INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

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

And In the Matter of the *Insurance Councils Regulation*, Alta. Reg. 126/2001, as amended ("*Insurance Councils Regulation*")

BETWEEN:

ROBERT ARNOLD

Appellant

- and -

GENERAL INSURANCE COUNCIL

Respondent

Heard in Calgary, Alberta on June 21 and 22, 2016
Written Argument received August 5, September 9 and September 16, 2016

Before:

JULIE G. HOPKINS	-	**Appeal Panel Chair**
KENNETH NICHOLAS	-	**Appeal Panel Member**
KELLY ANN PARROTT	-	**Appeal Panel Member**

REASONS FOR DECISION AND ORDER

1. This is an appeal by Mr. Robert Arnold of a decision of the General Insurance Council dated May 16, 2013 (the "Decision") where Mr. Arnold was found to have contravened:

(a) Section 480(1)(a) of the *Insurance Act* three times as he was guilty of misrepresentation, untrustworthiness and dishonesty in that he billed and collected from three clients amounts in excess of the stated insurance policy premium without their knowledge or consent;

(b) Section 500 of the *Insurance Act* three times in that he indicated that the premium to be paid for a policy to the same three clients was an amount greater than the amount of the premium set out in the policy; and

(c) Section 505(2) of the *Insurance Act* three times in that he charged and collected fees from the same three clients without the client's prior written consent.

2. In relation to each contravention of Section 480(1)(a) of the *Insurance Act*, the General Insurance Council imposed a civil penalty of $5,000.00 against Mr. Arnold for a total of $15,000.00 in penalties and revoked Mr. Arnold's certificate of authority allowing him to act as an agent for general insurance in the Province of Alberta. In relation to each contravention of Section 500 of the *Insurance Act*, the General Insurance Council imposed a civil penalty of $1,000.00 against Mr. Arnold for a total of $3,000.00 in penalties and suspended Mr. Arnold's certificate of authority for a six month period. In relation to each contravention of Section 505(2) of the *Insurance Act,* the General Insurance Council imposed a civil penalty of $1,000.00 against Mr. Arnold for a total of $3,000.00 in penalties and suspended Mr. Arnold's certificate of authority for a six month period. All of the suspensions were ordered to run concurrently.[1]

Procedural History

3. Mr. Arnold commenced this appeal with a Notice of Appeal addressed to the Superintendent of Insurance dated June 10, 2013.

4. On June 19, 2013, a panel of the Insurance Councils Appeal Board was selected by the Superintendent of Insurance to hear the appeal (the "Panel").

5. On July 5, 2013, at the request of the General Insurance Council, the hearing of the appeal was adjourned to a date to be determined.

6. On July 16, 2013, the Panel issued a Notice of Hearing scheduling the appeal hearing for October 28 and 29, 2013.

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[1] Pursuant to section 16(4) of the *Insurance Councils Regulation* the payment of penalties and the suspensions/revocation of the certificate of authority ordered in the Decision were suspended until the disposition of this appeal.

7. Mr. Arnold applied to the Panel for an adjournment of the appeal hearing pending the outcome of an Originating Application he filed in the Court of Queen's Bench of Alberta (Action No. 1301-11710) (the "Application") in which he sought to, among other things, have certain evidence excluded from the appeal hearing pursuant to Sections 8 and 24 of the *Canadian Charter of Rights and Freedoms*. On October 15, 2013, the Panel ordered that the appeal hearing was adjourned to a date to be determined pending the outcome of the Application.

8. On April 27, 2015, Amanda Friess was appointed to replace Lisa Young as a member of the Panel.

9. On July 15, 2015, Madam Justice Dario of the Court of Queen's Bench issued Reasons for Judgment dismissing the Application.

10. On February 28, 2016, the Alberta Court of Appeal issued a Memorandum of Judgment, reported at 2015 ABCA 55, upholding the dismissal of the Application.

11. On April 26, 2016, Kelly Ann Parrott was appointed to replace Amanda Friess as a member of the Panel.

12. On May 20, 2015, the Panel issued a Notice of Hearing setting the hearing of the appeal for June 21 and 22, 2016.

13. Both parties were present and represented by counsel at the appeal hearing. Mr. Martinson appeared on behalf of the General Insurance Council. Mr. Wong appeared on behalf of Mr. Arnold. The parties confirmed they had no objection to the constitution of the Panel or its jurisdiction to hear the appeal.

14. At the hearing, the General Insurance Council called three witnesses: Janice Dowhaniuk, who was the Director of Compliance for the AIC; * X a broker and former employee of Mr. Arnold's agency; and * Y the principal of a former client of Mr. Arnold. Mr. Arnold testified on his own behalf.

15. The record before the General Insurance Council was received in evidence by the Panel without objection. The matter had proceeded before the General Insurance Council by way of an Investigation Report dated December 7, 2012 by Alberta Insurance Council ("AIC")

investigator, Carrie Graham ("Investigation Report"). Mr. Arnold also submitted additional documentary material to the General Insurance Council.

16. Subsequently, Mr. Wong objected to the admissibility of the Investigation Report if Ms. Graham was not called as a witness to speak to it. The Panel ruled the report was admissible in evidence as part of the record before the General Insurance Council but that the opinions and recommendations of Ms. Graham contained in the Investigation Report would be given little weight if Ms. Graham was not called to speak to them.

17. At the close of the hearing, the parties agreed to provide the Panel with full written argument.

Relevant Legislation

18. The relevant Sections of the *Insurance Act* state:

> **Part 3**
>
> **Insurance Agents and Adjusters**
>
> **Certificates of Authority**
>
> **Sanctions affecting certificates**
>
> 480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority
>
> > (a) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty,
> >
> > ...
>
> 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]

[2] The General Insurance Council has been delegated the powers, duties and functions of the Minister exercised under section 480(1) of the *Insurance Act*: See Section 791 *Insurance Act* and Minister of Finance Directive No. 02/01.

Part 4

Market Conduct

Amount of premium

500 No insurer, no officer, employee or agent of an insurer and no insurance agent may indicate that the premium to be paid for a policy is an amount that is different than the amount of the premium set out in the policy.

Additional fees

505(2) No insurance agent may charge or collect a fee for providing a service to a person who is or is in the process of acquiring insurance through the agent unless the person has agreed in writing before the service is provided to pay the fee.

Issues to be Decided

19. The Panel must decide:

(a) The appropriate standard of review;

(b) If this matter should be stayed because of an alleged breach of the duty of full disclosure and the failure of the AIC Investigator to testify;

(c) Whether a breach has been proven of Section 500 of the *Insurance Act* in relation to* Y's business* Z or *W's business;

(d) Whether a breach has been proven of Section 505(2) of the *Insurance Act* in relation to* Y's business,* Z or *W's business;

(e) Whether a breach has been proven of Section 480(1)(a) of the *Insurance Act* in relation to* Y's business,* Z or *W's business;

(f) If the principle in *R. v Kienapple* applies;

(g) If Mr. Arnold has breached a section of the *Insurance Act*, the appropriate sanction; and

(h) The disposition of the appeal fee.

Facts

20. Mr. Arnold held a certificate of authority to act as a general insurance agent in Alberta from at least when the AIC first started to keep electronic licensing records in 1996. The certificate of authority allowed him to transact business as the Designated Representative of Mitchell Insurance Brokers (the "Agency") and so he was responsible for the supervision of the Agency. Mr. Arnold no longer holds a certificate of authority to act as a general insurance agent, although he did at the time he was sanctioned by the General Insurance Council in this matter.

21. On October 17, 2011, the AIC received a complaint from a former employee of the Agency. Among other things, the complaint alleged that Mr. Arnold overbilled clients by charging them a greater premium amount than the premium charged by the insurance company for a policy. The complaint specifically identified billing issues with two clients: * Z and a restaurant and bar owned by * Y It also identified billing issues generally in relation to clients with outfitting businesses. Documents related to the alleged overbilling were attached to the complaint. They had apparently been taken from the Agency's trash.

22. After making various inquiries, on March 28, 2012, Janice Dowhaniuk, the Director of Compliance for the AIC, and Carrie Graham, an AIC investigator, attended at the Agency. They attended at a time they believed Mr. Arnold would be out of the office. They did so because, based on Mr. Arnold's previous dealings with the AIC, they anticipated Mr. Arnold would be uncooperative with their investigation.

23. Both Ms. Dowhaniuk and Ms. Graham had been appointed as examiners under Section 793 of the *Insurance Act*. Those appointments provided them with certain powers for the purpose, among others, of determining compliance with the *Insurance Act* and its regulations (Section 755). Those powers included the power to demand information (Section 758) and the power to enter premises that they had reasonable grounds to believe may contain records, documents or property of a person regulated under the *Insurance Act* (Section 759).

24. When Ms. Dowhaniuk and Ms. Graham attended at the Agency, as they anticipated, Mr. Arnold was absent. They presented * X a broker and an employee of the Agency at the time, with their appointments as examiners. * X provided them with three files and a printout of computerized accounting records. One of the files related to the restaurant and bar owned by

another related to the client Z who insured, with Mr. Arnold's assistance, various pieces of artwork; and the third file provided related to the client W who obtained insurance through Mr. Arnold for his outfitting business.

25. There was some dispute between the parties at the hearing as to whether one of the three files and the accounting records provided to Ms. Dowhaniuk and Ms. Graham were volunteered by X as opposed to demanded by the AIC and whether there had been appropriate disclosure by the AIC related to this issue. This issue is discussed further below.

26. A receipt was provided by Ms. Dowhaniuk and Ms. Graham to X for the documents taken. Copies were made and the originals were returned to the Agency by courier on April 4, 2012.

27. When Mr. Arnold learned of the attendance by the AIC and the seizure of documents from the Agency in his absence he was very upset. During the proceedings, Mr. Wong, Mr. Arnold's counsel, described Mr. Arnold as a "hothead" and "someone who does not think before he writes". Certainly, his written communications with the AIC, following the seizure of the documents, were often belligerent. Further, he made complaints against Ms. Dowhaniuk and Ms. Graham related to the seizure to the Calgary Police Service, the Superintendent of Insurance, the Solicitor General and Minister of Public Security, the Premier of Alberta, and the Alberta Information and Privacy Commissioner. Mr. Arnold also reported Ms. Dowhaniuk, a non-practicing lawyer, to the Law Society of Alberta. Nothing appears to have come from any of these complaints. In any event, although the complaints were the subject of evidence at the hearing, the Panel views them and their outcome as irrelevant to the consideration of whether Mr. Arnold's dealings with his clients were in violation of the *Insurance Act*.

28. Mr. Arnold's dealings with the three clients whose files were seized by the AIC are the subject matter of this appeal.

29. Mr. Arnold testified that those three clients' arrangements differed from 90 to 95 percent of his other business. The vast majority of his business was placed with three main insurers. He had agreements with those insurers for "extended commissions" based on profitability. This contrasted with the accounts for Y business Z or W s business which provided reduced

commissions to Mr. Arnold and, in the latter two cases, the insurance was placed through a managing general agent that charged fees to Mr. Arnold.

Restaurant and Bar

30. Mr. Arnold testified that the insurance policy he placed for Y, restaurant and bar was a "sub-brokered policy". He stated that he explained to Y when he first began working with him that there was a reduced commission to the broker on this type of policy and because of that Mr. Arnold would be charging him additional fees. The fees would be set to bring "my commission up to the same level or the same conditions as the insuring agreements that I have with my contract companies".

31. Mr. Arnold also testified that Y knew that fees would be charged "based on the amount of work we had to put in from the previous year." Mr. Arnold described generally how those fees were set:

> Everything was factored in prior to. Every year -- there was no rhyme or reason. I just basically took my fees and figured out, you know, how much effort went into last year over and above my commission, and how much time I had to spend on the file. And that's how I -- basically, there was no rhyme or reason how I came up with a calculated number. I just based it -- tried to work it back and find out how much work over and above a normal broker's job would be, and that's how I worked out the excess amount.

32. Mr. Arnold testified that it was his practice to obtain written consent from his clients to charge them extra fees when he started working for them. However, he was unable to produce any written consents signed by Y or any of his other clients, including Z or W. He speculated that the consents could have been destroyed during periodic purging of files or as a result of a fire that occurred at his offices that destroyed a number of files.

33. However, Mr. Arnold's evidence that he obtained prior written consent from his clients to charge fees was contradicted by his own correspondence to the AIC dated April 10, 2012 where he stated in a memo:

> …I…have been charging a fee for services for many years when we are working with a reduced commission on a sub-brokered account. We advise the insured on his new business, renewals or invoices that a fee has been added. ..Is the signed

> check not evidence that the insured has accepted the terms and conditions of our invoice including the consulting fee or set up fee…
>
> Our firm is buying their policies from a "wholesaler" and have added the consulting fee or set up fee to the wholesaled price. From my understanding this is common practice in our industry. If this is not the case we will discontinue this practice.
>
> We have not asked for a signed consent form for this fee. It they pay the amount we have charged this is acceptance to (sic) the fee. Correct? We have always made the insured aware that a fee has been included.
>
> The insured is always supplied with a copy of there [sic] policies and we have never been questioned on this point before nor have we been questioned to date. [Emphasis added]

34. On cross-examination, Mr. Arnold stated that this passage was meant to be in reference to fees charged by wholesalers that were passed on by Mr. Arnold to the client and not his own fees. There is no support for that interpretation on the face of the document.

35. It was only later in the investigation that Mr. Arnold stated to the AIC for the first time that he did in fact obtain signed consent forms from his clients to charge fees. Mr. Arnold provided a sample of the type of agreement concerning fees he says he would have had clients sign. He drafted the sample for the purpose of this appeal. The sample stated in part:

> Our quote is subject to a policy fee as our Insurance Provider (Premier) is at a reduced commission a/o they are charging our firm a fee which is included your [sic] invoice.
>
> Please confirm acceptance of this fee prior to our firm implementing coverages on your behalf. Your signature may be required.
>
> On renewals our fee with [sic] be documented in our renewal letter to you with a copy of the policy.

36. * Y testified he never signed a written consent to be charged fees. Further, *X testified that she had never seen a document where a client consented in writing to being charged fees during her time working with Mr. Arnold and she had access to all the files. The Panel finds that no such written consent was obtained by Mr. Arnold from* Y.

37. In any event, a written consent in the form Mr. Arnold provided at the hearing is so unclear as to be meaningless. It makes no reference to fees being charged for additional work

required to service the client the previous year. It makes no reference to the actual amount of any fee or how it is to be calculated or what it is for. The subject of the consent appears to slide from fees charged by the "Insurance Provider" to fees charged by the Agency.

38. In relation to the placement of insurance for the restaurant and bar, although there was some evidence that Mr. Arnold had dealings with * Ys' ; accountant, * Y considered himself the main contact as he signed all the cheques and he ultimately controlled everything to do with the business. * Y had no knowledge as to how insurances agents were compensated. He stated he was unaware that Mr. Arnold was charging him additional fees.

39. Mr. Arnold testified that he was charging the fees in the case of * Ys' ; restaurant and bar for additional work he performed on the account, such as dealing with health authorities or with claims issued against the business. He said that * Ys' restaurant and bar was a high maintenance client and he "was probably putting two or three hours a week in just generally facilitating their insurance needs." This contrasts with * Y's evidence. He estimated that Mr. Arnold spent 30 minutes a year working on his file. He was unaware of any work or services that Mr. Arnold said he provided other than that Mr. Arnold referred him to a law firm in the case of the claims.

40. * Y testified the only time Mr. Arnold spoke to him about charging fees was after the AIC seized the files from the Agency in 2012. The Panel accepts that * Y was never originally informed that he would be charged fees or if he was it was not in a clear and forthright way but rather in a way that was consistent with how fess were disclosed to * Y with Renewal Invoices which evidence is summarized below.

41. * X testified that Mr. Arnold instructed the wording of the Renewal Invoices and set the amounts to be included.

42. A Renewal Invoice relating to coverage for * Ys' restaurant and bar from the Agency dated September 14, 2009 stated "[l]ast year's annual premium was $27,000.00 and this year's premium has come in at $23,000.00 including consultation fee." The actual premium for the policy for the 2009/2010 year, as shown on the policy, was $18,250.00 not $23,000.00 as stated on the Renewal Invoice. The difference appears to be the "consultation fee". Further, contrary to the Renewal Invoice, the premium for the policy for the "last" or previous year (2008/ 2009) was, as stated on the policy itself, $22,750.00 not $27,000.00. The difference between the two

amounts again appears to be the "consultation fee" from the previous year. However the $27,000.00 amount is described on the Renewal Invoice only as premium and not as premium and consultation fee. The Renewal Notice notes "Over the last two years, this is a **savings** of over **$9,000.00**" [emphasis in original].

43. * Y testified that he had no idea when he reviewed the Renewal Invoice how much of the $23,000.00 premium amount stated on the Renewal Invoice was consultation fee. It was never broken down for him and he thought the consultation fee was simply part of what made up the total premium. * Y did not cross-reference the Renewal Invoices to the policies to compare the invoiced amounts to the premiums. * Y said when he reviewed the Renewal Invoice he simply focussed on the fact that his premiums were going down.

44. It appears the policies were sent to * Y by the Agency so that a comparison could have been made between the policy and invoiced amounts. However, documentation indicates that that the policies were sent separately from the Renewal Invoice and sometimes weeks and often months after the Renewal Invoice was sent out. Mr. Arnold insisted however that the client could compare the policy with the Renewal Invoice and determine the actual premium and fee amount and he never had any complaints from his clients.

45. Mr. Arnold testified that the invoice from the insurer was attached to the Renewal Invoice. * X confirmed that this was the general practice at the Agency but if a document was attached to a Renewal Invoice it would have been referenced as attached. The Renewal Invoices in relation to * Y's restaurant and bar did not state that the insurer invoice was attached. * Y testified it was never attached to his copy. The Panel finds insurer invoices were not attached to the Renewal Invoices.

46. The Renewal Invoice for the following year, dated September 13, 2010, stated "[l]ast year's annual premium was $23,000.00 and this year the premium has come in at $18,750.00 including consultation fee". As noted above, the actual premium stated on the policy for the previous year was $18,250.00 not $23,000.00. The Renewal Invoice does not state that the $23,000.00 amount for the previous year included a "consultation fee" as it did in the previous Renewal Invoice. It is described only as premium. Further the actual premium charged by the insurer for the 2010/2011 year was $15,548.00 not $18,750.00. Again the difference between

$18,250.00 and $15,548.00 appears to be the "consultation fee". The Renewal Notice states "Over the past two years this is a **saving** of over $13,000.00" [emphasis in original].

47. The next Renewal Invoice dated September 13, 2011 stated "[l]ast year's premium was $18,750.00 and this year the premium has come in at $17,850.00 including consultation fee". Again the actual premium charged by the insurer for the 2010/2011 period was $15,548.00 not $18,750.00. There was no mention that the $18,750 premium amount included the "consultation fee". The amount is described only as premium. The actual premium for the 2011/2012 year was $14,639.00, as shown on the policy and not $17,850.00 with the difference apparently being made up of the "consultation fee". The Renewal Notice states: "Your overall premium is down this year for a **savings of $900**" [emphasis in original].

48. When comparing the Renewal Invoices with the policies from the 2008/2009 insurance year to the 2011/2012 insurance year it appears Mr. Arnold charged "consultation fees" to * Y's business in excess of the premium amounts totaling over $15,000.00. This is in addition to the 15 percent premium to the broker that formed part of the policy premium amount that Mr. Arnold would have received over that same period.

* Z

49. *Z is a collector and frequent purchaser of art. Mr. Arnold testified that * Z's primary concern was that any art that *Z purchased was insured from the moment that he took possession of it. To facilitate this, Mr. Arnold stated he would provide *Z an estimate of premium based on the value of the artwork to be added to the policy and the insurer's rating system. The estimated premium amount would be paid by *Z before he took possession of the artwork. Mr. Arnold would provide the insurer with the bill of sale and an appraisal. There would often be a delay before the premium was confirmed while the insurer attempted to authenticate the artwork. When the actual premium was known, Mr. Arnold testified tha* Z would receive a credit and that amount would be applied to the renewal invoice for the following year. Mr. Arnold stated that * Z also agreed to a $100.00 transaction fee as "the cost of doing business". Mr. Arnold also said that he and *Z became quite good friends and so, after a time, the transaction fees were credited back to* Z.

50. Mr. Arnold was asked about the available coverage for newly-acquired articles under the policy. He said he was unaware of its terms and that he simply ignored that portion of the wording of the policy because Z preferred to transact his business based on estimates.

Addition of Artwork in 2009

51. In a memo dated May 28, 2009 to V another broker who Z used and with whom Mr. Arnold originally dealt with in relation to Z Mr. Arnold stated "we have added Z's new art piece…valued at $142,000.00. Please make arrangement to have Z send our firm a check in the amount $195.00 including set up fee (payable to Mitchell Insurance Brokers) for this additional painting to …policy #60000009".

52. Endorsement No. 5 to Z's policy dated effective May 28, 2009 shows that the policy limit for policy #60000009 was increased by $142,000.00 and the additional premium for that increase was $31.00. The difference between $31.00 and the $195.00 charged by Mr. Arnold was apparently the "set up fee". The accounting records show Z paid the $195.00. There is no indication on the records in evidence of a credit for the "set up fee". Mr. Arnold testified credits could have been done by journal entry. He would have had to instruct a staff member to do the journal entry as he did not, and could not, do it himself. X testified she refused to do journal entries but she knew that an accounting manager did although she did not recall whether they were in relation to credits for Z As stated, the accounting records in evidence do not demonstrate a credit either by journal entry or otherwise.

53. Mr. Arnold also testified that the premium differences would have been credited to Z on the next year's renewal. Again, the accounting records showed no such credit. In response Mr. Arnold stated that he was not responsible for accounting and that he relied on others for that but that the records were generally a mess. He acknowledged that those same records must have been relied on to provide any credits to Z. X also confirmed that the accounting records were in bad shape. She also testified she was not aware that Z was given a credit when the actual premium amount was known.

54. On cross-examination Mr. Arnold was shown copies of accounting records seized from the Agency which indicated that "consulting fees" or "set up fees" ranging from $600.00 to over $1,000.00 were also charged to Z five times over a period of approximately five years ending in

2012. Again he stated that he did not work on the accounting end of the business, that he relied on accounting staff and that the Agency's accounting had been badly mishandled. Mr. Arnold testified that a set up fee was the same as a consultation fee and it was simply "the cost of doing business".

Addition of Artwork in 2010

55. On August 4, 2010 Z was sent the Agency's invoice for the addition of two new works of art to the policy. It states "the change has produced an additional premium including fees" of $250.00. On August 5, 2010 Mr. Arnold received an email from the insurer stating that the premium increase would be waived by the insurer for the addition of the two works of art. On August 12, 2010, Mr. Arnold received Endorsement No. 3 to policy 6000246 confirming that the premium had been waived. The accounting records show Z paid the $250.00. There was no evidence that Z was subsequently informed that the premium had in fact been waived by the insurer and no credit was shown on the accounting records in evidence.

56. Similarly, three pieces of artwork were added to the policy effective November 12, 2010 for which the insurer waived any additional premium. On November 15, 2010, Z was invoiced for $450.00 and the invoice stated that the addition of the three paintings had "produced an additional premium including fees". The accounting records show that the invoice was paid. There was no evidence that Z was subsequently informed that the premium had in fact been waived and no credit was shown on the accounting records in evidence.

Addition of Artwork in 2011

57. Endorsement No. 3 dated effective April 8, 2011 added 5 pieces of artwork to policy 6000246 with an increase to the policy limit of $624,750.00 which resulted in an additional premium of $402.00. On April 11, 2011 Z was invoiced $850.00 which was "the additional premium including fee" for the additions. The accounting records show the invoice was paid. They do not show a credit for the difference between $850.00 and the premium of $402.00

58. Another Endorsement No. 3 dated effective December 20, 2011 increased the limit of liability for the policy by $469,696.00 for which an additional premium of $413.00 was charged. Z was invoiced by the Agency on December 21, 2011 for $485.00 for the addition. The

accounting records show the invoiced amount was paid but no there is no indication that the difference was ever credited back to Z.

Addition of Artwork in 2012

59. Endorsement No. 4 dated effective February 23, 2012 increased the limit of liability of the policy by $1,496,250.00 as a result of the addition of one work of art and the deletion of another one from the policy. This increase in limit resulted in an additional premium of $651.00. On February 29, 2012 Z was invoiced for "additional premium" of $750.00 for the increase.

60. Mr. Arnold testified that Z was aware that the invoices were in fact estimates but none of the invoices cited above state that they were. If the invoices were intended and understood as estimates and they included a fee, it would be impossible for the client to know how much of the invoice was fee and how much was premium estimate because it was not broken down. That could only be determined at some point later with reference to the actual endorsement and the amount of any credit subsequently provided. X's evidence was that the endorsements were not sent to Z and that she was specifically instructed not to send them to Z by Mr. Arnold.

W's ***Outfitting Business***

61. Mr. Arnold testified that he and W were very good friends. W ran an outfitting and white water rafting business. Mr. Arnold testified W was required to change insurers for his business because his previous insurer no longer would insure white water rafting. The new policy was a sub-brokered account so it provided for a lesser commission to him than his other business and required the payment of fees by him to the managing general agent. Mr. Arnold stated that W signed an agreement consenting to additional fees but, as noted above, he was unable to produce it but instead produced a sample wording.

62. A Renewal Invoice dated April 20, 2009 from the Agency to W stated the "amount due" was $16,000.00. The actual premium due was $12,522.00 as shown on the policy. The Renewal Notice also stated "your guiding insurance renewal for rafting tours, including a consultation fee will follow". The difference between the premium and the stated amount due was apparently the somewhat confusing reference to a "consultation fee". The insured's copy of the policy was found on Mr. Arnold's file.

63. A Renewal Invoice dated April 23, 2010 from the Agency to *W stated "[t]he annual premium is $15,500.00 including set up fee". This time the actual premium stated on the policy was the same as the Renewal Invoice at $15,500.00. Notwithstanding that the premium actually increased by $2.978.00 from the previous year, the Renewal Invoice told the client "your overall premium is **down** this year" [emphasis in original]. Again, the insured's copy of the insurance policy was on Mr. Arnold's file.

64. A Renewal Invoice dated April 7, 2011 stated "[u]pon receipt of payment which includes set up fee we will be forwarding your policy". The amount shown due on the Renewal Invoice was $12,500.00. The actual premium stated on the policy was $9,940.00. The Renewal Invoice stated: "Your overall premium is down this year for an approximate **savings of $6,000**" [emphasis in original].

65. In evidence was a letter from the AIC Investigator Carrie Graham to *W dated May 7, 2012. It asked the following questions:

> 1. During the period of time that you have been insured through Mitchell Insurance Brokers, did Mr. Arnold, at any time, advise that he would charge you for amounts over and above the policy premium?
>
> 2. If so, did Mr. Arnold advise what amount or percentage he would be charging?
>
> 3. If he had informed you, can you please confirm if he advised this verbally or in writing, and whether or not you agreed to the extra costs?
>
> 4. Did Mr. Arnold have you sign anything to confirm that he had informed you of the possibility of additional charges?

Beside each question it appears that the word "no" has been written and scratched out with the word "yes" written next to it. The letter was signed apparently by *W and dated. It was faxed back to the AIC from the Agency.

66. Mr. Arnold testified that *W signed the letter in front of him and that *W originally had written "no" next to the questions because he misinterpreted all the questions but then wrote "yes" once he properly understood them after speaking with Mr. Arnold.

67. Other letters signed by * W and faxed from the Agency state * W was aware that he was being charged a consulting fee to offset a reduced commission. Ms. Dowhaniuk and Ms. Graham interviewed * W in October, 2012. Ms Dowhaniuk testified * W originally told them that he was not aware that he was being charged fees by Mr. Arnold but at the end of the interview he retracted that statement.

68. The evidence before the Panel shows that * W equivocated as to whether he was previously aware that he was charged fees by Mr. Arnold. In the absence of * W's testimony, a potential witness equally available to both parties, the Panel is not prepared to find that he was aware that he was being charged fees. In any event, for the reasons given above, the Panel concludes he did not provide consent in writing to be charged fees.

69. Mr. Arnold testified that he provided additional services to * W that justified the imposition of fees, for example, drafting waivers to be used by * W's customers and dealing with the Crown, First Nations and oil and gas companies related to * W's outfitting business. * X testified she was unware that Mr. Arnold provided extra services to * W other than providing a waiver for * W's use.

70. As to whether the policies were provided to * W, in at least two cases noted above the client's copy of the policy was found on Mr. Arnold's files. The Renewal Invoices themselves state the policies would be forwarded under separate covers and in two cases only upon receipt of payment. If they were provided, it appears then that they were provided later. The Panel accepts * X's evidence that it was the Agency's practice to attach the insurers' invoice to the Renewal Invoice but if it was attached it would have been referenced. None of the Renewal Invoices reference insurer's invoice as attached and the Panel finds that they were not.

Discussion

Standard of Review

71. Although this is considered a de novo appeal,[3] a standard of review analysis must be done by this Panel to determine what deference, if any, is to be given to the Decision.[4]

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[3] *Gilbert v. Alberta Insurance Council*, 2009 ABQB 673 at para. 28.

72. The proceeding before the General Insurance Council was in writing and the material consisted of the Investigation Report and written materials Mr. Arnold provided in response. In contrast, before the Panel there was a full evidentiary hearing with *viva voce* evidence. The Panel had the benefit of the testimony of four witnesses, including Mr. Arnold and hundreds of pages of additional exhibits that were not before the General Insurance Council. It also had the benefit of argument by Counsel.

73. Where new evidence or a new issue is raised on appeal with the result that the issue before the appeal panel is new or different than what was considered by the body whose decision is being reviewed, there is no decision on point. As stated by the Court of Appeal, in such circumstances "it is artificial to speak of any standard of review".[5] Rather, the appeal panel considers the issue as a tribunal of first instance. That is the case here, where the new evidence is material to both the alleged offence and the appropriate sanction if any. In the result, although mindful of the Decision, the Panel will consider this appeal as a tribunal of first instance.

Should the charges in this matter be stayed?

74. As a preliminary issue, it was argued on behalf of Mr. Arnold that the charges against him should be stayed because the AIC breached its duty of full disclosure. The alleged breach occurred in relation to the written proceeding before the General Insurance Council. The material before the General Insurance Council consisted, for the most part, of the Investigation Report. It was argued that the Investigation Report failed to disclose that:

(a) Mr. Arnold advised the AIC that he would be out of the office on March 28, 2012 and not to email documents to his office.

(b) [redacted] told Carrie Graham that Mr. Arnold would be out of the office on March 28, 2012 and that they should go to the office to retrieve files then because he was not likely to give them over willingly.

75. Further, it was argued that there was a failure of the AIC to advise the General Insurance Council of a number of documents seized from the Agency that were relevant and material as

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[4] *Imperial Oil Resources Ltd. v. 826167 Alberta Inc.*, 2007 ABCA 131 at paras. 8-18; *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399 at para. 52.
[5] *Kikino Metis Settlement v. Metis Settlements Appeal Tribunal*, 2013 ABCA 151 at para. 13.

they evidenced that insurance policies were in fact sent to clients. Those documents are Exhibit 11 in this proceeding.

76. It was also argued on behalf of Mr. Arnold that the evidence of * at this hearing and Carrie Graham in a separate matter conflicted on the issue of whether * told the AIC that Mr. Arnold was not going to be present in the office and that the Panel should draw an adverse inference against the General Insurance Council as it did not call Ms. Graham as a witness.

77. In regard to this last issue, Madam Justice Dario found that the AIC had the power to conduct the search and seizure and it did so in a reasonable manner.[6] Given this, it is the view of the Panel that how the AIC came to know that Mr. Arnold was out of the office in the first place is not a material issue and it declines to draw the requested adverse inference.

78. Further, the Panel will not stay the charges on the basis argued by Mr. Arnold. It was noted on behalf of Mr. Arnold that Madam Justice Dario in disposing of the Application stated:

> At the initial hearing the AIC did not disclose that Mr. Arnold was not present at the time the AIC examiners attended Mitchell Insurance Brokers. This, the applicant argues, painted the wrong picture and skewed the GIC's ability to understand the context of the subsequent correspondence and the actions of Mr. Arnold. Whether or not that is the case, and to clarify the scope of this application, the Court will not be conducting a review of that decision, nor will it be making a credibility determination or assess whether there are issues of bias of the GIC. <u>These issues will be left for the appeal, which I understand will be a trial *de novo* involving *viva voce* evidence and an opportunity to call new evidence</u>. [Emphasis in original][7]

79. As stated by Madam Justice Dario, this is a *de novo* hearing. Unlike the proceeding before the General Insurance Council, there was a full evidentiary hearing before this Panel including *viva voce* evidence and cross examination. The parties were represented by counsel. Exhibit 11 is in evidence before this Panel. To the extent there may have been any failure of disclosure by the AIC in the Investigation Report to the General Insurance Council which "painted the wrong picture and skewed the GIC's ability to understand the context of the subsequent correspondence and the actions of Mr. Arnold" that was not the case before this Panel. The circumstances under which the documents were seized were fully canvased at this

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[6] Reasons for Judgment, *Arnold v General Insurance Council*, Action No. 1301-11710 (ABQB).
[7] Ibid, p. 103.

hearing. There was a full and fair opportunity before this Panel to remedy any prejudice that may have resulted because of the nature of the proceedings before the General Insurance Council and the alleged failure by the AIC to disclose any matter to the General Insurance Council. The issue of bias on the part of the General Insurance Council, apparently raised before Madam Justice Dario, was not argued before this Panel.

Has an Offence under Section 500 Been Proven?

80. Section 500 of the *Insurance Act* provides "no insurance agent may indicate that the premium to be paid for a policy is an amount that is different than the amount of the premium set out in the policy".

81. The evidence was that Mr. Arnold instructed Agency staff as to the wording of the Renewal Invoices sent to *Y and *W and the invoices sent to *Z and that he set all the amounts stated in them. The Renewal Invoices and invoices stated premium amounts that were different from what was shown on the actual policy or endorsement in question. As to whether those incorrect premium amounts were "indicated", which implies that the premium amount was expressed in a form communicated or intended to be communicated to others, the Renewal Invoices and invoices were records kept by the Agency in the ordinary course of business. From this it can be inferred that, as they state on their face, they were sent to the client in question. *Ys evidence was that he received them. The accounting records support that they were sent, as the invoiced amounts were paid by the clients.

82. Mr. Arnold argued that an adverse inference should be drawn from the failure of the General Insurance Council to call *Z and *W as witnesses at the hearing citing principles from the case *Howard v Sandau*.[8] However, *Z and *W were not witnesses in the exclusive control of either party. Nor was it demonstrated that they had material evidence to offer in relation to this offence which focusses on the statements made by the agent.

83. In the view of the Panel, it has been demonstrated that Mr. Arnold indicated on Renewal Invoices or invoices "that the premium to be paid for a policy [was] an amount that [was] different than the amount of the premium set out in the policy" in relation to each client.

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[8] 2008 ABQB 34.

84. The Supreme Court of Canada has held that with offences such as Section 500, where there is no requirement to prove some positive state of mind such as intent, knowledge, or recklessness, the defence of due diligence is available. This means that if the accused can demonstrate on a balance of probabilities that all due care was taken to prevent the offence, or that the accused was acting under a reasonable misapprehension of a state of facts, the accused will avoid liability for the offence.[9]

85. There was no evidence that Mr. Arnold was mistaken when he set the premium amounts to be stated in the Renewal Invoices and invoices or that he took care to avoid misstating the premiums. Rather, the evidence was he intended his statements as to premium amounts and that it was up to the client to compare the Renewal Invoice with the policy or endorsement to determine what the actual premiums were. No defence of due diligence has been proven in this case. As a result, the Panel finds Mr. Arnold has committed three breaches, one is relation to each client, of section 500 of the *Insurance Act*

Has an Offence Under Section 505(2) Been Proven?

86. Section 505(2) provides: no insurance agent may charge or collect a fee for providing a service to a person who is, or is in the process of, acquiring insurance through the agent unless the person has agreed in writing before the service is provided to pay the fee.

87. The Renewal Invoices and invoices and accounting records referenced above demonstrate that Mr. Arnold charged and collected fees for providing a service to a person who was acquiring insurance in the case of *Y's business, *Z or *W's business. The only issue is whether those clients agreed in writing to be charged a fee and that agreement was made before the service was provided. For the reasons stated above, the Panel is satisfied that no such written consent was obtained from *Y.

88. Even if written consents were obtained from *Z and *W Mr. Arnold testified the consent would have been in the form of the sample he drafted for the purposes of this appeal. That sample provided:

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[9] *R. v Sault Ste. Marie(City of)* (1978), 40 C.C.C. (2d) 353 (SCC).

> Our quote is subject to a policy fee as our Insurance Provider (Premier) is at a reduced commission a/o they are charging our firm a fee which is included your [sic] invoice.
>
> Please confirm acceptance of this fee prior to our firm implementing coverages on your behalf. Your signature may be required.
>
> On renewals our fee with [sic] be documented in our renewal letter to you with a copy of the policy.

89. As stated above, this form failed to identify the services to be performed or the amount of the fee for the service or even how the fee was to be calculated. It appears in places to be referring to fees charged by the "Insurance Provider" as opposed to fees charged by the Agency. On Mr. Arnold's own evidence any such agreement would have been signed years before the fees would have been charged.

90. The Panel interprets the word "consent" in Section 505(2) to mean informed and meaningful consent. It is confirmed in its interpretation by the fact that the section, which is found under the part of the *Insurance Act* titled "Markey Conduct", is clearly concerned with consumer protection. There is no evidence of written consent that would meet the requirements of Section 505(2) in relation to *Z or *W. Certainly, the sample consent would not meet that requirement.

91. It was also argued, as Mr. Arnold expressed it:

> We advise the insured on his new business, renewals or invoices that a fee has been added…Is the signed check not evidence that the insured has accepted the terms and conditions of our invoice including the consulting fee or set up fee…

In the Panel's view, that would not suffice either. The wording of the Renewal Invoices and invoices was sufficiently opaque as to make any consent based upon their wording and the fact they were paid meaningless.

92. There was no evidence of due diligence on the part of Mr. Arnold to obtain meaningful informed consent from his clients to charge them fees. In the result, the Panel is satisfied that Mr. Arnold has breached section 505(2) in relation to each of *Y, *Z and *W.

Has an Offence Under Section 480(1)(a) Been Proven?

93. In *Roy v Alberta (Insurance Councils Appeal Board)* ("*Roy*"),[10] Mr. Justice Marceau reviewed the requirements for an offence to be made out under Section 480(1)(a) of the *Insurance Act*. Those requirements are (1) that objectively one or more of misrepresentation, fraud, deceit, untrustworthiness or dishonesty have been proven; and (2) that the mental element has been proven. Those requirements are to be proven on a balance of probabilities.

94. It was argued on behalf of Mr. Arnold that the burden of proof for this offence is clear and cogent evidence. Although some cases speak of the requirement for "clear and cogent evidence" that requirement does not mean the burden of proof is changed or that the evidence is to be scrutinized any differently. The evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.[11]

95. To "misrepresent" is defined in the Oxford Canadian Dictionary as "to represent wrongly; give a false or misleading account or idea of". Black's Law Dictionary (6th Edition) defines misrepresentation, in part, as "[t]hat which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead".

96. "Dishonesty" is defined in the Oxford Canadian Dictionary as "a lack of honesty, esp. a willingness to cheat, steal, lie or act fraudulently". "Honesty" is defined, in part, as "truthfulness".

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[10] 2008 ABQB 572.

[11] In *F. H. v. McDougall* [2008] 3 S.C.R. 41 (SCC) the Supreme Court of Canada stated:

> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

97. "Trustworthy" is defined in the Oxford Canadian Dictionary as "deserving of trust; reliable, dependable" and "trust" is defined in part as "reliance on the truth of a statement etc. without examination".

98. The Panel is satisfied that the Renewal Invoices and invoices summarized above were objectively false in that they stated that an amount was premium when in fact it was both premium and fee or they stated there was premium owing when in fact the insurer had waived the premium, or they simply stated the incorrect premium. The Renewal Invoices or invoices required comparison with the actual policy or endorsement to determine the actual premium and fee amount and to determine whether the fee was charged by the insurer or the Agency. In the case of *Z, even that would not be enough to determine the true state of affairs, as even with comparison of the invoices to the endorsement, it would still not be known how much of the invoiced amount was attributable to a misestimate of premium and how much was attributable to a fee.

99. The making of a false statement is in and of itself sufficient to demonstrate the objective component of a misrepresentation under the section. In relation to the allegation of "dishonesty", false or misleading statements are not true and therefore do not demonstrate honesty on the part of the person giving the statement but, in fact, demonstrate the opposite. In relation to "untrustworthiness", false or misleading statements cannot be trusted: see *Roy*, para. 27. Neither can the person making them. The Panel finds that the objective element of the offence has been proven in relation to each of the clients in question.

100. Turning to the second requirement under *Roy*, as to the requisite level of intent, Madam Justice Rowbotham, referring to the predecessor section to Section 480(1)(a), stated in *Alberta (General Insurance Council) v. Howatt*, that "these allegations require some level of intent; at most that she intended the result or at the very least she acted recklessly".[12]

101. The Panel finds that Mr. Arnold was motivated in the case of *Y's and *W's businesses to bring the profitability of these accounts in line with his other business. His own evidence was that he charged the fees to bring the profitability of those accounts to him up the level of his other business. In the case of *Z, the Panel notes that Mr. Arnold was of the view that *Z "had

[12] 2000 ABQB 259.

lots of money". He testified *Z was not concerned about the price of insurance. Given the value of the items being insured, Mr. Arnold appears to have calculated that *Z would not notice being charged extra fees or being charged premium when none was owed.

102. The Panel finds Mr. Arnold decided to charge extra fees or amounts to *Y's *Z's and *W's businesses without their consent to increase the profitability of this business. He did so by misstating the premium amounts in Renewal Invoices and invoices and being deliberately vague as to whether the fee mentioned was being charged by the Agency or by the insurer as part of the premium. The premium and fee amount were often blended together so the client could not determine the exact amount of either without comparison to the policy or the endorsement or the insurers invoice. Those items were either not sent to the client or only sent weeks or months later. The fees themselves were determined "without rhyme or reason" and were supposedly based on Mr. Arnold's assessment of the previous year's work on that account. However, Mr. Arnold's evidence as to how much work he actually did on any account did not appear credible and was directly contradicted by *Y and *X Based on the evidence before it, the Panel concludes Mr. Arnold actually set the fees based on what he thought he could charge without raising suspicion with his clients. He attempted to obfuscate matters with repeated references in the Renewal Invoices to how much money the client saved from one year to another or in one case with an assertion that premiums went down when in fact they went up. The Panel concludes Mr. Arnold intended to misrepresent to each of *Y, *Z and *W the true state of affairs and to act in a dishonest and untrustworthy manner. In the result, the Panel finds Mr. Arnold guilty of breaching of section 480(1)(a) three times in relation to his dealings with each of *Y, *Z and *W.

Application of the principles in R. v. Kienapple

103. As set out above, the Panel is satisfied that it has been proven that Mr. Arnold has breached Sections 500, 505(2) and 480(1)(a) of the *Insurance Act*. However, the principle enunciated by the Supreme Court of Canada in *R. v Kienapple*,[13] prevents convictions for multiple offences when those offences are in substance the same and arise out of the same set of facts. Two conditions must be present before applying the principle in *R. v Kienapple*: (1) there must be a sufficient factual nexus between the two charges; and (2) there must be an adequate

[13] [1975] 1 S.C.R. 729 (SCC).

legal nexus between the offences. Where these two conditions exist, the court will conditionally enter a stay of the lesser charge, subject to the more serious charge being set aside.[14]

104. In *R. v Prince*,[15] another decision of the Supreme Court of Canada, Dickson C.J. discussed the situation where there are offences of unequal gravity:

> Where the offences are of unequal gravity, *Kienapple* may bar a conviction for a lesser offence, notwithstanding that there are additional elements in the greater offence for which a conviction has been registered, provided that there are no distinct additional elements in the lesser offence. For example, in *R. v. Loyer*, 1978 CanLII 194 (SCC), [1978] 2 S.C.R. 631, *Kienapple* was applied to bar convictions for possession of a weapon for the purpose of committing an offence when convictions were entered for the more serious offence of attempted armed robbery by use of a knife. Although the robbery charges contained the element of theft which distinguished them from the weapons charges, there were no elements in the weapons charges which were additional to or distinct from those in the robbery charges. Accordingly, it was appropriate for the Court to apply *Kienapple* to bar convictions on the lesser weapons charges rather than on the robbery charges.

105. Applying these principles to this matter, it is clear that in the context of the dealings of each specific client, there is a factual nexus between the offences under Section 480(1)(a) and the other offences. The fact that Mr. Arnold directed the creation of Renewal Invoices and invoices that misstated the premium amount on the policy and the fact that Mr. Arnold was charging fees to his clients without their prior written consent are also facts that underpin the finding of misrepresentation, dishonesty and untrustworthiness under Section 480(1)(a). The section 480(1)(a) offences arise out of the same facts as each of the section 500 and 505(2) offences.

106. There is also a sufficient legal nexus even though the offences are of unequal gravity. Sections 500 and 505(2) are clearly less serious offences than Section 480(1)(a) in that they do not require any proof of intent and are subject to lesser sanctions. They do not require proof of any distinct legal element from what is required to be proven under Section 480(1)(a). In the result, the principle in *R. v. Kienapple* applies in this case and Mr. Arnold cannot also be found guilty of the offence under the Sections 500 and 505(2) in relation to any given client when he has been found guilty of the more serious offence under Section 480(1)(a) in relation to that same client. Therefore, the Panel declines to make an order in in connection to each of the

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[14] *R. v. Bannert*, 2009 ABCA 15.
[15] [1986] 2 S.C.R. 480 (SCC).

breaches of Section 500 and 505(2) in relation to a specific client unless the order it makes in relation to the breach of section 480(1)(a) in relation to that same client is set aside.

Appropriate Sanction

107. In terms of the applicable sanctions, for a breach of section 480(1)(a) the Panel has ability to levy a civil penalty in an amount not exceeding $5,000.00 pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, as amended. We also have the ability to suspend or revoke Mr. Arnold's certificate of authority in relation to each breach.

108. Given the Panel's conclusion that Mr. Arnold was engaged in prolonged, dishonest and misleading conduct designed to charge extra fees and amounts to clients without their consent, it is of the view that the maximum civil penalty available should be imposed against him in regards to each breach of Section 480(1)(a). Any lesser amount would not be sufficient to denounce Mr. Arnold's conduct and would fail to deter other agents tempted to engage in similar activities. Given the seriousness of the offence, it would also risk public confidence in the ability of the insurance industry to properly regulate itself. It should be noted the maximum amount that can be imposed in total is still less than the global amount Mr. Arnold actually enriched himself at the expense of his clients as a result of his scheme.

109. The Panel is confirmed in its view that Mr. Arnold's conduct is deserving of the strongest possible sanction when it takes into account his previous disciplinary history which evidences a pattern of dishonest dealings with clients. In 2011, Mr. Arnold was found to have breached Section 480(1)(a) of the *Insurance Act* in that he repeatedly communicated with a client using "a fictitious alter-ego to collect a debt". A civil penalty of $1,000.00 was levied for that offence.[16] In 2013, Mr. Arnold was found guilty of making false or misleading statements or representations and engaging in unfair, coercive or deceptive practices contrary to Section 509(a) and (c) of the *Insurance Act*. The maximum available civil penalty for that offence was imposed which was $1,000.00 and his certificate of authority was suspended for nine months.[17]

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[16] *In the Matter of Robert Arnold,* General Insurance Council (October 31, 2011).
[17] *In the Matter of the Appeal of Robert Arnold from the Decision of the General Insurant Council*, Insurance Councils Appeal Board (August 7, 2013).

110. In the result, the Panel confirms the decision of the General Insurance Council to impose a civil penalty of $5,000.00 in relation to each breach of section 480(1)(a) for a total of $15,000.00 in penalties.

111. The Panel is further of the view that, based on its conclusions in this case and Mr. Arnold's previous disciplinary history, Mr. Arnold has demonstrated himself unfit to hold a certificate of authority to act as an agent for general insurance in the Province of Alberta and confirms the decision of the General Insurance Council to revoke his certificate of authority in relation to each offence.

Appeal Fee

112. 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 should be awarded to the General Insurance Council. Mr. Arnold's conduct gave the Panel no reason to do otherwise.

Order

113. For the above reasons, it is confirmed that Mr. Arnold has breached section 480(1)(a) three times in relation to each of clients *Y, *Z and *W it is confirmed and ordered and that:

(a) A civil penalty of $5,000.00 is imposed against Mr. Arnold in relation to each breach of section 480(1)(a) for a total of $15,000.00 which is to be paid within 30 days of the date of this Reasons for Decision and Order;

(b) Mr. Arnold's certificate of authority to act as an agent for general insurance in the Province of Alberta is revoked; and

(c) The appeal fee is awarded to the General Insurance Counsel.

114. The Panel makes no order in relation to the three breaches of each of Section 500 and 505(2) proven in relation to each specific client as determined above unless the order it has made in relation to section 480(1)(a) in relation to any specific client is set aside.

DATED at Calgary, Alberta, this 24th day of October, 2016.

INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

Per: _____
Julie G. Hopkins – Panel Chair

Authorized to sign for:

Per: _____
Kenneth Nicholas – Panel Member

Authorized to sign for:

Per: _____
Kelly Ann Parrott – Panel Member

Appearances:

Mr. W. Martinson	on behalf of the General Insurance Council
Mr. Raymond Wong	on behalf of Mr. Robert Arnold