

DECISION

of the

GENERAL INSURANCE COUNCIL OF MANITOBA

(“Council”)

Respecting

JACQUELINE DESROCHERS (the “Licensee”)

as Designated Representative of

CRAWFORD & COMPANY (CANADA) INC. (the “Firm”)

INTRODUCTION

The General Insurance Council of Manitoba (the “Council”) derives its authority from *The Insurance Act* C.C.S.M. c. I40 (the “Act”) and the *Insurance Councils Regulation 227/91*.

In response to information received by Council, an investigation was conducted pursuant to sections 385(7), and 375(1.1), of the *Act* and section 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee’s activity violated the *Act*, its *Regulations*, the Insurance Adjusters Licensing Rules (the “*Licensing Rules*”), and/or the Insurance Adjusters Code of Conduct (the “*Code of Conduct*”).

During the investigation the Licensee was notified of relevant information and given an opportunity to make submissions.

On March 3, 2021, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its Intended Decision.

As part of its Intended Decision, Council informed the Licensee that she may request a Hearing to dispute Council’s determinations and its penalty/sanction. The Licensee expressly declined her right and chose not to pursue a Hearing; she instead expressly accepted the terms of the Intended Decision.

Pursuant to section 385(7) of the *Act* and *Regulation 227/91*, the Council hereby renders its Decision and corresponding reasons.

ISSUES

1. Did the Licensee violate the *Licensing Rules*, when she failed to ensure that all Manitoba Level 1 and Level 2 Assistant Adjuster's correspondence was countersigned by a Manitoba Level 4 Adjuster?
2. Did the Licensee, in her role as the Designated Representative, fail to ensure adequate levels of on-site supervision of the Hamilton office by Level 4 Adjuster(s) as required by the *Licensing Rules*?
3. Did the Licensee, in her role as the Designated Representative, fail to inform the ICM, without delay, as required by the *Licensing Rules*, of the change in a supervising insurance Adjuster at the Hamilton office?
4. Did the Licensee, in her role as the Designated Representative, facilitate unlicensed activity when she allowed Adjuster A to adjudicate a Manitoba insurance claim on August 8, 2018, while unlicensed in Manitoba?

FACTS AND EVIDENCE

1. During all material times the Licensee was the Designated Representative for the Firm in Manitoba.
2. As the Designated Representative, it was the Licensee's responsibility to ensure compliance with the *Act's* prohibition regarding unlicensed activity and that supervision of employees was present in accordance with the *Licensing Rules*.
3. On March 17, 2017, February 27, 2018 and March 4, 2019, the Licensee completed annual Adjusting Firm Attestation forms and by affixing her signature, she attested that she understood she was required to:
 - ensure that proper and adequate supervision of employees is provided at all times (refer to the *Licensing Rules* and *Code of Conduct*);
 - ensure that no employee, director or partner who is not licensed acts as an insurance adjuster;

- ensure compliance with *The Insurance Act* of Manitoba, its *Regulations*, its *Rules* and the *Code of Conduct*; and,
- report any material change(s) to the ICM within 15 days.

Ensuring on-site supervision

4. The 2017 Adjusting Firm Attestation, dated March 17, 2017, requested a list of the Firm's locations and the name(s) of each Level 4 or 5 licensee who was required to provide on-site supervision within that office. The Licensee provided a list which indicated that:

- a. The Firm had 15 locations; and,
- b. Adjuster A provided on-site supervision of the Hamilton Ontario office.

5. On behalf of the Licensee, the Firm's legal counsel confirmed by letter dated January 20, 2020 that:

"Adjuster A did not provide on-site supervision to the Hamilton office between March 17, 2017 and June 30, 2018".

6. By letter dated March 27, 2020, the Firm's legal counsel further stated:

"Yes, the Hamilton office did adjudicate Manitoba claims, including SIR [Self-Insured Retention] claims between March 17, 2017 and June 30, 2018."

"No other Manitoba Level 4 Adjuster provided on-site supervision at the Hamilton office between March 17, 2017 and June 30, 2018."

"The inaccuracy in the information provided was not intended to mislead. Ms. Desrochers was mistakenly under the impression that Adjuster A had occupied this role previously but now understands that not to be the case. Ms. Desrochers admits to having been inexperienced in completing these forms and in not having adequately reviewed the Licensing Rules when completing the attestation."

7. On the 2019 Adjusting Firm Attestation form, dated March 4, 2019, the Licensee indicated that:

- a. Adjuster B supervised the Calgary office; and
- b. Adjuster C supervised the Hamilton office.

8. By email dated March 4, 2019, ICM's Licensing Department notified the Licensee that Adjuster B and Adjuster C did not hold the appropriate level of licence in Manitoba to provide on-site supervision; as Level 3 Adjusters they were prohibited from acting as the supervising manager of an adjusting firm.
9. On a different version of the 2019 Adjusting Firm Attestation form, also dated March 4, 2019, the Licensee indicated that:
 - a. Adjuster D had been providing the required on-site supervision at the Hamilton office.
10. By email dated March 8, 2019, ICM's Licensing Department questioned the Licensee as to who provided on-site supervision and acted in the capacity of a supervisor as per the Licensing Rules for the Hamilton office prior to December 2018.
11. By email dated March 8, 2019, the Licensee advised ICM's Licensing Department and indicated that:

"I had Adjuster E as the on site manager for Hamilton previously – did not realize had to be Manitoba licensed."
12. A search of ICM's Licensing Portal indicated that Adjuster E had never held an Insurance Adjuster licence in Manitoba.
13. By emails dated July 8th, 10th and 18th, 2019, the Licensee indicated to Council's Investigator that:

"With respect to my error in naming Adjuster E [as the on-site supervisor prior to December 2018] – Adjuster A has been the supervisor...[Adjuster E] is the branch manager and in my haste to do too many things at one time – wrote her name down instead of Adjuster A- The supervisor is and has been Adjuster A..."

"Sorry - meant to clarify – Adjuster D has been supervisor since last year – I meant previously, supervisor was Adjuster A not Adjuster E"

"I will try to clarify my error in the former posting Adjuster A was the on site supervisor for the entire time period"

"It is my understanding that Adjuster A did provide some site supervision for Hamilton"
14. A search of ICM's Licensing Portal indicated that Adjuster A did not hold an Insurance Adjuster licence in Manitoba from July 1, 2018 to July 8, 2019.

15. By email dated July 18, 2019, Council's Investigator requested the name(s) of the Manitoba Level 4 Adjuster(s) who had provided on-site supervision at the Hamilton office from July 1, 2017 to June 30, 2019, and in response, by email dated July 24, 2019, the Licensee indicated to Council's Investigator that Adjuster D was the on-site supervisor from July 1, 2018 to December 5, 2018 and from December 6, 2018 to June 30, 2019.
16. A search of ICM's Licensing Portal indicated that Adjuster D was not Manitoba licensed at this time and did not obtain a Manitoba Insurance Adjuster licence until December 6, 2018, therefore she was not eligible to provide on-site supervision at the Hamilton office for the period of July 1, 2018 to December 5, 2018.
17. Contrary to the Licensee's indication that Adjuster D was the on-site supervisor from July 1, 2018 to December 5, 2018, by letter dated January 20, 2020, the Firm's legal counsel stated to Council's Investigator that:

"To clarify, Adjuster D was not located at the Hamilton office in the period July 1, 2018 to December 5, 2018. In that period, she did carry out supervisory responsibilities in relation to the Hamilton office remotely. In the material time, Adjuster D was not qualified to perform these supervisory services. Ms. Desrochers, in responding to you, incorrectly assumed that supervision could have been carried out remotely and that Adjuster D had the appropriate qualifications to do so for the period of your enquiry. It is important to note that in the period July 1, 2018 and December 5, 2018 that Manitoba claims with the exception of those handled under a SIR were handled by Level 3 adjusters which would not require countersignature."

And by letter dated March 27, 2020:

"Adjuster D did not supervise the Hamilton office in the period July 1, 2018 to December 5, 2018 either on-site or from another office although it was Ms. Desrochers' mistaken assumption that she was doing so."

"Adjuster D did not provide such [on-site] supervision in the periods set out in your e-mail of February 28, 2020." [for the period of December 6, 2018 and December 4, 2019].

"No other Manitoba Level 4 Adjuster provided on-site supervision at the Hamilton office between March 17, 2017 and June 30, 2018."

"We are unaware of any other Level 4 adjuster providing on-site supervision in the Hamilton office between July 1, 2018 and December 5, 2018."

“No other Manitoba Level 4 Adjuster was providing on-site supervision at the Hamilton office between December 6, 2018 and December 4, 2019.”

18. As per Council’s discussion in adjudicating this matter, Council concluded at their March 3, 2021 meeting that licensure was/is required for Self-Insured Retention (“SIR”) related adjusting activities, therefore all the supervisory requirements (on-site supervision and countersigning of correspondence and reports, by a Level 4 Adjuster, completed by Levels 1 and 2 Adjusters) needed to be in place.

19. By letter dated March 27, 2020, in responding to a query from Council’s Investigator as to whether the Licensee had communicated to Adjuster A, Adjuster D and Adjuster F that they were required to provide on-site supervision at the Hamilton office, the Firm’s legal counsel advised:

“This requirement was not communicated to these individuals.”

20. By letter dated March 27, 2020, the Firm’s legal counsel concluded:

“The errors committed by Ms. Desrochers evidence her lack of appreciation of both the applicable Rules and what was happening at the Hamilton office in relation to Manitoba claims. Ms. Desrochers attributes the circumstances of this complaint to her own misapprehension of the applicable Rules but also in not having received adequate training on her compliance responsibilities as a Level 5 representative.”

Facilitation of Unlicensed Activity by the Licensee

21. Adjuster A, who had previously held a Manitoba Level 4 Insurance Adjuster licence had a licensing gap in his licence from July 1, 2018 to July 8, 2019 when he was no longer licensed (the “Unlicensed Period”).

22. By email dated March 27, 2020, the Firm’s legal counsel provided Council’s Investigator a spreadsheet of Manitoba claims adjudicated by the Firm and that spreadsheet indicated that Adjuster A adjudicated one claim for Insurer A, dated August 8, 2018, for a Manitoba business during his Unlicensed Period and supporting documentation is on file to that effect.

SIR Claims

23. In response to Council’s Investigator querying whether any Level 1 or Level 2 Assistant Adjusters handled Manitoba claims or claims within the SIR program and for the name(s) of the Level 4 Adjuster who would have countersigned correspondence and reports, the Firm’s legal counsel advised by letter dated December 19, 2019:

“Unfortunately, there was no Level 4 adjuster in the Hamilton office countersigning these documents.”

24. By letter dated March 27, 2020, the Firm’s legal counsel advised Council’s Investigator that:

“Yes, the Hamilton office did adjudicate Manitoba claims, including SIR claims, between March 17, 2017 and June 30, 2018.”

“Level 1 and Level 2 Assistant Adjusters administer the single SIR program administered by Crawford in Manitoba. No reports are generated by those adjusters under the program other than letters of denial. Those would not be countersigned by a Level 4 Adjuster...”

25. By letter dated August 17, 2020, the Firm’s legal counsel advised Council’s Investigator that he had reviewed the Agreement between the Firm and a client with regard to administration of the SIR program and stated:

“I have also now had an opportunity to review the wording of the Agreement and in accordance with its terms the work being performed under that agreement, although at times in the vein of customer relations (See Recital 2), is largely an arrangement where adjusting services are being provided.”

26. The wording of Recital 2 is as follows:

“Service Provider is engaged in the business of providing claims adjusting, administrative and management services;”

27. The Firm’s legal counsel provided Council’s Investigator with redacted claims notes and correspondence for 10 randomly selected SIR Claims, which included claims notes which included an abundance of emails, which appeared to be pasted into the claims management system, that had been sent by Assistant Adjusters, without carbon copying a Manitoba Level 4 Adjuster.

Failed to report a change in the on-site supervisor without delay

28. By letter dated December 19, 2019, the Firm’s legal counsel stated to Council’s Investigator:

“This exercise has been important as it has identified Crawford’s non-compliance with the regulatory framework...”

“Unfortunately, there was no Level 4 adjuster in the Hamilton office countersigning these documents. This was remediated on December 13, 2019 when Adjuster F, who is a supervisor in the Hamilton office was

granted a Level 4 Licence in Manitoba. Crawford regrets this oversight in its administration of these claims.”

29. Adjuster F’s Manitoba Level 3 Adjuster’s licence was upgraded to a Level 4 licence on December 5, 2019.
30. On March 25, 2020, the Licensee emailed ICM’s Licensing Department the completed the annual Adjusting Firm Attestation form dated March 24, 2020 which indicated that Adjuster F was the supervising Adjuster for the Hamilton office.
31. As per two 2019 Adjusting Firm Attestation Forms, the Licensee had an affixed her signatures to the forms attesting to her understanding that she was to report any material change to the ICM within 15 days where Council considers a material change to include any material fact which may influence Council to amend, or review a licensee’s licence(s).
32. By letter dated March 27, 2020, the Firm’s legal counsel indicated to Council’s Investigator that:

“On November 29, 2019, Adjuster F emailed the Insurance Council of Manitoba Info email address. At that time, she sought assistance to have her Manitoba licence amended from a Level 3 to Level 4. Adjuster F indicated that she had recently been promoted to a management position and her signature block indicated that she was physically located in Hamilton. The email does not indicate that this reflected a change in supervising adjuster and Ms. Desrochers has no documentation to suggest that this was done formally.”

Additional Information Provided by the Firm’s Legal Counsel

33. By letter dated June 2, 2020, the Firm’s legal counsel indicated to Council’s Investigator that:

“Ms. Desrochers notes that she was not suitably informed with respect to the supervisory arrangements in the Hamilton office and was under the mistaken impression that such supervisory responsibilities could be administered within the business unit generally and not in the Hamilton office specifically. This was reinforced in her mind by the footnote on the attached Attestation that had previously been filed which states, ‘Individuals operate out of the same business unit and oversee supervisory functions at various locations.’ Ms. Desrochers admits this was an incorrect interpretation of the applicable Rule. Ms. Desrochers believes that the absence of being well informed in relation to the operation of the Hamilton office combined with her view that the supervisory function could be administered from within the business unit contributed to her failure to provide the appropriate filing in the requisite period of time.”

34. By letter dated December 19, 2019, the Firm's legal counsel explained steps taken by the Firm to ensure compliance moving forward, namely:

- a. Increased monitoring and review of Manitoba licensed Adjuster which will allow managers to quickly confirm the level of Manitoba licensing for any Adjuster across Canada.
- b. Regular review of the administration of Manitoba claims being handled outside of Manitoba to ensure compliance with all regulatory requirements.
- c. Development and implementation of a training module for all Canadian Adjusters on the regulatory requirements relevant to Manitoba claims.
- d. The training module will be posted as a reference document on Crawford's intranet and will be accessible for all Adjusters/managers.
- e. The training module will form part of the HR file of all Manitoba licensed Adjusters and those Adjusters will be required to attest to the review of those requirements on an annual basis.

ANALYSIS

Section 385(7)(b) of the *Act* speaks to violating any provision of the *Act* or any rule or regulation under the *Act*. Sections 3.2, 5(2)(c)(ii), and 5(3)(b) of the *Insurance Adjusters Licensing Rules* speak to management of the Adjusting Firm to ensure appropriate on-site supervisory oversight, with countersigning of documentation, where applicable for Level 1 and 2 Adjusters by a Level 4 Adjuster. These sections are of particular relevance to the Licensee's conduct.

Further, pursuant to section 385(8) of the *Act*, persons are prohibited from acting as an adjuster without a licence and section 391 of the *Act* prohibits any person who, not being duly licensed as an adjuster, from holding out to the public as an adjuster; and, section 8 of the *Insurance Adjusters Code of Conduct* addresses the prohibition of an unauthorized practice of the profession, specifically, the use of unlicensed individuals.

The Licensee had been the Firm's Designated Representative from November 9, 2001 – April 24, 2002, November 13, 2007 to April 1, 2011, and from October 13, 2016 to present – she knew, or ought to have known, and been accustomed to the regulatory requirements to managing the Firm.

The Licensee in her capacity as the Designated Representative for the Firm had the overall responsibility to ensure that all adjusters in the Firm complied with the *Licensing Rules*. As the Designated Representative, the Licensee confirmed by signing annual Firm Attestation forms (in 2017, 2018, and 2019) that she would ensure proper and adequate

supervision of employees would be provided at all times in reference to the *Licensing Rules*, that no employee who is not licensed acts as an adjuster, and that material changes would be report to the ICM within 15 days.

Section 3.2, Restrictions – Levels 1 and 2, of the *Licensing Rules*, indicates that “*The holder of a Level 1 or Level 2 assistant insurance adjuster’s licence shall not sign reports or correspondence unless countersigned by the holder of a Level 4 insurance adjuster’s licence*”, and section 5(2)(c)(ii) indicates that the corporation must “*employ at least one insurance adjuster holding a Level 4 insurance adjuster’s licence to provide on-site supervision at each office of the corporation other than the office supervised by the designated representative, and*”. Section 8 of the *Code of Conduct* makes the Designated Representative responsible for supervision of employees and assistants.

For the Hamilton office, the Licensee failed to inform the appointed Manitoba Level 4 Adjusters of their responsibility to provide on-site supervision and the Firm’s legal counsel acknowledged to Council’s Investigator that no on-site supervision by a Level 4 Adjuster was provided between March 17, 2017 and December 4, 2019, contrary to the Licensee’s attestations that supervision would be provided on the annual Adjusting Firm Attestation forms, which amount to misrepresentations to the ICM (by way of the forms).

Negotiation, settlement, or investigation of a loss or claim under a contract by an insurer falls under the definition of an Adjuster as per the *Act*:

"adjuster" means a person who

- (a) for or on behalf of an insurer or an insured and for compensation, reward or the hope or expectation of compensation or reward,
 - (i) solicits the right to negotiate the settlement of or to investigate a loss or claim under a contract, or under a fidelity, surety or guaranty bond issued by an insurer, or
 - (ii) directly or indirectly negotiates, investigates, adjusts or settles such loss or claim, or
- (b) holds himself or herself out as an adjuster, investigator, consultant or adviser with respect to the adjustment, negotiation or settlement of such losses or claims,

but does not include a member of The Law Society of Manitoba, entitled to practise as a solicitor in Manitoba, acting for or on behalf of a client in the course of and as part of that practice; (« expert » ou « expert en sinistres »)

It was the responsibility of the Designated Representative to ensure that no employee who is not a licensed Adjuster acted as an insurance Adjuster. During his Unlicensed Period, Adjuster A adjudicated one claim on August 8, 2018 for a Manitoba resident, in violation of section 385(8) Offence, of the *Act*. By facilitating unlicensed activity, the

Licensee violated section 8 (Unauthorized Practice of the Profession) of the *Code of Conduct*.

With respect to SIR, Council's position is that licensure was required for adjudication of these SIR claims, and as such, all the supervisory requirements of countersigning and on-site supervision apply. The Firm's legal counsel acknowledged that Level 1 and Level 2 Assistant Adjusters administer the SIR program and that letters of denial for the SIR program would not be countersigned by a Level 4 Adjuster – Council emphasizes that the *Licensing Rules* mandate countersigning of correspondence by a Level 4 Adjuster.

Council noted comments from the Firm's legal counsel that "*There are no instances where a Manitoba Level 1 or Level 2 Assistant Adjuster exceeded the limits of the SIR*" but considered this point to be moot given the need for licensure for SIR adjudication activities.

Sections 5(2)(c)(ii), and 5(3)(b) of the *Licensing Rules* indicate that the corporation shall employ at least one Adjuster holding a Level 4 Adjuster's licence to provide on-site supervision at each office of the corporation other than the office supervised by the Designated Representative, provide Council with the name and address of each supervising Adjuster employed, and notify Council without delay of any change in supervising Adjuster.

During the course of the investigation, the Licensee had no documentation to suggest that she notified ICM's Licensing Department, without delay, of the change of an on-site supervising Adjuster (Adjuster F) at the Hamilton office, as required by section 5(3)(b) of the *Licensing Rules*. Adjuster F had been a supervisor at the Hamilton office since December 5, 2019 when her Level 3 Adjuster's licence was upgraded to a Level 4 licence. In violation of the *Licensing Rules*, the Licensee failed to notify Council of the change of supervising Adjuster until March 25, 2020 – over three months later.

It is the Designated Representative's responsibility to ensure that the Firm has policies and procedures in place to ensure regulatory compliance and that these procedures are followed. Council noted assurances from the Firm's legal counsel that enhanced compliance measures would be implemented moving forward but Council concluded that these new measures do not absolve the Licensee of her prior misconduct.

Based on the information and evidence reviewed, Council concluded that there was a systemic lack of due diligence and appropriate organizational procedures pertaining to licensure of all adjusters, supervision, and oversight provided by the Firm and as such, the Licensee in her capacity as the Designated Representative violated section 385(7)(b) of the *Act*; sections 3.2, 5(2)(c)(ii), and 5(3)(b) of the *Licensing Rules*; and, section 8 (Unauthorized Practice of the Profession) of the *Code of Conduct*, and that disciplinary action is warranted.

PENALTY AND FINAL DECISION

Council's Decision dated December 1, 2021 was delivered by mail to the Licensee on December 9, 2021. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis. Having regards to its determination that the forgoing violations had occurred, Council imposed the following penalty and sanction pursuant to sections 385(7) and 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council order the following:

1. The Licensee be fined \$5,000.00 and assessed partial investigation costs of \$5,000.00.

Pursuant to section 389.0.1(1) of the *Act*, the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Licensee was advised of this right in the Decision and was provided with the Notice of Appeal form, in accordance with section 389.0.1(2) of the *Act*. As an appeal was not requested in this matter, this Decision of Council is final.

In accordance with Council's determination that publication of its Decisions are in the public interest, this will occur, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 18th day of January, 2022.