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 Daniel Joseph Daggett
(the "Agent")

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

This case involved an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent signed and completed a request for confirmation of leased vehicle insurance documents ("Proof of Insurance") for a leasing company that confirmed insurance coverage was in place for an automobile owned by the Agent for three years when coverage was not actually in place. In so doing, it is alleged that he is guilty of misrepresentation or dishonesty and that this constitutes an offence pursuant to s. 480(1)(a) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated July 3, 2014 (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 signed the Report on June 11, 2014 and did not adduce any further evidence.

The Agent is a former holder of an Insurance Agent's Certificate of Authority for the sale of general insurance, and was so licensed from at least January 3, 1996 until June 4, 2014. On May 14, 2014 the AIC received an email of complaint and accompanying enclosure from "DM". DM is the Executive Vice-President of the agency that the Agent was affiliated with at the time that his certificate of authority was terminated. In his email, DM alleged that the Agent knowingly completed and signed false proof of insurance documents on a vehicle that the Agent owned and then provided them to a leasing company.

By letter May 23, 2014, an AIC investigator wrote to the Agent and asked that he respond to the allegations that DM made. The letter also requested that the Agent confirm that he owned the automobile set out on the proof of insurance documents.

On June 20, 2014, the AIC received a handwritten letter from the Agent. In this letter, the Agent confirmed that he owned the automobile described on the proof of insurance documents. He further admitted that he completed and signed the documents and that there actually was no coverage in place at the time that he completed them. In his letter he characterized this act as "an error."

Decision of the Council

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).
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> [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.
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> [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 completed and signed the proof of Insurance documents confirming that insurance coverage was in place for his automobile even though coverage had not been placed. Given the totality of the evidence, we are of the view that the Report contains sufficient clear and cogent evidence to prove 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. While the Agent has no disciplinary history with the AIC and is a long-standing experienced agent, we believe that a significant civil penalty is warranted. The Agent's actions were deliberately conducted and extended over a period of three years and were obviously done for his own personal gain. There do not appear to be any mitigating factors put forward by the Agent. He characterized his conduct as simply being an "error". Lending institutions and leasing companies usually require insurance coverage so as to protect their interests. As a result, they rely on the trustworthiness of the documents that agents and agencies

produce on behalf of insurers. The Agents completely disregarded the trust that was placed in him by the leasing company, his agency and ultimately the insurer and a significant civil penalty is warranted in the circumstances. As such, we order that a civil penalty in the amount of $3,000.00 be levied against the Agent. As he no longer holds a certificate of authority, we have no ability to order a suspension or revocation.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. 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: October 15, 2014

_____Original Signed By_____
Amanda Sawatzky, 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