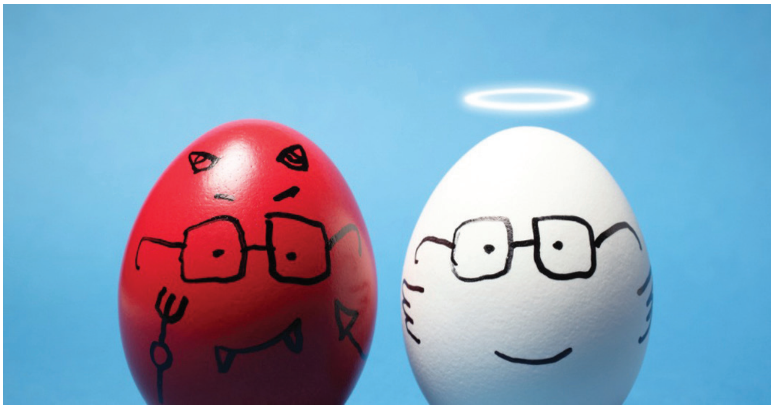


The CIP Society
Ethics Series

Here Comes Trouble

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.

The quick fix of terminating a producer suspected of unethical behaviour by simply cutting a cheque could have some lingering effects. Litigation costs and unpleasantness may be avoided, but what if the producer simply moves on to a new job and continues with the same questionable behaviour? What must a brokerage do to meet its obligations to its customers, its industry and regulators?

Within a mid-sized brokerage operation, rumours have swirled around about the questionable conduct, comments and actions of a certain commercial lines producer. He constantly appeared to operate close to the line. Although nothing was ever substantiated in terms of rule violations, staff had their suspicions.

Finally, one of the owners felt she should take a closer look at the producer's activities and, in so doing, discovered several violations (both current and historical) that were of grave concern. Upon reviewing the producer's personnel file, it was clear that his references were never consulted when he was hired. He was simply hired on the recommendation of an internal staff member.

Regardless, the current evidence of misconduct could not be tolerated and a decision was made by the owners to terminate his employment. The producer argued that, in his defence, he had always operated the same way and no one had approached him to change his behaviour any time during his tenure with this brokerage.

Thus, in consultation with the brokerage legal team, it was decided to terminate the producer without cause and provide a severance payment so as to avoid the unpleasantness of litigation. It was also agreed to not provide a future reference for him (positive or negative) if ever requested and to only confirm dates of employment.

While it appeared the approach would avoid embarrassment and costly litigation for the firm, the owner who discovered the misconduct had a nagging, uneasy feeling about the direction being taken. In essence, it was allowing the producer to remain in the industry and continue with this pattern of suspected dishonesty. To whom should the owner be most loyal? Her firm and its shareholders? Or the insurance industry as a whole?

Tracy Makris, CAIB, CIP
President
Bryson Insurance
This scenario may happen more often than everyone would like to think and in a variety of professions. As professional insurance brokers, governed in Ontario by the *Registered Insurance Brokers Act*, it is the duty of brokers to protect the interest of the insurance consumer.

In the aforementioned scenario, upon confirmation that a violation has occurred and the professional competence of the individual producer has been breached, the owner should act to protect society as a whole. Along with her obligation to her clients, she needs to protect those ethical brokers who conduct themselves, at all times, in a professional manner and who continue to contribute to the moral fabric of the firm and society.

Unfortunately, fear of litigation can dictate an individual's or a firm's course of action and, many times, steer it away from the correct behaviour. The brokerage community as a whole needs to stand together and protect the owners and employees of brokerages, but most importantly, the consumers of insurance products, from those who operate without ethics, as well as act selfishly and with complete disregard for others.

Kristin Coulombe, CHRL
Director
Human Resources
Jones Deslauriers Insurance Management Inc.
As brokerage leaders, it is the job of owners to identify the level of severity of the violation that has occurred. They can then move forward and determine the consequence of the actions to be taken. Companies should have proper due diligence procedures in place through their recruitment practices and annual audit procedures.

In this particular case, as the producer was terminated without cause, it appears that the owner and the shareholders did not consider the level of the violation to be severe enough to report to the regulator, but did regard it as severe enough not to tolerate the behaviour in their particular brokerage.

This brokerage is making a statement to its employees, shareholders and the industry by terminating the producer's employment. It is also making a statement to other brokerage owners by only providing employment dates versus an actual reference — which is a red flag to H.R. professionals.

Do not be fooled and think that rumours about behaviour and ethics will remain silent in the brokerage; word of mouth travels very fast in the industry.

Companies in the industry must do what is right and ensure proper due diligence in their hiring practices and commercial audit procedures to avoid any such violation(s) in the future. The owner controlled the situation for her shareholders and issued a warning sign to the industry; it is now up to other companies to pick up on that sign.

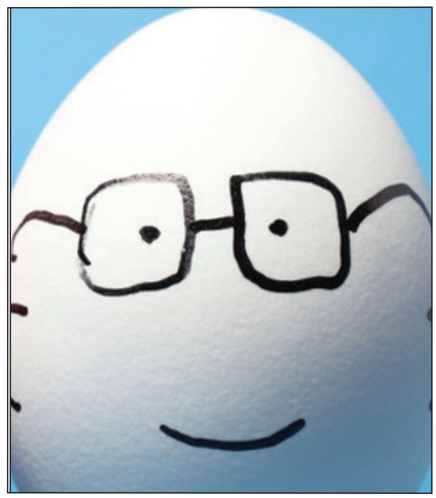
If, however, the violation was severe, there is no doubt that the owner would have had all shareholders supporting her decision of termination with cause and reporting the producer to the regulator. As much as shareholders understand and appreciate the importance of the company's reputation in the industry, there is a line where, if crossed, no other brokerage or client should come into contact with this producer entirely.

If, as leaders and professionals, brokers are loyal to their firms and put their people and customers first, this will, ultimately, make a positive contribution to the industry.

Maurice Audet
Senior Vice President, Regional Resource Leader
Risk Research & Solutions
Aon Reed Stenhouse Inc.
What is not provided in the scenario presented is the nature of the unacceptable behaviour.

If it was criminal, both the regulator and the authorities should be notified. If it was not criminal, but unethical, the regulator should be notified.

What is also not provided in this scenario is whether or not this is the first offence. What if the producer had behaved unacceptably in his previous brokerage and been let go without cause for the same reason? While making the problem go away quietly has short-term benefits for one brokerage office, there



are long-term consequences, with the potential for the producer to continue his violations elsewhere.

From a public relations perspective, sweeping something like this under the rug does no more than confirm some public perceptions that insurance brokers are more interested in protecting their own interests than protecting the public's. Permitting a "rogue" broker to continue causing damage by simply allowing him or her to move to another unsuspecting employer is unethical and, it could be argued, a violation of the

Code of Conduct regulating brokers.

As to the owner's loyalty, the decision to provide a severance payment for termination without cause is a business decision taken in the best interest of her firm.

The obligation to report the conduct to the regulator is a separate issue and is dictated by a broker's duty to maintain the integrity of the profession under the *Code of Conduct* regulating brokers. Failing to do so not only hurts the profession, but can also subject the firm and the individual to disciplinary proceedings.

Arthur Kosikowski, CIP
Senior Investigator
Complaints and Investigations
Registered Insurance Brokers of Ontario

The issue of ethics and ethical behaviour is permanently at the forefront of the insurance industry as a whole.

In this particular scenario, the owner is faced with a dilemma when dealing with a producer committing the acts of misconduct.

On the surface, firing the producer without cause, providing a severance package and refusing to provide references might seem like the best possible option. The firm would be getting rid of the problem, avoiding possible litigation and the associated costs, and by not providing references, would perhaps avoid a lawsuit in case another employer found the references not to be accurate.

But examine the motives and implications of the way the owner dealt with the problem. From the scenario, it appears the firm had no procedures regarding checking references, and allowed the producer to continue to "operate close to the line."

Both of these issues might come up if the owner reports the producer's misconduct to the regulator.

While the producer's actions may have been unethical, is the producer solely to blame? There are many questions that need to be asked. Had the producer been provided any training? Was allowing the producer to continue to "operate close to the line" a largely contributing factor in the producer's misconduct? Who and what else were the contributing factors in the producer's misconduct? Why did the owner not attempt to educate the producer about his misconduct? Was the owner contributing to the producer's misconduct by firing him without trying to find out why the misconduct occurred in the first place? Was the owner committing an act of misconduct by failing to notify the regulator?

Although getting rid of an apparent problem producer might seem like the only approach at the time, the question the owner should have been asking is this: How will the members of the public, other brokers and the insurers be affected if the misconduct is not reported and is allowed to continue?

THE FINAL WORD

The owner is faced with a difficult situation when she discovers that one of her producers is engaging in questionable conduct and has made a number of violations. At the discovery stage, the owner must not only consider how to move forward by reprimanding that producer, but also determine how her firm got into the position that it did.

What are the policies and procedures, as well as the informal internal culture, that allowed the producer to make these violations in the first place?

In the scenario, it appears the hiring process was not handled properly and that changes will be required to make sure that potential hires are properly vetted prior to being offered a position. Barriers in communication can be addressed to help staff feel empowered to do the right thing the next time they become suspicious of a co-worker's actions. Ideally, tighter oversight by the owners will help flag problems early on, before they spiral out of control.

In order to remedy the situation, the owner must not only ensure the producer is properly disciplined — and the proper authorities and regulators are notified — but also ensure that the firm addresses the policies, procedures and culture that led to the problem so that the problem does not occur again.