

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 Derek Tedrick  
(the "Agent")

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

This case involved allegations pursuant to ss. 480(1)(a) and 509(1)(a) of the Act. Specifically, it is alleged that the Agent made misrepresentations to the effect that he had completed his continuing education ("CE") requirements to renew his certificate of authority for life insurance in the 2015 certificate term when, in fact, he did not. In so doing, it is alleged that he committed an offence pursuant to s. 480(1)(a) of the Act. Alternatively, it is alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act by reporting that he had completed CE courses to renew his life insurance certificate of authority for the 2015 certificate term when he did not. In so doing, it is alleged that he violated a section of the Act as contemplated by s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council ("Report") dated May 11, 2017. The Report was sent to the Agent to provide him with the opportunity to adduce further evidence or submissions by way of addendum. The Agent did not provide additional material.

The Agent was first licensed to act as an insurance agent in 2004. He continued to hold licenses until his Accident & Sickness certificate expired in 2013. He more or less continually held a life insurance certificate of authority after that.

As part of an AIC CE compliance audit, the Agent was randomly selected to submit records of his CE attendance. The AIC sent the Agent an email to this effect on February 24, 2017. In his July 6, 2015, renewal application for a certificate of authority to sell life insurance, the Agent declared: "I confirm

that I have completed the [CE] required by the regulation for the certificate in the class of Life. I further certify that I have certificates to support the [CE] which I have entered and will retain those certificates in accordance with the regulation.”

The Agent responded by email on March 20, 2017 wherein he included a number of CE certificates, however, he explained that he would provide three more “as soon as possible”. To avoid delay, the AIC investigator contacted the CE course providers directly to obtain the missing certificates. One (Oliver’s Learning) confirmed attendance; another (Industrial Alliance) did not.

The Agent subsequently explained that when he was with WFG, the CE providers did not have sign-up sheet to verify attendance. He suggested that they would later ask team leaders to provide a list of attendees after the fact and then they would issue certificates to the office which would be physically distributed to attendees. The Agent advised that he would have received his CE course certificates in this manner but he could not provide any insight as to what he did with his certificates. Among other things, he suggested that he may have given them to WFG when he resigned or that he misplaced the course certificates when he moved offices in February 2015.

As the Agent failed to provide the CE certificates that reflected the courses that he entered onto the AIC online system in regard to his license renewal, the investigator deleted those courses that could not be substantiated. As a result, the Agent could only demonstrate that he took 5.00 hours of CE rather than the 7.5 that he attested to on his renewal application.

### **Discussion**

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 he committed the acts as alleged. The requirement of clear and cogent evidence reflects the fact that our findings can dramatically impact an insurance agent’s ability to remain in the industry.

Additionally, the elements of s. 480(1)(a) offences have been 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 the applicable CE when he did not, in fact, have the required CE. The Agent also

held a securities license and stated that he believed that the CE required to maintain his securities license was applicable to his insurance agent requirements. 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 case before us, it is clear that the Agent did not possess the required CE credits as of June 30, 2016. However, given the evidence in its entirety, we are unable to conclude that the Agent acted with the intent required of an allegation pursuant to s. 480(1)(a) of the Act, therefore, we find him not guilty of that allegation.

Turning to the alternative allegation made pursuant to s. 509(1)(a) of the Act, this section states that "[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement." This section falls into a category of offences called strict liability offences. As such, the

AIC only has the onus to prove that the Agent's statement that he had earned the reported CE credits was false. Once this occurs, the onus shifts to the Agent to establish a defense of due diligence. To establish this defence, he must prove that he took all reasonable measures to avoid making the false statement.

As noted above, it is clear the Former Agent did not possess the certificates that proved he obtained the required CE hours and that the statements to the contrary were false. Moving on, he then bears the onus to prove that he took all reasonable measures to avoid making the false statement. One of the course providers indicated that the Agent did not appear on their attendance lists and the Agent could not provide a course certificate to the contrary. Therefore, we find that the Agent did not act with due diligence and that he is guilty of an offence pursuant to s. 509 of the Act.

As to the appropriate sanction for this conduct, we can levy civil penalties in an amount up to \$1,000.00 for offences pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on these factors and the evidence before us, we order that a civil penalty of Three Hundred Dollars (\$300.00) be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If the civil penalty is not paid within thirty (30) days, the Agent's certificate of authority will be automatically suspended and 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.

Dated: July 12, 2017

Kenneth Doll  
Kenneth Doll, Chair  
Life 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