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 2.1.2 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° : CD00-1316

DATE : 11 février 2022

LE COMITÉ : M[e] George R. Hendy — Président
M. Denis Petit, A.V. A — Membre
M. François Faucher, Pl. Fin. — Membre

LYSANE TOUGAS, ÈS QUALITÉS DE SYNDIQUE ADJOINTE DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

MARTIN LEFEBVRE, conseiller en sécurité financière (certificat numéro 178905)

Partie intimée

DÉCISION SUR SANCTION

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

Ordonnance de non-divulgation, de non-diffusion et de non-publication des noms et prénoms des consommateurs impliqués dans la plainte disciplinaire, ainsi que de toute information se trouvant dans la preuve qui

permettrait de les identifier. Toutefois, il est entendu que la présente ordonnance ne s'applique pas aux échanges d'information prévus à la *Loi sur l'encadrement du secteur financier* et la *Loi sur la distribution de produits et services financiers*.

APERÇU

[1] Le 8 septembre 2021, le Comité a rendu une décision déclarant l'intimé, Martin Lefebvre, coupable en vertu des chefs d'accusation 1 et 3, et l'a acquitté du deuxième chef d'accusation d'une plainte disciplinaire qui se lit ainsi :

> 1. À Saguenay, le ou vers le 8 septembre 2010, l'intimé n'a pas recueilli tous les renseignements et procédé à une analyse complète et conforme des besoins financiers de P.L., alors qu'il lui faisait soumettre une demande de transformation de la police A, contrevenant ainsi aux articles 16, 27 de la *Loi la distribution des produits et services financiers* (RLRQ, c. D-9.2) et 6 du *Règlement sur l'exercice des activités d'un représentants (RLRQ, c. D-9.2, r. 10);*
>
> 2. À Saguenay, le ou vers le 8 septembre 2010, l'intimé a fait soumettre à P.L. une demande de transformation de la police A alors que cela ne convenait pas à sa situation personnelle et financière, contrevenant ainsi aux articles 16, 27 de *la Loi sur la distribution des produits et services financiers (RLRQ, c. D-9.2), 12 et 35 du Code de déontologie de la Chambre de la sécurité financière (RLRQ, c.D-9.2, r. 3);*
>
> 3. Dans la province de Québec, entre 2011 et 2014, l'intimé a utilisé ou permis que soient utilisé environs 16 formulaires sur lesquels la signature de P.L. a été photocopiée, contrevenant ainsi aux articles 16 de *Règlement Loi sur la distribution des 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).

[2] L'audition sur sanction a eu lieu le 12 janvier 2022, lors de laquelle les parties ont soumis la recommandation commune suivante pour l'approbation du Comité :

a) pour le chef d'accusation 1, une réprimande;

b) pour le chef d'accusation 3, une radiation temporaire de deux mois, à être purgée concurremment avec la radiation temporaire de 11 mois (à compter de la date de réinscription de l'intimé) imposée en vertu d'une décision sur

sanction rendue contre l'intimé le 25 octobre 2021, dans les dossiers CD00-1403 et 1404, 2021 QCCDCSF 63, pièce SP-1);

c) condamnation aux frais de publication en vertu de l'article 156 du *Code des professions*;

d) condamnation à payer 2/3 des déboursés conformément à l'article 151 du *Code des professions*, à cause de l'acquittement de l'intimé sur un des trois chefs d'accusation portés contre lui, suivant les modalités qui ont été laissées à la discrétion du Comité.

QUESTIONS EN LITIGE

[3] Le Comité doit déterminer:

a) si la recommandation commune des parties déconsidère l'administration de la justice ou si elle est contraire à l'intérêt public;

b) s'il y a lieu d'accorder des modalités et un délai à l'intimé pour le paiement des déboursés.

REPRÉSENTATIONS DES PARTIES

[4] Comme facteurs aggravants concernant les chefs d'accusation 1 et 3, la plaignante a soulevé la gravité objective de la conduite de l'intimé, vu que l'analyse des besoins du client constitue un élément essentiel du travail et des devoirs du représentant, et que la confection de documents (utilisation de photocopies de signatures) a été jugée une pratique malsaine de façon constante par la jurisprudence

[5] Comme facteurs atténuants, la plaignante a souligné:

a) l'absence d'antécédents disciplinaires contre l'intimé au moment des infractions dans cette cause;

b) le fait que l'intimé avait relativement peu d'expérience au moment des infractions, dont la première est survenue en septembre 2010 (l'intimé étant alors inscrit depuis juin 2008);

c) la conséquence objectivement mitigée du défaut de l'intimé d'avoir procédé à une analyse complète et conforme des besoins de la cliente, vu l'acquittement de l'intimé en vertu du chef d'accusation 2;

d) qu'il n'y avait aucune intention frauduleuse ou malhonnête de la part de l'intimé, l'infraction ayant été commise pour éviter des délais et inconvénients pour la cliente;

e) l'absence de profit personnel pour l'intimé;

f) la durée prolongée entre le début de l'enquête en 2014 et le jugement sur culpabilité en octobre 2021;

g) la perte de la relation contractuelle entre l'intimé et Industrielle Alliance.

[6] Bien que la jurisprudence impose normalement comme sanction une amende pour le chef d'accusation 1, la plaignante argumente que les facteurs atténuants ci-haut militent en faveur d'une simple réprimande.

[7] En ce qui concerne le chef d'accusation 3, la jurisprudence impose normalement une radiation temporaire pouvant aller jusqu'à trois mois.

[8] La plaignante a invoqué la jurisprudence suivante à l'appui de ses représentations:

a) *Chambre de la sécurité financière c. Auger*, 2021 QCCDCSF 54

b) *Chambre de la sécurité financière c. Baillargeon Bouchard*, 2021 QCCDCSF 33

c) *Chambre de la sécurité financière c. Salvail*, 2021 QCCDCSF 39

d) *Chambre de la sécurité financière c. Labrecque*, 2020 QCCDCSF 5

e) *Chambre de la sécurité financière c. Rondeau*, 2019 QCCDCSF 48

[9] La plaignante soumet que la recommandation commune n'est pas en conflit avec la marge de manœuvre offerte par la jurisprudence pour des cas semblables et qu'elle ne déconsidère pas l'administration de la justice et n'est pas contraire à l'intérêt public.

[10] L'intimé a ensuite fait part au Comité qu'il a eu des difficultés à se trouver un nouvel emploi à cause de la mauvaise publicité résultant des diverses procédures intentées contre lui par la Chambre de la sécurité financière et il demande au Comité de lui accorder des modalités et un délai équitable pour payer les déboursés considérables de cette cause, ce à quoi la plaignante ne s'est pas opposée.

[11] Le Comité a été informé par le greffier que les déboursés totaux de cette affaire pourraient se chiffrer à la somme approximative de 10 000$, de sorte que même les 2/3 de cette somme constitue un montant important pour l'intimé.

ANALYSE ET MOTIFS

[12] Il n'y a aucun doute que l'intimé a contrevenu à des obligations déontologiques fondamentales dans cette cause.

[13] Cependant, en décidant sur les sanctions appropriées à imposer pour ces manquements graves, le Comité ne peut ignorer les facteurs atténuants mentionnés ci-haut.

[14] La décision de la Cour suprême du Canada dans l'affaire *R. c. Anthony-Cook* (2016 S.C.R. 43) nous oblige à adopter une recommandation commune des parties quant aux sanctions à moins que celle-ci déconsidère l'administration de la justice ou est contraire à l'intérêt public.

[15] Le Comité est d'avis que la recommandation commune propose des sanctions qui sont appropriées dans les circonstances et qui se situent dans la fourchette des sanctions établies par la jurisprudence, tout en respectant les principes de progression d'exemplarité et de dissuasion qui sont pertinents à ce cas, de sorte que la recommandation commune ne déconsidère pas l'administration de la justice et n'est pas contraire à l'intérêt de la justice.

[16] Quant aux déboursés, le Comité est d'avis que le montant important de ces déboursés et la capacité financière diminuée actuelle de l'intimé justifient de lui permettre de satisfaire à la condamnation aux déboursés suivant l'article 151 du *Code des professions* par versements mensuels consécutifs et égaux sur une période de 18 mois à partir de la date de communication à l'intimé du montant total dû.

PAR CES MOTIFS, le Comité de discipline:

ORDONNE, sous le chef d'infraction 1, une réprimande de l'intimé;

ORDONNE, sous le chef d'accusation 3, la radiation temporaire de l'intimé pour une période de deux mois, à être purgée à partir du moment que l'intimé reprendra son droit de pratique à la suite de l'émission en son nom d'un certificat par l'Autorité des marchés financiers ou par toute autre autorité compétente, le cas échéant, et concurremment avec la radiation temporaire de 11 mois imposée contre l'intimé dans le jugement produit sous la cote SP-1 (2021 QCCDCSF 63, CD00-1403 et 1404);

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

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

CONDAMNE l'intimé au paiement de 2/3 des déboursés prévus à l'article 151 du *Code des professions*, mais par versements mensuels consécutifs et égaux sur

une période de 18 mois, à partir de la date de communication à l'intimé du montant total dû;

PERMET la signification de la présente décision à l'intimé par moyen technologique conformément à l'article 133 du *Code de procédure civile*, soit par courrier électronique.

(S) Me George R. Hendy

George R. Hendy
Président du comité de discipline

(S) M. Denis Petit

M. Denis Petit, A.V.A.
Membre du comité de discipline

(S) M. François Faucher

M. François Faucher, Pl. Fin.
Membre du comité de discipline

M^e^ Mathieu Cardinal
CDNP AVOCATS
Avocats de la plaignante

L'intimé se représente seul

Date d'audience : 12 janvier 2022

COPIE CONFORME À L'ORIGINAL SIGNÉ

DISCIPLINARY COMMITTEE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUÉBEC

NO: CD00-1402

DATE: February 16, 2022

THE COMMITTEE[1]:	Me George R. Hendy	President
	Mr. Marc Binette, Pl. Fin.	Member

SYNDIC OF THE CHAMBRE DE LA SÉCURITÉ FINANCIÈRE,

Plaintiff

v.

PETER SAKARIS (certificate # 130145)

Respondent

DECISION REGARDING GUILT

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

- **Orders the non-disclosure, non-publication and non-release of the names of clients contemplated in the Complaint herein or mentioned in the evidence filed by the parties, as well as any information which might enable their identification, it being understood that this order does not apply to requests**

[1] As the third member, Mr. Richard Charette, is unable to act, this decision is rendered by the two remaining members of the Committee in accordance with section 371 of the Act respecting the distribution of financial products and services and Article 118.3 of the Professional Code.

for access to information from l'Autorité des marchés financiers (the "AMF") and from the Fonds d'indemnisation des services financiers.

[1] On November 2, 3 and 4, 2020, the Disciplinary Committee of the *Chambre de la sécurité financière* (the "**Committee**") heard the evidence and legal arguments of the parties regarding the following disciplinary complaint (the "**Complaint**") filed against the Respondent, which reads as follows, once translated to English[2]:

THE COMPLAINT

1. In the region of Montreal, on or about March 8, 2016, the Respondent did not favour the maintenance in force of insurance contract A held by his client, D.P., thereby contravening section 20 of the Regulation respecting the pursuit of activities as a representative;

2. In the region of Montreal, on or about March 8, 2016, the Respondent did not complete the prior notice of replacement for insurance contract A in such a manner as to permit his client, D.P., to be aware of the advantages and disadvantages of replacing said contract, thereby contravening Article 22 of the *Regulation respecting the pursuit of activities as a representative and Article 16 of the Act respecting the distribution of financial products and services*;

3. In the region of Montreal, on or about July 23, 2016, the Respondent denigrated, belittled or discredited another representative in completing replacement forms regarding insurance contract B (for his client, N.P.), and regarding insurance contract C (for his client, A. B.), thereby contravening Article 32 of the *Code of Ethics of the Chambre de la sécurité financière*;

4. In the region of Montreal, starting from July 23, 2016, Respondent did not transmit the replacement forms regarding insurance contract B (for his client, N.P.) and insurance contract C (for his client, A.B.) which he had completed and signed, in such a manner as to confirm the attestation of the dates of transmission to the head office of the insurer, Industrial Alliance, thereby contravening Article 22 of *the Regulation respecting the pursuit of activities as a representative.*

[2] Plaintiff was represented by Mes Marie-Claude Sarrazin and Sarah Lefebvre, while the Respondent was represented by Me Peter Lack.

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

[3] The parties agreed that this decision be drafted in English.

OVERVIEW

[4] As appears from Counts 1 and 2 above, Respondent is charged with (i) having failed to favour the maintenance in force of an existing insurance policy (with Industrial Alliance, "**IA**") when he persuaded his client (D.P.) to replace it with another policy (with Sun Life) in March 2016 and (ii) having failed to properly fill out the relevant prior notice of replacement form in such a manner as to permit D.P. to be aware of the advantages and disadvantages of replacing said original policy.

[5] As appears from Counts 3 and 4, Respondent is charged with (i) having denigrated, belittled and discredited another representative in completing prior notice of replacement forms regarding insurance policies belonging to two other clients, N.P and A.B., and (ii) with having failed to transmit said prior notice of replacement forms in such a manner as to confirm the transmission dates thereof to the insurer.

[6] Plaintiff called only one witness, Sébastien Lévesque, its investigator assigned to this case, while Respondent testified in his own defence, in addition to his client, A.B., and Paulo Goncalves, a financial security advisor who testified as an expert regarding yearly renewal term policies.

THE EVIDENCE OF THE PARTIES

Counts 1 and 2

[7] Respondent's "Attestation de droit de pratique" (Exhibit P-1) shows that he was registered with the AMF from October 23, 1997 to October 31, 2019, except for a brief hiatus (March 2 to 6, 2017), and that he was therefore subject to the jurisdiction of the

Chambre de la sécurité financière at the time of the alleged infractions (March and July 2016).

[8] On September 11, 2001, D.P. subscribed to a universal life policy from IA (contract A, cited in Count 1) with a face amount coverage of $75,000, for pre-determined annual premiums based on yearly renewable term ("**YRT**"), as appears from Exhibit P-5 (pages 11 and 12). Although the premiums increased every 4 years by pre-determined amounts, the policy had a "levelling privilege" (P-5, page 11) which allowed D.P. to freeze the future premiums at a fixed amount for the remainder of the contract, depending on when that privilege was exercised.

[9] Although the IA policy with D.P. was not filed, Respondent admitted that its general terms and conditions were identical to the YRT universal life policy issued by IA to N.P. (Exhibit P-14)

[10] When, on March 8, 2016, Respondent persuaded D.P. to terminate the IA policy and replace it with the Sun Life policy, which had the same coverage of $75,000, the annual (YRT) premium payable under the IA policy was $360, while the annual (level) premium for the Sun Life policy was $1338.50, or $120.47 per month (P-6, page 16, and P-8, page 69).

[11] The evidence established that, if D.P. had availed herself of the levelling privilege under the IA policy on March 18, 2016, she could have benefitted from a level monthly premium of $66.19 for the remainder of the policy (Exhibit P-9, page 76).

[12] Mr. Lévesque testified that Respondent made the following relevant notes in the prior notice of replacement form (P-6) which he prepared for his client (D.P.):

a) in section 2.1 (P-6, page 18), he stated that the existing insurance contract (contract A, with IA) did not meet his client's needs because "The existing insurance the cost of insurance increases. So the cost goes up each year", without mentioning (i) the needs of the client and how those needs were satisfied under the two policies, (ii) the availability of the above-described levelling privilege in the IA policy that would have allowed D.P. to freeze the premium at the constant monthly sum of $66.19 for the remainder of the contract and (iii) without conducting a comparative analysis of the relative future cost of premiums (e.g. over the next 10 or 20 years) under the Sun Life policy and the IA policy (assuming the level premium of $66.19/month);

b) in section 2.2 (P-6, page 18), he explained how the proposed contract (with Sun Life) would better meet his client's needs by stating that "The client wants to have cash in her plan" and that "There's a guaranteed amount of divident plus the none guaranteed dividents (sic)", without doing an analysis of D.P.'s needs, as required by Article 6 of the Regulation and mentioned in the prior notice (P-6, page 14), to determine (inter alia) whether she needed to accumulate "cash in her plan" and, if so, how much, or mentioning or examining whether the client might also have been able to accumulate cash in the IA contract by (for example) contributing an amount equal to the difference between the level premium ($66.19) available under the IA policy and the increased monthly level premium ($120.47) stipulated in the Sun Life contract, which would have generated dividends which were guaranteed at a minimum of 3% per annum (P-14, page 131, Fixed-Term Accounts),

which was equivalent to the guaranteed return under the Sun Life policy, as confirmed during Respondent's cross-examination. Although the parties did not bring up at the hearing the rule under the Income Tax Act of Canada which potentially limits the contributions an insured may invest in the tax-exempt accumulated funds after the 7th anniversary of the issue date of a universal life policy, the fact remains that Respondent did not look into this issue or bring it to his client's attention in summarizing the advantages and disadvantages of the proposed replacement**;**

c) in section 2.3, in his non-responsive explanation of the alleged disadvantages of replacing the IA contract with the Sun Life contract, Respondent stated that D.P. "does not have to worry about higher premiums and No cash in her plan. And nothing is guaranteed", without mentioning that the annually increasing premiums thereunder were in fact pre-determined and therefore guaranteed (P-5, page 12), or the disadvantages of the Sun Life policy mentioned in sub-paragraph 12(e) below);

d) in section 2.4, when asked to explain why he was not modifying the client's existing contract, Respondent non-responsively answered "because this plan is superior to her old one and in 20 years the insurance wouldn't cost her anything", without mentioning why the IA policy could not be amended to provide the same coverage and similar advantages to the Sun Life policy;

e) in section 2.5, when asked to "explain the financial impact of the replacement (e.g. redemption fees, cash surrender value, (guaranteed and non-guaranteed), cancellation fees premiums, policyholder dividends, …)", Respondent laconically answered "It would be a lot better for the client than their original YRT", without mentioning (as affirmed by Mr. Lévesque) that (i) most, but not all of the accumulated cash surrender value under the Sun Life policy is added to the death benefit (see P-8, pages 70 and 72), whereas the full amount of the cash surrender value accumulated under the IA policy is added to the death benefit, and (ii) that withdrawals of any amounts in the Sun Life were allowed only if the money was withdrawn as an interest-bearing loan or the policy was terminated, whereas they could be withdrawn without terminating the IA policy, neither of these features having been mentioned by Respondent in section 2.6, where he was asked to explain the differences between complementary or optional guarantees under the two contracts.

[13] In sections 1.3 and 8.4 of D.P.'s application for the Sun Life policy (Exhibit P-7, pages 24 and 40), in response to questions regarding the purpose of the new policy, Respondent merely responded that "client wants to replace her YRT-UL" and "replace a YRT policy only", without referring to her alleged need for cash or the cash surrender value.

[14] Mr. Lévesque concluded his testimony regarding Counts 1 and 2 by stating that Respondent could not prove to him that replacing the IA policy by the Sun Life policy was in D.P.'s interests and that the prior notice of replacement form completed by Respondent

(P-6) did not permit D.P. to be aware of the advantages and disadvantages of this replacement, as several of Respondent's answers were non-responsive to the questions posed to him and focused doggedly on the YRT nature of the IA contract, without pointing out (i) the premium levelling option available thereunder, (ii) the comparative cost of premiums over time under the two policies (iii) the fact that D.P. could have invested additional sums from time to time to allow her to generate a cash value under the IA policy with a level premium (thereby generating a guaranteed minimum return of 3%, which was equivalent to the guaranteed dividends under the Sun Life policy), and (iv) the relative disadvantages of the Sun Life policy provisions regarding the withdrawal of the cash surrender value and its partial exclusion from the death benefit.

[15] Respondent testified as follows regarding Counts 1 and 2, initially referring to a written list of questions (some with answers) that were prepared in advance of the hearing:

a) He had worked in the insurance business since 1995, as an agent and a broker;

b) Respondent had known D.P. since she married his brother-in-law in 2011 or 2012 and the notice of prior replacement for D.P. (P-6) was sent on his behalf to IA by MSA Financial, Respondent's MGA at the time (Exhibit I-2);

c) Respondent said that when he met with D.P. at her home, he told her that her policy with IA (P-5) was a YRT and that, although "there was nothing basically wrong with a YRT" and that it was "a pretty good policy", it had to be "sold right", by which he meant that the investments made with such a policy had to be guaranteed and that a YRT policy

linked to mutual funds (such as D.P.'s IA policy) could not provide guaranteed returns because of the ever-present possibility of market fluctuations;

d) Respondent said that a YRT policy linked to mutual funds (i.e. in the stock market) required an annual review and proper management of the client's situation to determine whether the returns were keeping pace with the increased cost of premiums;

e) Although Respondent believes he prepared a written needs analysis for D.P. at the time of the replacement, which should have been in his file, none was found in the documents he remitted to Plaintiff during its investigation, after having been requested to send his entire file to the investigator (Exhibit P-4);

f) Respondent claims that, although he verbally informed D.P. about the levelling privilege in the IA policy, she did not want to keep it;

g) Respondent said he showed D.P. a series of alternative products and that, after looking "at the pros and cons", she chose the Sun Life policy, which was paying a cumulative dividend of 6.75% in July 2016 (of which 3% was guaranteed), which had fallen to 6.25% by the date of trial (Exhibit I-3, third page);

h) This return of 6.25% was comprised of a guaranteed return of 3%, the balance being a non-guaranteed return based on investments in what amounts to a balanced mutual fund;

i) Respondent admitted that he did not give D.P. an illustration of how much she might earn under a modified version of the IA policy (with a level premium), assuming she made additional contributions above and beyond the amount of the level premium, because of his belief that a YRT policy, in order to avoid stock market risks, had to be linked to GICs (then offering rates less than 1.5%), which would never generate enough returns to pay the increasing premiums over the long term;

j) Respondent does not appear to have considered the abovementioned 3% guaranteed return available in the IA policy, and his opinion that YRT policies linked to mutual funds are inappropriate is belied by the fact that the non-guaranteed portion of the Sun Life policy was also invested like a balanced mutual fund (I-3, second page), Respondent's only response to this contradiction being his opinion that the Sun Life mutual fund was better managed than IA's mutual fund because of its reliable historical returns (I-3, third page);

k) in discussing his comments in the notice of replacement (P-6), Respondent said the following:

1. as regard section 2.1, he admitted that he neglected to mention therein that D.P. wanted to have "cash in her plan";

2. he admitted that he did not properly respond to the question in section 2.3, as the alleged elimination of fears regarding higher future premiums and the potential lack of "cash in her plan" are not disadvantages of replacing the IA policy, and the claim that nothing in the IA policy was guaranteed was wrong

and misleading because it ignores the guaranteed amounts of future premiums (P-5) and the possibility of investing for a 3% guaranteed return;

3. in section 2.4, his answer to the question "why you are not modifying your client's existing contract" was also non-responsive, because it instead refers to alleged advantages of the Sun Life policy, and fails to mention or consider the level premium option available under the IA policy, the possibility of investing extra amounts at a guaranteed rate of return of 3%, a comparison of the future costs and benefits of the two policies by way of an illustration that Respondent could have requested from IA, and the disadvantages of the Sun Life policy as regard the abovementioned issues relating to the partial exclusion of the surrender value from the death benefit and consequences of the withdrawal of cash value;

l) Respondent claims that he verbally explained to D.P. that withdrawing the cash value in the Sun Life policy would lead to termination (unless she made a loan), but that he did not mention that in the prior notice of replacement (P-6);

m) Respondent was involved in a serious automobile accident on March 31, 2019, in which he sustained serious head trauma, and he has not apparently worked since then.

[16] Respondent called Mr. Paulo Goncalves, a financial security advisor since 1989, currently registered with the AMF, to testify as an expert on (i) the advantages and

disadvantages of YRT policies, (ii) the servicing thereof, (iii) the prior replacement forms filed in evidence (P-6, P-15 and P-16) and (iv) the new policies issued to D.P, N.P. and A.B.

[17] Mr. Goncalves admitted he has never testified as an expert before and has never given conferences to industry representatives on the subject matter of his testimony, although he has had considerable experience as an insurance broker during the past 31 years.

[18] While Plaintiff objected to Mr. Goncalves' qualifications to testify as an expert on the aforementioned topics and on the ultimate legal questions to be decided herein, the Committee decided to hear the testimony of Mr. Goncalves while expressly reserving its right to decide the ultimate questions in issue.

[19] Mr. Goncalves testified as follows regarding YRT policies:

a) he has sold YRT policies over the years, usually for term insurance (including about 12 IA policies similar to those purchased by D.P. and N.P.), although such policies do not constitute the bulk of his business;
b) the cost of premiums for such policies increases exponentially after the insured reaches the age of 50, but these increases are clearly set forth in the terms of the policy;
c) when a broker puts a client into a YRT policy, he/she has to follow the situation closely to monitor the ability of the policy to generate sufficient cash value to service the increasing cost of premiums;
d) the commissions on YRT policies are generally equal to 55 or 60% of the minimum premium for the first year, then fall to a lower percentage for the

next 4 to 9 years and, after that, a commission based on the cash value of the policy;

e) the modification of an existing policy (such as in the case of D.P.) usually generates a commission for the agent, but only on the amount by which the new premium exceeds the old premium (before the modification), whereas a new policy would entitle the agent to the 55 to 60% commission described above on the entire premium;

f) when asked whether replacing D.P.'s policy with IA by the Sun Life policy was appropriate, Mr. Goncalves would only say that such replacement was based upon said client's decision, after receiving Respondent's advice;

g) he recognized that a representative should do everything to keep the current policy in force rather than replace it with a new one.

Counts 3 and 4

[20] On November 16, 2001 and February 26, 2002, IA issued two universal life (YRT) insurance policies to N.P. and A.B., a married couple, for initial face coverages of $200,000 and $106,930 respectively, with premium levelling privileges, each spouse being the beneficiary of the other, as appears from Exhibits P-14 and P-13.

[21] On July 23, 2016, Respondent prepared two prior notice of replacement forms (Exhibits P-15 and P-16) corresponding to the replacement of the IA policies issued to N.P. and A.B. (P-14 and P-13) by a joint policy (offering universal life and term coverage) issued by Ivari (for which the application was filed as Exhibit P-17).

[22] Neither of these prior notice of replacement forms was received by IA, as appears from IA's letter dated April 30, 2017 (Exhibit P-19, pages 206 and 207, at paras. 3 and 12), the content of which was not contested by the Respondent.

[23] Mr. Lévesque testified that the said prior notice of replacement forms (P-15 and P-16) were provided to Plaintiff by Ivari, but not IA.

[24] The Respondent made the following relevant comments in the prior notice of replacement forms for N.P. and A.B. (P-15 and P-16 respectively) regarding the replacement of the two aforementioned IA policies by the joint Ivari policy:

a) *in the « Comments » section of the prior notice for N.P. (P-15, page 154), Respondent wrote « Contract of Industrial Alliance is a YRT along with a T-20 is a YRT on the UL I have the printout but no policy, strange…Both clients were not explained that the YRT costs will go up every year. Why give them a YRT UL They would be better off with a level cost that's why I'm replacing them both. »;*

b) *in section 2.5 of the prior notice for N.P. (P-15, page 157), where Respondent was asked to explain the financial impact of the replacement, he responded « If they would keep the IA policy, they would pay higher premiums, WHY ! »;*

c) in the « Comments » section at page 157, Respondent commented as follows « The agent at the time should of (sic) done a proper needs and give the clients what they asked for, NOT a YRT what's the reason for this… »;

d) in the « Comments » section of the prior notice for A.B. (P-16, page 164), Respondent stated « the agent told the client that at 65 she will retire because her plan would accul. A large sum of money we know that's not true! », without explaining why. As we will see, this allegation was denied by A.B. in her testimony;

e) in section 2.1 (page 166 of P-16), in concluding his comments as to why the IA policy did not meet the needs of A.B., Respondent stated « At age 65 would she retire on the money her plan would have; No way », without explaining this comment;

f) in section 2.3 (P-16, page 166), where he was asked to explain the disadvantages of replacing the IA contract for A.B., Respondent stated « No disadvantages only one the agent should of sold a level cost of insurance instead of a YRT »;

g) in section 2.5 (P-16, page 167), in explaining the financial impact of the replacement, Respondent stated « It's better for the client, pays a higher premium now because of her agent »;

h) nowhere in his comments regarding the two prior notices of replacement did Respondent mention or appear to consider the fact that the two IA policies had a levelling privilege.

[25] Mr. Lévesque said that he did not normally find such gratuitous criticism of a previous agent in prior notice of replacement forms and that he did not think that such comments were helpful in allowing the client to make an informed decision about a proposed replacement of policies.

[26] Respondent testified as follows regarding the replacement of the said IA policies by the Ivari policy :

a) he has known N.P. for 44 years and that, while discussing mortgage insurance with N.P. and A.B. at their home in 2016, he learned that A.B.

had a YRT universal life policy with IA (P-13), which A.B. told him she thought had a level premium;

b) when Respondent reviewed A.B.'s policy with IA, he told her that she did not have a level premium plan, but that it was instead a YRT plan under which the premiums increased over time, which news apparently shocked A.B.;

c) N.P. and A.B. decided to change their YRT-universal policies with IA for a joint policy from Ivari for a total level monthly premium $585.02, offering a gamut of coverages to each;

d) at the time, Financière Sentiel («**Sentiel**») had apparently been Respondent's MGA for the past 12 months;

e) Respondent testified that he gave the two prior notices of replacement (P-15 and P-16) and the Ivari insurance application form to the receptionist at Sentiel and said to her « can you please process them…send them down », because his previous MGA (MSA Financial) had accepted to send similar forms to the appropriate insurer on his behalf (I-2);

f) Respondent claims that this was not the first time he had left prior notice of replacement forms with Sentiel in this manner for transmission to the insurer;

g) Respondent was later shocked to learn that the prior notice of replacement forms for N.P. and A.B. were not sent to IA;

h) The parties filed by consent a letter from Dominic Demers (of Sentiel) to Respondent dated Sept. 9, 2020 **(**Exhibit I-1), which they agreed would avail in lieu of his testimony, advising that Sentiel never assumed the responsibility of sending prior notices to insurers on behalf of brokers such as Respondent, but Respondent reproaches Sentiel for not having informed him of that position in 2016;

i) Respondent claims that he got a good rate on a combined policy from Ivari for A.B. and N.P, with a mix of coverages

[27] As regard the prior notice of replacement for N.P. (P-15), Respondent testified as follows :

a) in the « Comments section at page 154, Respondent says he did not mean to criticize the prior agent by using the word « strange », by which he merely intended to describe his reaction to the fact that N.P. did not have a copy of his policy from IA;

b) Respondent again affirmed that a YRT policy is a good product, but that it requires regular follow-up and maintenance;

c) Respondent claims that his comment « WHY!» (in section 2.5, at page 157) was not meant to discredit or denigrate the prior agent, but merely to point out the predicament Respondent believed that N.P. would have faced by not having a level premium under the IA policy, because he felt that it was not right that he should pay a higher premium. He confusingly added that his comment was possibly addressed to IA and/or the prior representative,

although he wasn't expecting a response from IA, and concluded his testimony on this point with the comment « I don't know ».

d) he repeats that he had no intention of denigrating the prior representative by his statements in the Comments section at page 157 («The agent at the time should of done a proper needs and give the clients what they asked for, NOT a YRT what's the reason for this… »), but admits he doesn't know if the previous agent did a proper needs analysis.

[28] As regard the prior notice of replacement for A.B. (P-16), Respondent testified as follows:

a) at page 164, the comment « We know that's not true » is based on his lack of faith in mutual fund performance, but he recognizes that he could have toned down that assertion by indicating that it may not be true;

b) his comment (« No way ») in section 2.1, page 166, was again based on his bias regarding the reliability of YRTs tied to stock market performance;

c) Respondent reiterates that he had no intention of denigrating the previous agent when, in explaining the disadvantages of replacing the policy in section 2.3, he criticized him for selling N.P. and A.B. a YRT policy rather than a level premium one ;

[29] A.B. was also called as a witness and testified as follows :

a) she first met Respondent in 2016 to discuss mortgage insurance and Respondent asked to see the IA insurance policy she had purchased on the advice of her previous agent;

b) A.B. claims she did not realize until she met Respondent that the previous representative had sold her a YRT policy, rather than a level premium policy, and she only learned the contrary from Sakaris in 2016;

c) she felt « very betrayed » by IA because of this discrepancy;

d) AB said that her mother had suffered from Lupus and she feared that such a diagnosis for her would cause an eventual increase in premiums under the IA policy (despite the guaranteed premiums schedule in her policy, P-13);

e) she said that the reason she subscribed to the IA policy was not to have sufficient funds to retire by age 65 (there having been no such discussion with the previous agent), but rather to have a plan with returns sufficient to pay her level premiums after she reached the age of 59 or 60 so that she would be insured for rest of her life. It was only with the Respondent that she had discussions about being able to retire by age 65 with the savings generated by her new policy;

f) on November 28, 2016, she sent IA her own handwritten notice advising of her desire to cancel her policy and requesting payment of the cash value accrued thereunder (Exhibit P-20).

ANALYSIS AND REASONS

[30] On or about October 20, 2020, Respondent's attorney served a Motion to Annul Plaintiff's Complaint, but this motion was withdrawn by Respondent on November 4th.

Count 1

[31] The relevant statutory provision reads as follows :

a) Article 20, Regulation regarding the pursuit of activities as a representative (the « Regulation »)

> « A representative must endeavour to ensure that all insurance contracts are maintained in effect, unless the replacement of the contract is justified as being in the interest of the purchaser or the insured; the representative in insurance of persons who replaces the contract must demonstrate that the replacement is justified. »

[32] It is well-established law that the burden of proof lies upon Plaintiff to prove (beyond a balance of probabilities) that the alleged offence has been committed and the same burden applies to Respondent as regard any relevant fact the/she wishes to prove.

- Mailloux vs. Fortin, 2016 QCCA 62.
- Vaillancourt vs. Ordre professionnel des avocats, 2012 QCTP 126.
- Bisson vs. Lapointe, 2016 QCCA 1078.

[33] As regard Count 1, there is no doubt that D.P. had a valid insurance contract with IA (P-5), which was replaced by the Sun Life policy (P-7).

[34] Once these two facts are established, the text of Article 20 cited above imposes upon Respondent the burden of proving that the replacement of the IA policy by the Sun Life policy was in the client's interest.

- Chambre de la sécurité financière vs. Chen, 2017 QCCDCSF 79, para. 32.

[35] In attempting to establish that the new policy was in his client's interest, Respondent must demonstrate that he conducted an appropriate due diligence to assure himself that the replacement was in his client's interest and that he explained to her all of the advantages and disadvantages which would result from the proposed replacement.

- Chambre de la sécurité financière vs Gauthier, 2013 CanLII 43416, para. 77.
- Chambre de la sécurité financière vs. Chen, 2017 QCCDCSF 79, paras. 26 and 27.

[36] The following cases have held that there is an indication of failure to justify the replacement when :

a) the prior notice is completed by the representative in a manner which does not permit the client to be fully informed of and comprehend the advantages and disadvantages of replacement;

- Chambre de la sécurité financière vs. Chen, 2017 QCCDCSF 79, paras. 29 and 30.

b) the representative fails to conduct a financial needs analysis ;

- Chambre de la sécurité financière vs. Nemeth, 2015 QCCDCSF 24, paras. 45 and 46.

c) the representative neglected to communicate with the issuer of the initial policy to determine whether said policy could be appropriately modified or discuss such possibilities with the client;

- Chambre de la sécurité financière vs. Nemeth, 2015 QCCDCSF 24, paras 49 and 51.

d) the representative's failure to duly note a relevant fact or act which he is required to do creates a presumption that such fact or act did not occur;

- Duguay vs Ordre des dentistes du Québec, 2019 QCTP 31, paras. 94 to 99.

[37] The following cases have held that the approval of the replacement strategy by the client or his/her desire to modify the modalities of the premium do not alone justify the replacement of a policy with equivalent or less advantageous terms without proper verification by the representative or without having informed him/her of the advantages and disadvantages;

- Chambre de la sécurité financière vs. Chen, 2017 QCCDCSF 79, paras. 14, 31 and 32.
- Chambre de la sécurité financière vs. Gauthier, 2013 CanLII 43416, paras. 77 to 80.

[38] As regard Count 1, the Committee finds that Respondent did not discharge the burden imposed upon him to justify the replacement of the IA policy (contract A, P-5) by the Sun Life policy (P-7) in the prior notice of replacement (P-6) in view of his failure to :

a) point out to client and calculate the impact of the client's right to opt for a level premium under the IA policy ($66.19, which was slightly more than 55% of the Sun Life level premium, $120 47);

b) mention to client or calculate the impact of her possible guaranteed cash value under the IA policy, once amended to incorporate a level premium;

c) comparatively consider the capacity and consequences of withdrawing funds from the two policies or consider the importance of the fact that all of

the cash value accumulated in the IA policy would be added to the death benefit, which was not the case for the Sun Life policy;

d) comparatively evaluate the capacity of the two policies to satisfy the client's needs, as no written needs analysis appears to have been done by Respondent, as required by law;

e) request an illustration from IA based on the parameters of the Sun Life policy to make such a comparison.

[39] The Respondent claims that he prepared a needs analysis for D.P., but no written version of such an analysis could be found in his file, as required by regulation.

[40] Similarly, he claims that he mentioned to his client the possibility of levelling the premium under the IA policy, which is not once mentioned in the prior notice of replacement form (P-6), and he never asked IA to provide an illustration which would have demonstrated to his client whether she could obtain satisfactory or equivalent protection (to the Sun Life policy) under such a modified policy.

[41] Respondent's repeated failure to mention and comparatively analyze the relevant features of the two policies and objectively bring them to the attention of his client in the prescribed notice of prior replacement form is compelling evidence of his failure to favour the maintenance of the IA policy and his desire to instead promote a new policy that was more financially rewarding to him.

[42] In effect, in completing the prior notice of replacement form (P-6), Respondent presented the Sun Life policy in its best light, while presenting the IA policy in its worst light, thereby failing to fulfil his duty to favour the maintenance in force of the IA policy.

[43] For the foregoing reasons, the Committee finds the Respondent guilty of Count 1, for having contravened Article 20 of the Regulation.

Count 2

[44] The relevant statutory provisions read as follows :

a) Article 22, Regulation

« Where the purchase of an insurance contract is likely to result in termination, cancellation or reduction of benefits of another insurance contract, the representative must :

(2) complete, prior to or at the same time as the insurance proposal, the form set out in Schedule I if it is in the interests of the policyholder or the insured to replace one contract with another;

(3) explain the content of the form to the policyholder by comparing the features of the current contracts with those of the proposed contracts and by describing the advantages and disadvantages of the replacement;

(3.1) give to the policyholder a copy of the form completed and signed by the representative within 5 working days of the signing of the proposal;

(4) send the form completed and signed by the representative to the head offices of the insurers who issued the contracts likely to be cancelled, by any means providing proof the date of sending, within 5 working days of the signing of the insurance proposal

(5) send a copy of the completed form, within the time prescribed in paragraph 4, to the insurer with whom the representative in insurance of persons intends to place the new contract."

b) Article 16, Act respecting the distribution of financial products and services (the « Act »)

« All representatives are bound to act with honesty and loyalty in their dealings with clients.

They must act with competence and professional integrity. »

[45] There is no doubt that Article 22 applies here, as D.P.'s policy with IA was replaced by the Sun Life policy.

[46] Therefore, Respondent was bound to act in conformity with Article 22 of the Regulation, as well as the above-cited Article 16 of the Act.

[47] The purpose of the prior notice of replacement form is to objectively provide whatever relevant information regarding the advantages and disadvantages of the old and new policies is required to permit the client to make an informed decision regarding the proposed replacement, as appears from the following jurisprudence, which has also held that there is a failure to respect this obligation where the representative fails to (i) mention any relevant facts, (ii) respond to all of the sections of the form or (iii) includes erroneous information therein :

- Chambre de la sécurité financière vs. Paradis, 2018 QCCDCSF 28, para. 9.

- Chambre de la sécurité financière vs. Breton, 2005 CanLII 59618, paras. 34 and 35.

[48] Considering the number of times Respondent stressed the YRT nature of the IA policy in the prior notice of replacement form (P-6), without ever referring to the premium levelling option, it strains credulity to believe his assertion at the hearing that he nevertheless verbally informed D.P. of the premium levelling option available to her under the IA policy (P-5), especially when he also failed to request an illustration from IA as to what cash value she could have accumulated under the IA policy (with a level monthly premium of $66.19) by investing an additional sum equal to the difference between that level premium and the level premium of $120.47 stipulated in the Sun Life policy (P-7) and generating a minimum annual return of 3% on such additional payments.

[49] The same is true for Respondent's assertion that he conducted a financial needs analysis, without explaining why there is no written record of same in his file for D.P. In this regard, the Committee points to Respondent's reproach (in paragraph 15 of his Summary Expose of Defence on Merits herein, dated May 19, 2020) that the agent who persuaded D.P. to subscribe to the IA policy may have done so without conducting a financial needs analysis, thereby recognizing the need for such an analysis at the time of the replacement.

[50] As appears from the instructions which appear on the second page of the prior notice of replacement form (P-6, page 14), the purpose of said form is to set out clearly and objectively in writing all of the relevant information required to permit the client to make an informed decision regarding the proposed replacement. It would defeat the purpose of Article 22 of the Regulation to allow a representative to excuse his/her failure

to do so by alleging (without material corroboration) that the missing relevant information was verbally provided to the client.

[51] In view of the foregoing, the Committee finds that Respondent is guilty under Count 2, for having contravened Article 22 of the Regulation and Article 16 of the Act. As the former provision is the more directly applicable of the two, the Committee will conditionally suspend proceedings under Article 16 of the Act and sanction the Respondent pursuant to Article 22 of the Regulation.

Count 3

[52] Article 32 of the Code of Ethics of the Chambre de la sécurité financière (RLRQ, chapter D-9.2, r.3, the "Code") reads as follows :

> «A representative must not denigrate, belittle or discredit another representative, a firm, an independent partnership, an insurer or a financial institution. »

[53] The relevant jurisprudence has ascribed the commonly understood meanings of these three terms (denigrate, belittle and discredit), and the following cases have held that they apply to cases where a representative has used offensive words to (i) discredit a colleague or competitor in order to influence the client to purchase the product offered by the former, (ii) cavalierly attack the integrity or competence of the latter under the guise of freedom of expression and opinion, or (iii) disrespectfully make otherwise truthful statements :

- Chambre de la sécurité financière vs. Girard, 2002 CanLII 49117, at page 11.
- Chambre de la sécurité financière vs. St-Pierre, 2012 CanLII 97160, paras. 12 to 14.

- Thibault vs. Ordre des ingénieurs, 1999 Q.C.T.P. 80, page 20.
- Ordre professionnel des avocats vs. Doré, (SOQUIJ AZ-50360512, paras. 59 to 64).

[54] The purpose of a prior notice of replacement is not to pejoratively comment on the work of another representative, firm or insurer, but rather to permit the client to know all of the relevant advantages and disadvantages of the proposed replacement and consequently make an informed decision regarding the proposed replacement.

[55] The Committee is of the view that Respondent's following comments in the prior notice of replacement for N.P. (P-15) were ill-advised, contravened the terms of the above-cited Article 32 and were not required for an objective comparison of the advantages and disadvantages of replacing the IA policy by the Ivari policy :

a) « strange », in the Comments section on page 154;

b) « WHY! », in section 2.5 (page 157);

c) « The agent should of done a proper needs and give the clients what they asked for, NOT a YRT what's the reason for this « in the Comments section at page 157.

[56] The same may be said of Respondent's following comments in the prior notice of replacement for A.B. (P-16):

a) « We know that's not true! », in the Comments section on page 164, especially in light of the Respondent's statement (denied by A.B.) that the prior representative ever discussed the notion of accumulating sufficient savings from the IA policy so as allow A.B. to retire at age 65;

b) « No way», in section 2.1, at page 166;

c) « No disadvantages only one the agent should of sold a level cost of insurance instead of a YRT », in section 2.3, at page 166;

d) «It's better for the client, pays a higher premium now because of her agent », at page 167.

[57] The Respondent's explanations for making these comments do not detract from or lessen their gratuitously offensive and disrespectful nature or exempt them from the ambit of the conduct proscribed by Article 32. Each and every one of his comments was unnecessary to attain the abovedescribed legal objectives of the prior notices of replacement and collectively had the effect of denigrating, belittling and discrediting the work and reputation of the prior representative, all of which is contrary to the Respondent's duty as a representative to act in a professional and respectful manner.

[58] A.B.'s feeling that she had been « betrayed » by her previous agent did not entitle Respondent to « pile on » with his own criticism.

[59] For the foregoing reasons, the Committee finds Respondent guilty of Count 3, for having contravened Article 32 of the Code of Ethics of the Chambre de la sécurité financière.

Count 4

[60] The applicable statutory provision (Article 22(4) of the Regulation) is recited in paragraph 44 above.

[61] Respondent had a clear duty under the Regulation to transmit a copy of the prior notices of replacement regarding N.P. and A. B. (P-15 and P-16) to IA, which confirmed that it did not receive the prior notices from Respondent (P-19.

[62] Respondent's explanation that he relied upon Sentiel's receptionist to transmit said prior notices to IA is contradicted by the letter from Dominic Demers, Sentiel's president, dated September 9, 2020 (Exhibit I-1).

[63] The jurisprudence has held that the delivery of the prior notice of replacement to the original insurer is an essential precaution to protect the public, as it permits said insurer to be informed of the proposed replacement and inform the client if it feels that the replacement is not appropriate.

- Chambre de la sécurité financière vs. Adou, 2015 QCCDCSF 60, para. 15 (April 26, 2016).

[64] The following decisions have held that (i) a letter from the initial insurer that it did not receive the prior notice permits an inference that it was not sent to said insurer, and (ii) that a representative may delegate the sending of the prior notice to a third party, but that he/she nevertheless bears the ultimate responsibility for non-delivery :

- Chambre de la sécurité financière vs. Le Corvec, 2010 CanLII 99886, para. 39.
- Chambre de la sécurité financière vs. McMartin, 2004 CanLII 59863, para. 10 to 12.

[65] Thus, Respondent cannot be excused from his legal duty to send the prior notices (P-15 and P-16) to IA because of this alleged misunderstanding with Sentiel's receptionist or the fact that the MGAs he had previously dealt with (I-2) accepted to forward his prior notices of replacement to the original insurers.

[66] Accordingly, the Committee finds Respondent guilty of Count 4 for having contravened Article 22 of the Regulation.

FOR THESE REASONS, the Disciplinary Committee:

DECLARES the Respondent guilty of the four Counts of the Complaint as follows:

a) as regard Count 1, pursuant to Article 20 of the Regulation;

b) as regard Count 2, pursuant to Article 22 of the Regulation and Article 16 of the Act;

c) as regard Count 3, pursuant to Article 32 of the Code ;

d) as regard Count 4, as regard Article 22 of the Regulation.

ORDERS the conditional suspension of proceedings under Count 2 as regard Article 16 of the Act;

CONVOKES the parties, with the assistance of the Secretary of the Committee, to a hearing on sanctions.

(S) Me George Hendy

Me George R. Hendy
President of the Disciplinary Committee

(S) M. Marc Binette

Mr. Marc Binette Pl. Fin.
Member of the Disciplinary Committee

Me Marie-Claude Sarrazin
Me Sarah Lefebvre
Sarrazin Plourde, s.a..
Attorneys for the Plaintiff

Me Peter R. Lack
Attorney for Respondent

Dates of the hearing: November 2, 3 and 4, 2020.

TRUE COPY OF THE ORIGINAL SIGNED

COMITÉ DE DISCIPLINE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

C A N A D A
PROVINCE DE QUÉBEC

N° : CD00-1466

DATE : 17 février 2022

LE COMITÉ : M[e] Marco Gaggino — Président
M. Robert Chamberland, A.V.A. — Membre
M. Trong Cuong Ha — Membre

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

NILS LAVOIX, conseiller en sécurité financière (certificat numéro 227714)

Partie intimée

DÉCISION SUR CULPABILITÉ

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

- **Non-divulgation, non-diffusion et non-publication des noms et prénoms des consommateurs impliqués dans la plainte disciplinaire, ainsi que de toute information se trouvant dans la preuve qui permettrait de les identifier. Toutefois, il est entendu que la présente ordonnance ne s'applique pas aux échanges d'information prévus à la *Loi sur l'encadrement du secteur financier* et à la *Loi sur la distribution de produits et services financiers*.**

[1] L'intimé, M. Nils Lavoix, est cité devant le Comité de discipline de la Chambre de la sécurité financière (le « Comité ») à la suite d'une plainte disciplinaire du 26 janvier 2021 laquelle contient un seul chef d'infraction[1].

[2] Au moment des faits, M. Lavoix agit comme représentant en assurances maladie et accident pour la *Compagnie d'assurance Combined* (« Combined »), et ce, depuis le 7 janvier 2019.

[3] Le 28 octobre 2019, M. Lavoix rencontre sa cliente, T.D. Trois propositions d'assurance sont alors complétées, lesquelles désignent E.P., sa fille, comme assurée. Certaines informations apparaissant sur les propositions ne sont pas celles de l'assurée E.P., mais plutôt celles de T.D. et elles sont signées par T.D. et non par E.P.

[4] Suite à la transmission électronique des propositions, Combined émet trois polices que E.P. annule le 15 novembre 2019.

[5] La plainte disciplinaire reproche à M. Lavoix d'avoir exercé ses activités de façon malhonnête ou négligente[2] et de ne pas avoir agi avec professionnalisme et compétence[3] en soumettant et en ayant fait émettre ces trois propositions d'assurance sans avoir obtenu le consentement de l'assurée E.P. et alors que celles-ci contenaient des informations incomplètes et inexactes.

[6] M. Lavoix reconnaît ne pas avoir obtenu le consentement de E.P. avant d'émettre et soumettre ces propositions. Il reconnaît également que celles-ci comportaient des informations inexactes en ce qui a trait à l'assurée. Ainsi, l'adresse, le numéro de

[1] Voir le texte en annexe.
[2] Sous l'article 35 du *Code de déontologie de la Chambre de la sécurité financière*.
[3] Sous l'article 16 de la *Loi sur la distribution de produits et services financiers*.

téléphone, le numéro de permis de conduire et la signature, informations que l'on retrouve aux trois propositions, sont celles de T.D. et non celles de E.P. qui était l'assurée et donc la propriétaire des polices à être émises.

[7] M. Lavoix allègue ne pas avoir commis de manquement déontologique. La manière dont les propositions ont été remplies découle d'une erreur de sa part, qui n'est pas de la nature d'un manquement déontologique. Il n'a ainsi pas agi avec malhonnêteté ou fait preuve de négligence, d'incompétence ou d'un manque de professionnalisme en soumettant ces propositions. De même, M. Lavoix soumet que la preuve présentée au Comité ne permet pas de conclure à un manque de professionnalisme ou de compétence de sa part, car celle-ci n'est pas étayée par une preuve d'expert.

Questions en litige

[8] Dans la mesure où il est reconnu et prouvé que M. Lavoix a soumis et fait émettre les propositions HAC***, OAC*** et AEC***, sans avoir obtenu le consentement de E.P. et alors que celles-ci contenaient des informations inexactes, les questions en litige sont les suivantes :

- Est-ce que M. Lavoix a exercé ses activités de façon malhonnête ou négligente ou en faisant défaut d'agir avec professionnalisme et compétence commettant ainsi un manquement déontologique?

- Est-ce qu'une preuve d'expert était nécessaire pour établir le manquement déontologique de M. Lavoix ?

[9] Selon le Comité, M. Lavoix doit être reconnu coupable du seul chef d'infraction

contenu à la plainte disciplinaire portée contre lui. Ainsi, il a complété et fait émettre les propositions HAC***, OAC*** et AEC*** dans lesquelles E.P. était désignée comme assurée, et ce, sans son consentement et alors que ces propositions contenaient des informations inexactes. Bien que M. Lavoix n'ait pas agi avec malhonnêteté, il a fait défaut d'agir avec professionnalisme et compétence et a fait preuve de négligence, commettant ainsi un manquement déontologique.

ANALYSE

Est-ce que M. Lavoix a exercé ses activités de façon malhonnête ou négligente ou en faisant défaut d'agir avec professionnalisme et compétence commettant ainsi un manquement déontologique?

[10] M. Lavoix reconnaît avoir inscrit des informations qui ne correspondent pas à celles de E.P. dans les trois propositions et de ne pas avoir obtenu son consentement et sa signature avant de les soumettre et de les faire émettre. À cet effet, il explique avoir agi de la sorte parce qu'il ne connaissait pas les règles applicables lorsqu'un parent désire assurer son enfant majeur, ce qui était le cas de E.P. Il a ainsi présumé que la procédure était la même que lorsqu'un parent assure son enfant mineur. Dans ce cas, les informations contenues à la police ainsi que la signature de l'assuré peuvent être celles du parent. Par ailleurs, il souligne qu'ayant eu un doute, il a communiqué avec son superviseur dès le lendemain matin de la rencontre avec T.D. pour vérifier si la signature de E.P. était requise. Puisque le superviseur lui a mentionné que cette signature était nécessaire, il a tenté, en vain, de joindre T.D. pour obtenir la signature de E.P. Lorsqu'il apprend, vers le 15 novembre 2019, que les polices avaient été annulées, il cesse alors toutes démarches en lien avec ces propositions.

[11] M. Lavoix soutient que même s'il a commis une erreur, soit d'avoir utilisé la

mauvaise procédure pour compléter les propositions, celle-ci est purement technique et ne remet pas en cause sa moralité ou sa probité professionnelle. Ainsi, cette erreur découle d'une méconnaissance de bonne foi de la procédure applicable alors qu'il était un représentant inexpérimenté qui n'avait jamais été confronté à une situation où un parent veut souscrire une assurance pour son enfant majeur. Il n'a donc pas agi avec un manque de compétence ou de professionnalisme et il n'a pas été négligent. À cet égard, M. Lavoix rappelle qu'il a contacté son superviseur dès le lendemain de sa rencontre avec T.D. pour vérifier la question de la signature et, une fois l'information donnée, il a tenté de joindre T.D. pour corriger la situation.

[12] Chaque professionnel étant susceptible de commettre des erreurs dans le cours de sa vie professionnelle, il serait invivable pour celui-ci que le moindre écart de conduite puisse constituer un manquement déontologique surtout en début de carrière alors que des situations nouvelles ont plus de chance de survenir. À cet effet, une « faute technique », qui découle d'une défaillance accidentelle d'un acte pourtant planifié et entrepris avec prudence, diligence, habileté et compétence, ne sera pas considérée comme un manquement disciplinaire; il faut que le comportement du professionnel déroge à son obligation de prudence, de diligence, d'habileté et de compétence et s'éloigne des standards moyens requis du professionnel[4].

[13] Le Comité comprend que M. Lavoix était un représentant de peu d'expérience au moment des faits et qu'il était confronté à une situation nouvelle. De même, son honnêteté n'est aucunement remise en cause. Cependant, l'erreur qu'il a commise est plus qu'une

[4] *Malo* c. *Ordre des infirmières et infirmiers du Québec*, 2003 QCTP 132, par. 28; GOULET, Mario, *Le droit disciplinaire des corporations professionnelles*, Éditions Yvon Blais Inc. 1993, pages 65-66.

simple « faute technique » et elle est suffisamment grave pour constituer un manquement déontologique de sa part.

[14] Le consentement de l'assuré et la justesse des informations contenues dans la documentation amenant à l'émission d'une police d'assurance sont des exigences fondamentales qui visent la protection du public. Dans son rôle, le représentant doit veiller à ce que ces exigences soient correctement remplies. Cette obligation est au cœur de la profession.

[15] Malgré qu'il avait peu d'expérience et qu'il s'agissait de la première fois qu'il était confronté à une situation où un parent veut assurer son enfant majeur, M. Lavoix a présumé qu'il pouvait appliquer la même procédure que lorsqu'un parent assure son enfant mineur. M. Lavoix savait ou aurait dû savoir que la règle veut que l'assuré soit mis au courant et donne son consentement à une proposition d'assurance et que les renseignements qu'elle contient soient ceux de l'assuré; rien ne lui permettait raisonnablement de conclure autrement et d'appliquer l'exception à ce principe lorsqu'un enfant mineur devient l'assuré. Rappelons qu'une « faute technique » découle d'une défaillance accidentelle d'un acte pourtant planifié et entrepris avec prudence, diligence, habileté et compétence. Dans la présente affaire, l'erreur n'est pas accidentelle : elle découle d'un acte qui n'a pas été planifié et entrepris avec prudence, diligence, habileté et compétence.

[16] Plutôt que de présumer que la procédure applicable à un enfant majeur est la même que dans le cas d'un enfant mineur, M. Lavoix devait se questionner lors de la rencontre à savoir s'il s'agissait bien de la bonne procédure. Il aurait dû obtenir les informations lui permettant de compléter adéquatement les propositions, soit en

communiquant avec son superviseur, soit en mettant les propositions en attente, tel que le logiciel alors utilisé le lui permettait, pour ensuite vérifier si sa perception était la bonne. À cet égard, il n'y avait aucune urgence à ce que les propositions soient émises à l'issue de la rencontre avec T.D. Cette simple consultation en temps opportun aurait peut-être privé M. Lavoix d'une vente, mais elle aurait évité les désagréments qu'il vit aujourd'hui en raison de la plainte disciplinaire portée contre lui. Par ailleurs, M. Lavoix reconnaît dans son témoignage qu'il devait, par professionnalisme, contacter E.P. pour confirmer les informations contenues aux propositions[5]; cette démarche, entreprise avant que les propositions ne soient soumises et émises, aurait également pu lui éviter ces mêmes désagréments.

[17] En omettant d'obtenir le consentement et la signature de E.P. et en inscrivant des informations inexactes et incomplètes dans les trois propositions, M. Lavoix a agi avec un manque de compétence et de professionnalisme, et a été négligent[6].

[18] Au surplus, les démarches postérieures à l'émission des propositions ne dédouanent pas M. Lavoix de son manquement déontologique.

[19] D'une part, ces démarches sont le résultat de l'erreur inexcusable commise en amont par M. Lavoix.

[20] D'autre part, la seule démarche effectuée par M. Lavoix, alors qu'il est informé par son superviseur que la signature de E.P. était nécessaire, a été de tenter de contacter T.D. Cependant, alors que cette démarche s'avère infructueuse, aucune autre démarche n'est effectuée, tel que de communiquer à nouveau avec le superviseur pour obtenir

[5] Voir également l'enregistrement de sa rencontre avec l'enquêtrice de la partie plaignante, pièce P-22.
[6] *Chambre de la sécurité financière* c. *Varennes*, 2012 CanLII 97208 (QC CDCSF), par. 25.

conseil ou avec l'administrateur réseau de Combined, lequel aurait pu bloquer l'émission des polices d'assurance.

Est-ce qu'une preuve d'expert était nécessaire pour établir le manquement déontologique de M. Lavoix ?

[21] Le Comité est d'avis qu'une preuve d'expert n'était pas nécessaire pour statuer sur la responsabilité déontologique de M. Lavoix et considère que cette preuve aurait même été inutile.

[22] Ainsi, les éléments essentiels du chef d'infraction ne soulèvent aucune question de nature scientifique, technique ou d'une complexité telle qu'elle nécessite l'éclairage d'un expert. De même, ce chef d'infraction ne réfère pas à l'usage ou à une norme applicable dans l'industrie[7]. Finalement, M. Lavoix reconnaît lui-même avoir commis une erreur, soit d'avoir fait défaut d'obtenir le consentement et la signature de E.P.

CONCLUSION

[23] Pour les motifs qui précèdent, le Comité en vient à la conclusion que la preuve est claire et convaincante que M. Lavoix n'a pas agi avec professionnalisme et compétence et a fait preuve de négligence en faisant émettre les propositions HAC***, OAC** et AEC***, lesquelles contenaient des informations inexactes, et ce, sans avoir obtenu la signature et le consentement de E.P.

[24] M. Lavoix sera donc trouvé coupable pour avoir contrevenu à l'article 35 du *Code de déontologie de la Chambre de la sécurité financière* et à l'article 16 de la *Loi sur la distribution de produits et services financiers.*

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[7] *Médecins (Ordre professionnel des)* c. *Bissonnette* 2019 QCTP 51, par. 55; *Chambre de la sécurité financière* c. *Kabeya*, 2020 QCCDCSF 13, pars. 120-124.

[25] En raison toutefois de la prohibition de condamnations multiples[8], le Comité suspendra conditionnellement les procédures à l'égard de l'article 35 du *Code de déontologie de la Chambre de la sécurité financière*.

PAR CES MOTIFS, **le comité de discipline** :

DÉCLARE l'intimé coupable quant aux infractions fondées sur les articles 16 de la *Loi sur la distribution de produits et services financiers* (RLRQ, chapitre D-9.2) et 35 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, chapitre D-9.2, r. 3) reprochées à l'unique chef d'infraction de la plainte disciplinaire;

ORDONNE la suspension conditionnelle des procédures à l'égard de l'article 35 du *Code de déontologie de la Chambre de la sécurité financière* (RLRQ, chapitre D-9.2, r. 3);

ORDONNE à la secrétaire du Comité de discipline de convoquer les parties à une audition pour entendre la preuve et les représentations des parties sur sanction.

(S) Me Marco Gaggino

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M^e^ Marco Gaggino
Président du comité de discipline

(S) M. Robert Chamberland

_____

M. Robert Chamberland, A.V.A.
Membre du comité de discipline

(S) M. Trong Cuong Ha

_____

M. Trong Cuong Ha
Membre du comité de discipline

[8] *Kienapple* c. *R.*, 1974 CanLII 14 (CSC).

Me Nathalie Vuille
POULIOT PRÉVOST GALARNEAU, s.e.n.c.
Procureure de la partie plaignante

Me Carolyne Mathieu
DELISLE MATHIEU
Procureure de la partie intimée

Date d'audience : 7 et 8 octobre 2021 (délibéré : 24 novembre 2021)

COPIE CONFORME À L'ORIGINAL SIGNÉ

ANNEXE

« À Québec, vers le 28 octobre 2019, l'intimé n'a pas agi avec professionnalisme et compétence en soumettant et en faisant émettre les propositions numéros HAC***, OAC*** et AEC*** lesquelles contenaient des informations incomplètes et inexactes et sans avoir obtenu le consentement de E.P., contrevenant ainsi aux articles 35 du *Code de déontologie de la Chambre de la sécurité financière* et 16 de la *Loi sur la distribution de produits et services financiers.* »

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.