

Citation: Old Republic Insurance of Canada (Re),
2022 BCSFI 4

**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
RSBC 1996, c 141**

AND IN THE MATTER OF

OLD REPUBLIC INSURANCE COMPANY OF CANADA

**DECISION ON ADMINISTRATIVE PENALTY
RECONSIDERATION REQUEST**

Date of Hearing:	Via written submissions
Counsel for Old Republic Insurance Company of Canada:	Scott Marcus Alexander Holburn Beaudin & Lang LLP Barristers & Solicitors
Hearing Officer:	Andrew Pendray

Introduction

1. On February 1, 2022, the Superintendent of Financial Institutions issued, pursuant to section 253.1(1) of the *Financial Institutions Act* (the “FIA”), an administrative penalty to Old Republic Insurance Company of Canada (“Old Republic”) in the amount of \$40,000.
2. That administrative penalty related to what the Superintendent concluded was Old Republic’s contravention of section 176 of the FIA. Specifically, the Superintendent concluded that Old Republic had breached section 176 of the FIA by allowing the sale of travel insurance policies (underwritten by Old Republic) through unlicensed entities.
3. Pursuant to section 253.1(5) of the FIA, Old Republic now seeks reconsideration of the amount of the administrative penalty. Old Republic takes the position that an appropriate penalty would be in the amount of \$10,000.
4. Old Republic requested that this reconsideration proceed by way of written submissions. I do not consider that an oral hearing is necessary to consider this reconsideration. There are no significant issues of credibility or significant factual issues in dispute, and I am satisfied that there are no other compelling reasons for convening an oral hearing.

Issues

5. The issues are:
 - Did Old Republic commit a contravention of section 176 of the FIA?
 - If so, should the February 1, 2022 administrative penalty be confirmed, reduced, or eliminated?

Jurisdiction

6. Where a party seeks reconsideration of an administrative penalty issued under section 253.1(1), section 253.1(8) requires that the Superintendent must, after receiving written submissions or holding an oral hearing, confirm whether the person committed the contravention, and if so, determine whether to:
 - Confirm the penalty specified in the notice of administrative penalty, or

- Order a lesser penalty, or
 - Order no penalty.
7. Pursuant to a March 18, 2022 Acting Capacity Instrument, the Superintendent has indicated that the Chief Hearing Officer and Hearing Officers of the BC Financial Services Authority are appointed to hold and act in the position of the Superintendent in the exercise of statutory powers and duties related to section 253.1 of the FIA.

Background

8. I have reviewed all of the evidence and information before me. This includes the information provided by Old Republic as part of its submissions, and the further information obtained from BCFSA as part of my inquiry during this reconsideration process. The following is intended not as a recitation of all of that information. Rather, it is intended to provide context for my reasons.
9. Old Republic is an extra-provincial company, registered in B.C. since 1995, and is authorized to conduct general insurance business in B.C.
10. In March 2019, Old Republic entered into an agreement (the “Agreement”) with TM. The Agreement called for TM to engage in the marketing and distribution of travel insurance policies, with those policies to be underwritten by Old Republic.
11. The Agreement specifically required TM to promote sales of the travel insurance policies only through licensed travel suppliers and travel agents, with Article 10.1(d) of the Agreement further required TM to ensure that all distributors selling the travel insurance policies were properly licensed.
12. Despite those requirements set out in the agreement, one of the third-party distributors engaged in the sale of the travel insurance policies, Explorica Canada Inc. (“Explorica”), had never been licensed to sell travel insurance in B.C. Further, another distributor, Educatours Ltd. (“Educatours”), which had been licensed from 2016 to February 2020, ceased to be licensed to sell travel insurance when it amalgamated with Explorica to form a new company, Worldstrides Canada, Inc. (“Worldstrides”), in February 2020.
13. Despite the fact that the license belonging to Educatours had terminated in February 2020, the newly formed Worldstrides continued to sell the travel insurance without a licence, through May 2020.

14. On March 9, 2020, Old Republic received what it describes as an “XML’ load file” from TM. That file indicated that Explorica had acted as the insurance agent in the sale of 125 of the travel insurance policies in British Columbia.
15. Worldstrides continued to sell travel insurance policies underwritten by Old Republic subsequent to March 9, 2020, despite not being licensed to do so.
16. Between January 25 and March 15, 2021, BCFSA received complaints from members of the public who held travel insurance policies underwritten by Old Republic. Those complaints related to what the policy holders claimed were delays in the processing of their travel insurance claims related to secondary school trips which had been cancelled in March 2020, due to the onset of the COVID-19 pandemic.
17. Old Republic terminated its contract with TM on March 1, 2021.

Notice of Penalty

18. BCFSA investigated the complaints it received in early 2021 and, after determining that Explorica had never been licensed to sell travel insurance in B.C., that Educatours’ license had ceased to be as of February 2020, and that Worldstrides had continued to sell the Old Republic underwritten travel insurance policies despite those facts, found that:

14. Old Republic breached section 176 of the FIA by making contracts of insurance and issuing or delivering policies where the application for the insurance was received from persons other than the person to be insured, or an agent thereof, or an insurance agent licensee.

19. In the Notice of Penalty, the Superintendent noted that:

13. Old Republic advised BCFSA that they had sold 952 insurance policies in B.C. through unlicensed entities, including Explorica and Worldstrides, and more particularly Worldstrides sold 87 policies between February 2020 and March 2021.

20. The Superintendent concluded that:

33. Due to the number of policies sold through unlicensed agents, the span of time over which the non-compliance took place, failure to follow [Canadian Council of Insurance Regulators] Guidelines, and significant delays in the processing of claims that the risk to the public, and in order to achieve specific deterrence to Old Republic and adequate general

deterrence to the industry, I find that an appropriate penalty for Old Republic's contraventions of the requirements in the FIA is \$40,000.

Submissions

21. In its reconsideration submissions, Old Republic took the position that the penalty of \$40,000 was unduly harsh. While Old Republic acknowledged that a contravention of the FIA occurred, it submitted that a penalty in the amount of \$10,000 would be proportional to the nature of the contravention.
22. In support of that position, Old Republic submitted that it had expected that TM would meet their contractual obligations to ensure that sales and distribution of the travel insurance policies was conducted by licensed entities, and that, in light of the articles of the agreement, it had been reasonable for Old Republic to rely on that expectation.
23. Old Republic further submitted that rather than simply relying on TM to meet its contractual obligations, Old Republic conducted yearly audits to ensure that its intermediaries complied with those obligations. Old Republic submitted that its regular audit process had been delayed due to the COVID-19 pandemic.
24. Specifically, Old Republic submitted that at the time it received the March 9, 2020 file, which indicated that Explorica had acted as the insurance agent in the sale of 125 travel insurance policies in British Columbia, Old Republic had shifted its resources to addressing claims and assisting with inquiries from policy holders in light of the onset of the COVID-19 pandemic. The result, in Old Republic's submission, was that the information provided by TM on March 9, 2020 was not examined by Old Republic "as quickly as otherwise would have been the case".
25. Old Republic submitted that, regardless, only a further 32 travel insurance policies were sold by Worldstrides between March 9 and May 5, 2020, less than the 87 policies identified by the Superintendent in the Notice of Penalty. Old Republic submitted that the minimal number of policies sold during that period of time ought to have been considered by the Superintendent in determining the amount of the administrative penalty.
26. With respect to what the Superintendent had identified as the "significant delays" that occurred in respect of Old Republic processing the travel policy claims, Old Republic submitted that while a delay existed, that delay was only incurred as a result of Old Republic having been engaged in the legal processes surrounding the determination of the proper amount owing under the Policies.

27. Old Republic submitted that it had accorded with the “Conduct of Insurance Business and Fair Treatment of Customers” guidance, and that the guidance contained within that document ought not to be interpreted by the Superintendent as requiring an insurer to ignore its legal rights under the policies and pay out sums that were not owing.

Reasons and Findings

28. I find that the penalty applied by the Superintendent was appropriate in the circumstances. As a result, I confirm the penalty set out in the February 1, 2022 Notice of Penalty. My reasons for having reached this conclusion follow.

Applicable Law

29. Section 176 of the FIA sets out that an insurer must not make a contract of insurance or issue or deliver a policy unless the application for the insurance is made by the person to be insured or by an agent of that person, or is received by or from an insurance agent licensee.

30. Section 253.1(1) of the FIA, “Administrative Penalties”, provides that if, in the opinion of the Superintendent, a person has contravened a prescribed provision of the Act, the Superintendent may give written notice to the person requiring the person to pay an administrative penalty in the amount specified in the notice.

31. Section 253.1(10) sets out that an administrative penalty for a contravention must not exceed the amount prescribed by Regulation for that contravention, and in any event must not exceed \$50,000 in the case of a corporation. The *Administrative Penalties Regulation* to the FIA (the “Regulations”) provides that the maximum administrative penalty for a contravention of section 176 is \$50,000.

Did Old Republic commit a contravention of section 176 of the FIA?

32. As I have indicated above, Old Republic does not dispute that it contravened section 176 of the FIA. The evidence before me clearly demonstrates that Old Republic sold insurance policies through unlicensed entities, including Explorica and Worldstrides, contrary to section 176 of the FIA.

33. Given those facts, I confirm that Old Republic contravened section 176 of the FIA by making contracts of insurance and issuing or delivering policies where the application for insurance was received from persons other than the person to be insured, or an agent thereof, or an insurance agent licensee.

Should the February 1, 2022 administrative penalty be confirmed, reduced, or eliminated?

34. At the outset, I note that Old Republic has not taken the position that the administrative penalty should be eliminated entirely. Rather, it has taken the position that an appropriate penalty would be in the amount of \$10,000.
35. As noted in the February 1, 2022 Notice of Penalty, the FIA regulatory framework serves to protect the public of B.C. by requiring, subject to certain exceptions which are not applicable here, that insurers distribute their products through licensees who are subject to the approval and oversight of the Insurance Council.
36. Similarly, the goal of the administrative penalty regime provided for by section 253.1 of the FIA is to further the protection of the public by promoting compliance with the regulatory framework set out in the FIA. The compliance sought is not only that of the offending party (specific deterrence), but also compliance from the industry generally in relation to similar type issues (general deterrence).
37. Having considered the fact of Old Republic's contravention of section 176, the need to protect the public and to encourage compliance with the FIA's regulatory framework, as well as Old Republic's acknowledgement that a monetary penalty is warranted, I find that it is not necessary to further consider whether the February 1, 2022 administrative penalty should be eliminated in its entirety. Rather, I agree with Old Republic that an administrative penalty is warranted.
38. I, therefore, turn to a consideration of whether the February 1, 2022 administrative penalty should be confirmed or reduced.
39. In determining that a penalty of \$40,000 was warranted, the Superintendent set out what he considered to be both mitigating and aggravating factors.

Mitigating Factors

40. With respect to mitigating factors, the Superintendent noted the fact that Old Republic had not been the subject of any previous administrative order made by BCFSA, that Old Republic had not made any attempts to deny the unlicensed sale of its insurance products through Explorica and Worldstrides, and that Old Republic had terminated its agreement with TM due to the unlicensed sale of Old Republic insurance products by TM distributors.

41. I agree that the fact that Old Republic has a long history of operating in B.C. without any prior administrative orders can be considered to demonstrate that this situation may have been an unfortunate aberration, as opposed to a pattern of contraventions. I accept that this fact serves as a mitigating factor in the determination of the appropriate amount of the administrative penalty.

42. I do not, however, agree with Old Republic's submission that:

...given that this is its first infraction and that it comes after a history of 27 years without an infraction, the **starting point for assessing an appropriate penalty should be at the low end of the spectrum.**

[emphasis added]

43. While I consider that a history of regulatory compliance is properly considered to be a mitigating factor in determining the amount of an administrative penalty, the suggestion that there should be a presumed "low end" starting point for an administrative penalty where there has been historical compliance does not, in my view, allow for a proper consideration of the nature and effect of the contravention in question.

44. In my view, it is the nature and effect of the specific contravention at hand that must be the primary consideration in determining the appropriate amount of an administrative penalty. I consider this conclusion to be consistent with the wording of section 253.1(1), which specifically contemplates the imposition of an administrative penalty in respect of a specific contravention.

45. Simply put, while a history of compliance is appropriately acknowledged as a mitigating factor, I do not consider that historical compliance can be seen to outweigh the nature of the contravention. In my view, to presume a low end "starting point" for administrative penalties based on historical compliance would encourage exactly that.

46. I note that in support of its position that first time contraventions should be assessed at the "low end of the spectrum" Old Republic further submitted that:

37. If first time infractions are subject to penalties at the high end of the spectrum, those that continuously fail to meet the requirements of the *FIA* will face similar penalties to those that have a long history of compliance. This result is not equitable and does not promote compliance in the insurance industry (i.e. general deterrence).

47. I do not agree. In my view, the above excerpted submission fails to give consideration to the fact that administrative penalties are not the sole tool by which compliance in the insurance industry can be encouraged. Licensees who continuously fail to meet the requirements of the FIA would be subject not only to repeat administrative penalties, but also at risk of having their license suspended or cancelled.

48. Old Republic further submits that, given that this is its first infraction, “the need for specific deterrence is speculative”:

As there is no demonstrated history or pattern of noncompliance, there is not reason to conclude that Old Republic does not intend on complying with any and all regulations going forward. The Agreement stresses the importance of ensuring that all distributors are properly licensed and puts in place the necessary rights and obligations to facilitate proper monitoring. The failure in this case arose due to TM’s repeated breaches of Agreement. Old Republic submits that in the circumstances there is no demonstrated need for specific deterrence and it fully intends on adhering to the provisions of the *FIA*.

49. While it is true that the agreement between Old Republic and TM did stress the importance of ensuring that distributors were properly licensed, the evidence before me shows that there was little action taken to ensure that that important aspect of the agreement was enforced. While Old Republic may say that the contravention in this case arose from TM’s repeated breaches of the agreement, it is also apparent that Old Republic took no steps to address the breaches when it ought to have become aware of them in March 2020.

50. I acknowledge the circumstances of COVID-19 likely placed a resource drain on Old Republic around March 2020; however, in my view, the fact that what Old Republic has rightly described as an important aspect of the agreement merited no investigation by Old Republic in March 2020, suggests that the need for specific deterrence is more than speculative. The importance of ensuring that insurance products are sold by licensed entities cannot be overstated, and the fact that Old Republic did not take immediate action to address the unlicensed sale of its products indicates that specific deterrence is required in order to ensure such action is taken in the future.

51. Old Republic also submits that it ought to be considered a mitigating factor that although its travel insurance products were sold by unlicensed entities, those entities were part of a group of companies that had a valid licence until February 2020. On

Old Republic's submission, the fact that the travel insurance policies were not being sold by a party that "clearly lacked the credentials to become licensed or had lost a license" ought to be considered a mitigating factor.

52. While it is perhaps fortunate that the travel insurance policies were sold by the entities they were, I do not consider that good fortune to properly constitute a mitigating factor in the assessment of the quantum of the administrative penalty. The fact remains that the policies were sold by entities who were not licensed to sell them.
53. Turning to the remaining factors identified as mitigating, I agree that the fact that Old Republic readily admitted that the unlicensed sale of its insurance products had occurred can appropriately be seen as a mitigating factor in the determination of the appropriate amount of the administrative penalty. I do not consider, however, that this factor is entitled to significant weight, given that the compliance with the investigation, while apparently timely, occurred only after complaints led to the launching of the investigation on the part of BCFSA. The evidence before me does not support a conclusion that Old Republic self-reported the contravention in this case.
54. Similarly, I do not consider the fact that Old Republic terminated its agreement with TM in March 2021 to be a particularly compelling mitigating factor. In my view, Old Republic was aware, or ought to have been aware of the issues with its agreement with TM (that being that TM was permitting the sale of Old Republic insurance products by unlicensed entities), well prior to March 2021. As Old Republic has acknowledged in its submissions, that information was available to it by March 2020. That the agreement was not terminated until a year later does not, in my view, constitute a significant mitigating factor.

Aggravating Factors

55. The Superintendent identified a number of what it considered to be aggravating factors:
 - a. Old Republic became aware of unlicensed sales in March 2020 and failed to take immediate steps to prevent further unlicensed sales, resulting in the sale of an additional 87 policies;
 - b. Old Republic accepted 952 insurance policy applications sold through unlicensed distributors, including Explorica and Worldstrides, over the course of at least a year; and

- c. The FIA breach occurred in the context of weak oversight, monitoring, and control over intermediaries and a consequent failure to follow CCIR Guidelines, which are designed to achieve fair treatment of customers. The dispute between insurer and intermediaries resulted in significant claims processing delays for policyholders, totalling \$917,000.
56. While Old Republic submitted that the number of policies sold should be considered a neutral factor, it provided no argument in support of that position. In my view, the number of policies sold by unlicensed entities, in this case more than 900, indicates that this contravention was not limited to a very few policies affecting only a very small segment of the public, and is appropriately considered as an aggravating factor.
57. I turn to the fact that as of March 9, 2020, Old Republic was in possession of information indicating that unlicensed sales of the travel insurance policies had occurred and were occurring, and failed to take immediate steps to prevent further unlicensed sales, resulting in what the Superintendent concluded was the sale of an additional 87 policies.
58. In its submissions Old Republic disputed the number of policies that were sold subsequent to March 9, 2020, which Old Republic has described as the date upon which it knew that investigation was required into who was selling their insurance products. Old Republic provided internal data which showed that a total of 33 policies¹ were sold after that date through May 5, 2020. Old Republic further submitted that its records indicated that there had been no further policies sold after May 5, 2020.
59. Given the discrepancy, I requested further information from BCFSA regarding how it had reached the figure of 87 policies sold from March 2020 forward.
60. In response to that request BCFSA provided a copy of June 29, 2021 email from Old Republic's Chief Compliance Officer which indicated that Old Republic had sold 102 policies from February 20, 2020 onward, and 850 prior to that date.
61. BCFSA also provided a copy of a May 23, 2021 letter from Worldstrides, which indicated that it had sold 87 policies to B.C. residents since February 20, 2020.

¹ Old Republic submitted that the number of policies sold from March 9 to May 5, 2020 was 32, however, I have reviewed exhibit B of Old Republic's submission and that document identifies 33 policies sold during the time period in question.

62. Old Republic submitted that the information in both the June 29, 2021 email and the May 23, 2021 letter was not inconsistent with its position that 33 policies were sold from March 9, 2020 to May 5, 2020. It reiterated that the Notice of Penalty had wrongly concluded that 87 policies were sold after Old Republic had knowledge of unlicensed sales.
63. I accept that the correct number of policies sold after Old Republic became aware that unlicensed entities were involved in the sales of the travel insurance policies was 33. This is consistent with the documentary evidence provided by Old Republic for the period from March 9, 2020 to May 5, 2020. The figure of 87 policies identified by Worldstrides as having been sold after February 20, 2020 is not inconsistent with that finding. I note that Old Republic's own records indicate that 102 travel insurance policies were sold from February 20, 2020 through May 5, 2020.
64. Old Republic has acknowledged that the information it received as of March 9, 2020 indicating that Explorica had been selling the travel insurance policies was information which would have warranted an investigation, but submitted that in judging the time it took for Old Republic to carry out its investigation, it was relevant to acknowledge that this information was provided to Old Republic at the outset of the COVID-19 pandemic. Old Republic further submitted that it was not unreasonable for Old Republic to assume that very few, if any, travel insurance policies would be sold at that time, which would assist in explaining its failure to investigate and ensure the immediate cessation of further unlicensed sales.
65. While I accept that Old Republic likely was required to reallocate its resources at the beginning of the pandemic, the reality is that Old Republic was, by March 9, 2020, in possession of information which would have clearly indicated, with a minimal amount of investigation, that Old Republic's travel insurance policies were being sold by unlicensed entities. While the number of policies actually sold was less than that identified in the Notice of Penalty, the fact remains that Old Republic was or ought to have been aware of a contravention, and took no steps to ensure that contravention ceased for a period of months. This fact points to the need for specific deterrence and remains, in my view, an aggravating factor.
66. I turn, finally, to the issue of delays for policy holders and what the Superintendent termed as a "consequent failure to follow CCIR Guidelines², specifically, the failure to provide "fair treatment of Customers throughout the life-cycle of the insurance product". The Superintendent further noted that:

² Canadian Counsel of Insurance Regulators' "Conduct of Insurance Business and Fair Treatment of Customers" Guidance.

The CCIR Guidelines state regulator expectations of insurers, including that insurers:

- a. Handle claims, complaints, and disputes in a fair and timely manner;
- b. Service policies appropriately throughout the life cycle of the product;
- c. Manage their relationship with intermediaries to achieve fair treatment outcomes, including that insurers:
 - i. Conduct due diligence in the selection of intermediaries to assess they are authorized and have appropriate governance policies and procedures with respect to fair treatment of customers, and
 - ii. Have contractual arrangements in place that ensure the fair treatment of customers, including ongoing monitoring of compliance with contractual terms;
- d. Ensure outsourced functions to service providers, including the sale of insurance products, do not hinder the quality of services or jeopardize the insurer's ability to achieve fair treatment of customers, including the expectation that insurers:
 - i. Retain full and ultimate responsibility for outsourced functions and monitor them accordingly, and
 - ii. Maintain appropriate controls over outsourced functions;
- e. Examine and settle claims in a manner that is diligent and fair, simple and accessible; and
- f. Examine and resolve complaints and disputes in a manner that is diligent and fair, simple and accessible.

67. Old Republic submitted that its contractual dispute with Explorica would have arisen regardless of Explorica's licensing status. In Old Republic's submission, it quickly took steps to commence legal action against Explorica in order to resolve the contractual dispute, and that it could not determine the amount of appropriate policy payout without obtaining information from Explorica as to what the proper amount owing on the policy was.

68. Old Republic further submitted that it kept its policy holders apprised of the issues it was having with obtaining that required information, and that its conduct was in fact in accordance with the CCIR Guidance. It noted that it settled its claims with Explorica and Worldstrides in order to expedite payment of claims to policyholders,

and that all claims were paid within 10 business days of the settlement. The payouts to eligible policy holders began in July 2021, and totaled \$917,000. Old Republic further submitted that the fact that it exercised its legal rights to be made aware of the appropriate amount of policy payouts from its position as an excess insurer ought not to be seen as a failure to comply with the CCIR guidance.

69. While I accept that the Old Republic was within its rights to determine, through litigation, the appropriate amount of policy payouts, I have difficulty with its submission that it had conducted itself in accordance with the CCIR Guidance throughout the process.
70. In my view, the reality of this case is that Old Republic did not maintain appropriate controls over its outsourced functions, and that this resulted in travel insurance policies being sold to members of the public by unlicensed entities.
71. Further, although it is true that Old Republic was entitled to exercise its legal rights, that does not take away from the fact that Old Republic was unable to manage its relationship with its intermediaries in a way that achieved fair treatment outcomes for its customers, and the fact that it was unable to handle claims in a timely manner as a result. The fact that payout of the travel insurance policies was delayed more than a year, and came only after the filing of a class action against Old Republic and Explorica for the failure to settle the travel insurance policy claims, is, in my view, compelling evidence of this fact.
72. I note in passing, that while it may be true that the dispute between Old Republic and Explorica may have arisen regardless of Explorica's licensing status, it would be speculative to reach a conclusion in that respect.
73. What is known, however, is that Old Republic's failure to maintain appropriate controls and manage its relationship with Explorica did, in fact, arise in the context of a situation in which Old Republic allowed Explorica to sell Old Republic's products when Explorica was not licensed to do so.
74. I find that Old Republic did fail to follow CCIR Guidelines, and did not meet expectations of fair treatment of customers. I agree with the Superintendent's conclusion that this is an aggravating factor. In my view, it is an aggravating factor of significance given the importance of the protection of the public in the regulatory scheme.

Quantum of the Penalty

75. As set out above, the Regulation provides that a maximum penalty for a contravention of section 176 is \$50,000. In assessing an administrative penalty of \$40,000, the Superintendent concluded that:

Due to the number of policies sold through unlicensed agents, the span of time over which the non-compliance took place, failure to follow CCIR Guidelines, and significant delays in the processing of claims that the risk to the public, and in order to achieve specific deterrence to Old Republic and adequate general deterrence to the industry, I find that an appropriate penalty for Old Republic's contraventions of the requirements in the FIA is \$40,000.

76. In my view, there are a significant number of aggravating factors in this case, with those aggravating factors far outweighing the mitigating factors, such that a significant administrative penalty was warranted.

77. Old Republic failed to manage its relationship with its intermediaries in respect of the sale of the travel insurance policies. That failure led, at least in part, to the travel insurance policies being sold by unlicensed entities. Even after Old Republic came into possession of information which would have made the fact of the sales by unlicensed entities clear, it did not take the steps necessary to prevent further sales by unlicensed entities. Finally, Old Republic's inability to manage its relationship with its intermediaries led, again at least in part, to a significant delay in the payout of valid claims under the travel insurance policies.

78. While it is true that Old Republic has a long history of previous compliance with the FIA, the failure to comply with the FIA in this case, the subsequent failure to immediately take the steps necessary to ensure compliance on a going forward basis once that failure was apparent, coupled with the fact that those failures led, at least in part, to significant delays in payouts, in my view, lead to the conclusion that the mitigating value of Old Republic's past history of compliance is minimal.

79. Old Republic was in a position to ensure that this contravention did not occur at first instance, and to address the contravention expeditiously when it became apparent. It did not do either, and in failing to do so, allowed the public to be placed at risk.

80. Having considered all of the information, evidence, and submissions before me, I am of the view that the Superintendent rightly determined that a penalty of significance, at the high end of the scale, was warranted. Such a penalty provides specific deterrence, in that it will impress upon Old Republic the importance of insuring that

its intermediaries are properly managed, as well as the need to take immediate action when it becomes aware of a contravention. A penalty at the high end of the scale will also provide general deterrence, by impressing upon other insurers the importance of taking those steps in order to avoid a penalty of significance. I find that the \$40,000 penalty should be confirmed.

Order

81. Pursuant to section 253.1(8) of the FIA, I find that Old Republic committed a contravention under section 176 of the FIA when it allowed unlicensed third parties to sell its travel insurance policies, and I order that the administrative penalty issued to Old Republic Insurance Company of Canada on February 1, 2022, in the amount of \$40,000, is confirmed.
82. I further order, pursuant to section 253.1(13)(a) of the FIA, that Old Republic must, within 30 days of receiving this decision and order, pay the administrative penalty in the amount of \$40,000.
83. The FIA does provide, at section 253.1(13)(b), that Old Republic may choose, within 30 days of receiving this decision and order, to file a notice of appeal of the order. The filing of an appeal operates as a stay and suspends the order until the disposition of the appeal.

Issued at Kelowna, British Columbia, this 11th day of August, 2022.

“ANDREW PENDRAY”

Andrew Pendray
Chief Hearing Officer