

Clouding the Issue



**The CIP Society
Ethics Series**

The CIP Society
Insurance Institute
of Canada

The CIP Society represents more than 17,000 graduates of the Insurance Institute of Canada's Fellow Chartered Insurance Professional (FCIP) and Chartered Insurance Professional (CIP) Programs. The CIP Society, through articles such as this, is working to bring ethical issues to the forefront and provide learning opportunities that enhance the professional ethics of all insurance professionals.

What if information about a specific claim, stored in the cloud as part of a company's new cloud-based system, goes missing? What are the ethical responsibilities of the company, the claims adjuster, the manager and other employees who may have handled the file in past?

A long-standing employee of an insurance company retires after 40 years of service as a claims adjuster. A young professional is hired to take over this position, with some changes to the job description. There is no overlap between the retired employee and the new employee, and the new employee is trained by a far less experienced claims adjuster who started with the organization just a year prior when it transitioned from storing its files as physical documents to a cloud-based system.

The new employee is trained for digital note-taking and within a few weeks of training, she is ready to take on new cases and take over the cases of the retired employee. One afternoon, while reviewing one of the older cases that resurfaced a number of years ago, the new employee discovers that vital documents related to the claim are missing from cloud storage. She searches through all the possible digital folders, but is unable to find the missing information.

Since this missing information is an imperative part of the case, the employee discusses the matter with her manager, who then places a request for archives to search for the physical files. Unfortunately, none are found.

Another long-standing employee overhears the conversations about the file and recalls that when

he was an underwriter, he had occasion to consider the same client. He relayed that there were very unique and peculiar risks in the file that required special consideration and costing.

Given it was no longer his file, however, it was not his problem. He warned his employer about the perils of transferring paper files to the cloud, and for this and other reasons, he had not been happy at his job lately, but would soon be retiring, anyway.

In what ways does the long-standing employee have an ethical duty to enlighten his colleagues about some of the nuances of this file based on his recollection of facts? In what ways does the new employee have an ethical responsibility to track down the missing information? And what can the insurance company do to provide an ethical outcome for the client?

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This is a scenario that will, unfortunately, no doubt, arise (or already has) for a number of insurers as the transition takes place from paper files to paperless file storage. This scenario also highlights the importance of ensuring that all file

documentation is uploaded digitally as this transition takes place.

While the long-term underwriter is no longer handling this file and is retiring soon, he has an ethical obligation to put aside his views on digital storage and inform his colleague of the particular nuances of the client to the best of his recollection. He may be the only one who can give the claims adjuster better context around the client and the claim in question.

This long-term employee may also be aware of other avenues to locate the missing documents. For example, he may be aware of an old email server that could be accessed and searched.

The new claims adjuster certainly has an obligation to do everything within her ability to track down any documents that may be missing from the digital file and which may affect the outcome of the claim. These actions may include attempting to retrieve the original paper files (which could not be found in this case), as well as seeking out employees (including, perhaps, the retired employee), who may have been involved at an earlier stage and may have knowledge of where this documentation can be found.

Should all of these efforts fail, and the adjuster is unable to locate these documents, the insurer has an obligation to pay the claim — even if all of the anecdotal evidence suggests that the files existed and would support a denial of coverage. Not only is this the ethical solution, but failure to do so could also put the insurer in an awkward legal position should a denial of coverage be challenged by the client, and the documents relied on by the insurer for their denial cannot be produced.

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Claim departments, both insurer and independent, are well-stocked with seasoned technicians. Many in the industry probably have colleagues who prefer to print an email and attach it to their paper files instead of saving a soft copy

PDF document to their claim management systems.

Over coffee, if asked why, there is no guarantee they will know what a PDF document is, never mind the cloud, but they take comfort in the feel and security of a piece of paper. While they are reluctant to change, they are tremendously valued for what they bring on a day-to-day basis.

At the same time, claims organizations are looking for young talent who are IT-savvy and extremely comfortable with



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new technologies, and who choose insurance claims as their career path. These young people are rare and the industry needs more of them.

In the end, it is about the client's claim and the onus is on the insurer to adjudicate in good faith. While the aforementioned scenario may highlight the challenges of moving to a paperless world,

similar challenges were faced when trying to recall an old paper file from storage, only to discover that it had been destroyed.

Whether the material documentation is stored in a warehouse or in a digital world, the new claims adjuster, along with her manager, are obligated to try and recreate as much of the file as possible. In many cases, that may involve going to plaintiff counsel in order to obtain copies of key reports previously forwarded.

The seasoned underwriter is under the same obligation. He may not embrace change and he is free to choose whether he wants to learn and remain current, or retire and move on, but in the aforementioned scenario, he is still actively employed by the insurance company.

As the underwriter who was originally involved in reviewing and binding this risk, he has special insight that may assist the adjuster and her manager with recreating this file, and he should step up and help the insurer in responsibly discharging the duty to its client.

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The first item for this company to address is the reliability of the cloud storage system provider. While the physical files are usually destroyed, there should be a digital record of every piece of information that was uploaded into the digital storage system.

This is also an important time to review the organization's policies around confidentiality and its codes of ethics and conduct. An employee has an obligation to the organization's standards of business and to protect the personal information entrusted to him or her, as this is one way to earn a client's trust.

If the former adjuster properly attached the vital documents to the claim file, he has done nothing to cause the loss of the information. The new adjuster has a duty to find this documentation and make all attempts to replicate it.

The new adjuster also has a duty to

disclose to the client that records have been destroyed or lost, similar to when reporting a breach of privacy involving personal information.

Assuming these documents are important and essential to the adjudication of the claim, the new adjuster could ask for the assistance of the insured to produce the documentation from years ago. The new adjuster can also liaise with the

underwriting department and ask if it can share any relevant information from the file, even if this requires an authorization signed by the client.

The long-standing employee with prior information has a duty to keep documents in strict confidence and only disclose for the benefit of the company. When an employee ends his employment, he is required, by policy and ethically, to return

all documents and information, and this includes knowledge of the client. Employee knowledge, which includes data and information, is the property of the employer and is used to conduct business.

Each person in this scenario has a duty to conduct themselves using a framework of ethical principles for the success of the employee and the company. In the absence of the documentation, the ethical outcome for the client is to pay the claim as if the documentation in question never existed.

THE FINAL WORD

The insurance industry depends on accurate, relevant, reliable information and the ability to retrieve it at the right time in order to do its business. In the scenario described, important information pertaining to a claim has gone missing.

While the way in which it has gone missing might be new — it disappeared from the cloud — the industry has had to deal with similar scenarios in the pre-digital world.

The new claims adjuster is already doing her part to try to locate the missing documents, but the long-standing underwriter needs to disclose what he knows in order for the company to move forward. While the underwriter may not have all the missing information, any additional information can help fill in the blanks and may even reveal new sources of information.

At the same time, the client should be notified that the documents are missing and kept abreast of what is being done to remedy the situation. This includes how the client's missing information is being pieced together, but also how the company will prevent such oversights in the future by reviewing its file digitization and storage processes.

While the loss of information appears to be the result of a simple mistake, now that the company is aware, it has an ethical responsibility to figure out its scope and to prevent it from happening again.

Lastly, in resolving the claim file, the company must ensure the missing documents are considered and any uncertainty as a result of the missing information is dealt with in favour of the client. ≡