

Consultation Paper Insurance 2019

Licensing of Insurance Adjusters and
Damage Appraisers in New Brunswick

Insurance Division

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FINANCIAL AND
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Introduction

Established in 2013, the Financial and Consumer Services Commission (the Commission) is responsible for the administration and enforcement of provincial legislation that regulates insurance, securities, pensions, credit unions, trust and loan companies, co-operatives and a wide range of consumer legislation.

Our mission is to protect consumers and enhance public confidence in our financial and consumer marketplaces through the provision of regulatory and educational services.

The current *Adjusters Regulation* was implemented on July 1, 2009. The Financial and Consumer Services Commission is undertaking a comprehensive review of the current adjuster licensing regime. The Commission is also reviewing the licensing regime for damage appraisers. The goals are to ensure that the regimes are current, enhance consumer protection and remove any unnecessary administrative burdens. The Commission also wishes to increase harmonization with other Provinces. As a first step, the Commission completed a review of the licensing regimes in other Canadian jurisdictions. The Commission has prepared this Consultation Paper to facilitate dialogue with stakeholders who wish to provide feedback on the licensing matters raised in this paper.

You can access the current *Adjusters Regulation*, Reg. 2009-52 at <http://laws.gnb.ca/en/ShowPdf/cr/2009-52.pdf>, hereinafter referred to as the *Adjusters Regulation*.

You can access the current *Damage Appraisers Regulation*, Reg. 85-11 at <http://laws.gnb.ca/en/ShowPdf/cr/85-11.pdf>, hereinafter referred to as the *Damage Appraisers Regulation*.

1. Adjuster Licensing Requirements

The *Insurance Act* (the Act) requires anyone who acts, offers or undertakes to act or represents themselves as an adjuster in New Brunswick to hold a licence. This includes independent adjusters and staff adjusters who are employed by an insurance company. Currently, the Commission only licenses individual adjusters and does not license adjusting firms.

There is currently no consistency among jurisdictions with respect to the requirement for staff adjusters to be licensed. Some jurisdictions, like New Brunswick, require staff adjusters to be licensed, while others do not. The Commission proposes to continue requiring staff adjusters to be licensed because we believe that it enhances consumer protection.

Definition of Adjuster

Current definition

Section 1 of the Act defines “adjuster” to mean:

“a person who, for compensation, not being a barrister or solicitor acting in the usual course of his profession or a trustee or an agent of the property insured, directly or indirectly solicits the right to negotiate the settlement of a loss under a contract of insurance on behalf of the insured or the insurer, or holds himself out as an adjuster of losses under such contracts”.

The *Adjusters Regulation* provides the following:

3(1) A person acts as an adjuster when he or she offers, promises or attempts to act as an adjuster or claims that he or she is authorized to act in that capacity.

3(2) The following persons shall be deemed not to be acting as adjusters:

- (a) a liquidator or trustee in bankruptcy in the performance of his or her duties;
- (b) a testamentary executor, director, trustee or fiduciary in the performance of his or her duties;
- (c) an engineer, architect, appraiser, assessor or other expert whose services are required by a party for the purpose of obtaining the opinion or testimony of the expert; and
- (d) an adjuster dealing exclusively with ocean marine losses.

Proposed definition

The Commission has reviewed the definitions for “adjuster” in other jurisdictions. The Commission proposes to harmonize New Brunswick’s definition with that of several other jurisdictions and to include the exceptions within the definition. Therefore, the Commission proposes the following definition:

“adjuster” means a person who

- (i) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guarantee bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
- (ii) holds himself or herself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include

- (iii) a lawyer acting in the usual course of his or her profession;
- (iv) a trustee or agent of the property insured;
- (v) a liquidator or trustee in bankruptcy in the performance of his or her duties;
- (vi) a testamentary executor, director, trustee or fiduciary in the performance of his or her duties;
- (vii) an engineer, architect, appraiser, assessor or other expert who is employed solely for the purpose of giving expert advice or evidence;
- (viii) members of a police force, fire department or fire marshal’s office in the performance of their duties;
- (ix) and any other prescribed person.

Proposed Exemptions

As indicated, the current *Adjusters Regulation*, among other things, specifically exempts an adjuster dealing exclusively with ocean marine losses from requiring a licence. Several other jurisdictions exempt marine insurance claims. Prince Edward Island and Newfoundland and Labrador also exempt a person who is adjusting or dealing solely with claims for aircraft insurance, life insurance or accident and sickness insurance from being licensed.

Given the unique nature of the claims that they deal with, the Commission proposes to exempt individuals who are dealing with claims for life insurance, accident and sickness insurance, marine insurance, aircraft insurance and legal expense insurance. Life and accident and sickness claims are not “adjusted” like property and casualty claims and no jurisdiction, including New Brunswick, requires individuals dealing with them to be licensed. The other types of adjusting are very specialized and

typically the policyholders are corporations that are knowledgeable about the specific business, rather than individual consumers.

Licence Levels

Current licence levels

The current *Adjusters Regulation* creates a graduated licensing regime by having four different levels of licence. The goal is to protect consumers by ensuring that entrants into the industry complete educational requirements and gain practical experience. The roles and responsibilities of each level of licence reflect the individual's education and experience. The four levels of adjuster licences are as follows:

- Level 1 - probationary adjuster;
- Level 2 - assistant adjuster;
- Level 3 - adjuster; and
- Level 4 - general adjuster.

The *Adjusters Regulation* establishes mandatory progression requirements for level 1 and level 2 licensees. A level 1 licensee must obtain a level 2 licence within 12 months of receiving a level 1 licence. Within those 12 months, the level 1 licensee must complete course C-11 Principles and Practice of Insurance or C81 and C82 General Insurance Essentials – Parts 1 and 2 from the Insurance Institute of Canada, if they did not already have the course. Similarly, a level 2 licensee must obtain a level 3 licence within 36 months of receiving a level 2 licence. As discussed under [Topic 3 – Education and Experience Requirements](#), the *Adjusters Regulation* prescribes the different education programs that a level 2 must complete within that 36 months. A level 3 licensee can remain at that level indefinitely and is not required to move to a level 4.

There are four specializations for a level 3 licensee:

- property damage - first or third party claims arising out of damage to or loss of property of any kind other than claims under a policy of automobile insurance or ocean marine insurance;
- automobile physical damage - first or third party claims arising out of damage to property covered by a policy of automobile insurance;
- automobile accident benefits - accident benefit claims arising under a policy of automobile insurance; or
- bodily injury - third party claims arising out of any bodily injury or death.

New Brunswick is unique in having specializations. Level 3 licensees can only work in the specialization(s) for which they hold a licence, but can be licensed for multiple specializations. While there are several

courses that are the same for each specialization, there are specific courses that an individual must take for the specific type of adjusting. A full listing of the respective courses is set out under [Topic 3 - Educational and Experience Requirements](#).

Proposed licence levels

The Commission proposes the following new licensing levels:

- Level 1 - assistant adjuster;
- Level 2 - adjuster; and
- Level 3 – senior adjuster.

Many jurisdictions have a similar three level licensing regime, so this will enhance harmonization.

Most jurisdictions do not have mandatory progression. The Commission proposes eliminating it. This means that level 1 assistant adjusters can stay at that level for their entire career should they wish. However, they would be subject to direct supervision and would have restrictions on the activities that they are permitted to carry out. The restrictions on a level 1 assistant adjuster are discussed under [Topic 4 - Supervision, Responsibilities and Restrictions](#) below.

The Commission also proposes eliminating the specializations for a level 2 licensee (currently a level 3 licensee). Therefore, level 2 licensees would be permitted to do several types of adjusting under their licence. However, an adjuster's employer (adjusting firm or insurer) would be responsible to ensure that a level 2 adjuster is competent for the files that are assigned to them. Further, a level 2 licensee could not act as a manager of an adjusting firm or a designated representative.

A level 3 licensee under the proposed regime will be permitted to adjust all types of claims. Further, a level 3 licensee will be permitted to act as a manager of an adjusting firm and/or a designated representative of an adjusting firm as described under [Topic 2 - Adjusting Firm Licences](#).

Temporary Adjusting in Emergency Situations

The *Insurance Act* allows for a temporary licence to be issued to an adjuster from another jurisdiction to act within the Province where there is an “emergency situation”. The Commission has adopted a simplified process for the approval and there is no fee. The Commission proposes to continue this, but to change the name to “temporary authorizations” rather than “temporary licences”, as the Commission does not issue a formal licence in these situations, but rather notifies the applicant of the approval.

Elimination of subsection 358(5) re Incapacity

The Commission proposes eliminating subsection 358(5) of the Act. Subsection 358(5) provides as follows:

358(5) Where an adjuster dies, becomes bankrupt or otherwise incapacitated so that his property becomes vested in another person as executor, trustee in bankruptcy, trustee, committee or otherwise by operation of law, the Superintendent may give his written permission to such person to carry on the business of the adjuster for a period of six months following the event upon which the property became vested in that person, under such conditions and subject to such restrictions as are set out in the written permission, or are prescribed from time to time by him; and the Superintendent may extend the period beyond six months if, in his opinion, the circumstances of the case warrant the extension.

Although this provision is discretionary, it could potentially allow unqualified individuals to carry on adjusting. It would be more appropriate that files were taken over by a qualified licensed adjuster.

Consultation Questions

- 1.1 Do you agree with the definition of ‘adjuster’ as proposed, or, alternatively, how would you propose that “adjuster” be defined?
- 1.2 Do you agree with the proposed exemption from licensing for certain types of adjusting, or, alternatively, what types of adjusting, if any, do you propose should be exempt? Please elaborate on why they should be exempt.
- 1.3 Do you agree with the proposed adjuster licensing levels or, alternatively, how should adjuster licensing levels be structured?
- 1.4 Do you agree with the elimination of adjusting specializations? Please elaborate on your response.
- 1.5 Do you agree with the elimination of the current mandatory progression requirements? Please elaborate on your response.
- 1.6 Do you have any concerns about the proposal to eliminate subsection 358(5)? Please elaborate on your response.
- 1.7 Please comment on any other matters for consideration on these issues.

2. Adjusting Firm Licences

Current status of adjusting firms

The Commission currently only issues licences for individuals and not for corporate entities or partnerships. Most independent adjusters are employed by adjusting firms. Several jurisdictions require adjusting firms to be licensed. In 2015, the Commission issued a Position Paper: *Modernizing the Insurance Licensing Framework* (the Position Paper), which recommended updating the licensing regime for other-than-life agents and brokers. The Position Paper, among other things, recommended that agencies and brokerages be licensed. Further, it recommended that adjusting firms also be licensed.

Proposed licensing of adjusting firms

The Commission still recommends that adjusting firms be licensed. Consumers may identify with the adjusting firm in addition to the individual adjuster. Adjusting firms should be subject to direct regulation. Requiring the adjusting firm to obtain a licence strengthens consumer protection by enhancing oversight of adjusters. The Commission proposes that an adjusting firm must meet the following minimum standards to obtain a licence:

- Be registered with the New Brunswick Corporate Registry;
- Have a designated representative; and
- Provide proof of errors and omissions insurance specific to the adjusting firm (not just vicarious liability).

A designated representative would be a single individual who is the primary contact for the adjusting firm for regulatory purposes. Anyone seeking to be named the designated representative must hold a level 3 licence under the proposed regime. Responsibilities of a designated representative are discussed under [Topic 4 - Supervision, Responsibilities and Restrictions](#). If a designated representative of an adjusting firm ceases to be the designated representative, the firm must notify the Superintendent in writing within 10 days and provide reasons. The firm must submit a new eligible candidate within 10 business days. If the firm does not submit a new candidate, the firm's licence is automatically suspended. The Superintendent will also have the authority to appoint a temporary designated representative for up to 14 days, unless extended.

Consultation Questions

2.1 Do you agree with the proposed minimum standards for an adjusting firm to obtain a licence, or, alternatively, what would you propose?

2.2 Do you agree with the proposal for a designated representative, or alternatively, what would you propose? Please elaborate on your response.

2.3 Please comment on any other matters for consideration on this issue.

3. Educational and Experience Requirements

Current educational and experience requirements

Unlike in several other jurisdictions, there is currently no educational prerequisite for a level 1 probationary adjuster licence. However, as indicated under [Topic 1 -Adjuster Licensing Requirements](#), a level 1 licensee must complete course C-11 Principles and Practice of Insurance or C81 and C82 General Insurance Essentials – Parts 1 and 2 within 12 months of receiving the level 1 licence. The level 1 licensee must also obtain 12 months’ work experience.

Under the current *Adjusters Regulation*, upon obtaining a level 2 licence, licence holders must acquire 24 months’ adjusting experience and complete at least one of the following educational programs from the Insurance Institute within 36 months to qualify for one of the level 3 specializations:

Property damage

- C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
- C12 Insurance on Property;
- C13 Insurance Against Liability - Part 1;
- C110 Essentials of Loss Adjusting or C17 Claims 1; and
- C111 Advanced Loss Adjusting or C33 Insurance on Property - Part 2 and C46 Claims 2.

Automobile physical damage

- C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
- C13 Insurance Against Liability - Part 1;
- C14 Automobile Insurance - Part 1;
- C110 Essentials of Loss Adjusting or C17 Claims 1; and
- C111 Advanced Loss Adjusting or C46 Claims 2.

Automobile accident benefits

- C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
- C14 Automobile Insurance - Part 1;
- C32 Bodily Injury Claims;
- C110 Essentials of Loss Adjusting or C17 Claims 1; and
- C111 Advanced Loss Adjusting or C46 Claims 2.

Bodily injury

- C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
- C13 Insurance Against Liability - Part 1;
- C14 Automobile Insurance - Part 1;
- C32 Bodily Injury Claims;
- C110 Essentials of Loss Adjusting or C17 Claims 1; and
- C111 Advanced Loss Adjusting or C46 Claims 2.

To obtain a level 4 licence, an applicant must have 24 months’ adjusting experience as a level 3 licensee and must complete the following Institute courses:

- C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
- C12 Insurance on Property;
- C13 Insurance Against Liability - Part 1;
- C14 Automobile Insurance - Part 1;
- C32 Bodily Injury Claims;
- C110 Essentials of Loss Adjusting or C17 Claims 1;
- C111 Advanced Loss Adjusting or C33 Insurance on Property - Part 2 and C46 Claims 2; and
- C112 Practical Issues in Claims Management.

Proposed educational and experience requirements

Having regard to the new licensing levels proposed under [Topic 1- Adjuster Licensing Requirements](#), the Commission proposes the following educational and experience requirements:

- to obtain a level 1 assistant adjuster licence, an applicant must have already completed course C-11 Principles and Practice of Insurance or C81 and C82 General Insurance Essentials – Parts 1 and 2;
- to obtain a level 2 adjuster licence, an applicant must have at least 24 months’ adjusting experience as a level 1 assistant adjuster and must have completed the following courses:
 - C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
 - C110 Essentials of Loss Adjusting or C17 Claims 1;
 - C111 Advanced Loss Adjusting or C46 Claims 2; and
 - Any two of the following:
 - C12 Insurance on Property;
 - C13 Insurance Against Liability - Part 1;
 - C14 Automobile Insurance - Part 1; or
 - C32 Bodily Injury Claims.
- to obtain a level 3 licence, an applicant must have at least 24 months’ work experience as a level 2 licensee and must have completed the following courses:
 - C11 Principles and Practice of Insurance or C81 General Insurance Essentials - Part 1 and C82 General Insurance Essentials - Part 2;
 - C12 Insurance on Property;
 - C13 Insurance Against Liability - Part 1;
 - C14 Automobile Insurance - Part 1;
 - C32 Bodily Injury Claims;
 - C110 Essentials of Loss Adjusting or C17 Claims 1;
 - C111 Advanced Loss Adjusting or C33 Insurance on Property - Part 2 and C46 Claims 2; and
 - C112 Practical Issues in Claims Management.

As discussed under [Topic 1- Adjuster Licensing Requirements](#), level 2 licensees would be able to do several types of adjusting under their licence. However, their employer needs to ensure that they are adjusting in areas for which they are competent.

The current *Adjusters Regulation* allows a level 1 or level 2 licensee who fails to complete the educational requirements within the prescribed timeframes to seek an extension (see sections 13 and 18). Given the proposed changes, and specifically the proposed elimination of mandatory progression, there would be no need for these extension provisions going forward.

A comparison of the different educational requirements in all Canadian Jurisdictions is available in the *National Claims Manual* published by the Canadian Independent Adjusters’ Association and can be found on their website at www.ciaa-adjusters.ca.

Proposed recognition for adjusters from other jurisdictions

As with the current *Adjusters Regulation*, the Commission proposes to authorize the Superintendent to recognize equivalent training or adjusting experience obtained in another jurisdiction prior to seeking a New Brunswick licence, in lieu of the required courses. This would apply to individuals who move to New Brunswick from another jurisdiction and to individuals who live in another jurisdiction but want to also carry on business in New Brunswick. There would be minimal experience requirements for an applicant for the proposed level 2 or 3 licence:

- An applicant seeking a level 2 licence will have to have 24 months' experience as an adjuster in another jurisdiction;
- An applicant for a level 3 licence would need to have 48 months' experience as an adjuster in another jurisdiction.

An applicant who is granted a particular level of licence will be deemed to have the courses for that level of licence, but will have to take any additional required courses to move to the next level. Further, the Commission proposes that an individual applicant who is granted a level 2 licence on this basis, would be required to complete C112 (Practical Issues in Claims Management) and any two of the following to obtain a level 3 licence:

- C12 Insurance on Property;
- C13 Insurance Against Liability - Part 1;
- C14 Automobile Insurance - Part 1; or
- C32 Bodily Injury Claims.

Individuals who are licensed in another jurisdiction, will have to show proof of their licence in their home jurisdiction.

Consultation Questions

3.1 In consideration of any comments that you provided on licensing levels, do you have any comment on the proposed educational requirements for each level of licence?

3.2 In consideration of any comments that you provided on licensing levels, do you have any comment on the proposed minimum experience requirements for each level of licence?

3.3 If you are suggesting licensing levels and/or educational requirements different than those being proposed by the Commission, what would be appropriate with respect to extensions (if applicable)?

3.4 In consideration of any comments that you provided on licensing levels and educational requirements, do you have any comment on the proposal respecting licensing of applicants from another jurisdiction?

3.5 Please comment on any other matters for consideration on this issue.

4. Supervision, Responsibilities and Restrictions

Current Supervision Responsibilities and Restrictions

Under the current *Adjusters Regulation*, level 1 and 2 licensees must be supervised by a level 4 or a level 3 licensee with at least 12 months' experience as a level 3. The supervisor is responsible for the instruction and conduct of level 1 and level 2 licensees. There is no restriction on how many level 1 or 2 licensees a person can supervise. Level 1 and 2 licensees are subject to restrictions on their activities.

Proposed Supervision Responsibilities and Restrictions

Bearing in mind the licensing levels proposed under [Topic 1- Adjuster Licensing Requirements](#), the Commission proposes the following restrictions with respect to a level 1 assistant adjuster:

- A level 1 must be under direct supervision of a level 3 senior adjuster or a level 2 adjuster with at least 12 months' experience as a level 2 adjuster;
- The supervisor is responsible for the conduct of the level 1 adjuster;
- Insurance claims cannot be assigned to a level 1 and can only be assigned to a level 2 or level 3 adjuster;
- A level 1 cannot adjust an insurance claim in their own right;
- A level 1 can only work on claims assigned to their supervisor and only as authorized by the supervisor (this includes entering into correspondence, submitting reports and preparing memoranda);
- A level 1 must have all claim reports and settlement offers countersigned by their supervisor.

Further, the Commission proposes that a supervisor be limited to supervising an appropriate number of level 1 assistant adjusters. What would be appropriate can vary depending on the circumstances. The Superintendent will be authorized to reject a supervisory arrangement if it is determined not to be appropriate. Level 1 adjusters and their supervisors will be required to enter into a supervision agreement in a form approved by the Superintendent.

The Commission proposes that the designated representative of an adjusting firm be responsible for the overall supervision of all employees including adjusters. The Commission proposes that "supervision" be defined as set out in the Position Paper to mean "reasonable and prudent oversight of all insurance activities carried on by employees". It noted that the "primary goal is to protect consumer interests and ensure compliance with the *Insurance Act*, regulations and rules. A secondary goal is to build competency of employees." The Commission proposes that a designated representative's supervisory responsibilities include, but not be limited to, ensuring that:

- All staff are adequately trained and properly licensed;

- Appropriate written procedures are in place, which include, but are not limited to, such matters as proper file maintenance;
- Trust monies are handled properly and all books and records are properly maintained;
- Staff are compliant with the Act, Regulations and Rules;
- All licence holders operate in accordance with any conditions and restrictions on their licences;
- Errors and omissions insurance is properly maintained;
- Regular reviews of the work of licensed staff are carried out to ensure that there are no issues related to compliance, competence or ethics. Regular reviews would include auditing samples of client files.

Consultation Questions

- 4.1 Do you have any comment on the proposed supervision requirements and restrictions for a level 1 assistant adjuster?
- 4.2 Do you agree with the proposed definition of “supervision”, or, alternatively, how do you propose “supervision” be defined?
- 4.3 Do you agree with the proposed with respect to limitations on the number of level 1 assistant adjusters that can be supervised by a supervisor, or, alternatively, what do you propose?
- 4.4 Do you agree with the proposed responsibilities for a designated representative, or, alternatively, what do you propose?
- 4.5 Please comment on any other matters for consideration on this issue.

5. Renewal of Licence

Current renewals

Under the current *Adjusters Regulation*, a level 1 licence expires after 12 months, unless extended, and cannot be renewed. A level 2 licence expires after 12 months, but can be renewed twice, unless extended. Level 3 and 4 licences expire after 12 months, but can be renewed indefinitely.

Currently, insurance agents and brokers who have been licensed continuously for six years and who do not have conditions on their licences are eligible for a two-year licence. The Commission believes that a two-year licence provides an appropriate balance between reducing the administrative burden on licence holders and effective regulatory monitoring. In its Position Paper, the Commission recommended allowing insurance agents to become eligible for a two-year licence after being licensed for two years and not be disqualified because they have conditions on their licences.

Proposed renewals

Similarly, the Commission proposes that all adjusters be eligible for a two-year licence after being licensed with the Commission as an adjuster for two years. Time at any level would be considered and a person who moves to a higher level of licence would not have to move back to a one-year licence. Further, adjusters who have conditions on their licences would not be automatically disqualified from holding a two-year licence, but the Superintendent would have the discretion to issue a one-year licence where it is determined that an annual renewal is necessary.

Consultation Questions

5.1 In consideration of any comments that you provided on licensing levels, do you agree with the proposal with respect to the renewal of adjuster licences, or, alternatively, what do you propose?

5.2 Please comment on any other matters for consideration on this issue.

6. Reinstatement

Current reinstatement rules

Under the *Adjusters Regulation*, a person who ceases to hold a level 3 or 4 licence can have their licence reinstated, subject to any condition that might be imposed on the licence. However, pursuant to the Regulation, a person who ceases to hold a level 3 or 4 licence for 10 years or more is only eligible for a level 1 licence and must gain work experience again. Any courses successfully completed are recognized, subject to any condition that might be imposed on the licence. The ability of level 1 or level 2 licence holders to reinstate a licence is much more restrictive (see sections 14 and 19 of the Regulation) and they can become ineligible to hold a licence.

Proposed reinstatement rules

The Commission proposes that any level of adjuster who does not hold a licence for five years or more be required to retake the educational requirements to requalify for a licence and to rebuild the experience requirements. However, a person who has worked as an adjuster in another jurisdiction during that period would not be required to requalify.

This is consistent with the Commission's recommendation that general insurance agents who do not hold a licence for five years or more be required to retake the educational requirements to requalify for a licence. Further, a life insurance licensee or an accident and sickness licensee who has not held a licence for two years or more must retake the educational requirements

Consultation Questions

6.1 In consideration of any comments that you provided on other topics, do you have any additional information that should be considered by the Commission in establishing the appropriate timeframe to require an adjuster who has been out of the industry to requalify for a licence?

6.2 Please comment on any other matters for consideration on this issue.

7. Duty to Report

Current duty to report

The Commission proposes to maintain the current requirement that an adjuster who changes employer must obtain approval from the Superintendent. Likewise, where a licensee changes their name, they must immediately notify the Superintendent. Finally, an adjuster “who ceases to act as an adjuster” must immediately provide written reasons to the Superintendent.

Further, the Commission will maintain the requirement that a licensee or an applicant for an adjuster licence provide written notice to the Superintendent of:

- an investigation commenced or a disciplinary action taken against the licensee by an insurance regulator, a financial services regulator or a professional body;
- a judgment rendered against the licensee in relation to financial activities, fraud or breach of trust; or
- a charge or a conviction for an offence under any jurisdiction involving theft, fraud, forgery, breach of trust, misrepresentation, perjury, furnishing of false information, carrying on any regulated business or career while not licensed or crimes of violence or moral turpitude.

Proposed changes to duty to report

The Commission proposes to amend the time for giving notice from within 10 business days to within 5 business days of the disciplinary action, judgment, charge or conviction.

The Commission proposes to add the following to the list of reporting requirements:

- any change with respect to additional employment or business activity; or
- dismissal by an employer.

Further, the Commission proposes that a supervisor of level 1 adjuster must report within 10 business days any change of supervisor, including an end to the supervision.

Finally, the Commission proposes that a designated representative be required to report within 10 business days any of the following:

- Change in name of the adjusting firm;
- Change of ownership of the adjusting firm;
- Departure of any licensed employee, including where an employee is terminated, retires or leaves the company for any other reason;

- Detailed reasons for the licensed employee’s departure;
- Any change in errors and omissions coverage; and
- Any errors and omissions claim against the adjusting firm or any employee, with details.

Consultation Questions

7.1 Are there additional matters that should be reported by a licensee?

7.2 Are there additional matters that should be reported by a designated representative?

7.3 Do you agree with the proposed time period for giving notice, or, alternatively, what do you propose? Please elaborate on your response.

7.4 Please comment on any other matters for consideration on this issue.

8. Conduct

Current prohibitions

The *Adjusters Regulation* prohibits an adjuster who is adjusting a claim from doing certain things. In particular, section 27 prohibits an adjuster from:

- possessing an interest, other than professional, in the settlement of a claim;
- failing to disclose to his or her employer or the person retaining him any information known to him or her with respect to policy violations and cases of fraud, misrepresentation, concealment, falsification of facts and records or any other information material to the decision of his or her employer or the person retaining him or her in the settlement of a claim;
- failing, when acting for more than one insurer in the same matter, to immediately notify each insurer of the interests of all insurers for whom he or she is acting or has been requested to act in the same matter;
- seek or make a profit or seek or acquire an interest in any matter entrusted to his or her care, other than his or her fees or salary;
- represent falsely to an insurer that he or she has been instructed by another insurer to act in the settlement of a claim;
- act or hold himself or herself out as acting for an insurer without authorization of that insurer;
- advise a claimant to refrain from seeking legal counsel;
- knowingly interview or settle a claim with a claimant represented by a barrister or solicitor without the consent of that barrister or solicitor; or
- mislead an interested party as to the identity or the interest of the insurer.

Further, section 28 prohibits adjusters from disclosing any information obtained in the performance of their work to any person other than their employer or the person retaining the adjuster unless authorized by that person or obliged by law. However, an adjuster must, upon request, provide the Superintendent any information obtained in the performance of the adjuster's work.

Proposed changes to prohibitions

The Commission has researched the requirements in other jurisdictions, including the codes of conduct in the Western Provinces. Based on this research, the Commission is proposing the following changes to two of the above items:

Current

advise a claimant to refrain from seeking legal counsel,

knowingly interview or settle a claim with a claimant represented by a barrister or solicitor without the consent of that barrister or solicitor

Proposed

give legal advice or discourage a claimant from seeking legal advice,

Knowingly deal directly (including interview or settle a claim) with a claimant represented by a lawyer without the consent of that lawyer.

The Commission is also proposing to add the following to the list of prohibited conduct:

- place himself or herself in a conflict of interest with an insurer, policy holder or claimant unless such insurer, policy holder or claimant approves of the adjuster's intended conduct in writing, after the existence of the potential conflict of interest has been openly, honestly and fully disclosed;
- mislead the insured as to his/her role in adjusting a claim, (the insured should be aware that you act for the insurer in the claim and that the insured is responsible for hiring and work of contractors, even if facilitated by the adjuster);
- fail to take reasonable steps to keep the insured informed of the status of a claim and respond promptly to the insured's communication;
- fail to fully and promptly inform insureds of material information regarding policy coverage, limitation periods, claim denials and their rights and obligations in the claims process, as required in the circumstances;
- accept any financial inducement or gift in exchange for recommending the services of a third party such as a contractor or auto body shop;
- act in the investigation or settlement of a claim without specific authorization from the insurer;
- fail to deal with all formal and informal complaints or disputes in good faith and in a timely and forthright manner, including, when necessary, referring the complainant to other more appropriate people, processes and/or organizations;
- attempt to influence a claim through coercion, false or misleading statements or other improper means;
- make or assist anyone to make a false insurance claim or a false declaration to an insurer;
- counsel a claimant to misrepresent any aspect of a claim report or proof of loss to misrepresent information or knowingly transmit information which they have reason to believe is not true;
- ask claimants to sign statements, proofs of loss or other documents which are incomplete. If information is not available, those sections of the forms must be noted as 'To Be Advised' or 'information to follow' prior to the claimant signing the document; and

- access confidential client information outside the ordinary course of business.

Finally, the Commission is proposing a clear prohibition against any insurer or adjusting firm using the services of an adjuster to adjust claims in New Brunswick, unless the adjuster is properly licensed or exempt from licensing.

Consultation Questions

8.1 Are there additional acts that an adjuster should be prohibited from doing with respect to adjusting a loss?

8.2 Are there additional protections that should be in place to protect clients' personal information?

8.3 Please comment on any other matters for consideration on this issue.

9. Bond and Errors and Omissions Insurance

Current bond requirements

The *Adjusters Regulation* requires all adjusters who are not salaried employees of an insurer to provide a \$5,000 bond or other security. The Superintendent holds the bond in trust for any person who may incur a financial loss as a result of an improper or illegal act by an adjuster.

Several other jurisdictions require errors and omissions insurance rather than a bond. In its Position Paper, the Commission recommended amendments to eliminate the bond requirement and require adjusters be covered by errors and omissions insurance. However, like the current bond requirement, adjusters who are salaried employees of an insurer, would not be required to carry errors and omissions insurance.

Proposed errors and omissions insurance requirements

The Commission still recommends that adjusters who are not salaried employees of an insurer to be covered by errors and omissions insurance. The Commission proposes adjusters carry the following coverage:

- Liability insurance of at least \$1,000,000 in respect of any one occurrence and an overall policy aggregate of at least \$2,000,000 in respect of an occurrence with regard to negligent acts, errors or omissions with extended coverage for loss resulting from fraudulent acts pertaining to the licensed activity;
- Fidelity insurance against losses arising from dishonesty (including fraud) of employees, a proprietor or partners, directors and officers for an amount of not less than \$100,000.00 in coverage;
- Coverage amounts would be exclusive of defence and investigative expenses; and
- The coverage would require a 12 month extended reporting period.

The Commission further proposes that the insurer who issues the policy be required to provide 30 days' notice to the Superintendent before cancelling or refusing to renew the policy. Finally, the Commission proposes that a licence holder's licence be automatically suspended on the effective termination date or non-renewal date of the insurance policy.

Consultation Questions

- 9.1 Is the proposed errors and omissions insurance adequate? If not, what do you propose? Please elaborate on your response.
- 9.2 Do you agree with the proposed notice that an errors and omissions insurer should provide to the Superintendent before being permitted to cancel or refuse to renew an errors and omissions policy, or, alternatively, what do you propose? Please elaborate on your response.
- 9.3 Please comment on any other matters for consideration on this issue.

10. Deposit of money received for and on behalf of others

The *Adjusters Regulation* requires an adjuster, who is not a salaried employee of an insurer, to have a trust account if he or she receives money for and on behalf of others in the course of adjusting an insurance claim. The adjuster is also required to maintain a record of any money received or disbursed and of the main particulars concerning each claim. Although, it would be rare for adjusters to receive trust monies, the Commission proposes to maintain these requirements for those that do.

Consultation Questions

10.1 Do you agree with the proposed requirements for an adjuster who receives trust monies, or, alternatively, what do you propose?

11. Transition

Proposed transition

Based on the proposed new levels of adjuster licences, the Commission proposes the following transition:

- All individuals holding a level 4 general adjuster licence under the current Adjusters Regulation will transition to a level 3 senior adjuster licence;
- All individuals holding a level 3 adjuster licence under the current Adjusters Regulation, regardless of specializations, will transition to a level 2 adjuster licence;
- All individuals holding a level 2 assistant adjuster licence under the current Adjusters Regulation will transition to a level 1 assistant adjuster licence;
- All individuals holding a level 1 probationary adjuster licence under the current Adjusters Regulation will transition to a level 1 assistant adjuster licence.

The Commission proposes that individuals who hold a level 1 probationary adjuster licence, but have not completed C-11 Principles and Practice of Insurance or C81 and C82 General Insurance Essentials – Parts 1 and 2, have 12 months from the coming into effect of the new regime to complete one of these options. However, if, for reasons beyond his or her control, an individual cannot complete the course(s), within the 12 months, he or she may apply to the Superintendent, in writing and before the expiration of the 12 months, for an extension. The extension can be for up to 12 months and can only be granted once. Failure to complete one of the course options in the allotted time will result in their licence being terminated. However, the individuals can apply again for a level 1 licence when they complete C-11 or C81 and C82.

There will be no fees for transitioning licences. Further, there will be no refunds as a result of the transition.

Consultation Questions

11.1 Do you agree with the proposed transition, or, alternatively, what do you propose?

11.2 Please provide any additional comments with respect to adjuster licensing in New Brunswick?

12. Damage Appraisers

Current licensing requirements

Damage appraisers are also required to be licensed. The *Act* defines a damage appraiser as “a person who, for compensation or for promise or expectation of compensation, engages in the business of establishing the amount of loss resulting from any damage to the real or personal property of another person” The *Damage Appraiser Regulation* excludes the following from being considered as acting as a damage appraiser:

- an employee of a garage, body shop or other repair facility who estimate damage to a motor vehicle in the usual course of his or her employment;
- a liquidator or trustee in bankruptcy in the performance of his or her duties;
- a testamentary executor, director, trustee or fiduciary in the performance of his or her duties;
- an engineer, architect, appraiser, assessor or other expert who is employed solely for the purpose of giving expert advice or evidence;
- an insurance claims adjuster while acting in the course of his employment; and
- any person not employed by an insurance company, adjusting firm or appraisal firm, who, in the course of employment because of technical or expert knowledge, is called on to estimate the damage to or the value of property, either his own, his employer’s or his employer’s customers’.

There are currently no specific educational requirements to obtain a damage appraiser licence. An applicant must have a minimum of two years’ experience in automobile repair and automobile body work, and such other qualifications as the Superintendent considers appropriate. However, the Superintendent can consider other experience and qualifications. There is nothing specific to experience in real property.

The *Damage Appraisers Regulation* prohibits the following acts by a damage appraiser:

- possessing any interest in the property he or she is engaged to appraise;
- seeking to make any profit or seeking or acquiring any interest, other than fees or salary, in any property he or she is engaged to appraise;
- knowingly reporting the need to replace parts when such parts are repairable in a satisfactory manner, or agreeing to or conniving at such acts by any garage, body shop or other repair facility; and
- acting or attempting to act as an insurance claims adjuster in connection with any property he or she is appraising.

Proposed changes to licensing requirements

The Commission is considering eliminating the requirement for damage appraisers to hold a licence. New Brunswick is currently the only jurisdiction that continues to license damage appraisers. If the Commission eliminates the requirement for damage appraisers to be licensed, the Commission would propose requiring an insurance company or an adjusting firm using the services of a damage appraiser to ensure that the damage appraiser has the appropriate qualifications and experience and to provide oversight of their activities with respect to any insurance claim. Further, the Act would be amended to authorize the Superintendent to prohibit an individual from acting as a damage appraiser where the individual has demonstrated incompetency or untrustworthiness. The Act would maintain a list of prohibited activities.

Consultation Questions

- 12.1 What are the risks to consumers of eliminating the requirement that damage appraisers be licensed? What are the benefits of eliminating the licensing requirement?
- 12.2 If the Commission maintains the requirement for damage appraisers to be licensed, what are the appropriate training and experience requirements for obtaining a licence?
- 12.3 Do you agree with the current definition of “damage appraiser”, or, alternatively, what do you propose?
- 12.4 Are there additional activities that should be excluded from being considered as acting as a damage appraiser? Please elaborate on your response.
- 12.5 Are there additional acts that a damage appraiser should be prohibited from doing with respect to appraising a loss? Please elaborate on your response.
- 12.6 Please provide any additional comments with respect to damage appraisers working on claims in New Brunswick?

Providing Feedback

The Commission is publishing this Consultation Paper for a **60-day comment period**. Please send your comments in writing on or before **2 July 2019**.

All submissions should refer to “**Consultation Paper – Insurance 2019**”. This reference should be included in the subject line if the submission is sent by email. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word format.

Please address your submission to:

E-mail: consultation@fcnb.ca

Alternatively, submissions may be sent by mail or fax to:

Insurance Division c/o David Weir
Financial and Consumer Services Commission
200-225 King St.
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We cannot keep submissions confidential as they may be subject to a request under the *Right to Information and Protection of Privacy Act*. Additionally, any submissions or comments received during the comment period may be published; therefore, you should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission.

If you have any questions, please refer them to:

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