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 Balraj Grewal
(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 representations to the AIC that he had completed the required continuing education ("CE") hours to renew his certificates of authority for life insurance and accident & sickness ("A&S") insurance in the 2014 certificate term, when, in fact, he had not. As a result, it is alleged that he made misrepresentations as contemplated in s. 480(1)(a) of the Act. Alternatively, it was 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 certificate of authority for A&S insurance in the 2014 certificate term when he did not.

Facts and Evidence

This matter came before us by way of written Report to Council (the "Report") dated June 6, 2017. The Report was forwarded to the Agent for review and to provide him the opportunity to adduce additional evidence and make submissions. The Agent did not respond to the Report.

The Agent was first licensed to act in the capacity of a life and accident & sickness ("A&S") insurance agent on June 26, 2012. He subsequently obtained a general insurance agent certificate of authority on February 4, 2014. His certificate of authority for general insurance was terminated on November 19, 2014, and his certificates of authority for life and A&S insurance were automatically suspended on November 25, 2016 as a result of the fact that he did not provide CE certificates in response to the AIC audit.

The Agent had renewed his life and A&S certificates on July 2, 2014. In doing so the Agent made the following declaration: "I confirm that I have completed the [CE] required by the regulation for the certificate in the class of [Life][A&S]. 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."

On October 21, 2016, the AIC asked the Agent to provide copies of his CE course certificates in relation to his life and A&S certificates of authority in the 2014, 2015, and 2016 certificate terms. As the Agent did not respond, the AIC contacted him again on February 14, 2017 to remind him that he had been selected to participate in the audit and that CE records were due. He finally provided his available CE course certificates on February 26, 2017. However, the records he provided missed one particular certificate for a course that the Agent stated he completed on July 2, 2014. As such, the investigator wrote to the Agent on February 28, 2017 and requested this additional record.

The Agent responded on March 5, 2017. He first apologized for not responding to the October 21, 2016 CE Demand. While the Report contains evidence that he received the Demand he stated that he had moved from his previous residence and was disorganized. Secondly, he stated that he could not locate his certificate for the July 2, 2016 course that he attested to having completed but that he would contact the course provider. Ultimately, the investigator contacted the provider and was advised that they did not have any record to suggest that the Agent completed the course. While the Agent did not complete the course, they did, however, indicate that the he registered and paid the course fee.

The Report also noted that regarding seven of the CE courses he entered, the Agent indicated that he was the instructor. The significance of this is that the Alberta Continuing Education Accreditation Committee Guidelines state that instructors earn CE at a rate of twice the number of hours of the courses that they teach. When he was asked to produce records verifying that he was, in fact, the course instructor, the Agent stated that he entered the CE courses as the instructor in error because he was unfamiliar with the online license renewal system.

After deleting the course for which the Agent could not provide a certificate and the additional hours that were applied because the Agent stated that he was a course instructor, the Agent was short 4.5 hours of life insurance CE and 2.5 hours of A&S CE for the 2014 term.

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 the Agent committed the act 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).
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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)

Regarding the evidence in these types of cases and the concept of "clear and cogent" evidence, Chairperson Hopkins dealt with this issue in *The Matter of the Appeal of Arney Falconer* (http://decisions.abcouncil.ab.ca/abic/icaba/en/111052/1/document.do) wherein she wrote:

> The Life Insurance Council stated in the Decision that there is a requirement "for 'clear and cogent evidence' because our findings can dramatically impact an insurance agent's ability to remain in the industry". However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities. In *F.H.v. McDougall* 2008 SCC) (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:
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> > [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.
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> > [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.

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, 2014. However, based on the evidence before us, we are not able to conclude that the Agent made a deliberate misrepresentation with the intention to deceive the AIC. Therefore, we find him not guilty of the more serious allegations made against him pursuant to s. 480(1)(a) of the Act.

We turn next to s. 509(1)(a), which provides 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 defence of due diligence. To establish this, he must prove that he took all reasonable measures to avoid making the false statement.

As noted above, it is clear the Agent did not have the required CE hours and that his statements to the contrary were false. As such, the Agent bears the onus to prove that he took all reasonable measures to avoid making the false statement. Given the fact that the Agent entered a CE course for which he did not have a completion certificate (and that he wrongly indicated that he was a course instructor), we do not believe that the Agent acted reasonably such that he can avail himself of the due diligence defence. Therefore, we find an offence pursuant to s. 509 of the Act.

As to the appropriate sanction for this conduct, we are unable to levy a civil penalty against him because his conduct falls outside of the limitations period of three (3) years, as provided for in s. 480(9) of the Act. His certificates of authority have already been terminated, therefore, we cannot take action against his certificate of authority in the form of a suspension or termination. Notwithstanding this, our decision forms part of the Agent's AIC record and this conviction would be taken into consideration should the Agent attempt to obtain a new certificate of authority in the future.

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: August 29, 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 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