

Canada

MCMILLAN

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1. Insurance intermediation activities

1.1 Is the distribution of insurance products (hereinafter referred to as 'insurance intermediation activities' or 'insurance intermediation') limited to insurance intermediaries in your country?

Common law provinces

Generally, yes. Although certain products, such as travel insurance, may be sold by non-licensed individuals under specific circumstances. See 1.3 below.

Civil law (Quebec)

In Quebec, Canada's only civil law province, the regulatory regime for insurance intermediation is found in the Act Respecting the Distribution of Financial Products and Services (the 'Distribution Act')¹ and the regulations adopted thereunder. The activities of insurance intermediaries are also governed by the Quebec Civil Code ('CCQ')² and the Act Respecting Insurance (Quebec) (the 'Insurance Act')³. The *Autorité des marchés financiers* ('AMF') is the regulatory body responsible for enforcing the legislative framework applicable to the financial sector in Quebec and the administration of the Distribution Act.

The regulatory regime for insurance intermediation in Quebec requires that any individual who offers life insurance or damage insurance products to the public must be certified as an insurance representative by the AMF. However, an exception exists regarding the distribution of insurance products. It is called 'distribution other than through a representative' also known as 'distribution without a representative' ('DWR')⁴. Under that exception, an insurer may offer insurance products pertaining to a good or secure a client's adhesion in respect of such insurance products through a distributor, provided that the distributor's business is not in the field of insurance, and that the product offered is related to the good that is being sold. See 1.3 for further details.

Insurance representatives either act on their own behalf, through a corporate entity or through an independent partnership. Either way, they must register with the AMF to confirm how they are carrying on business. They must also pursue their activities in the sectors or classes of sectors in which they are authorised to act by a certificate issued by the AMF.⁵ Corporate entities must register either as a firm or as an independent partnership and obtain an authorisation from the AMF to be authorised to pursue activities through duly certified representatives. See also 3.1 below.

The existing framework provided by the Distribution Act created an uncertainty as to whether a certified insurance representative was necessary for the sale of online insurance products. In April 2015, following

¹ R.S.Q., c- D-9.2.

² See *Civil Code of Quebec*, R.S.Q., c C-1991, Art. 2138.

³ R.S.Q., c.-A-32.

⁴ Distribution Act, Title VIII, s 408 et seq.

⁵ Distribution Act, s 13.

a consultation with financial sector participants, the AMF released a report⁶ in which it ruled that a certified representative need not be necessarily involved for the sale of insurance via Internet.

1.2 What does the term ‘insurance intermediation’ include? Is there any definition set forth by statutory or case law? In any case, please indicate which activities/services are included in the above definition, for example, presentation or proposal of insurance products, assistance or consultancy aimed at drafting the agreement. Are collaboration activities that relate to the administration or execution of the contracts drafted, even in the case of accidents, included in the definition? Does the drafting of contracts or insurance agreements in a collective form on behalf of insured individuals also form part of insurance intermediation activities?

Insurance intermediation is regulated by each of the ten Canadian provinces and three territories (‘provinces’). Each province has its own statute that contains a unique definition of the elements of insurance intermediation activities.

Common law provinces

The Province of Ontario, for example, has two separate statutes that regulate ‘agents’ and ‘brokers’. The Insurance Act (Ontario) regulates life and non-life insurance agents, in the latter case, that are ‘captive’ or ‘career’ agents (meaning they are tied to one insurance company). The definition of ‘agent’ in this statute is:

A person who, for compensation, commission or any other thing of value,

(a) solicits insurance on behalf of an insurer who has appointed the person to act as the agent of such insurer or on behalf of the Facility Association under the Compulsory Automobile Insurance Act, or

(b) solicits insurance on behalf of an insurer or transmits, for a person other than himself, herself or itself, an application for, or a policy of insurance to or from such insurer, or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal with such insurer,

and who is not a member of the Registered Insurance Brokers of Ontario.

Agents owe duties to their customers, but also owe duties to the insurer, whether as an employee or independent contractor.

The Registered Insurance Brokers Act (Ontario) regulates brokers who are not tied to one insurer and who generally owe their duties to the customer. The definition of ‘insurance broker’ in this statute is as follows:

Any person who for any compensation, commission or other thing of value, with respect to persons or property in Ontario, deals directly with the public and,

(a) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers,

(b) provides risk management services including claims assistance where required,

(c) provides consulting or advisory services with respect to insurance or reinsurance, or

⁶ AMF Report: *Internet Insurance Offerings in Quebec: Presentation of Consultation Findings and Orientations*, 2 April 2015.

(d) holds himself, herself or itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above.

Third-party administrators and others performing similar purely administrative, clerical or adjudicatorial functions generally do not require a licence in most provinces. However, the province of Saskatchewan has recently introduced a new insurance statute which, although not currently in force, will soon regulate two new categories of insurance intermediary, namely, 'managing general agent' and 'third party administrator'. Persons and businesses acting as such will be required to be licensed. The Saskatchewan Insurance Act defines a 'managing general agent' as follows:

An insurance agent that manages all or part of the business of an insurer and carries out specific activities on behalf of that insurer, including:

- (a) soliciting, negotiating or accepting applications for insurance from licensed insurance agents;*
- (b) effecting and countersigning contracts of insurance;*
- (c) accepting risks;*
- (d) underwriting insurance contracts;*
- (e) entering into written agency agreements with licensed insurance agents;*
- (f) supervising and monitoring the activity of licensed insurance agents with whom it has entered into written agency agreements; and*
- (g) undertaking any other prescribed duties or activities.'*

There is no definition in the Saskatchewan Insurance Act of a 'third party administrator' but the trade usage of this term typically captures third parties that administer insurance claims or employee benefits. Regulations will be drafted in future to define this licensing requirement.

Civil law (Quebec)

The regulatory regime for insurance intermediation in Quebec does not provide for a specific definition of 'insurance intermediation'. The Distribution Act and its regulations prescribe the involvement of an insurance representative when insurance products are distributed (other than through the exempt regime of the DWR or other exemptions provided for under the Act) in order to protect consumers and satisfy their need for guidance during the process of buying insurance. The regulations adopted under the Distribution Act contain provisions which affect insurance representatives, namely provisions dealing with continuing education, codes of ethics and formalities for the issuance of new policies.

The Distribution Act uses the concept of 'representative' as opposed to 'market intermediary'. Representatives may act in a number of fields, such as insurance representatives, claims adjusters or financial planners. Insurance representatives are defined under the Distribution Act as being either a representative in the insurance of persons, a group insurance representative, a damage insurance agent or a damage insurance broker.⁷ Some key provisions of the Distribution Act⁸ show the role of certified insurance representatives in connection with the sale of insurance products. For further details, see 4.1 below.

See also 3.1 below for a description of the categories of licensing by insurance sector and the obligations of firms, independent representatives or independent partnerships to register with the AMF.

⁷ Distribution Act, s 2.

⁸ Distribution Act, ss 14 to 43.

1.3 Are insurance intermediation activities allowed as ancillary activities to other professional activities (eg, travel or rent-a-car services, etc) and to what extent? Furthermore, are there exceptions that allow actors, other than insurance intermediaries, to carry out insurance intermediation activities? Is it a matter related, for example, to the risk covered, the duration or the cost of the policy premium, etc?

Common law provinces

Yes. Individuals and firms, other than licensed insurance brokers or agents, who solicit certain types of insurance contracts are sometimes referred to as incidental sellers of insurance. Banks are considered to be incidental sellers of insurance in Canada, but various other entities are included as well such as auto dealerships, travel agencies and financing companies.

The provinces of British Columbia, Alberta, Saskatchewan, Manitoba⁹ and Québec, each have specific rules regarding the incidental sale of insurance while Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, do not specifically regulate incidental sales of insurance. See 3.4.3.5 below for further details.

Civil law (Quebec)

As explained in 1.1 above, under the Quebec DWR regime, certain insurance products can be offered by distributors rather than by certified representatives.

Under section 408 of the Distribution Act, a distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer an insurance product which relates solely to goods sold by the person or secures a client's adhesion in respect of such an insurance product.

The Act lists the insurance products relating to goods that can be offered by a distributor who does not hold a certificate issued by the AMF. For example, the products can include:

- debtor life, health and employment insurance;
- investor life insurance;
- travel insurance.

To take advantage of this exception regime, the insurer must have prepared, in advance, a distribution guide ('the guide') that complies with the provisions of the Distribution Act and of the regulation respecting distribution without a representative¹⁰. This guide is a disclosure tool, which enables the consumer to evaluate the product that is being offered. A copy of the guide must be filed with the AMF before the product is distributed. In addition, the insurer must take all necessary steps to ensure that the distributors are sufficiently familiar with the product described in the guide. The distributor must give a guide to the consumer prior to selling the product through the DWR regime. The guide must contain, in particular:

- a description of the product being offered and details on the nature of the guarantee;
- the exclusions associated with the product;
- the claim process; and
- a mention that similar insurance products exist on the market.

Besides the obligation to deliver a copy of the guide, the Distribution Act also imposes other obligations on distributors, such as the duty to disclose their remuneration if it exceeds 30 per cent of the cost of acquiring the insurance product. See 3.4.3.5 below for further details.

2. Insurance intermediaries' requirements

⁹ s 380.1(1) of *The Insurance Act* (Manitoba) defines an 'incidental seller of insurance' as 'a person that, in the course of selling or providing goods or services to the person's customers or clients, sells, negotiates or arranges insurance, or offers to sell, negotiate or arrange insurance, that relates to those goods or services'.

¹⁰ R.S.Q., c. D-9.2, r.8.

2.1 In order to act as an insurance intermediary, is there need for an authorisation and/or to be enrolled in a register? If yes, what are the requirements to be authorised/enrolled in the register as an insurance intermediary (individual or legal entities, integrity and/or professional requirements, etc)? Briefly explain how it works.

Common law provinces

Except for the circumstances where individuals or businesses are exempt from licensing, insurance intermediaries are required to be licensed in Canada. Each Canadian province has its own unique statute that regulates, among other things, licensing requirements. However, the provinces have worked together, through the Canadian Council of Insurance Regulators (CCIR), to create harmonised licensing application forms that can be used to facilitate licensing across the country. Although the requirements vary from province to province, generally speaking, an application in the common law jurisdictions involves:

- licence application fee;
- passing qualifying examinations or examination equivalency;
- insurer sponsorship;
- errors and omissions insurance;
- home jurisdiction certificate of authority (for non-residents); and
- criminal background checks.

The licensing regime for 'brokers' under the Registered Insurance Brokers Act (Ontario) is broadly similar.

Civil law (Quebec)

Quebec follows a distinct training procedure as specified by the AMF. Generally speaking, the requirements¹¹ for licensing as insurance representative are to:

- satisfy the minimum qualifications regarding education;
- pass the AMF examinations;
- complete a 12-week probationary period;
- submit a certification application to the AMF with the licensing fees and details of insurer sponsorship, errors and omissions insurance and criminal background checks.

Please note that in addition to the DWR exception regime, the Distribution Act also provides for the following exemptions¹² from the licensing requirements:

- persons who, on behalf of an employer, a union, a professional order or an association or professional syndicate, sign up employees or a member of the union, professional order, association or professional syndicate in respect of a group contract in insurance of persons or a group annuity contract;
- the members of a mutual benefit association who offer policies for the mutual benefit association if the association does not guarantee the payment of a benefit on the occurrence of a risk;
- actuaries who, in pursuing activities as an actuary, offer insurance products in group insurance of persons or group annuities.

¹¹ Regulations respecting the issuance and renewal of representatives' certificates, c.D-9.2, r.7

¹² Distribution Act, ss 3 and 4.

- 2.2 In what form can anyone access and verify the registration/authorisation or verify the fact that the insurance intermediary is a professional (eg, via the web)?

Common law provinces

Almost all of the provinces have licensing information for insurance intermediaries (individuals and corporate entities) on their government websites that are searchable by name. For those that do not, it would be possible to contact the relevant government authority by telephone to confirm their requirements for verification of insurance licensing.

Civil law (Quebec)

The registration of insurance intermediaries authorised to offer insurance products in Quebec can be verified on the AMF's website or by telephone.

- 2.3 **Are insurance intermediaries with a registered office in another country allowed to operate in your country and how (eg, under the right of establishment or freedom to provide services in your country, as in the EU)? If yes, under what conditions? In such a case, are they bound by the same obligations as the insurance intermediaries with a registered office in your country? Please describe.**

Common law provinces

Generally speaking, an insurance intermediary's licence in another province or another country does not permit the intermediary to act as such in a Canadian province without obtaining a licence in the province. Certain provincial insurance regulatory authorities will waive educational requirements where an out-of-province insurance intermediary has comparable qualifications and expertise from another jurisdiction. However, unless exempt from licensing, the insurance intermediary will be required to obtain a licence in the province in which the intermediary acts and will thereby be subject to all of the requirements imposed upon them by the laws of that province.

Civil law (Quebec)

The AMF may, for each insurance sector, allow representatives of a given sector to pursue activities in Québec from a base in another province or another country, and fix the professional requirements for the pursuit of such activities¹³. For example, in Quebec, intermediaries will have to pass certain prescribed examinations.

Legal persons, such as firms and independent partnerships, must for their part, maintain an establishment in Quebec.¹⁴

3. Different types of insurance intermediaries

- 3.1 **Please list the different types of insurance intermediaries acting in your country such as agents, brokers, banks, financial intermediaries or financial advisers.**

Common law provinces

Although the terms used may vary from province to province and may depend on the class of insurance, the following descriptions generally apply:

¹³ Distribution Act, s 205.

¹⁴ Distribution Act, s 72.

- life insurance ‘agents’ and non-life ‘agents’ are sponsored by and generally place business with the sponsoring insurer; however, life insurance agents may place business with more than one insurer if they have a higher level of licence, due to their level of education and experience;
- non-life ‘brokers’ place business with many insurers and generally owe their duties to the consumer (as opposed to an employer/insurer). This would include the obligation to shop the market to find the best product for the customer;
- banks are federally-regulated in Canada and there are regulations under the Bank Act (Canada) that define the types of insurance that banks are permitted to sell, through their employees;
- ‘financial intermediaries’ and ‘financial advisors’ are not legal terms, but are descriptions of persons who typically are licensed by provincial securities regulatory authorities to sell investment products. These individuals and entities are not permitted to act as insurance intermediaries unless and to the extent they are ‘dual licensed’ (meaning they would have to be licensed under the provincial insurance regimes as well). For example, many investment advisers are also dually licensed as life insurance agents in which case they can, in addition to selling mutual funds, sell life insurance products;
- ‘insurance adjusters’ are required to be licensed in Canada, subject to certain exemptions;
- as indicated under 1.2 above, the Province of Saskatchewan will soon require insurance intermediaries acting as ‘managing general agents’ and ‘third-party administrators’ to be licensed in that province.

Civil law (Quebec)

In Quebec, there are four types of insurance representatives¹⁵ as shown in the table below. In the insurance of persons sector, the Distribution Act makes no distinction between the ‘agent’ and the ‘life insurance broker’, both being regrouped under the designation of ‘representatives in insurance of persons’. However, the distinction between agents and brokers has been kept in the damage insurance category.

The table below presents the categories, sectors and sector classes under AMF jurisdiction for insurance representatives and the related authorised activities.

Table 1: Categories, sectors and sector classes

<u>Category of licensing (and corresponding titles)</u>	<u>Authorised activities</u>
<p>1. Representative in insurance of persons</p> <p>Sector: Insurance of persons (Financial security adviser)</p> <p>Sector class: Accident and sickness insurance (Representative in accident and sickness insurance)</p>	<p>A representative in insurance of persons is a natural person (ie, physical person) who offers individual insurance products in insurance of persons or individual annuities from one or more insurers directly to the public, to a firm, to an independent representative or to an independent partnership.</p> <p>Such representatives act as advisers in the field of individual insurance of persons and are authorised to secure the adhesion of persons in respect of group insurance or group annuity contracts.¹⁶</p>
<p>2. Group insurance representative</p> <p>Sector: Group insurance of persons (Group</p>	<p>A group insurance representative is a natural person who offers insurance products in group insurance of persons or group annuities from one</p>

¹⁵ Distribution Act, s 2.

¹⁶ Distribution Act, s 3.

<p>insurance and group annuity plans adviser)</p> <p>Sector classes:</p> <ul style="list-style-type: none"> – Group insurance plans (Group insurance plans adviser) – Group annuity plans (Group annuity plans adviser) 	<p>or more insurers.</p> <p>A group insurance representative also acts as an adviser in the field of group insurance of persons.</p> <p>Actuaries who, in pursuing activities as an actuary, offer insurance products in group insurance of persons or group annuities are not group insurance representatives.¹⁷</p>
<p>3. Damage insurance agent</p> <p>Sector: Damage insurance (Damage insurance agent)</p> <p>Sector classes:</p> <ul style="list-style-type: none"> – Personal-lines damage insurance (Personal-lines damage insurance agent) – Commercial-lines damage insurance (Commercial-lines damage insurance agent) 	<p>A damage insurance agent¹⁸ is a natural person who, on behalf of a firm that is an insurer or that is bound by an exclusive contract with a single damage insurer, offers damage insurance products directly to the public.</p> <p>A damage insurance agent also acts as an adviser in the field of damage insurance.</p> <p>A person who offers liability insurance products for the insurance fund established by the AMF is not a damage insurance agent.</p>
<p>4. Damage insurance broker</p> <p>Sector: Damage insurance (Damage insurance broker)</p> <p>Sector classes:</p> <ul style="list-style-type: none"> – Personal-lines damage insurance (Personal-lines damage insurance broker) – Commercial-lines damage insurance (Commercial-lines damage insurance broker) 	<p>A damage insurance broker¹⁹ is a natural person who offers a range of damage insurance products from several insurers directly to the public, or who offers damage insurance products from one or more insurers to a firm, an independent representative or an independent partnership.</p> <p>A damage insurance broker also acts as an adviser in the field of damage insurance.</p>

A customs broker who, in pursuing activities as a customs broker, offers insurance products is not a damage insurance agent or damage insurance broker.²⁰

A claim adjuster, that is, a natural person who, in the field of damage insurance, investigates insured losses, appraises damages and negotiates the settlement of claims, cannot offer insurance products as they are only authorised to act in the sector of claim adjustments.²¹

A financial planner, that is, a natural person who uses the title of financial planner in Quebec, must be registered as such with the AMF²² and will only be authorised to sell insurance products if they are 'dual licensed' that is, they have also obtained a licence as an insurance representative from the AMF.

Banks are not allowed to sell insurance products at a bank branch. However, insurance products like life, disability and damage insurance (eg, fire, accident, various risks) are available through the banks'

¹⁷ Distribution Act, s 4.

¹⁸ Distribution Act, s 5.

¹⁹ Distribution Act, s 6.

²⁰ Distribution Act, s 7.

²¹ Distribution Act, ss 10 and 45.

²² Distribution Act, s 11 and ss.56 to 69.

subsidiaries that are insurers, since the Bank Act prohibits banks from selling these products in their own branches, with the exception of loan and travel insurance. Only cooperatives, like credit unions in Quebec, are free of such restrictions and are thus allowed to sell insurance products at a credit union branch. However, a financial institution may, by giving out brochures or flyers or using direct mail or any other form of publicity, invite the public to purchase insurance products²³.

The Distribution Act provides that no representative may pursue activities as a representative unless the representative is acting for a firm, is registered as an independent representative or is a partner in or employee of only one independent partnership. Representatives acting for several firms must disclose the name of the firm for which they are acting to the client with whom they are transacting business²⁴

Accordingly, the four modes of distribution of insurance products in Quebec through certified insurance representatives or distributors are as follows:

- distribution through a firm, which is done through certified representatives sponsored by the firm; a firm is either a single-sector firm or a multi-sector firm, which offers products and services in more than one sector;²⁵
- distribution through independent partnerships, which is done through a certified representative who is a partner or an employee of the firm;²⁶
- distribution through the independent representative himself;²⁷ and
- distribution through a distributor under the DWR regime.²⁸

The Distribution Act and its regulations do not provide for a definition of managing general agent or third-party administrator. As explained in 1.3 above, except for the province of Saskatchewan, currently there is no jurisdiction with specific legislation governing the functions that a managing general agent performs on behalf of an insurer or a representative.

In a 2011 study on the managing general agent distribution channel for life insurance products, the Canadian Life and Health Insurance Association (CLHIA) defined a managing general agent as an individual, partnership or corporation that holds at least one direct brokerage contract with a life insurance company registered to do business in Canada. A managing general agent is a conduit that facilitates business between the representatives, their clients and insurers. The functions of a typical managing general agent fall under three general categories: back office support between representative and insurer for sales transactions; sales and marketing support for the representative; and market conduct compliance support for the insurer.

The current licensing and regulatory regimes provided for in the Distribution Act and its regulations were developed while the career agency distribution model predominated and thus there are no requirements at the moment for a managing general agent to register with the AMF. However, due to the prohibition that exists in most jurisdictions regarding the payment of commissions by insurers, most managing general agents or their principals are licensed as insurance representatives even though they do not directly engage in any retail insurance activity.

3.2 Do insurance intermediaries need to enter into a written contract with the insurers (or receive a mandate from the insurers)?

²³ Distribution Act, s 12.

²⁴ Distribution Act, s. 4.

²⁵ Distribution Act, s 70.

²⁶ Distribution Act, s 130.

²⁷ Distribution Act, s 128.

²⁸ Distribution Act, s 408 et seq.

Common law provinces

As indicated 3.1 above, to initially obtain licensing, both life and non-life agents are required to be 'sponsored' by an insurer. They are either employed by or have an independent contractor agreement with the insurer, and the insurer provides a letter of sponsorship to the regulator.

Brokers seeking licensing under the Registered Insurance Brokers Act (Ontario), for example, are required to demonstrate that they have an initial contract with an insurer, although as their businesses grow, they will have broker agreements with a number of insurers.

Civil law (Quebec)

As in the common law provinces, to initially obtain licensing, all insurance representatives are required to be 'sponsored' by an insurer. They are either employed by or have an independent contractor agreement with the insurer, and the insurer provides a letter of sponsorship to the regulator. They can eventually enter into independent contractor agreements or broker agreements, as the case may be, with a number of insurers.

3.3 Can an insurance intermediary enter into a contract with the insurers (or receive a mandate from the insurer) and in turn enter into one or more agreements with other insurance intermediaries (the so-called horizontal distribution)?

Common law provinces and civil law (Quebec)

See 3.2 above with respect to brokers. In addition, it is not unusual in Canada for insurers to enter into a contract with insurance intermediaries that, in turn, engage sub-agents or sub-brokers. These types of arrangements, sometimes referred to as managing general agencies, can take various forms and typically vary depending on the type of insurance. In each province, currently these types of activities fall under the insurance intermediary's existing agent or broker licence. In addition, in December 2013, the CLHIA adopted a guideline to be effective 1 January 2015, entitled 'insurer-managing general agent relationships', noting that over the past several decades, distribution structures within the life and health insurance industry have undergone considerable diversification. This guideline (which applies to the life and health sector) is intended to bring greater clarity to the roles, responsibilities and accountabilities within insurer-managing general agent relationships, and mainly sets out prudential standards for managing the arrangement. In addition, as indicated in the 1.2 above, managing general agents will have their own licensing category in Saskatchewan once the new statute is in force in that province.

3.4 The insurance intermediaries more in detail:

3.4.1 *The agent*

3.4.1.1 Does the role of insurance agent exist in your country? If yes, describe the agent's functions.

Common law provinces

'Agents' are typically insurance intermediaries referred to as 'captive' or 'career' agents who are employed by one particular insurer (either an employee-employer relationship or as an independent contractor). They solicit insurance products on behalf of the insurer/employer. These agents are distinct from life insurance agents in Ontario, for example, who have passed extra qualifying examinations and, hence, are permitted to act for more than one insurer. Such life insurance agents are also often dual-licensed to sell investment products, such as mutual funds.

Civil law (Quebec)

As indicated in 3.1 above, the term 'agent' is only used in Quebec in connection with damage insurance. For the insurance of persons sector, the term used is 'representative in insurance of persons'.

Representatives in insurance of persons that act exclusively for one insurer (either an employee-employer relationship or as an independent contractor) and the damage insurance agents that work for a single insurer usually solicit insurance products on behalf of the insurer.

3.4.1.2 In particular, does an agent act on behalf of the insurer or the insured? Who pays the agent's remuneration? To what kind of remuneration is the agent entitled?

Common law provinces

Agents typically act on behalf of the insurer. They are required to act in the best interests of the customer as far as product suitability is concerned, but they do not shop the market to find other insurers' products that may be better suited to the customer. Nevertheless, the 'three principles' discussed in 3.4.2.1 are designed to apply equally to agents, as well as brokers (ie, for the purposes of creating a level playing field). From a practical perspective, for those agents that act for only one insurer, the principle relating to conflicts of interest is less applicable.

Agents typically receive remuneration in the form of commissions paid by the insurer out of the premiums collected. In addition, it is possible that further remuneration in the form of bonuses, for example, may be paid, based on the amount of business placed by the agent. The remuneration will be determined based on the contractual arrangement between the agent and the insurer.

Civil law (Quebec)

As in the common law provinces, representatives in insurance of persons that offer insurance products from one insurer and damage insurance agents typically act on behalf of the insurer. They are required to act in the best interests of the customer as far as product suitability is concerned but do not offer products from other insurers when dealing with a customer.

The representatives in insurance of persons that act for one insurer and damage insurance agents typically receive remuneration in the form of commissions paid by the insurer out of the premiums collected. In addition, it is possible that further remuneration in the form of bonuses, for example, may be paid, based on the amount of business placed by these representatives. The remuneration will be determined based on the contractual arrangement between the representative and the insurer.

3.4.1.3 If an agent acts on behalf of the insurer, describe the type of work relationship with the insurer (eg, subordinate, para-subordinate or freelance, self-employed etc). Does the 'principal-agent model' exist, that is, is one appointed by the insurer to manage a particular branch or subsidiary?

Common law provinces

The relationship between agents and the insurers that sponsor them may take various forms, but the overriding principle is that agents are tied to and act for the insurer that sponsors them. Nevertheless, as stated above, the agent still owes duties to the customer, such as suitability of the product for the customer's needs. Typically, agents are employees or independent contractors of the insurer, but in either case, act for one insurer only.

Civil law (Quebec)

The same principle described above applies in Quebec for representatives in insurance of persons.

3.4.1.4 What type of organisation does the agent have? Can he have staff working for him (eg, sub-agents)?

Common law provinces

Agents are licensed individually but if they operate as a corporate entity, for example, they must also obtain a licence for the entity as an agency. The corporation is required to have a licensed individual who is the principal representative of the agency and responsible to the public and the regulatory authorities in the jurisdictions where the agency is licensed. In addition, individual agents employed by the agency that solicit insurance are required to be licensed.

On the other hand, managing general agents may be corporate organisations that manage underwriting functions on behalf of insurers through a network of sub-agents, both individual and corporate. When the new Saskatchewan legislation comes into force, these entities operating in Saskatchewan will be required by law to carry out some of the duties that are typically carried out by the insurer, namely, determining the suitability of the individual agents and ensuring the individual agents fulfil their licensing responsibilities.

Civil law (Quebec)

An insurance representative may only pursue activities as a representative if he or she is acting for a firm, is registered as an independent representative or is a partner in or employee of only one independent partnership.²⁹

3.4.1.5 Is the relationship between the insurer and the agent regulated by a collective bargaining agreement? If yes, what does it mainly cover? Can the relationship be exclusive to a particular area? Is the remuneration established by the collective bargaining agreement? Can the provisions be waived by the parties' mutual agreement?

Common law provinces and civil law (Quebec)

It is not typical for individual agents (ie, captive or career agents) working for insurance companies to be unionised, hence, collective bargaining agreements do not generally apply. However, it is theoretically possible that the individual agents employed by an insurer could take legal steps under provincial legislation to establish a union for the insurer's employees.

Since the relationship between the agent and the insurer is a contractual one, it is possible to establish territorial exclusivity arrangements.

3.4.1.6 Does the termination of the work relationship between the agent and insurer provide for the agent's obligation to return the portfolio of contracts? In such a case, would the agent be entitled to an indemnity?

Common law provinces and civil law (Quebec)

These matters would be determined pursuant to the terms of the contract that exists between the individual agent and the insurer, as a matter of freedom of contract. The extent to which any non-competition or non-solicitation provisions contained in the contract are enforceable is a matter that is subject to determination by the courts.

3.4.2 *The broker*

3.4.2.1 Describe the broker's services? In general terms, do the services consist of intermediation or are they similar to consultancy/advisory activities? Is the broker an independent actor?

Common law provinces

²⁹ Distribution Act, s.14.

As a representative example of the types of services that brokers provide, please refer to the definition of 'insurance broker' under the Registered Insurance Brokers Act (Ontario) in 1.2 above. In Canada, the larger and more sophisticated brokers provide a gamut of consultancy/advisory services in the course of designing, negotiating and placing insurance programmes on behalf of their clients, but the main function of the broker is to place insurance on behalf of their customers with insurers and assist their customers with presenting claims. In today's regulatory environment, with the increasing emphasis on duties of boards of directors and corporate governance, an important emerging function of brokers is to educate boards and senior management regarding their legal duties and the directors and officers regarding the insurance coverage available in the marketplace to protect them. In addition, sophisticated programmes are designed and coordinated by brokers for Canadian manufacturers and other enterprises carrying on business all over the world.

Brokers are, by definition, supposed to be independent of insurers and principally owe their duties to the customer. However, circumstances can exist where brokers become financially dependent on certain insurers due to clauses, such as commission overrides, in the contracts they enter into with the insurers. In addition, over the years, rules restricting the ownership of brokerages by insurance companies have been relaxed in Canada. It is not uncommon for an insurer to have ownership interests in several brokerages. These aspects of the broker-insurer relationship have been the subject of some controversy in Canada in the recent past and culminated in the articulation by a joint regulatory committee, including the Canadian Council of Insurance Regulators, of three principles by which brokers and insurers are required to conduct their relationships in order to manage potential or actual conflicts of interest. The object of the principles is to promote consumer confidence in the insurance industry by outlining best practices for managing conflict situations when they arise. The three principles are:

- priority of the client's interest – the intermediary is required to place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests;
- disclosure of conflicts or potential conflicts of interest – consumers must receive disclosure of any actual or potential conflict of interest that is associated with a transaction or recommendation;
- product suitability – the recommended product must be suitable for the needs of the consumer.

Notwithstanding the articulation of these principles and regulatory expectation that they will be implemented, compliance is largely voluntary. Many insurers and brokers have adopted codes of conduct in order to demonstrate adherence to the principles and are required to disclose their commitment to them via their websites.

Civil law (Quebec)

Under the Distribution Act, a broker in damage insurance acts as an adviser and offers a range of insurance products from several insurers directly to the public, or may offer damage insurance products from one or more insurers to a firm, an independent representative or an independent partnership.³⁰

Brokers are generally agents of the insured. The broker's responsibility is to assist the customer in making the best decision as to which insurance product to purchase. The broker will therefore offer insurance products from a variety of insurance companies. They are subject to general rules of civil law on mandate.³¹ In *Lebrasseur v Canada Health & Accident Ins. Corp.*,³² the Court found that the broker was mandatory of the insured to obtain coverage for a given risk and that a broker's knowledge of material facts is not presumed to extend to the insurer. See also *Car & General Corp. Ltd v Therrien*.³³

3.4.2.2 Who pays for the broker's remuneration (please specify case by case for the different services, if any)? Is the broker allowed to retrocede a portion of his remuneration to the insurer or to the insured?

³⁰ Distribution Act, s 38.

³¹ CCQ, Art. 2130 to 2185.

³² [1976] C.A. 131.

³³ [1969] B.R. 144.

Common law provinces and civil law (Quebec)

Brokers generally receive commissions as a percentage of premiums (paid by the consumer) for their services, but may charge a fee or *per diem* rate to the consumer for consultancy services that are above and beyond their placement or claims handling activities.

Consumer protection legislation in the provinces contains prohibitions on premium rebates and other payments or inducements to the insured. The amount of commission is generally negotiable, although certain lines of business may be subject to industry norms.

3.4.3 Banks, financial intermediaries, financial advisers and others allowed to act as insurance intermediaries

3.4.3.1 Can banks, financial intermediaries and/or financial advisers act as insurance intermediaries?

Common law provinces and civil law (Quebec)

a) BANKS

Canadian banks are prohibited from undertaking the business of insurance in Canada except as expressly permitted by the Bank Act and its regulations. The Bank Act expressly prohibits a Canadian bank from acting in Canada as an agent for any person in the placing of insurance and from leasing or providing space in any branch in Canada to an individual or entity engaged in the placing of insurance. What this means, is that a Canadian bank is not entitled to be licensed in Canada as an insurance agent or broker or to sell insurance on its premises in Canada. That said, certain banks in Canada have licensed insurance agencies or brokerages within their corporate groups and, generally, these distribute home and auto insurance on behalf of insurance companies within the group or life insurance products on behalf of securities dealers/wealth management companies within the group. (Outside of Canada, a bank incorporated in Canada may carry on any aspect of the business of insurance, other than the underwriting of insurance, if permitted by the laws of the applicable foreign jurisdiction.)

Canadian banks are legislatively permitted to do a number of things in Canada in respect of insurance, including:

- (i) 'administer' an authorized type of insurance (being credit or charge card-related insurance, creditors' disability insurance, creditors' life insurance, creditors' loss of employment insurance, creditors' vehicle inventory insurance, export credit insurance, mortgage insurance or travel insurance), whether within a bank branch or not;
- (ii) provide advice regarding an authorised type of insurance or a service in respect thereof, whether within a bank branch or not;
- (iii) provide advice in respect of an insurance policy that is not an authorised type of insurance or a service in respect thereof, if the advice is general in nature, the advice is not in respect of a specific risk, insurance policy, service, insurance company, agent or broker, and the bank does not refer any person to a particular insurance company, agent or broker;
- (iv) 'promote' an insurance company, agent or broker provided that the company, agent or broker deals only in authorised types of insurance (this can occur within or outside a branch of the bank), or the promotion takes place outside of a branch and is directed to the general public, or to all of the holders of credit or charge cards issued by the bank who regularly receive statements of account or notices of those statements, or to all of the bank's customers who are natural persons and who regularly receive statements of account or notices of those statements;

- (v) 'promote' an insurance policy, agent or broker, or a service in respect of such a policy, provided that the policy is of an authorised type of insurance (this can occur within or outside a branch of the bank), or the policy is a personal accident insurance policy and the promotion takes place outside of a branch of the bank, or the promotion takes place outside of a branch of the bank and is directed to the general public, or to all of the holders of credit or charge cards issued by the bank who regularly receive statements of account or notices of those statements, or to all of the bank's customers who are natural persons and who regularly receive statements of account or notices of those statements.

When promoting insurance in Canada, a federally-chartered bank is participating in the business of insurance and is only secondarily, if at all, furthering the security of a loan and, accordingly, it must comply with both federal banking law as well as provincial law, including provincial licensing schemes governing the promotion of insurance products. It is not entitled to ignore provincial law in such regard on the basis of the doctrine of inter-jurisdictional immunity or, alternatively, on the basis of the doctrine of federal paramountcy. For example, if a bank promotes authorised types of insurance in Alberta, it will need to first obtain a restricted agent's certificate of authority to do so.

b) FINANCIAL INTERMEDIARIES AND/OR FINANCIAL ADVISERS

The term 'financial intermediaries' is not a legal term in Canada, and we are not aware of any registration category for such in any of the ten provinces or three territories of Canada. In the securities industry, for example, an individual can be registered with such commissions as a 'dealing representative', 'advising representative' or 'associate advising representative'. A firm can be registered with such commissions as a 'dealer' (and within the category of investment dealer, mutual fund dealer, scholarship plan dealer, exempt market dealer or restricted dealer), or as an 'advisor' (and within the category of portfolio manager or restricted portfolio manager), or as an 'investment fund manager'.

Individuals (ie, natural persons) are generally entitled to hold an insurance agent's licence and, at the same time, be engaged in any other business or occupation, provided that the other business or occupation will not jeopardise that individual's integrity, independence or competence. More particularly, the individual could not be engaged in another business or occupation that would place the individual in a conflict of interest position when acting as an insurance agent, or in a position to use undue influence in order to control, direct or secure insurance business. Accordingly, and as an example only, if an individual sells mutual funds (ie, a person is registered as a 'dealing representative' of a registered 'mutual fund dealer'), then such an individual could concurrently be licensed to sell life insurance (eg, annuities offering segregated funds as investments) by the appropriate insurance regulator of the applicable province where the customer resides.

As far as corporate entities are concerned, in the Province of Ontario, for example, the majority shareholder of a corporate insurance agency is no longer required to be a licenced insurance agent, and the regulations no longer require that the incorporating documents of an agency provide that the agency is incorporated for the sole purpose of acting as an insurance agent. Again, as in the case of an applicant who is a natural person, the Superintendent (of Insurance) will need to be satisfied that the other business or operations of the agency will not jeopardise integrity, independence or competence, before a licence is issued. To illustrate using the securities industry once more, there are a good number of corporate entities that are affiliates of securities dealers, that are not registrants under securities legislation, and that are, in fact, licensed to sell life insurance. The fact that these corporate licensees are not registrants under securities legislation may represent a requirement of the Superintendent (of Insurance) to avoid conflicts of interest, or may simply be the way that such entities (or their corporate groups) have chosen to organise their businesses.

3.4.3.2 Please define a financial intermediary. Are there particular requisites for the profession of financial intermediary? Does the financial intermediary have to be enrolled in another register (eg, a register of financial intermediaries)?

See 3.4.3.1 above.

3.4.3.3 Please define a financial adviser. Are there particular requisites for the profession of financial adviser? Does the financial adviser have to be enrolled in another register (eg, a register of financial advisers)?

Common law provinces and civil law (Quebec)

In Canada, 'financial advisor' is a loose term without particular statutory recognition. Individuals in Canada who typically think of themselves as 'financial advisers' often sell life insurance or securities (including mutual funds), but the term would also encompass a variety of other persons, including financial planners (the latter having some recognition via the Financial Planning Standards Council – a non-profit, private sector entity – which controls the designation Certified Financial Planner® (CFP) in Canada).

3.4.3.4 Can financial intermediaries and/or financial advisers distribute any insurance and/or financial products? If yes, under what conditions or with what limitations?

See 3.4.3.1 above.

3.4.3.5 With reference to insurance intermediaries other than agents, brokers, banks, financial intermediaries and financial advisers, as indicated under question 2.1 above (if any), please describe what kind of products they can distribute and under what conditions.

Common law provinces

As briefly explained in 1.3 above, individuals and firms, other than licensed insurance brokers or agents, who solicit certain types of insurance contracts are sometimes referred to as incidental sellers of insurance. The CCIR has previously defined an 'incidental seller of insurance' as:

'a person who, in pursuing activities in a field other than insurance, offers as an accessory, for an insurer, an insurance product which relates solely to goods sold or services offered by the person or secures a client's enrolment in respect of such an insurance product.'

Banks are considered to be incidental sellers of insurance in Canada, but various other entities are included as well such as auto dealerships, travel agencies and financing companies.

The provinces of British Columbia, Alberta, Saskatchewan, Manitoba³⁴ and Quebec, each have specific rules regarding the incidental sale of insurance, and these are outlined, in turn, below. Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, do not specifically regulate incidental sales of insurance.

(a) BRITISH COLUMBIA

British Columbia has opted for what might be described as a hybrid regime for dealing with incidental sales of insurance, since it provides a series of exemptions from the province's insurance legislation for certain persons engaging in such sales while, at the same time, requires a restricted agent licence for certain others offering prescribed types or classes of insurance. The exemption portion of its regime includes the following persons, among others:

- (i) a motor vehicle dealer or an employee or commissioned sales representative of a motor vehicle dealer whose only activity as an insurance agent or insurance salesperson is in

³⁴ s 380.1(1) of The Insurance Act (Manitoba) defines an 'incidental seller of insurance' as, 'a person that, in the course of selling or providing goods or services to the person's customers or clients, sells, negotiates or arranges insurance, or offers to sell, negotiate or arrange insurance, that relates to those goods or services'.

connection with vehicle warranty insurance sold incidentally to the ordinary business of such dealer;

- (ii) a person whose only activity as an insurance agent or insurance salesperson is in connection with product warranty insurance sold incidentally to the sale, by that person or that person's employer, of the product;
- (iii) an employee or commissioned sales representative of a person licensed as a travel agent or travel wholesaler in the province, subject to certain conditions, including, that the only activity of the employee or commissioned sales representative as an insurance agent or insurance salesperson is in connection with travel insurance sold incidentally to the ordinary business of the travel agent or travel wholesaler;
- (iv) banks, trust companies and credit unions, and the officers and employees of each, while acting as an insurance agent in connection with credit insurance, incidental to the ordinary business of the bank, trust company or credit union;
- (v) a mortgage broker registered under the Mortgage Brokers Act (British Columbia) whose only activity as an insurance agent or insurance salesperson is in connection with credit insurance sold incidentally to the granting or arranging of credit by that mortgage broker, provided that certain additional conditions are fulfilled; and
- (vi) a funeral director or funeral provider or an employee of either, whose only activity as an insurance agent is in connection with funeral services insurance sold incidentally in the ordinary course of business of the funeral director or funeral provider, provided that certain additional conditions are fulfilled.

In the other portion of its hybrid regime, British Columbia provides for restricted licences for travel agencies that sell travel insurance and for motor vehicle dealers and their representatives that offer insurance products (other than vehicle warranty insurance) that are incidental to the sale of a motor vehicle and that provide coverage of \$15,000 or less.

(b) ALBERTA, SASKATCHEWAN AND MANITOBA

Alberta, Saskatchewan and Manitoba have each opted for a restricted licence regime under which prescribed entities may procure a restricted licence that allows such entities as well as their employees (under the same licence), to offer certain types or classes of insurance. This is outlined in the following table:

Table 2: Classes/types of insurance offered by various entities

Province	Entity	Class/type of insurance that may be offered by entity
Alberta (called a 'restricted insurance agent's certificate of authority')	<ul style="list-style-type: none"> • automobile dealership 	<ul style="list-style-type: none"> • equipment warranty insurance • credit-related insurance (ie, creditor's group insurance³⁵ or insurance effected by a creditor)

³⁵ In this context, 'creditor's group insurance' is defined as 'insurance effected by a creditor whereby the lives or well-being of a number of debtors are insured severally under a single contract'.

Province	Entity	Class/type of insurance that may be offered by entity
		against the risk of default by a debtor due to involuntary loss of employment)
	<ul style="list-style-type: none"> • equipment dealer 	<ul style="list-style-type: none"> • equipment warranty insurance • credit-related insurance
	<ul style="list-style-type: none"> • travel agency 	<ul style="list-style-type: none"> • travel insurance
	<ul style="list-style-type: none"> • transportation company 	<ul style="list-style-type: none"> • travel insurance • cargo type insurance (ie, insurance covering goods in transit, but excluding carrier liability insurance)
	<ul style="list-style-type: none"> • deposit-taking institution (eg, bank, trust company, credit union) 	<ul style="list-style-type: none"> • credit-related insurance • personal accident type insurance (ie, group insurance covering injury due to accident and hospitalisation) • group travel insurance
	<ul style="list-style-type: none"> • sales finance company 	<ul style="list-style-type: none"> • credit-related insurance
	<ul style="list-style-type: none"> • customs broker <p>or</p> <ul style="list-style-type: none"> • freight-forwarding company 	<ul style="list-style-type: none"> • cargo type insurance
	<ul style="list-style-type: none"> • funeral services business 	<ul style="list-style-type: none"> • funeral services insurance
Saskatchewan (called a 'restricted licence')	<ul style="list-style-type: none"> • automobile dealership 	<ul style="list-style-type: none"> • equipment warranty insurance • creditor's disability insurance • creditor's life insurance • creditor's loss of employment insurance • highway transport vehicle gap insurance • highway transport vehicle payment insurance
	<ul style="list-style-type: none"> • marine dealership <p>or</p> <ul style="list-style-type: none"> • recreational dealership 	<ul style="list-style-type: none"> • equipment warranty insurance • creditor's disability insurance • creditor's life insurance • creditor's loss of employment insurance
	<ul style="list-style-type: none"> • farm implement dealership 	<ul style="list-style-type: none"> • equipment warranty insurance • creditor's disability insurance

Province	Entity	Class/type of insurance that may be offered by entity
	or <ul style="list-style-type: none"> • construction equipment dealership 	<ul style="list-style-type: none"> • creditor's life insurance • creditor's loss of employment insurance • highway transport vehicle gap insurance • highway transport vehicle payment insurance
	<ul style="list-style-type: none"> • travel agency 	<ul style="list-style-type: none"> • travel insurance
	<ul style="list-style-type: none"> • transportation company 	<ul style="list-style-type: none"> • travel insurance • cargo type insurance
	<ul style="list-style-type: none"> • deposit taking institution (eg, bank, trust company, credit union) 	<ul style="list-style-type: none"> • creditor's disability insurance • creditor's life insurance • creditor's loss of employment insurance • personal life insurance • travel insurance
	<ul style="list-style-type: none"> • financing corporation 	<ul style="list-style-type: none"> • creditor's disability insurance • creditor's life insurance • creditor's loss of employment insurance
	<ul style="list-style-type: none"> • mortgage broker 	<ul style="list-style-type: none"> • creditor's disability insurance • creditor's life insurance • creditor's loss of employment insurance
	<ul style="list-style-type: none"> • customs brokerage or <ul style="list-style-type: none"> • freight-forwarding business 	<ul style="list-style-type: none"> • cargo type insurance
Manitoba (called a 'restricted insurance agent licence')	<ul style="list-style-type: none"> • automobile dealership • watercraft dealership • recreational vehicle dealership • farm implement dealership or <ul style="list-style-type: none"> • construction equipment dealership 	<ul style="list-style-type: none"> • credit-related insurance (ie, creditor's disability insurance, creditor's life insurance, creditor's loss-of-employment insurance)
	<ul style="list-style-type: none"> • travel agency 	<ul style="list-style-type: none"> • travel-related insurance (ie, personal travel insurance, travel interruption and property-loss insurance)

Province	Entity	Class/type of insurance that may be offered by entity
	<ul style="list-style-type: none"> transportation service 	<ul style="list-style-type: none"> travel-related insurance cargo insurance
	<ul style="list-style-type: none"> deposit-taking institution 	<ul style="list-style-type: none"> credit-related insurance (ie, see above, plus creditor's vehicle inventory insurance)
	<ul style="list-style-type: none"> sales finance company 	<ul style="list-style-type: none"> credit-related insurance (ie, see above, plus creditor's vehicle inventory insurance)
	<ul style="list-style-type: none"> mortgage broker 	<ul style="list-style-type: none"> credit-related insurance
	<ul style="list-style-type: none"> customs brokerage <p>or</p> <ul style="list-style-type: none"> freight forwarding business 	<ul style="list-style-type: none"> cargo insurance
	<ul style="list-style-type: none"> funeral director 	<ul style="list-style-type: none"> funeral expense insurance (\$15,000 coverage under pre-arranged funeral plan)
	<ul style="list-style-type: none"> vehicle rental business 	<ul style="list-style-type: none"> rented-vehicle contents rented-vehicle accidental injury or death rented-vehicle disability
	<ul style="list-style-type: none"> portable electronics vendor (eg, cell phones) 	<ul style="list-style-type: none"> portable electronics insurance

Civil law (Quebec)

As explained in 1.3 above, Quebec has opted for a distribution guide regime – the DWR regime³⁶ instead of one based on restricted licences. The regime permits ‘distributors’ to sell insurance without an insurance representative’s licence, provided that certain conditions are satisfied. Under the Distribution Act, a ‘distributor’ is defined as, ‘a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client’s adhesion in respect of such an insurance product’. The statute also provides that:

- (i) the following types of insurance are deemed to be insurance products that relate solely to goods: travel insurance, vehicle rental insurance where the rental period is less than four months, credit card and debit card insurance, and property insurance under which the insurer guarantees the replacement of an insured vehicle or insured parts;
- (ii) the only insurance products relating to a vehicle or an immovable sold by a distributor that may be offered by the distributor are those set out in clause (i) above;
- (iii) the following insurance products are deemed to be insurance products which relate solely to goods and to which clients adhere: (1) debtor life, health and employment insurance; and (2) investor life, health and employment insurance; and

³⁶ Distribution Act, Title VIII, s 408 et seq.

- (iv) a deposit institution may distribute travel insurance products, and in such case, it is deemed to act as a distributor.

4. Rules of conduct and responsibilities

- 4.1 **Are there rules of conduct that insurance intermediaries should comply with (eg, duties in relation to the obligation of utmost care, correctness, utmost good faith, information, adequacy, transparency, conflict of interests, filing of documentation, separate accounting or other accounting obligations)? Please describe the above duties, specifying if they apply to all types of insurance intermediary (eg, agents, brokers, banks, financial intermediaries, financial advisers, etc) and whether the content differs – with particular reference to responsibility – according to the type of actor/activity and person (insurer or insured) receiving the activity.**

Common law provinces

a) BROKERS

Brokers owe fiduciary duties to their clients. In some cases, these duties have been articulated by the courts and in other cases have been enshrined in legislation/regulations. The Registered Insurance Brokers of Ontario (RIBO) has produced a Code of Conduct Handbook which applies to insurance brokers in the Province of Ontario and is based on a code of conduct contained in regulations under the Registered Insurance Brokers Act (Ontario). Violation of the Code of Conduct Handbook could lead to disciplinary action (see also 5.1(a) below). The RIBO Code of Conduct Handbook covers the following subject matters:

- integrity;
- competence;
- quality of service;
- advising clients;
- confidentiality;
- safekeeping and preserving clients' property;
- duty to clients where broker has another business or occupation;
- disclosure of facts indicating potential conflicts of interest disclosure;
- fee disclosure;
- encouraging public respect;
- manner of service;
- maintaining integrity of the vocation;
- unauthorized practice of the vocation;
- conduct towards others.

In addition, the 'three principles' discussed in 3.4.2.1 above, apply to brokers as well as to agents: (i) priority of client's interest; (ii) disclosure of conflicts or potential conflicts of interest; and (iii) product suitability.

Brokers are required to have trust accounts and follow appropriate accounting practices.

b) AGENTS

In addition to the 'three principles' referred to above, there are codes of conduct that apply to agents, sometimes articulated in the form of guidelines under provincial statutes and sometimes contained in regulations. Further, the insurer that 'employs' the agent is at liberty to impose rules by which the agent will be required to regulate his or her conduct. See also 5.1(b) below.

Pursuant to the regulations under the Insurance Act (Ontario), insurers are required to establish and maintain a system designed to ensure compliance by the insurer's authorised agents. The system must

screen each agent for suitability to carry on business as an agent and insurers are required to report incidents of non-suitability to the Ontario Superintendent. Among other things, under the Ontario regulations, life insurance agents are required to maintain minimum errors and omissions insurance, meet continuing education requirements, disclosure rules and conflicts of interest standards.

c) BANKS

The Canadian Bankers Association (CBA) has articulated a Code of Conduct for Authorised Insurance Activities' that sets out minimum standards that applies to all authorised insurance products promoted in Canada and to the banks, their employees and/or any independent intermediaries acting as the banks' agents. Each bank is responsible for ensuring that the Code is implemented, understood and followed by its representatives. Topics covered by the Code include:

- training;
- disclosure;
- promotion practices;
- privacy of personal information;
- continuity of coverage;
- complaint procedures.

(d) Financial intermediaries; financial advisers

Advocis®, the Financial Advisers' Association of Canada, has a Code of Professional Conduct. It is a condition of membership that all members agree to abide the Code, which covers:

- priority of the client's interest;
- integrity;
- competence;
- diligence;
- disclosure;
- professionalism;
- confidentiality;
- respect for the law.

Civil law (Quebec)

In Quebec, the activities of all representatives are governed by the CCQ³⁷, the Insurance Act and the Distribution Act³⁸ and its regulations.

The Distribution Act provides that all representatives are bound to act with honesty and loyalty in their dealings with clients. They must act with competence and professional integrity.³⁹

Firms and independent partnerships are held to the same duties of loyalty and diligence towards their respective clientele.⁴⁰ They have the duty to oversee the conduct of the firm's representatives who are self-employed and must ensure that their employees comply with the Distribution Act and its regulations. They must also abide by the provisions of the Distribution Act and its regulations in the context of their mutual relations.⁴¹

The Distribution Act contains several provisions on disclosure that apply to all representatives, such as the representatives' disclosure obligation to the clients as to their remuneration and the representatives'

³⁷ CCQ, Art. 2138.

³⁸ Distribution Act, c. D-9.2.

³⁹ Distribution Act, s 16.

⁴⁰ Distribution Act, ss 84 and 146.

⁴¹ Distribution Act, ss 85, 86, 87, 137 and 138.

obligation to disclose the name of the firm for which they are acting to the person with whom they transact business.⁴²

The Distribution Act also provides for rules applicable specifically to insurance representatives,⁴³ such as the duty to personally gather information from a client⁴⁴ (knowledge of their clients), the duty to disclose their business relationship with an insurer⁴⁵, the duty to advise⁴⁶ (as to suitability of the products and in regard to exclusion of coverage), the duty to disclose the names of the insurers whose products they are authorised to offer⁴⁷ and the duty to follow up on client files⁴⁸.

Some provisions of the Distribution Act will apply specifically to damage insurance brokers. For example, damage insurance brokers offering insurance products directly to the public must offer their clients a range of products from several insurers.⁴⁹ Before entering into an insurance contract, they must also disclose in writing, to the person with whom they are transacting business, the fact that they carry out their activities for a firm or an independent partnership acting as a claims adjuster for an insurer.⁵⁰ Furthermore, when renewing an insurance policy, damage insurance brokers (and damage insurance agents) must take the necessary steps to ensure that the coverage provided corresponds to the client's needs.⁵¹ Finally, for special brokers, that is, those who place a risk with an outside insurer, special brokers must give the client a written notice stating that the proposed insurer does not hold an insurance licence in Quebec and has no establishment in Quebec.⁵²

The regulations adopted under the Distribution Act will set out the conditions under which the AMF will issue or renew a certificate to an insurance representative, define the practice of all representatives governed by the Distribution Act and describe the information to be provided to consumers.

The AMF issues certificates to agents, brokers and representatives.⁵³ It may make regulations covering the term of the representative's certificate; fees payable for the renewal of the certificate; rules and procedures governing the issuance and renewal of certificates; and particulars which the certificate may contain.⁵⁴ The AMF is also responsible for ensuring that certificate holders comply with relevant provisions of the Distribution Act.⁵⁵ The AMF also receives complaints made against certificate holders, firms, independent representatives and independent partnerships.⁵⁶

The Distribution Act also provides for the delegation by the AMF of the monitoring and supervising of the conduct of insurance representatives to two self-regulatory organisations: the *Chambre de la sécurité financière* (CSF) (for the insurance of persons and group insurance of persons sectors) and the *Chambre de l'assurance de dommages* (ChAD) (for the damage insurance sector).⁵⁷ See 5.1 for further details as to the supervisory role of these self-regulatory organisations.

⁴² Distribution Act, ss 17 to 25.

⁴³ Distribution Act, ss 26 to 43.

⁴⁴ Distribution Act, s 27; Distribution Act Regulations 2.

⁴⁵ Distribution Act, s 26.

⁴⁶ Distribution Act, s 28 and Regulations 6.

⁴⁷ Distribution Act, s 31.

⁴⁸ Distribution Act, s 39.

⁴⁹ Distribution Act, s 38.

⁵⁰ Distribution Act, s 40.

⁵¹ Distribution Act, s 39.

⁵² Distribution Act, s 43.

⁵³ Distribution Act, s 200 et seq.

⁵⁴ Distribution Act, s 203.

⁵⁵ Distribution Act, s 184.

⁵⁶ Distribution Act, s 186.

⁵⁷ Distribution Act, s 284.

4.2 Does the insurance intermediary represent the insurer? By way of example, is the agent also the insurer's representative vis-à-vis the customer, and if so, does this also apply during trial before a court? Is there a matter of imputation of knowledge? What happens when a broker has information on matters relevant to the insurer's decision to insure which the broker fails to disclose to the insurer? Is the insured deemed to have breached its duty of disclosure in such circumstances? In which cases? Can the insurance intermediary be accountable for the contracts he executed on behalf of the insurer?

Common law provinces

See the discussion in 1.2 above regarding the general differences between the duties of a broker versus the duties of an agent.

There are circumstances in which agents and brokers owe duties both to the insurer and the insured in connection with the same insurance policy. For example, the Insurance Act (Ontario) provides that both agents and brokers:

- are deemed to be the agent of the insurer for the purposes of receiving any premium for a contract of insurance;
- are deemed to hold premiums in trust for the insurer; and
- are deemed to hold insurance money in trust for the person entitled thereto (eg, the policyholder).

In addition, the Insurance Act (Ontario) also provides that agents and brokers are personally liable to the insured on all contracts of insurance unlawfully made by or through the agent or broker or directly or indirectly with any insurer not licensed, in the same manner as if the agent or broker were the insurer.

Further, the party to whom liability would be ascribed in any given circumstances would depend upon the facts of the case. If, for example, a broker (owing fiduciary duties to the broker's customer, the insured), were to fail to disclose information to the insurer that, in turn, resulted in the insurer denying the insured coverage for misrepresentation, the insured would be entitled to seek damages from the broker, for breach of the broker's duties to the insured.

The overall duty imposed on insurance intermediaries was described in the Supreme Court of Canada case of *Fletcher v Manitoba Public Insurance Co.*⁵⁸ as a 'stringent duty to provide both information and advice to their customers'. Generally, in order to satisfy the duty of care owed to insured, an insurance intermediary is required to: (i) inform himself/herself about the client and/or the client's business; (ii) assess the foreseeable risk; and (iii) obtain the appropriate coverage or inform the client that the coverage is not available.

Negligence is the widest area of insurance intermediary liability. The test for the insurance intermediaries is whether the insurance intermediary has provided the customer with reasonable advice expected of a reasonable and informed broker or agent, considering all circumstances. Case law has shown that agents and brokers have a duty to make inquiries and obtain independent information to ensure proper coverage is placed for the customer.

Civil law (Quebec)

In Quebec, the responsibilities of insurance representatives and insurance companies are established by virtue of the law governing insurance, that is, the applicable provisions of the CCQ applicable to insurance law, contract law, mandate law and civil responsibility. Statutes such as the Distribution Act and the insurance Act also contain provisions applicable when determining the responsibilities and liabilities of insurance representatives and insurers. Therefore, regardless of the fact that the policy was sold by an independent insurance representative, or the fact that an insurer delegates certain functions to another

⁵⁸ (1990) 3 S.C.R., 191.

party such as a managing general agent, an insurer is ultimately responsible for its product by virtue of the insurance contract between the insurer and the policyholder.

Agency law governs the agency relationship between an insurer and an insurance representative, regardless of the fact that the insurance representative may act on behalf of more than one insurer. Agency is a relationship in which one person is authorised to represent and act for another person. In the field of insurance, the 'principal' is the insurance company and the 'agent' is the representative. There are a number of court decisions under agency law that clearly set out the circumstances when an insurer is responsible to the policyholder. Similarly, there have also been court decisions that clearly set out the circumstances when a representative is responsible to the policyholder (for example, when providing advice to a customer or recommending an insurance product).

Responsibility under civil law deals with legal liability issues usually involving damages for negligence. There are a number of court decisions which clearly set out the circumstances when an insurance company has been found negligent in fulfilling its contractual obligations to the policyholder (eg, unfair denial of a claim). Similarly, there are a number of court decisions which clearly set out the circumstances when a representative may be found negligent in its responsibilities to his/her client (eg, providing unsuitable advice, or putting their interest ahead of the client's interest).

4.3 Is the insurer jointly liable for damages caused by the insurance intermediary, appointed by the same, when executing intermediary activities? Who is liable vis-à-vis the insured person? Is it always the intermediary or the insurer?

Common law provinces

In accordance with the legal principles of principal and agent, an insurer would generally bear liability for the acts of its agents (vis-à-vis the insured) and would be required to indemnify its agents provided they acted within the scope of their authority. As discussed, brokers are generally deemed to be the agent of the insured and not the insurer and, therefore, it would not be typical for an insurer to be held liable for losses or damages caused by a broker even though, for certain limited purposes in connection with the insurance transaction, the broker may be deemed by statute or by a court to be the agent of the insurer (see 4.2 above).

Civil law (Quebec)

Firms are responsible for any injury caused to their clients by the fault of one of its insurance representatives in the performance of the representative's functions. For example, in the 2012 Quebec Court of Appeal decision of *Les Souscripteurs du Lloyd's v Alimentation Denis & Mario Guillemette*⁵⁹, the Court found the firm liable both as the employer of the representative and for failing in its duty of supervision of a representative.

Representatives are also personally responsible for the services they provide to consumers. Where a representative acts on behalf of a firm, his personal responsibility is in addition to that of the firm. However, the firms retain the remedies available to it against the representative concerned.⁶⁰

Under the Distribution Act and its regulations, all registrants (independent representatives, firms and independent partnerships) must take out and maintain professional liability insurance covering their activities in the authorised sectors.⁶¹ Also, all firms and independent partnerships must ensure that all of their attached representatives, whether employees or not, are covered by such an insurance.⁶² Professional liability insurance grants the representatives or registrants so insured coverage against the monetary consequences of their civil liability in case of professional errors, fault, negligence, or omissions committed in the pursuit of their activities. Such insurance is mandatory and in addition to ensuring

⁵⁹ 2012 QCCA 1376.

⁶⁰ Distribution Act, s 80.

⁶¹ Distribution Act, ss 76 and 274.

⁶² Distribution Act, ss 73 and 131.

compliance with the regulatory requirements, this insurance protects clients from possible monetary consequences sustained as a result of professional errors, fault, negligence, or omissions, and protects the representatives or registrants so insured against risks of insolvency resulting from a claim.

Insurers can also be found liable if they consent to the contravention by representatives of their obligations under the Distribution Act and its regulations. Section 482 of the Distribution Act provides that: 'Every insurer that helps or, by encouragement, advice or consent or by an authorisation or order, induces a firm or an independent representative or independent partnership through which it offers insurance products or an executive officer, director, partner, employee or representative of such a firm or independent partnership to contravene any provision of this Act or the regulations is guilty of an offence. The same applies to any director, executive officer, employee or mandatary of an insurer.'

In the 2013 Supreme Court of Canada case of *La Souveraine, Compagnie d'assurance générale v Autorité des marchés financiers*⁶³, the Court found the Quebec insurer guilty of the offence stipulated at section 482 of the Distribution Act for having provided its consent to a Manitoba damage insurance brokerage firm which was not registered as a firm with the AMF to distribute the insurer's products in Quebec. This case demonstrated the importance of the obligation for any insurer conducting business in Quebec to ensure strict control and monitoring of the regulatory compliance of the distribution activities of its products conducted on its behalf in Quebec by persons regulated under the Distribution Act.

4.4 Are there particular regulations or specific forms of compensation for damages caused to the insured person?

Common law provinces

Generally, unless the insurance policy provides otherwise, insured persons are free to seek redress from the Canadian courts in the case of a dispute with their insurer. An exception in Ontario is automobile insurance where the legislation requires disputes as to 'statutory accident benefits' to first be mediated.

There are ombudsman services available in Canada offering alternative dispute resolution services in the case of disputes between the insured and insurers. The General Insurance OmbudService is the organisation for issues relating to non-life insurance and the insured may opt to mediate or adjudicate the matter with his or her insurer through this avenue (if the insurer is a member organisation). The OmbudService for Life and Health Insurance is a complaint resolution service that offers assistance in the case of life and health products.

Reinsurance agreements (between an insurance company of first instance and a reinsurance company) generally contain clauses requiring disputes between the parties to be resolved by arbitration, rather than by resorting to the courts.

Civil law (Quebec)

As explained in 4.3 above, firms are required to hold liability insurance, as are representatives who act on their behalf without being employees of the firms.

Various protection mechanisms exist in cases of fraud. However, because a financial sector participant cannot invoke professional liability insurance against fraud, this has an indirect bearing on consumers. Quebec is the only jurisdiction in North America to have set up a compensation system for fraud victims. The Financial Services Compensation Fund is an administrative process, not a judicial one. Claims must essentially meet the following three conditions:

- the representative or firm involved must have been duly certified by the AMF in a sector covered by the Financial Services Compensation Fund;

⁶³ 2013 SCC 63.

- claimants must have demonstrated that they were victims of fraud and that the fraud was committed by the representative or firm;
- the fraud must concern financial products that the representative or firm was authorised to offer within the limits of the certificate issued by the AMF. The maximum compensation payable by the AMF is \$200,000 per claim.

Victims can claim compensation without having filed legal proceedings against the perpetrators of the fraud and without having exhausted other available remedies. Therefore, the Financial Services Compensation Fund is not a last-resort system, as exists in other jurisdictions.

Funding is derived from dues paid by the firms of the market intermediaries covered by the Financial Services Compensation Fund, amounts recovered through subrogatory recourses initiated by the AMF, and interest income. There is no cost to the claimant.

The Financial Services Compensation Fund does not apply to all situations in which victims of financial crime could find themselves. Consequently, the Financial Services Compensation Fund does not cover misconduct by individuals who are not registered with the AMF or fraud committed by fund managers or investment dealers.

5. Supervision and sanctions

5.1 Regardless of the requirement of an authorisation and/or enrolment, are insurance intermediaries subject to the control of supervisory bodies? Does the supervisory body have powers/duties of prudential supervision on the insurance intermediary's activities, and if so, in what way does it act?

Common law provinces

Generally, across the Canadian provinces, all supervisory bodies that regulate insurance intermediaries have powers and/or duties to supervise their activities. The following applies in Ontario, Canada's most populous province.

(a) BROKERS: ONTARIO

In certain jurisdictions, the supervision of insurance intermediaries has been delegated to a self-regulating organisation. For example, in the Province of Ontario, brokers are subject to regulation by RIBO.

RIBO is a self-governing, self-supporting organisation of general insurance brokers that was established by the Ontario government to protect the public during insurance transactions with brokers, through self-governance. RIBO regulates the licensing, professional competence, ethical conduct and insurance-related financial obligations of all independent general insurance brokers in the province of Ontario. It is self-funded on the basis of registration fees paid by every brokerage firm and individual licensed to sell insurance in the province of Ontario.

RIBO is governed by a thirteen-member council comprised of elected brokers and members of the public appointed by the Lieutenant Governor in Council. The council supervises the management and affairs of RIBO and is responsible for setting policies and guidelines. Its main authority is exercised through a qualification and registration committee, complaints committee and discipline committee.

The qualification and registration committee establishes RIBO's qualification standards and is responsible for ensuring that brokerages and individual brokers are in compliance. The complaints committee investigates allegations of professional misconduct brought against a broker to determine whether there is sufficient evidence of misconduct to warrant referring the complaint to the discipline committee. The discipline committee conducts a hearing, similar to a trial in a civil court, to determine whether a broker is innocent or guilty of the allegations outlined in the complaint. Where a broker is found guilty, the discipline committee may impose an appropriate penalty, ranging from a reprimand to licence revocation.

(b) AGENTS AND ADJUSTERS: ONTARIO

Although there is some regulatory and statutory overlap with respect to brokers in Ontario, insurance agents and adjusters in Ontario are subject to the Insurance Act (Ontario) and regulated by the Financial Services Commission of Ontario (FSCO). Insurance agents licensed in Ontario do not have a self-regulating organisation such as RIBO that fulfils the same hands-on, dedicated regulatory function.

The FSCO undertakes a number of monitoring activities as part of its regulatory function. It conducts criminal record checks on prospective agents and reviews complaints made against them. In addition, the FSCO audits life agent renewal applications to ensure they meet continuing education and errors and omissions insurance requirements. These checks, reviews and audits are the first step in the enforcement process. A significant number of matters are resolved at this first step. As a follow up to its regular monitoring activities, the FSCO may decide that some matters need to be investigated. An investigation is the second step in the enforcement process. It is used where prosecution or administrative action may be contemplated.

To resolve enforcement matters, the Superintendent of Financial Services has a number of options available, including:

- issuing a 'letter of caution', advising that regulatory action may be taken in the event of another violation;
- issuing 'minutes of settlement', whereby the Superintendent and a person reach an agreement about the appropriate resolution of the non-compliance; and
- issuing a 'notice of proposal' that may lead to a hearing before the Financial Services Tribunal, a Superintendent's hearing, or an Advisory Board hearing.

The Advisory Board established under the Insurance Act assists in determining the granting or refusal of a new licence or the possible revocation or suspension of an existing licence for insurance agents and adjusters. The Board considers evidence presented by the applicant or agent, as well as that put forward by counsel for the FSCO, and then makes a recommendation to the Superintendent.

In addition to the above options, the Superintendent may (i) make, without prior notice, an interim or temporary order (where the Superintendent is of the opinion that the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order); or (ii) lay charges under the Provincial Offences Act which may result in a fine.

Civil law (Quebec)

Quebec has a regulatory system comparable to that of professional corporations when it comes to the supervision of representatives who distribute financial products. As explained in 4.1, the Distribution Act provides for the creation of two self-regulatory bodies, the CSF and the ChAD (the CSF and the ChAD as collectively referred to as 'Chambers'). Both the AMF and the Chambers exercise regulatory powers over representatives. They also directly or indirectly exercise supervisory authority and authority to impose sanctions on representatives.

The Distribution Act regulates both the representative and his firm. In Quebec, the representative is governed by a Chamber according to a model that draws inspiration from the professional corporations and must abide by its code of professional conduct. Pursuant to such oversight, the representative is responsible for his acts, whether he is independent or an employee. The firm on whose behalf the representative acts also monitors the representative since pursuant to the Distribution Act the firm is responsible for the actions of the representatives attached to it.

Oversight of ethical conduct by a Chamber thus offers the added advantage of extra protection for consumers under the distribution with a representative regime in Québec. This means that representatives are personally responsible for the services they provide to consumers. Where a representative acts on behalf of a firm, his personal responsibility is in addition to that of the firm.

The Chambers are each a legal person⁶⁴ and their respective affairs are administered by a board composed of representatives engaged in the various sectors concerning them, except for two members named by the relevant Minister to represent the public.⁶⁵ Members of the Board of the CSF shall be elected by the representatives in insurance of persons, group insurance, securities and financial planning; members of the Board of the ChAD shall be elected by damage insurance agents, damage insurance brokers and claims adjusters.⁶⁶

The responsibilities of the Chambers concern more specifically the rules of ethics (other than those applicable to securities) and training (other than those applicable in respect of financial planning) and the criteria governing the professional titles and the amount of annual dues that the representatives, independent partnerships and firms must pay to the AMF on their behalf.⁶⁷

Each Chamber has a Code of Ethics that applies to its members. These codes set out ethical obligations. These are divided into several sections, namely, duties and obligations towards the public, duties and obligations towards clients, duties and obligations towards other representatives, firms, independent partnerships, insurers and financial institutions, and duties and obligations towards the profession.⁶⁸ The Chambers make recommendations to the AMF on any matter within their jurisdiction and may also offer training services and advisory services in quality control and compliance with professional requirements to their contributors.⁶⁹

Each Chamber has a discipline committee consisting of lawyers, representatives and a syndic.⁷⁰ It handles all complaints formulated in respect of a representative for breaches of the rules of professional conduct. The syndic and the AMF may file a complaint against a representative before the appropriate discipline committee when there are reasonable grounds to believe that an offence has been committed.⁷¹ A decision rendered by the discipline committee can be appealed before the Court of Quebec for any sector.⁷²

5.2 Are there fines for violations of the insurance intermediaries' obligations? If yes, please describe.

Common law provinces

Each province and territory of Canada imposes its own fines on insurance intermediaries for contraventions by them of its insurance legislation. The usual offence prosecuted is soliciting insurance without a licence, but other violations (especially 'market conduct' breaches by licensed intermediaries) are prosecuted as well. There is considerable variation among the jurisdictions as to fines. Possible fines for an insurance intermediary (or a person acting as one without a licence) range from a \$1m maximum (in Saskatchewan, Manitoba, Newfoundland and Labrador) to \$10 for each day in violation of the statute (in Nova Scotia). In some jurisdictions, the fines vary with the type of offence involved, whether the person in violation is a natural person or a corporation, and/or whether the offence constitutes a first or subsequent offence. Some jurisdictions (eg, Alberta and New Brunswick) have specific provisions dealing with whether the act or omission is of a continuing nature (Alberta, for example, has a maximum fine of \$200,000, but provides that if the offending act or omission is of a continuing nature, each day or part of a day that it continues constitutes a separate offence). Most Canadian jurisdictions have a 'derivative'

⁶⁴ Distribution Act, s 285.

⁶⁵ Distribution Act, s 288.

⁶⁶ Distribution Act, ss 289 and 290.

⁶⁷ Distribution Act, ss 313 and 320.

⁶⁸ Code of Ethics of the Chambre de la securite financiere, R.S.Q., c-D-9.2, r.3 and the Code of Ethics of Damage Insurance Representatives, R.S.Q., c-D-9.2, r.5.

⁶⁹ Distribution Act, ss 314 and 315.

⁷⁰ Distribution Act, ss 327, 352 and 355.

⁷¹ Distribution Act, s 344.

⁷² Distribution Act, s 379.

provision in their insurance legislation that provides that if a corporation commits an offence, then whether or not the corporation is prosecuted or convicted of the offence, any director or officer of the corporation who authorised or permits the offence, is also guilty of the offence and is liable to a fine (either of the same amount or a lesser amount as that applicable to the corporation).

It should also be noted that a number of jurisdictions in Canada also now provide for (summary) administrative monetary penalties (sometimes referred to as 'AMPs') for various violations of insurance legislation (as opposed to fines for the conviction of an offence). These vary from a maximum of \$200,000 in Ontario, to a maximum of \$25,000 in Alberta. No person is subject to both a fine and an AMP.

Civil law (Quebec)

The Distribution Act provides a number of penal sanctions applicable to natural and legal persons in the event of violations of the Act. These sanctions also apply to directors, officers and agents of a legal person that contributes to the perpetration of a violation.⁷³

A contravention of the Distribution Act or its regulations carries the following fines:⁷⁴

- for a natural person, a minimum fine of \$2,000 up to \$150,000;
- for a legal person, a minimum fine of \$3,000 up to \$200,000;
- some offences can carry a maximum fine of up to \$1m.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled.

The sanctions for representatives found guilty of a breach of their legal obligations towards customers can also include a combination of fines, disciplinary sanctions or penalties, compliance or court orders and licence revocation or prohibition.

A representative acting in contravention of the provisions of section 12 or 14 of the Distribution Act with respect registration and representation conditions may not claim or receive remuneration for any products sold or services rendered.⁷⁵

5.3 Do sanctions also apply to foreign intermediaries who operate in your country?

Common law provinces and civil law (Quebec)

Yes.

5.4 Is there a consultation procedure with the insurance intermediary before the fine is applied?

Common law provinces and civil law (Quebec)

See the description of the investigation and disciplinary processes discussed in 5.1 above.

There would be no consultation procedures before a fine is imposed by a court. By then, it is too late. A consultation with the regulator, if it occurs, would occur prior to the prosecution of the offence. A consultation could also occur with an insurance regulator before an AMP process commences, or even during an AMP process.

⁷³ Distribution Act, s 461 and following

⁷⁴ Distribution Act, s 485

⁷⁵ Distribution Act, s 15

In respect of an alleged offence, insurance regulators generally prefer to pursue a course of conduct that results in the offending act or omission ceasing with the minimum application of resources (which will often involve notification through a cease and desist letter, and consultation). However, where the breach is blatant or particularly offensive, the regulator will generally not hesitate to proceed by way of an AMP or recommend the prosecution of an offence. Where a client has been defrauded, it is more likely that the insurance regulator will recommend the prosecution of an offence.

5.5 Could the application of more fines, or the breach of particular regulations, result in the revocation of the authorisation, or in the intermediary being struck off the register (if any), or in the prohibition to act as an insurance intermediary? If yes, which are the most relevant circumstances?

Common law provinces and civil law (Quebec)

Yes. An insurance intermediary is more likely to have his/her/its licence revoked if:

- a) the insurance intermediary has been guilty of a dishonest or fraudulent act or practice (especially if the act or practice is concurrently a violation of the criminal law such as theft or conversion of client funds); and
- b) the insurance intermediary has demonstrated incompetence and/or untrustworthiness in transacting business as an insurance intermediary.

Licence revocations are also common for the following reasons:

- a) failure to maintain the requisite errors and omissions insurance;
- b) failure to complete continuing education requirements; and
- c) failure to respond to requests for information from an insurance commission after an allegation of misconduct.

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