with the GAA's recommendations. The AMF may impose the penalties set out in sections 189.1, 189.2, 190, 193, 193.1, 193.2 and 193.3 of the Act.

The AMF may also, at its discretion, take any other measures in respect of an insurer pursuant to any other Act it administers when the audit facts and conclusions give rise to such measures.

Insurers whose procedures are not found to be in compliance during an audit must amend them within a reasonable time frame agreed upon with the GAA.

6. Sections of the *Automobile Insurance Act* that regulate obligations and penalties applicable to the FCSA

Automobile insurance experience, automobile driving experience and proof of experience

“177. *The Autorité des marchés financiers may require that every insurer file, in the form prescribed by it, the statistical data and information which it determines concerning the insurer’s automobile insurance experience in Québec and the automobile driving experience of the persons insured.*

The information concerning the automobile driving experience of persons insured by the insurers shall cover only the past 10 years.

If the Autorité des marchés financiers requires that insurers transmit information concerning the automobile driving experience of the persons they insure, each insurer shall notify in writing the persons insured by him that certain information in that respect may be transmitted to the Autorité des marchés financiers and, possibly to other insurers, and that they have, in respect of such information, the rights of access and correction provided for by the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

Authorized agency and powers of investigation and inspection

“178. *The Autorité des marchés financiers may authorize an agency to collect the data and information contemplated in section 177 for it, and every insurer must furnish them to that agency on demand, in the indicated form.*

This authorization shall not be granted, however, unless the agency has its main establishment in Québec, and keeps its records and books in Québec.

The agency so authorized is subject to the powers of investigation and inspection vested in the Autorité des marchés financiers under the Act respecting insurance (chapter A-32).

The Autorité des marchés financiers may designate the Groupement as an authorized agency under this section.”

Processing of data

“179. *The Autorité des marchés financiers may require the authorized agency under section 178 to process the data and information it receives, in the manner the Authority considers appropriate; every authorized insurer must pay his share of the agency’s operating costs, proportionally to the amount of the direct gross premiums collected for automobile insurance in Québec.”*

Information communicated to insurer

“179.1. *The Autorité des marchés financiers may communicate the following information to the authorized insurer who so requests for the purpose of issuing or renewing an automobile insurance policy:*

- (1) the driver’s licence number of the person submitting an application for insurance and of the regular drivers of his automobile;*
- (2) the date of any accident in which those persons have been involved as the driver or owner of an automobile;*
- (3) the description of the accident and the coverage affected;*
- (4) the class of use of the vehicle of which the person concerned had custody at the time of an accident;*
- (5) the description of the vehicle of which the person concerned had custody at the time of an accident;*
- (6) the amount of the indemnities paid under an automobile insurance contract entered into by every person concerned;*
- (7) the outstanding claims;*
- (8) the percentage of liability assumed by the persons.*

That information may be communicated at the time a person expresses the intention to apply for or renew an automobile insurance policy with an insurer; that information may only be used for purposes of classification and rate application based on the risk the person represents.

If the insurer issues a policy, the information referred to in the first paragraph is presumed to have been confirmed by that person, subject to any other circumstances the person is required to declare in that respect, and the obligation relating to that declaration is presumed to have been properly discharged.

The Autorité des marchés financiers may, at the request of the Société⁵, communicate to the Société the same information if it is necessary for the purposes of section 22 of the Act respecting owners, operators and drivers of heavy vehicles (chapter P-30.3).

The Authority may also, on the conditions it determines, authorize the agency designated in section 178 to make such communications on its behalf.”

Written notification

“179.2. *Every insurer must, on issuing or renewing an automobile insurance policy, inform the insured in writing that he has requested and obtained information from the Autorité des marchés financiers under section 179.1, where such is the case, in order to determine the rates applied to him.”*

⁵ Refers to the Société de l’assurance automobile du Québec.

Liability

“179.3. *On payment of an indemnity subsequent to a claim, the insurer must notify the insured in writing of the percentage of liability attributed to him pursuant to the direct compensation agreement contemplated in section 173 and specify the amounts paid to him under that part of the policy pertaining to liability insurance and under that part of the policy pertaining to insurance of the damage caused to the insured vehicle.*

The notice must also indicate to the insured that he is not bound to accept the indemnity and that he may apply to the court, in accordance with the ordinary rules of law, to contest the percentage of liability attributed to him and the amount of his indemnity.

Note: At the end of the second paragraph, the following words are not in force:

“and the amount of his indemnity”.

These words will come into force on the date to be fixed by order of the Government (1989, c. 47, s. 16).”

Fine and penal proceedings

“189.1. *Any insurer who uses or tolerates the use of any information transmitted to him under section 179.1 otherwise than for purposes of classification or rate application is liable to a fine of not less than \$575 nor more than \$5,750.”*

“189.2. *Any person who, knowingly, gives access to any information transmitted under section 179.1, communicates such information or permits the communication thereof without having obtained the authorization of the person concerned to disclose such information to a person determined or without having received the order of a person or body having the power to compel its communication is liable to a fine of not less than \$200 nor more than \$1,000.”*

“190. *The person who contravenes sections 83.10, 83.15, 97, 174, 177 to 179, and 179.2 to 181 is liable to a fine of not less than \$700 nor more than \$7,000.”*

“193. *Any person who infringes a provision of this Act or the regulations for the violation of which no penalty is specially provided, is liable to a fine not exceeding \$1,400.”*

“193.1. *Penal proceedings for an offence under Title VII may be instituted by the Autorité des marchés financiers.”*

“193.2. *The fine imposed by the court is remitted to the Autorité des marchés financiers if it has taken charge of the prosecution.”*

Prescription

“193.3. *Penal proceedings for an offence under any of sections 177 to 181 of Title VII are prescribed three years from the date the investigation record relating to the*

offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Autorité des marchés financiers indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary.”