

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

In the Matter of the *Insurance Act*, R.S.A 2000, c. 1-3, as amended ("*Insurance Act*")

And in the Matter of the *Insurance Agents and Adjusters Regulation*, Alta. Reg. 122/2001, as amended ("*Insurance Agents and Adjusters Regulation*") and the *Certificate Expiry, Penalties and Fees Regulation*, Alta. Reg. 125/2001, as amended ("*Fees Regulation*")

BETWEEN:

JANET HINK

Appellant

- and -

INSURANCE ADJUSTERS' COUNCIL

Respondent

Heard in Calgary, Alberta on September 11, 2018

Before:

GWEN HARRIS
LUCILLE JAKUBOWSKI
NANCY TOSO

Appeal Panel Chair
Appeal Panel Member
Appeal Panel Member

DECISION AND ORDER

1. This is an appeal by Janet Hink ("the Appellant") from the June 5, 2018 decision of the Insurance Adjusters' Council. The Insurance Adjusters' Council held that the Appellant failed to respond to a demand for information pursuant to section 481 of the *Insurance Act*. In respect of that failure the Insurance Adjusters' Council imposed a penalty of \$750 pursuant to section 13(1) of the *Fees Regulation*.

Procedural History

2. By letter dated June 13, 2018 to the Superintendent of Insurance, the Appellant commenced the appeal of the June 5, 2018 decision. On July 18, 2018, the Superintendent of Insurance granted the Chair's request for an extension of the statutory time limit for hearing the appeal. On August 13, 2018, the Panel issued notice to the parties confirming the date, time and location of the hearing.

Preliminary Matters

3. The Appellant participated in the September 11, 2018 hearing via telephone. Mr. Martz appeared as counsel on behalf of the Insurance Adjusters' Council.
4. The parties confirmed they had no objection to the constitution of the Panel and raised no objection to the Panel's jurisdiction to hear and decide the appeal.
5. The Insurance Adjusters' Council conducted its review of this matter on a documentary basis. At the outset of the appeal hearing, the Panel admitted the Record provided by the Insurance Adjusters' Council which included the materials before the Insurance Adjusters' Council, the June 5, 2018 decision of the Insurance Adjusters' Council and the June 5, 2018 letter from the Alberta Insurance Council to the Appellant transmitting the decision of the Insurance Adjusters' Council. In addition, the Panel admitted documents made available subsequent to the decision of the Insurance Adjusters' Council and the written submissions of the parties received prior to the hearing. The complete listing of documents before the panel is set out Appendix A.
6. Counsel for the Insurance Adjusters' Council indicated he would call evidence through the investigator, Mr. Dias. The Appellant indicated she would speak on her own behalf.

Issues to be Determined

7. **Did the Appellant comply with the Alberta Insurance Council direction to provide the continuing education certificates for courses taken within the deadline specified?**
8. **If not, is the penalty of \$750 imposed by the Insurance Adjusters' Council appropriate?**

Relevant Legislation

9. Section 481 of the *Insurance Act* provides authority for the Minister to direct an insurance adjuster to provide certain information. The provisions that are the focus of this appeal, sub-sections 481(1) and (2) provide:

481(1) The Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in section 480(1).

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

10. Section 480 of the *Insurance Act* as referenced in section 481(1) allows, in part:

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority

(b) has contravened any provision of this Act or the regulations ...

the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

(2) The amount of a penalty imposed under subsection (1) is governed by the regulations.

11. The Minister's powers, duties and functions set out in the sections quoted above were delegated to the Insurance Adjusters' Council by the Minister of Finance in a 2001 directive.

12. The requirements for the completion of continuing education and the maintenance and submission of records of courses completed are addressed in the *Insurance Agents and Adjusters Regulation* as follows:

30(1) An individual or a sole proprietor who holds

...

(d) an adjuster's certificate of authority

must complete in each certificate term at least 15 hours of the continuing education courses approved under section 29 with respect to the certificate of authority.

31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.

(2) The records must be kept for a period of 3 years following the expiry of the certificate term and must be provided to the Minister upon request.

(3) If the individual does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.

13. Section 13 of the *Fees Regulation* authorizes the imposition of the financial penalty that is the subject of this appeal as follows:

13(1) For the purposes of section 480(2) of the Act, the amount of the penalty that may be imposed may not exceed the following:

...

(b) \$1000 for a matter referred to in section 480(1)(b), (c), (d) or (e) of the Act.

Submissions

14. Counsel for the Insurance Adjusters' Council adduced the following information through AIC investigator Mr. Dias:

- a. The document entitled Certification and Licensing is from the Alberta Insurance Council website. The document provides information on the Canadian Insurance Participant Registry (CIPR) and requirements for maintaining contact information on the registry. The document indicates that agents, brokers and adjusters must record all residence address changes, including email address and changes to personal profile information on the CIPR website.
- b. The Alberta Insurance Council relies on the information on the CIPR to communicate with agents and adjusters.
- c. The document entitled Event shows the demand for information was sent on November 14, 2017 to the email address provided by the Appellant on the CIPR.
- d. The chart presented to the panel shows the Appellant reported her change of occupation to the Alberta Insurance Council on June 30, 2017. Mr. Dias submitted the Appellant could have updated her contact information when she reported that change of occupation.

15. Counsel for the Insurance Adjusters' Council outlined the position of the Council:

- a. Adjusters are obligated to fulfill continuing education requirements and to respond to a demand from the Alberta Insurance Council to confirm completion of those requirements.
- b. It is undisputed that the Alberta Insurance Council sent the demand for the information on November 14, 2017 to the email address provided by the Appellant and followed up with a telephone call on November 28, 2017 to the telephone number also provided by the Appellant.
- c. The Alberta Insurance Council did not receive a response from the Appellant within the 30-day time limit.

- d. The failure to provide the information demanded constitutes a strict liability offence such as is characterized in *R. v Sault Ste. Marie*, [1978] 2 S.C.R. 1299 as a public welfare offence that involves the protection of public and social interests. Section 480(1)(b) prohibits adjuster conduct that is against the public interest.
- e. Proof of intention is not required in a strict liability offence.
- f. Adjusters have a positive obligation to provide accurate contact information to the Alberta Insurance Council. The contact information provided by the adjuster is the information the Alberta Insurance Council uses to communicate with individual adjusters
- g. There is no evidence that the Appellant took steps to update the contact information available to the Alberta Insurance Council.
- h. There is no requirement that the demand for information be served by registered mail and in any case the mailing address the Appellant provided to the Alberta Insurance Council was incorrect.
- i. The adjuster has an obligation independent of the employer to respond to a demand for information.
- j. It is the practice of the Insurance Adjusters' Council to reduce the penalty for failure to respond to the demand within the time limit to \$750 in cases where the requested information is provided after the decision is issued.

16. The Appellant argued that not complying with the Alberta Insurance Council's demand was reasonable in her situation. Further, she claimed improper service of the demand for records and lack of due diligence on the part of her employer and the Alberta Insurance Council. In support of her position, she submitted the following:

- a. From July 2017 she was no longer working in the Claims Pro branch office.
- b. Her May 31, 2017 log onto the registry shows she had not been active in the insurance industry for a year.
- c. She did not receive the demand for information sent by the Alberta Insurance Council by email or the follow up phone call.
- d. She started a new job on June 1, 2017 and once she updated her new job information to the registry she stopped checking the system.
- e. At the end of June 2017 she was no longer accessing her email account at the Claims Pro office.
- f. Once she received the registered letter notifying her of the Insurance Adjusters' Council decision she promptly provided the requested information.
- g. The failure to comply was not a lack of care or due diligence on her part. Had she known of the demand for information she would have complied with the demand.

- h. She is not resident in Alberta and her work in Alberta was limited to the floods in southern Alberta and the Fort McMurray fire.
- i. Because her licensing for the natural disaster work was expedited, she was not familiar with Alberta reporting requirements.
- j. As the new job she began in June 2017 was very busy involving 14-hour days through November and December 2017, it is reasonable that she did not continue to be connected to her insurance business.
- k. Her employer had a responsibility under section 473(1) of the *Insurance Act* for advising the Alberta Insurance Council of her change of employment.
- l. The Alberta Insurance Council was not duly diligent in its attempts to contact her and could have done more to make her aware of the demand including sending the demand by registered mail.
- m. The financial penalty is severe and unnecessary given her circumstances.

17. In response to questions, the Appellant confirmed:

- a. She held Level 1 Licensing and had the same obligations as an adjuster resident in Alberta.
- b. She had access to the CIPR and could have updated her contact information.
- c. She logged onto the registry in June 2017 to update her employment information.
- d. The email address and telephone number available to the Alberta Insurance Council were provided by her and were her correct contact numbers at the Claims Pro office.
- e. She did not update her contact information.
- f. She had moved from the address to which the Alberta Insurance Council sent the June 5, 2018 registered letter.
- g. The neighbour residing at the Appellant's former address delivered the June 5, 2018 registered letter to her at her current address on June 12, 2018.

Discussion

Compliance with Alberta Insurance Council Demand

18. The *Insurance Act* stipulates that in order to act as an insurance adjuster in Alberta an individual must hold a valid insurance adjuster's certificate of authority. The *Insurance Agents and Adjusters Regulation* details the personal attributes and limitations, educational qualifications and reporting requirements the holder of a certificate of authority must meet in order to maintain the certificate.

19. It is clear in the legislation that participating in continuing education is an important aspect of having the certificate of authority. The *Insurance Agents and Adjusters Regulation* provides for the approval of courses and course providers to qualify for continuing education credit, sets minimum requirements for participating in continuing education courses and requires each holder of a certificate of authority to maintain a record of the courses completed and provide a record of the courses when requested.
20. The record shows that the Appellant held an adjuster's certificate of authority in Alberta commencing May 13, 2016. It is undisputed that at the time of the demand for proof of continuing education credits, the Appellant was a 'former holder of a certificate of authority' for purposes of section 480 and 481 of the *Insurance Act* and is thus captured by the legislated requirement to submit the required documentation.
21. In this case, the record shows that the Alberta Insurance Council directed the Appellant to provide proof of the continuing education courses she had declared for the period of her certificate of authority. The Demand for Continuing Education Certificates/Records, which included notice of the 30-day time limit for submission and the consequences of a failure to respond, was sent on November 14, 2017 to the email address provided to the Alberta Insurance Council by the Appellant.
22. The Panel acknowledges the Appellant's claim that she was not properly served with the demand from the Alberta Insurance Council because she was no longer accessing the email account after the end of June 2017 and did not have access to telephone messages left at the Claims Pro office.
23. The evidence as to proper notice is as follows:
 - a. The Appellant did not dispute the accuracy of the email address to which the Alberta Insurance Council sent the demand for records of continuing education courses or the accuracy of the telephone number she had provided.
 - b. The evidence before the Panel does not indicate the Alberta Insurance Council demand was not delivered to the email account provided by the Appellant. Neither does the evidence show that the follow up courtesy telephone call was not received at the telephone number provided by the Appellant.
 - c. In respect of the Appellant's assertion that the Alberta Insurance Council was not diligent in ensuring she was served with the demand in that it could have sent the demand by registered mail, the *Insurance Agents and Adjusters Regulation* does not require service by registered mail. Further and in any case, the mailing address

provided by the Appellant as the address the Alberta Insurance Council could use to communicate with her was inaccurate.

- d. The Appellant cited the requirement for an employer to notify the Alberta Insurance Council of an adjuster ceasing to be an employee pursuant to section 473 of the *Insurance Act*. The obligation of the employer to provide such notice does not negate the positive obligation of the individual to provide accurate contact information. Section 473 does not delegate to the employer the individual adjuster's obligation to provide accurate contact information.

24. In light of this uncontroverted evidence, the Panel is satisfied that the Alberta Insurance Council provided notice to the Appellant of the requirement to submit documentation within 30 days. The Appellant's failure to review the demand notice was due to her failure to provide accurate contact information to the Alberta Insurance Council.
25. As it is undisputed that the Appellant did not submit the requested documentation prior to the deadline, the panel finds that the Appellant failed to comply with the Insurance Council's Demand for Continuing Education Certificates/Records.
26. The failure to comply with the demand as authorized in section 481 of the *Insurance Act* and section 31(2) of the *Insurance Agents and Adjusters Regulation* is categorized as a regulatory or public welfare offence that attracts strict liability. In the present case, this means that once the failure to comply with the demand for records is established, liability can be avoided only if the Appellant can establish on a balance of probabilities that she was diligent in taking all reasonable steps to prevent the failure to comply with the demand.
27. We acknowledge the Appellant's submissions that she would have complied with the demand had she been aware of it, that she believed in high standards for the industry and conducted her practice with integrity and that given the change of employment and the demands of her new job it was reasonable in the circumstances that she did not provide the information within the deadline. However, neither intention nor preoccupation with other matters is a defense to a strict liability offence. The offence is limited to the Appellant's failure to provide the information demanded within the specified time as authorized by Regulation. It does not call into question the Appellant's integrity in the conduct of her practice.
28. At the time the demand was issued, the Appellant was the former holder of a Level 1 certificate of authority that had allowed her to act as an insurance adjuster in Alberta. As a requirement of and included in the authority to work in the insurance business as an adjuster are obligations to enroll in and

take at least 15 hours of approved continuing education courses, to maintain records of the completed continuing education courses and to submit those records when requested. The reference in the *Insurance Agents and Adjusters Regulation* to former holder and to keeping up to 3 years of records clearly signals that the obligation to respond and report persists beyond concluding industry licensing.

29. The evidence before the Panel does not show the Appellant took any steps to comply with the demand to submit the proof of continuing education courses following the November 14, 2017 delivery of the Alberta Insurance Council notice to the email address that she had provided to the Council as her proper contact address. We acknowledge the Appellant's submission that beyond the end of June 2017 she was not accessing the email account to which the demand was sent. However, the Appellant had an obligation to update the contact information and although the Appellant had accessed the registry to update her employment information in June 2017, she did not update any of her contact information.
30. Thus, the Panel finds on the evidence that the Appellant did not exercise the diligence necessary to excuse her failure to comply with the demand to submit the required documentation prior to the deadline.
31. On the first issue, the panel finds that the Appellant did not comply with the Alberta Insurance Council demand to provide the continuing education certificates for courses taken during her previous licensing period within the specified deadline.

Penalty

32. The *Fees Regulation* allows for a penalty of no more than \$1000 for a breach of the provision that is the subject of this appeal. The Insurance Adjusters' Council reduced the penalty imposed on the Appellant to \$750 on the basis that she submitted the records demanded after receiving the Council decision in June 2018.
33. The Panel accepts the reasoning of the Insurance Adjusters' Council and its practice as to the reduction in the amount of the penalty and finds the amount to be appropriate.

Conclusion

34. In the final result the Panel concludes the Appellant failed to comply with the Alberta Insurance Council demand to submit continuing education records within the 30-day time limit and that the penalty of \$750 imposed by the Insurance Adjusters' Council is appropriate in the circumstances.

Appeal Fee

35. Section 24 of the *Insurance Councils Regulation* provides that, in determining an appeal, a panel shall also determine the disposal of the appeal fee paid by the Appellant to commence the appeal to one or both of the parties taking into consideration both the results of the appeal and the conduct of the parties. Given the result of the appeal, the Panel is of the view that the appeal fee paid by the Appellant should be awarded to the Life Insurance Council. The conduct of the parties provides no reason to do otherwise.

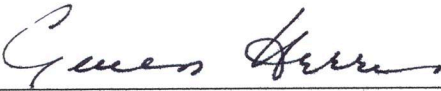
Order

36. For the reasons set out above, it is ordered that:

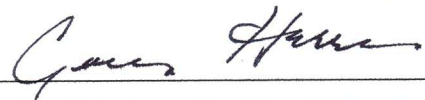
- a. The June 5, 2018 Decision of the Insurance Adjusters' Council is confirmed.
- b. The appeal fee is awarded to the Life Insurance Council.

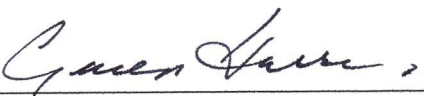
DATED at Edmonton, Alberta this 2nd day of October 2018.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: 
Gwen Harris – Panel Chair

Authorized to sign for:

Per: 
Lucille Jakubowski – Panel Member

Per: 
Nancy Toso – Panel Member

APPENDIX A

- A. Insurance Adjusters Council Submission to the Appeal Panel
 - 1) Investigation Report
 - 2) Alberta Insurance Council License History
 - 3) Janet Hink CIPR Profile November 1, 2017–November 30, 2017
 - 4) November 14, 2017 Demand for Continuing Education
 - 5) Janet Hink CIPR Profile July 1, 2017- June 30, 2018
 - 6) Janet Hink CIPR Profile – Reported Continuing Education Courses
 - 7) Alberta Insurance Council Registered letter to Janet Hink dated June 5, 2018
 - 8) Insurance Adjusters' Council decision June 5, 2018
 - 9) Deputy Superintendent of Insurance Regulation and Market Conduct letter to Alberta Insurance Council dated June 27, 2018
 - 10) Janet Hink letter to Superintendent of Insurance dated June 13, 2018 with attachments
 - 11) Deputy Superintendent of Insurance Regulation and Market Conduct letter to Alberta Insurance Council dated June 28, 2018
- B. Written Submissions of the Alberta Insurance Council with attachments
 - 1) Printout from Alberta Insurance Council website entitled Certification and Licensing
 - 2) Document entitled Event – November 14, 2017
 - 3) Chart showing questions to be answered on license renewal
- C. Written Submission of the Appellant, Janet Hink - attachments
 - 1) Chart showing continuing education courses completed between March 10, 2017 and June 30, 2017
 - 2) Copies of continuing education certificates for the nine courses identified in the chart submitted