

ALBERTA INSURANCE COUNCIL  
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3  
(the "Act")

And

In the Matter of Leslie McDougall  
(the "Adjuster")

DECISION  
OF  
The Insurance Adjusters' Council  
(the "Council")

This case involved an allegation pursuant to 460(2) of the Act. Specifically, it is alleged that the Adjuster acted as an adjuster during a period of time in which she did not hold a valid and subsisting certificate of authority. As such it is argued that she violated a section of the Act or regulations as contemplated in s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated May 11, 2017 (the "Report"). The Report was forwarded to the Adjuster for her review and to allow the Adjuster to provide the Council with any further evidence or submissions by way of Addendum. The Adjuster signed the Report on May 31, 2017, thereby indicating that the contents of the Report were true and complete in regard to the matters in issue. Given this, there is very little that is factually in dispute.

The Adjuster is currently the holder of an insurance adjuster certificate of authority and has been so licensed since January 10, 2008. On or about October 7, 2016, the Adjuster submitted a Form 3 Application for an Adjusters Certificate of Authority ("Form 3") to the AIC. Prior to this, the Adjuster held a certificate of authority and it expired on June 30, 2016 because it was not renewed. Because the Adjuster had not renewed her certificate of authority, the AIC asked her to confirm whether she had acted in the capacity of an adjuster since her certificate expired. In response, the Adjuster acknowledged that she did act as an adjuster after her certificate expired and explained that her failure to renew her

certificate of authority was an oversight. In support of this position, the Adjuster stated that she had accumulated the requisite continuing education credits as of June 30, 2016. Given this, she said that there would have been nothing to prevent the issuance of a new certificate had she processed her renewal.

The Report proved that the Adjuster continued to act as an adjuster between July 1, 2016 and October 7, 2016. During this period, she was compensated for acting in this capacity by a number of insurance companies. In all, she acted as an adjuster on a total of 122 claims and was compensated in the amount of \$28,634.59. To the Adjuster's credit, she took immediate steps to apply for a new certificate upon realizing her error in not renewing her certificate of authority.

### **Discussion**

As noted in the Report, the Act requires that individuals adjusting losses under Alberta contracts of insurance hold certificates of authority issued by the AIC. These Certificates of Authority are issued on one date and have an explicit expiry date on them. This expiry date is prescribed by the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Once this date passes, the Certificate of Authority expires and the individual cannot act in the capacity of an adjuster until such time as another certificate of authority is in place.

While we are cognizant of the fact that some adjusting firms attend to the renewal of their adjusters' certificates of authority, these certificates are issued to the individual. As such, it is ultimately the individual's responsibility to ensure that they hold valid certificates of authority if they wish to act in the capacity of an adjuster.

In our view, the evidence in the Report clearly proves that the Adjuster acted in the capacity of an adjuster after the date upon which her Certificate of Authority expired. Given this, it is our conclusion that the Adjuster contravened a section of the Act as contemplated by s. 480(1)(b) of the Act.

As to the applicable sanction, we can levy civil penalties of \$1,000.00 per offence. This could potentially equate to one offence on each of the files on which the Adjuster performed activities

requiring a licence (in this case 122 files). However, we note that this is the Adjuster's first infraction. Additionally, when the Adjuster discovered that her certificate of authority had lapsed, she took steps to apply for a new certificate of authority and this brought the matter to the AIC's attention. Finally, we note that she had earned all the required continuing education credits to have her certificate of authority issued timely. Therefore, we are of the view that one civil penalty of \$300.00 would be most appropriate in the circumstances and we order that this be levied. The civil penalty must be paid within thirty (30) days of receiving this notice. If the civil penalty is not paid within thirty (30) days, the Adjuster's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Adjuster has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Insurance Adjusters' Council. The motion was duly recorded in the minutes of that meeting.

Dated: August 31, 2017

Bob Pearson  
Bob Pearson, Member  
Insurance Adjusters' Council

**Extract from, Alberta Insurance Act, Chapter I-5****Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

**Extract of Insurance Councils Regulation, Alberta Regulation 126/2001****Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- (a) a copy of the written notice of the decision being appealed;
- (b) a description of the relief requested by the appellant;
- (c) the signature of the appellant or the appellant's lawyer;
- (d) an address for service in Alberta for the appellant;
- (e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

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Alberta Finance  
402 Terrace Building  
9515-107 Street  
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