

ALBERTA INSURANCE COUNCIL
(the "AIC")

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

And

In the Matter of Donald W Reddekopp
(the "Agent")

DECISION
OF
The General Insurance Council
(the "Council")

This case involved an allegation pursuant to ss. 480 (1)(a) and (e) of the Act. Specifically, it is alleged that the Agent submitted a farm insurance application form to an insurance company that was purportedly signed by the named client ("BM"). However, it is alleged that the Agent signed and submitted this application without that client's knowledge or permission. In so doing, it is alleged that the Agent is guilty of misrepresentation or dishonesty and that this constitutes an offence pursuant to s. 480(1)(a) of the Act. In addition or in the alternative, it is alleged that the Agent demonstrated incompetence to act as a general insurance agent and that this constitutes an offence pursuant to s. 480(1)(e) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 7, 2015 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not submit any further evidence for consideration.

The Agent is a former holder of a certificate of authority that authorized him to act in the capacity of a general insurance agent. The Report sets out the Agent's license history and it indicates that he first held a certificate on May 11, 1999. He held a certificate of authority until January 10, 2014.

On January 9, 2014, the AIC received a copy of a termination letter addressed to the Agent signed by "GB". GB is the President of the agency at which the Agent worked. This letter summarized certain allegations against the Agent as follows:

- a) the Agent issued automobile liability insurance cards to clients, which cards showed incorrect information;
- b) the Agent received requests from clients to amend their insurance coverage, which requests the Agent failed to complete;
- c) the Agent collected a cash payment for an insurance premium, which payment the Agent failed to forward to the Agency; and
- d) the Agent “forged” signatures of a client on insurance applications.

On April 23, 2014, the AIC sent a letter to the Agent requesting a response regarding GB’s allegations. The Agent responded through counsel by fax dated May 7, 2014. Counsel for the Agent requested an extension of time to provide a substantive response. This was granted and counsel ultimately responded by fax dated May 16, 2014. In regard to BM’s application, the Agent admitted to signing an insurance document in BM’s name. The Agent stated that he informed BM of his actions after BM returned from holidays. The Agent denied the additional allegations that GB made. The investigator ultimately concluded that there was insufficient evidence to proceed on the other allegations that GB set out in the termination letter. As such, the Report and this Decision only relate to the application that the Agent submitted for BM’s farm coverage.

Discussion

As a preliminary matter, we note that pursuant to s. 480 of the Act, we have jurisdiction to adjudicate matters against holders and former holders of insurance agent certificates of authority. Therefore, we have jurisdiction over this allegation notwithstanding the fact that the Agent no longer holds a certificate of authority.

In order to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the impugned acts as alleged. While the normal civil burden of proof applies, the necessity of clear and cogent evidence recognizes that our decisions impact an agent’s professional standing.

Misconduct offences found in s. 480(1)(a) were discussed by the Alberta Court of Queen’s Bench in *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter “*Roy*”). In *Roy*, the

Council found that an Agent committed an offence pursuant to s. 480(1)(a) of the Act when he attested to completing his required continuing education when he did not, in fact, do so. The Insurance Councils Appeal Board also found the Agent guilty of an offence and the Agent appealed to the Court of Queen's Bench. In his reasons for judgment, Mr. Justice Marceau reviewed the requisite test to find that an offence pursuant to s. 480(1)(a) of the Act has been made out and expressed it as follows at paragraphs 24 to 26:

[24] The Long case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the Long decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of mens rea or intent depending on which of the constituent elements was being considered. In my view, the difference between the disjunctive elements may be found in an objective analysis of the definition of each and certainly, as demonstrated by the Long case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However once the objective test has been met, one must turn to the mental element. Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied by the recklessness of the Applicant.

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness". (emphasis added)

In applying this test to the facts as set out in the Report, the Agent freely admitted that he signed the client's name on that application and that BM was not even aware that an application was being submitted on his behalf. Therefore, there is sufficient clear and cogent evidence of the objective elements of the allegation and the Agent's subjective intent are proven and we find that he made misrepresentations and acted in a dishonest manner as alleged.

As to the appropriate sanction for this conduct, we typically have the ability to levy civil penalties in an amount up to \$5,000.00 for offences pursuant to s. 480(1)(a) and 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to order that certificates of authority be revoked for one year or suspended for a period of time. The Agent no longer holds a certificate of authority. Given this, the sanction of certificate suspension or revocation is unavailable. In terms of a civil penalty, the Agent has a long history in the industry without previous incident. He indicated that processing BM's application in the manner he did was motivated by the fact that BM was out of the country and could not provide a signature. However, processing applications in this manner is never acceptable and is a serious breach. Therefore, we order that a civil penalty in the amount of \$1,000.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

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

Date: September 2, 2015

Original Signed By

Louise Clare, Chair
General Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

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

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

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

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

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

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

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

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3