

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**Canadian Imperial Bank of Commerce o/a CIBC (“CIBC”)**

**INTRODUCTION**

The Life Insurance Council of Manitoba (Council) derives its authority from *The Insurance Act C.C.S.M. c. 140* (the “Act”) and the *Insurance Councils Regulation 227/91*.

For many years it has been common for sellers of some goods and services to offer insurance parallel to but connected to the main transaction with the consumer. For example, financial institutions may offer life, disability, and loss of employment insurance to borrowers. In 2015, regulations regarding such insurance were in force in Manitoba. (See the *Insurance Agents and Adjusters Regulation 389/87R*, particularly part 2 thereof.) These regulations require that financial institutions (banks, credit unions and caisses populaires, loan and/or trust corporations, among others) which sell insurance, obtain what are called “restricted insurance agent licences” through an application to the Insurance Council of Manitoba (ICM) (for the Superintendent of Insurance).

In response to information received by Council, an investigation was conducted pursuant to sections 375(1)(e) and 396.1(7)(e) of the *Act* and section 7(2)(e) of *Insurance Councils Regulation 227/91*. The purpose of the investigation was to determine whether CIBC had violated the *Act* and/or its *Regulations*.

During the investigation, CIBC was notified of Council's concerns and was given an opportunity to make submissions.

**ISSUE**

1. When CIBC failed to forward ten (10) Manitoba Business and Farm Loan insurance applications to the insurer, did CIBC violate section 375(1)(e) has demonstrated his or her incompetency or untrustworthiness to transact the business of insurance agency for which the licence was granted, of the *Act* and/or the Restricted licence holder’s responsibilities as listed under sections 30(1)(b), 30(1)(c)(i) and 30(1)(c)(ii) of the *Insurance Agents and Adjusters Regulation 389/87R*?

## **FACTS AND EVIDENCE**

1. CIBC is the holder of a Restricted Insurance Agent's ("RIA") licence in Manitoba.
2. By email dated May 28, 2021, CIBC's former Designated Official indicated to ICM's former Director of Licensing that:
  - a. On April 23, 2021, CIBC self-reported to the Financial Consumer Agency Canada that:
    - i. CIBC was responsible to review various control reports, including an exception report for Creditor Insurance on business and farm loans. Each day, CIBC's own policies required the review of all entries and a determination whether any action was required.
    - ii. Due to a transition of staff, the exception report was not reviewed between January 2019 and February 2020, which resulted in insurance applications failing to be forwarded to the insurer.
    - iii. The affected consumers did not receive confirmation of approval or denial of insurance and insurance premiums were not charged.
3. By email dated June 25, 2021, CIBC's former Designated Official clarified to ICM's former Director of Compliance that eight (8) applications for ten (10) Manitoba consumers, had been affected by this oversight.
4. By email dated March 31, 2023, CIBC's former Designated Official indicated to Council's Investigator how the exception report for Creditor Insurance for business and farm loans was to be reviewed, and how it indicated whether the application had been forwarded to the insurer. CIBC's former Designated Official indicated that the errors occurred with respect to ten (10) applicants from Manitoba consumers over the period of January 2019 to February 2020 and that:
  - a. It was the accountability of one (1) employee to review and action the daily report.
  - b. The back-up plan if the employee was absent was as follows:
    - i. Planned absences — the management team ensured teams were staffed appropriately during peak times and tasks were reassigned to individuals who could complete the tasks, as required.

- ii. Unplanned absences — the management team was to ensure that all work was being completed each day. They proactively assigned tasks (manually) to other team members, in times of unplanned absences.
  - c. *"...all 10 Manitoba clients were those who had applied for insurance, but their application was not sent by CIBC to the insurer and premiums were not collected from them."*
  - d. No Manitoba consumers requested cancellation of their insurance, and no consumers were declined insurance; therefore, no consumers fell into these categories [cancelled/declined] on the exception report.
  - e. *"Where a client had applied for insurance, but their application had not been sent to the insurer, the exception report would read 'application still awaiting approval' or 'loan number not on loan system'. In such cases, the accountable employee, who through training and procedures, would know that either of these system notations would mean that a client had applied for insurance, but their application had not been sent by CIBC to the insurer. The accountable CIBC employee would then have to undertake a manual review of each client file to resolve the processing error."*
  - f. The report was by CIBC's own policies to be reviewed daily and actioned within five (5) business days.
  - g. On a monthly basis, a Quality Assurance team member would verify that the exception report had been reviewed/actioned within five business days; a Senior Director reviewed the report quarterly.
5. Included with their March 31, 2023 email, CIBC's former Designed Official provided Council's Investigator with their remediation plan, copies of correspondence sent to the affected consumers, and indicated that:
- a. The affected consumers were contacted and provided the option to submit their original application to the insurer, without additional underwriting requirements;
  - b. If the application was approved, CIBC would not collect back-premiums;
  - c. The consumer also had the option to cancel their application; and
  - d. All affected consumers were remediated by August 31, 2021.

## **ANALYSIS AND DETERMINATIONS**

Section 375(1) Investigation by superintendent, etc., of the *Act* states that:

*If, after due investigation by the superintendent and after a discipline hearing, if a hearing is required under the regulations, the superintendent determines that the holder or former holder of an insurance agent licence*

*.  
(b) has violated any provision of this Act or any rule or regulation under this Act*

*.  
the superintendent may take one or more of the actions set out in subsection (1.1).*

Section 375(1.1) Disciplinary actions by the superintendent, of the Act states that:

*For the purposes of subsection (1), the superintendent may do one or more of the following after giving a notice of decision in writing to the licence holder or former licence holder:*

*.  
(c) subject to the regulations, impose a fine on the licence holder or former licence holder and fix a date for the payment of the fine;*

*(d) subject to the regulations, require that the licence holder or former licence holder pay some or all of the costs of the investigation and, where applicable, of the hearing and fix a date for the payment of the costs assessed.*

Under section 30(1) Restricted licence holder's responsibilities, of the *Insurance Agents and Adjusters Regulation 389/87R*, "A restricted licence holder must (a) have reasonable and demonstrable policies and procedures to ensure that anyone who solicits, negotiates, or transacts insurance on behalf of the restricted licence holder is knowledgeable, competent, and suitable taking into account the class or type of insurance; (b) ensure that anyone who solicits, negotiates, or transacts insurance on behalf of the restricted licence holder complies with the policies and procedures mentioned in clause (a); (c) upon receiving an application for insurance in relation to the restricted licence holder's goods or services, ensure (i) that the person applying is informed that the person is contracting with the insurer and not with the restricted licence holder, (ii) that the person applying is provided with a summary of (A) the terms, including limitations and restrictions, of the insurance, and (B) the circumstances under which the insurance commences or terminates and the procedures to follow in making a claim, ...".

In the course of reviewing the facts and evidence, Council originally reasoned as follows.

CIBC did have reasonable and demonstrable policies and procedures as it was the daily responsibility of one accountable employee to review and action the daily exception report for Creditor Insurance for business and farm loans. However, CIBC's management team failed to realize that the report had not been reviewed for 13 months. The management team was responsible to reassign tasks during planned and unplanned absences, and that those tasks were assigned to individuals who were able to complete those tasks. By failing to ensure

that this report was reviewed, Council determined that CIBC was in violation of section 375(1)(e), Incompetency, of the *Act*.

In addition, as staff were not reviewing the exception report for Creditor Insurance for business and farm loans between January 2019 to February 2020, CIBC failed to ensure that anyone who solicits, negotiates, or transacts insurance on behalf of the restricted licence holder complied with those policies and/or procedures as mentioned in clause 30(1)(a), which was a violation of section 30(1)(b) of the *Insurance Agents and Adjusters Regulation 389/87R*.

Further, it was a concern of Council that between January 2019 to February 2020, consumers who had applied for and wanted insurance coverage, did not receive acknowledgement letters or letters of denial, as the applications for insurance coverage were not submitted to the insurer. For 13 months, the consumers were not aware of the fact that their insurance had not commenced, nor did they know if there were any limitations or restrictions of the insurance coverage. This is a violation of sections 30(1)(c)(i) and 30(1)(c)(ii), of the *Insurance Agents and Adjusters Regulation 389/87R*.

Council recognized that CIBC had since implemented measures to monitor future oversights, but Council felt that those measures did not absolve CIBC from the past violations that had occurred.

Council concluded that CIBC violated section 375(1)(e) of the *Act*, and sections 30(1)(b), 30(1)(c)(i) and 30(1)(c)(ii), of the *Insurance Agents and Adjusters Regulation 389/87R*, and that disciplinary action was warranted.

### **SHOW-CAUSE HEARING**

The purpose of the show-cause hearing is to afford a licence holder a further opportunity to adduce evidence or present arguments with a view to persuading Council that their Intended Decision should not be made final, that Council should make a different decision than that which had been intended.

To accommodate CIBC, the attendance at the show-cause hearing was virtual. As is universally done, there was an official court reporter and the hearing was recorded. Three representatives of CIBC attended, including the current designated representative of CIBC. CIBC was represented by legal counsel. Before the hearing, Council had received from CIBC's counsel a brief of evidence, a brief of authorities and written submissions. These were much appreciated by Council.

CIBC acknowledged through counsel that an error had been made by it. It did not dispute the finding of responsibility, or the intended fine and costs. Its concern was with the basis of the decision, especially the finding of incompetency.

CIBC's main contention was that although there was a lengthy period during which its own policy had not been complied with, this was a consequence of one error at a specific moment in time, namely when an employee new to the position had not been trained/instructed/directed to review a particular list for a particular purpose.

In CIBC's written submission, the point was expressed as follows:

21. *"The Retail Lending Service ("RLS") department at CIBC is responsible for reviewing and actioning various control reports relating to, among other things, creditor insurance applications."*

22. *"Between January 2019 and February 2020, due to an oversight at the time of transition in RLS staff at CIBC, the responsible RLS employee did not review a daily control report (known as an exception report) relating to business and farm credit insurance applications. The exception report identified applications for creditor insurance that were to be forwarded to the insurer for a coverage decision."*

Also significant in Council's mind is this, from paragraph 24 in CIBC's written submission:

24. *"During the same time period (January 2019 to February 2020), CIBC arranged 12,580 creditor insurance applications for customers in Manitoba. The 8 applications that were not forwarded to the insurer represent 0.06% of the creditor insurance applications for Manitoba customers processed by CIBC during the relevant time period."*

In addition, CIBC submitted that each of the applicants whose applications had not been forwarded to the insurer for consideration had in fact been advised of the information required to be communicated to them under subsections 30(1)(c)(i) and 30(1)(c)(ii), of the *Insurance Agents and Adjusters Regulation 389/87R*. That this was so manifest on the CIBC business and farm loan life insurance application form which was part of CIBC's brief of evidence in this matter.

## **ANALYSIS**

ICM's own general insurance agent code of conduct, section 2 Competence, states:

**AGENTS OR BROKERS OWE A DUTY TO THE CLIENT TO BE COMPETENT TO PERFORM THE SERVICES WHICH THE AGENTS OR BROKERS UNDERTAKE ON THE CLIENT'S BEHALF.**

## **COMMENTARY:**

### **Scope of Duty**

Your duty to the client is to give competent guidance based on sufficient knowledge of the specific risks entailed, adequate consideration of the relevant insurance principles and your own experience and expertise.

### **Knowledge and Skill**

The public regards licensing as a badge of competence. Competence, however, is not limited to legal qualification as an insurance agent or broker. It encompasses the agent or broker's ability to competently provide the services needed by the client. It calls for a clear understanding of insurance principles, and it requires sound knowledge of the practice and procedures to apply them effectively in the best interest of the client.

A licensed insurance agent or broker is held out as knowledgeable, skilled and capable to perform as an insurance intermediary. The client is therefore entitled to assume that you have the ability and capacity to deal adequately with general insurance matters on the client's behalf.

It is apparent from this that competence relates to the skill, knowledge and capabilities of the agent. Thus, to justify a finding of incompetency there must be evidence of a lack of knowledge, deficient skills or inadequate capabilities as judged by reference to what would be reasonably expected of an agent according to industry standards. This is consistent with and supported by the legal authorities and dictionary definitions submitted by CIBC at the hearing.

In its Intended Decision, Council was naturally concerned regarding the length of time during which CIBC had not followed its own policy and by the fact that eight (8) applications (10 applicants) were affected. But the root cause of the problem was a single error at the time of transition from one staff member to another. A single training or orientation failure led to the impact reported by the CIBC. A solitary mistake or failure in communication of a policy requiring the review of a list does not warrant a determination of incompetency. Council has no reservation in saying that the CIBC was not in breach of the competency requirement.

The other bases for Council's Intended Decision were sections 30(1)(c)(i) and 30(1)(c)(ii), of the *Insurance Agents and Adjusters Regulation 389/87R*. Essentially, these provisions combine to require certain disclosure to be made to an applicant for insurance, in particular that: (i) (in this case) any contract of insurance would be with the insurer and not with CIBC; and (ii) the terms of coverage and the circumstances of when and how coverage begins and ends and how to make a claim.

The documents submitted at the hearing (and a few days before the hearing) (exhibit 3) make clear that CIBC made all necessary disclosures to these ten applicants. Whatever Council knew or did not know at the time it wrote its Intended Decision, there is no doubt that CIBC did not violate the aforesaid sections.

In conclusion, Council accepts and finds, as CIBC candidly and forthrightly acknowledged, that CIBC breached section 375(1)(b) has violated any provision of this Act or any rule or regulation under this Act, of the *Act* and section 30(1)(b) of the *Insurance Agents and Adjusters Regulation 389/87R* in that it failed to comply with its own policies and procedures which lead to the sequence of events described earlier herein.

### **PENALTY AND FINAL DECISION**

Council's Decision, dated July 16, 2024, was delivered to CIBC on August 12, 2024. The Decision outlined the foregoing background, analysis, and conclusion on a preliminary basis.

Having regards to its initial determination that the foregoing violation and pursuant to sections 375(1.1)(c) and 375(1)(d) of the *Act* and section 7(1) of *Insurance Councils Regulation 227/91*, Council orders that:

1. CIBC is fined \$2,000.00 and assessed investigation costs of \$2,000.00.

Pursuant to section 389.0.1(1) of the *Act*, CIBC had the right to appeal this Decision within twenty-one (21) days of receipt. CIBC 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 is in the public interest, this will occur, in accordance with sections 7.1(1) and 7.1(2) of *Insurance Councils Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 24<sup>th</sup> day of October, 2024.