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 Robert Arnold
(the "Agent")

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

This case involved allegations pursuant to ss. 480(1)(a) and 509(1)(a) and (c) of the Act. Specifically, it is alleged that the Agent attempted to collect premiums for the renewal of an agency billed policy issued on behalf of a client (Client "A") despite the fact that the client did not wish to renew and thought that his previous coverage obtained through the Agent had lapsed. Additionally, it is alleged that the Agent attempted to mislead the AIC by stating that his employee had knowledge of the matter and would draft a letter to that effect, when the employee had no knowledge of such matter. In so doing, it is alleged that the Agent committed an offence pursuant to s. 480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements and representations to the AIC during the course of the investigation, and attempted to coerce Client A to pay alleged outstanding premiums by utilizing threatening and/or abusive language in his communications with Client A. In so doing, it is alleged that his actions constitute an offence pursuant to s. 509(1)(a) and (c) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated January 16, 2013 (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 submitted further evidence for consideration in the form of a letter dated January 27, 2013 with numerous attachments. The AIC also provided the Council with additional material in rebuttal by way of a memo dated February 25, 2013. While we have carefully reviewed all of the materials in relation to this matter we do not intend on referring to every piece of evidence in this Decision.

The Agent is the holder of a valid Certificate of Authority to act in the capacity of a general insurance agent. In this regard, it should be noted that the Agent is also the Designated Representative of Mitchell Insurance Brokers ("MIB"). As such, the Agent is responsible for the supervision of MIB. He has been a licensed general insurance agent since at least January 3, 1996 (the date that the AIC began keeping electronic licensing records).

On January 4, 2012, the AIC received a faxed letter of complaint from Client A that included a number of accompanying documents. The letter states, among other things, the following:

> Our corporation [Corporation A], was insured by Portage la Prairie Mutual Insurance Company [referred in this Decision as "Portage"] with [MIB] acting as the broker for the period from June 11, 2010 to June 11, 2011 with a onetime payment made at the initiation of the term of the policy for the full amount of the policy.
>
> When the notice for renewal came on May 31, 2011 we were not interested in renewing the policy and therefore did not respond to the request for payment to renew. It was our assumption that as the policy had finite (sic) term we were not require (sic) to notify the broker or insurance company that we were not interested in extending the term of the policy.

After detailing numerous pieces of correspondence from the Agent, Client A described how the matter came to a head:

> On December 22, 2011 we received a fax indicating that a registered letter of cancellation on our commercial business insurance from was (sic) in transit from [Portage]. In this fax [the Agent] threatened a lawsuit against [Corporation A] unless we verified we had valid insurance from the effective expiry of our prior insurance and paid all fees invoiced.
>
> On December 22, 2011 I called [the Agent] at his office after faxing a letter indicating that we had insurance with Intact Insurance with an initiation date of December 19, 2011. At that time I indicated to [the Agent] that I was willing to work out something for the prior period of premiums if necessary even though his prior correspondence indicated that the policy would have been cancelled as early as September 5, 2011. He did not agree that his correspondence indicated this until he reviewed it while we were on the phone. He then indicated our policy was not cancelled since "it got lost in his system".
>
> After this conversation, and on that same day, I received another fax from [the Agent] which indicated that he had misunderstood our earlier conversation. He understood that our policy had been in place earlier than December 19, 2011. I had never indicated this but rather used the December 19, 2011 date. He once again threatened legal action.

> Later that same day I received a further fax from[the Agent] stating that I "am not capable of telling the truth and [I] expect others to pay [my] bills. He also indicated that he had contacted our new insurer (Intact) and asked them not to issue a new policy until the earned premium is paid. [The Agent] included a copy of the email sent to Intact Insurance.
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> After this fax indicated that [the Agent] had sent an email to Intact we contacted [the Agent] by phone to indicate that we had contact the IBC [the Insurance Bureau of Canada] and were considering contacting the Office of the Information and Privacy Commissioner of Alberta (OIPC) and the Alberta Insurance Council (AIC). This short conversation ended when [the Agent] called me "a f***cking liar" a minimum of three times and hung (sic) up.
>
> On December 29th we contacted [KP] at [Portage] and he confirmed that the policy which we had in place with their firm from June 11, 2010 to June 11, 2011 was not a policy which is automatically renewed. There is no clause in the policy which states that the policy will be automatically renewed unless the insured notifies the insurer and that the insured will be responsible for any further premiums beyond the current term.
>
> It was my desire to arrive at an amicable solution to this dispute with [the Agent] on the premiums that are owed and as to when the policy should have been cancelled. I am, however, appalled and greatly concerned with [the Agent's] (sic) actions toward a member of the public and a former client. Mitchell Insurance Brokers and [the Agent] indicated a cancellation date and did not cancel a policy, threatened legal and collection action, contacted our current insurer, and used unprofessional and foul language when speaking to a former client.

As noted in his letter, Client A enclosed a series documents and correspondence commencing with a copy of the 2011/2012 Portage policy and renewal declarations. On the bottom left-hand corner of these documents the notation "17-05-11" appears. This suggests that the policy was created on May 17, 2011. The next document that is found in the Report is an invoice dated August 25, 2011. This invoice is on MIB letterhead and indicates that MIB had an outstanding balance of $1,118.00 for Corporation A's business insurance renewal premium that was previously invoiced on May 31, 2011. The August 25, 2011 invoice informs Client A that "[i]n order to keep your insurance in force we require payment in our office by September 5, 2011."

MIB's accounting manager sent a follow-up invoice demanding payment of the full premium on September 21, 2011. This time, however, the invoice also sought a "late fee" of $20.00 for every 2 weeks the payment was not remitted. The due date set out on this invoice is October 5, 2011.

The next document that Client A provided the AIC was a fax from the Agent to Client A dated December 14, 2011. In this document the Agent wrote as follows:

> You have not responded to our requests for payment. If you made other arrangements for your insurance please send our firm a copy of the policy back to inception and we will cancel the policy you have through our firm.
>
> Amount past due including late charges $1,318.99. If this is NOT received by December 31, 2011 collection actions will be initiated.
>
> We have advised your insurer to issue a registered letter of cancellation, which will put in default (sic) of your lease agreement.

As noted above, the Agent next sent a series of four faxes to Client A on December 22, 2011. The first is hand-signed by the Agent and it reads as follows:

> You will be receiving a registered letter of cancellation on your commercial business insurance. If you ignore paying the earned premium on this letter I will file a lawsuit against you unless you can verify you have had valid insurance effective on the expiry of your policy with our firm dated June 11, 2011.
>
> Our firm has paid the insurance on your behalf

The second fax reads:

> [Client A] you indicated in our conversation that your new policy went into effect shortly after the expiry of your old policy through our firm!! Wrong! we (sic) were on risk for 191 days. Your new policy went into effect December 19, 2011. I will expect the fully earned premium PAID in full or I will pursue legal actions.
>
> Earned premium for time on risk is $841.00 including late charges if this is not PAID by December 31 I will refer this to collections.

The next December 22, 2011 fax from the Agent stated:

> It is rather obvious you are not capable of telling the truth and you expect others to pay your bills. I have contacted INTACT your new insurer and have asked that they do not issue a new policy on your behalf until such time as the earned premium is PAID to our firm on your cancelled Portage policy.
>
> I am waiting for there (sic) reply.

The final December 22, 2011 fax from the Agent to Client A reads:

> As I explained to you and the IBC should have confirm these facts.(sic) The only way to cancel an insurance contract is in writing by the insured or by register (sic) letter from the

> insurer. Did we receive a letter from you to cancel your insurance? No. Did you receive a registered letter of cancellation? Yes.
>
> If you need further explaining I can drop by your office and discuss this with you. Please have a check prepared in the amount of $841.00 and have this certified. If the earned premium is NOT paid I will file a lawsuit against you. Do you understand, if not see a lawyer.
>
> Your new policy went into effect December 19, 211 our policy was in effect and the only valid insurance you had from June 11, 2011 to December 19, 2011 we were therefore on risk. Correct?
>
> It is also nice to see you are receiving Faxes and we didn't have the wrong fax number. Did you not say you had never received notifications or correspondences (sic) over this past due account.
>
> Simply put, I am not paying your bills.

The documents that Client A provided also included the email that the Agent sent to Intact on December 22, 2011. This email reads as follows: "Hi, INTACT will be getting a new commercial policy on [Corporation A] …effective December 19, 2012. We have been on risk since June 11, 2011 and have issued a registered letter of cancellation and to date he has not paid the earned premium. Do you take this into consideration for new business? Previous policy was Portage [policy number omitted]."

An AIC investigator wrote to the Agent on January 30, 2012 and requested that the Agent provide answers to a number of questions including why his office decided to renew Client A's insurance without his consent and then continued to seek payment from him. The AIC also asked the Agent to confirm the basis upon which Client A was charged a late fee, details as to MIB's billing practices, and to explain the unprofessional communications that Client A alleged that the Agent used.

On January 31, 2012, the Agent responded by way of faxed memo and attachments. The memo simply stated that "[t]his is a collection issue. Documentation enclosed for your file. The attached documents included some of the invoices referred to above but also an email from the Agent to Portage and Portage's response. The Agent's email to Portage is dated November 24, 2011 and the Agent wrote: Please issue R/L Nil Paid. Please back date for a FLAT. This was lost in our system." In other words, the Agent was asking that Portage back date the cancellation such that Client A did not owe any premium.

Elsewhere in the Report is an email response that the underwriter sent to the Agent on November 24, 2011 wherein he told the Agent to "[p]lease return 'Insured Copy' of Dec pages for flat…" The next day the Agent responded that he did not have the insured's copy of the policy declaration pages and the Agent also reiterated his request to have the policy back-dated.

The Report contained further faxes that the Agent sent to "KP" of Portage and some emails that Portage sent to the Agent. It appears that the Agent sent two faxes to Portage on January 3, 2012. One of these is written as follows:

> [KP], I want you to send him [Client A] another letter stating Portage Mutual was on risk from June 11, 2011 to December 19, 2011 and if there had been a claim the Portage policy would have had to respond to this claim as you're (sic) new policy did not go into effect until December 14, 2011. Subsequently, Portage Mutual was on risk from June 14, 2011 to December 19, 2011.
>
> From reviewing the file you never contacted the broker in writing to cancel the policy. You only undertook new insurance when you received the Registered letter of cancellation from Portage Mutual.
>
> [KP] this is urgent and needs your immediate attention.

Apparently not accepting KP's response, on January 3, 2012 the Agent sent another fax to KP that reads as follows:

> What are you talking about? We sent him his renewal and several notices. He did not take out insurance until December 19, 2011 after you issued the registered letter. Of course we were on risk!
>
> He was also not in compliance with his lease from June 11, 2011 until December 19, 2011.

The emails from KP to the Agent appear to relate to the above-noted faxes that the Agent sent to Portage. On January 4, 2012, KP's email to the Agent reads as follows:

> Hi Bob – I received your fax this morning re [Client A's policy]. This individual called our office on Thursday December 29th roughly 9:00 AM.....He was wishing to speak with the "privacy Officer".....i (sic) spoke with him – he said he was upset with conversations you had had with his new Broker – I told him I was not part of the conversation so I could not comment on that!.....He had one question for me – it was "Do you automatically renew your policies" – I explained to him that our procedures are to automatically renew our

> policies 45 days in advance of the actual renewal date. He then asked "where does it state that on your declarations?" I told him it doesn't. I asked whether he made any attempt to contact you to advise you that he didn't wish to renew. He said he didn't think he had to.
>
> Bob – this is why Brokers opt to convert all risks to Direct Bill – we would have been off this risk a lot sooner.
>
> If you wish to discuss further give me a call.

The Agent responded by email 20 minutes later wherein he wrote:

> Hi I want you to send a letter dismissing the contents of his letter. I have never spoken to his broker nor do I know the persons (sic) name. He sent me a certificate for INTACT showing the dates of his new policy which went into effect the date of your registered letter. I want the letter to spell out you were on risk if there was a claim from him. I talked to INTACT and they advised me that they do not as a rule taking (sic) on business where the client has not paid the insurance to the previous broker. The application from my knowledge did NOT show that the policy was cancelled.

The Agent emailed KP again on January 9, 2012 writing: "Hi have you done anything with the cancelled file as requested in my email? The way it stands now I will have a difficult time suing him if he uses your comments in his augment (sic) or you can cancel flat to broker."

KP responded on January 25, 2012:

> Bob – I'm not writing the insured – I will leave this up to you – my comments would have no bearing on the matter – all I did was answered (sic) the insured's question – he asked "where does it state on your declarations that it is an automatic renewal? – i (sic) told him is doesn't stat (sic) this but I did explain to him that our [underwriting] procedure is to automatically issue the renewal policy 45 days in advance…the payment is entirely between the two of you….I'm not sure why you waited so long to advise us to cancel for non-payment? If this policy had been on DB [direct bill] we would have cancelled for non-payment shortly after the renewal – however, I will look at the possibilities of cancelling flat.

KP of Portage sent a fax to the AIC on February 17, 2012 that outlined, among other things, Portage's billing and cancellation practices. He wrote, in part, as follows:

> 2. On an "Agency Bill" account we don't receive payment directly from the insured. The Broker is responsible for the collection of premiums from the insured. This file was

> effective on June 11, 2011 which therefore would have shown on the Brokers (sic) June 2011 account statement. The total for all files on the June statement would be owed to the Portage by the end of August 2011 (60 Day Billing). The Brokers (sic) June account was paid in full on August 31, 2011.
>
> 3. Our company procedure is to "automatically" issue renewal documents **45 to 60 days** in advance of the actual renewal date. On an Agency Bill policy the insured's copy of the renewal is sent to the Broker for distribution to the insured. The onus is then on the Broker to advise us if the renewal is needed or not. If the renewal documents are returned within 30 days after the renewal date we will then allow a "Flat" cancellation. If renewal documents are not returned within 30 days but the Broker advises us that the insured has paid nothing we will then issue a "registered letter" allowing a "Flat" to the Broker. In this case we did not receive a request for "cancellation" for "Non-Payment from the Broker until 5 months after the renewal date (Nov 24, 2011). Therefore we did not allow a flat cancellation to the Broker. We were on risk from June 11, 2011 to November 24, 2011. If a claim would have occurred we would have had to respond to it. It is my understanding that the insured didn't effect (sic) coverage with another carrier until December 14, 2011. Where was the insured insured from June 11, 2011 to December 14, 2011?
>
> In light of the complaint and the letter received from the council we will revise the Registered Letter allowing the Flat to the Broker.

In terms of what the Agency remitted to Portage on Client A's behalf, Portage confirmed that the Agency remitted $894.00 on August 31, 2011. Ultimately, on February 22, 2012 Portage cancelled the policy on a flat basis such that no premium was owed. On February 22, 2012, the AIC received a fax from the Agent which confirmed that he would not be filing a legal claim against Client A given Portage's agreement to allow a flat cancellation.

The Report also contained correspondence between the AIC investigator and the Agent relating to the manner in which the Agent spoke to Client A (Point #5 in the investigator's January 14, 2012 letter) and Client A's allegation that the Agent used unprofessional and inappropriate language. In a fax dated January 31, 2012 the Agent wrote:

> Item #5 in your letter is totally false with respect to any conversation with this individual. I did not use any abusive or profane language with this client. We have had insurance business for this business since 2002 without payment issues.
> As you can see in my detailed file he has a history of distorting the facts! He did not have valid insurance with any other supplier other than our firm until he received the registered letter of cancellation from Portage!!

> I will be filing a lawsuit against insured to collect the earned premium for time on risk and will now and (sic) slander and deformation (sic) to my lawsuit as the information in your letter is FALSE!!! (emphasis in original)

A further fax from the Agent to the investigator dated January 31, 2012 reads:

> Hi Again, it is a sad scenario that a former insured can file a complaint with the AIC to avoid paying the earned premium on his insurance policy.
>
> What you have sent me is completely false especial (sic) your comments in item #5. My long time employee was here the day the insured called and she can confirm that I did not use any profane or abusive language.
>
> Do Brokers NO longer have any rights to collect the earned premium on unpaid accounts? Please advise. (emphasis in original)

The Agent sent a further fax to the investigator the following day (February 1, 2012) that discusses, among other things, the allegation that he used profanity or abusive language when speaking to Client A. In this regard the Agent wrote:

> I have asked [Agent B] to compose a letter with reference to my conversation with [Client A]. Her office is next to mine and she has confirmed I returned his call and made mention of the earned premium and I needed verification that his new policy went into effect on the expiry of his old policy which was NOT the case. (emphasis in original)
>
> [Agent B] will confirm in that conversation that I did not swear or use abusive language with this insured.

However, in a fax dated February 9, 2012, the Agent appeared to back away from his statement regarding Agent B's knowledge of his conversations with Client A: "[Agent B] has no knowledge of our conversation. His comments to you about verbal abuse have no merit and are nothing more than his way to distort the facts and truth about this situation. I did not verbally swear or threaten the insured. I explained the situation clearly and decently."

The Report contained further information that could explain why the Agent's assertions as to Agent B's recollection markedly changed. First, on February 2, 2012, Agent B telephoned the AIC investigator because she had come across one of the faxes that the Agent had sent to the AIC the previous day. Specifically, Agent B saw the fax that referred to the Agent's request that Agent B compose a letter about

his conversation with Client A and the Agent's assertion that he did not swear or use abusive language when speaking with Client A. Agent B indicated that she told the Agent that she did not hear the conversation. She described the Agent's suggestion that she did hear the conversation as "fraudulent and absolutely false." She said she informed the Agent several times that she would not write a letter suggesting she did hear the conversation as she did not hear it nor did she want to become involved in the matter.

On February 23, 2012, Agent B also provided the AIC with a series of emails between her and the Agent. The first of these is from the Agent to Agent B dated February 1, 2012. It was sent at 9:01 a.m. and reads:

> Hi I need a letter from you when I returned [Client A's] call on or about December 20, 2011 that this related to the earned premium for time on risk for his business insurance and we had paid this on his behalf. I asked him for a copy of his new policy showing the effective dates so I could send this to Portage Mutual. Bob Arnold did not use abusive or threatening language. I sit outside his office and heard the complete conversation. We also discussed the entire matter after he finished his call with [Client A].

Agent B responded to the Agent's email at 3:25 p.m. the same day writing as follows:

> [Agent],
>
> As per our conversation today after I read your email below, when I hear you having "heated" phone conversation (sic) I try very hard to ignore it because I find it very disconcerting and disturbing when you do this and also because I try to give you as much privacy as I can. For that reason I generally do not <u>listen</u> to the conversations and therefore do not know who you are talking to. You have had many of these types of conversations, on the phone and in person, since I've worked here. I myself would never talk to anyone at the workplace, be it family, client, colleague, the way you talk to some people when you are in the office. In my opinion it is completely unprofessional and inappropriate.
>
> You stated that if I do not give you a letter as you have instructed in your email you will lose your license. I will not lie for you [Agent], as I told you today. We as brokers, are bound by a code of ethics and I thought you would have reconsidered your manner after being fined by the AIC in the [previous disciplinary sanction in 2011] matter for doing almost the exact same thing less than a year ago! The fact that these people owed the brokerage money is not necessarily the issue, it's the way you go about trying to collect it that is being disputed.
>
> You and I <u>did not</u> discuss the "entire matter" after you finished your call with [Client A] or I would have remembered it because this it (sic) is very serious. You may have made a short comment at the time but again, I don't recall what it was because I did not want to get involved and still don't as I told you today, let alone remember when the conversation occurred.

> You asked me today to think of something that will help you with this and you know I would do that if I could but I am simply unable to do so because I can't ever imagine being in your situation. Understandably, the entire matter is very upsetting to me. (emphasis in original)

The Agent responded to Agent B's email the next day on February 2, 2012 at 8:00 a.m. as follows:

> I agree and all of these conversations I have had with clients were because the accounting was not being done correctly and we were out money. The only good period of time without incident was when you were doing the books and now [another person] is doing the books and have much less problems with receivables.
>
> All I want you to write is when [Client A] phoned and I talked to him you did not hear any profanation (sic) or threats which is the truth as you did not listen to the conversation. Thanks

At 8:55 a.m. on February 3, 2012, Agent B responded by email to the Agent writing that "I have heard you yelling and swearing on the phone but I cannot say specifically who it was or was not to. I've told you twice that I do not want to get involved because I'm not and do not want to tell you again." (emphasis in original)

The material before us also included numerous pieces of correspondence between the AIC investigator and the Agent as to the amounts the Agent was seeking from Client A and whether they included late fees, anticipatory court costs in the event of a claim, or some other amounts. The references to fees that the Agent was seeking are concerning, especially given the fact that the Act prohibits an agent from charging or collecting a fee until a client has signed a written agreement to pay any such fees. The agreement must also be in place before an agent provides the service for which a fee is being charged. However, as the Report did not make a specific allegation in regard to this issue we will not comment on it any further.

Discussion

By way of a preliminary issue, in his submission dated January 27, 2013, the Agent makes reference to the AIC investigator's January 30, 2012 request that he provide the AIC with the complete file documents regarding Client A and his business. The Agent then asks for the statutory reference to the AIC's authority to request a file and makes additional comments as to court orders, alleged illegal search

and seizures and federal crimes.

Section 481 of the Act states that the Minister may direct the holder or former holder of an insurance agent's certificate of authority to provide any information specified by the Minister if it relates to matters within s. 480 of the Act. Section 480 of the Act deals with, among other things, investigations of alleged misrepresentations, fraudulent, deceitful, dishonest or untrustworthy conduct or investigations into whether a section of the Act or regulations has been breached. In the event of such a request, s. 481(2) states that the agent or former agent must provide the information in accordance with the direction. The Minister has delegated his authority to make such requests to the AIC. No court order is required to make such a request and an agent's obligation to respond is clear.

In the event that an agent wrongfully refuses to comply with a properly made Demand for Information under s. 481 of the Act, he or she can be subject to disciplinary proceedings as the refusal to comply is an explicit offence. Once again, refusal to comply with the Demand is an offence whether or not any action is taken before the courts to enforce the Demand.

Additionally, if an agent refuses to respond to a properly made Demand for Information, s. 481 of the Act provides for a mechanism to obtain a court order to further compel an agent to respond. However, it is simply false to suggest that the court order is required to compel an agent to provide information to the AIC.

In any event, the Agent's assertions on this point are irrelevant given the fact that the AIC did not invoke s. 481 of the Act in its January 30, 2012 letter. Rather, the investigator simply requested the file documents and the Agent willingly provided them to the AIC by way of the fax dated January 31, 2012 wherein he wrote "[t]his is a collection issue. Documentation enclosed for your file." All other documents were either subsequently provided by the Agent, Portage and its officials, or the Agent's staff. Given the irrelevancy and misguided nature of his assertions in this regard we make no further comment about these preliminary points.

As to the first allegation, 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. In other words, the applicable standard of

proof is the civil burden rather than the heightened standard found in the context of criminal cases. However, the requirement that any adverse finding against the Agent be based on clear and cogent evidence reflects the fact that our decisions can dramatically impact an insurance agent's ability to remain in the industry.

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 Life Insurance 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 ("CE") hours when this was not, in fact, true. The Agent also held a securities license and stated that he believed that the CE he required to maintain his securities license was applicable to his insurance agent requirements. The Insurance Councils Appeal Board likewise found the Agent guilty of an offence and the Agent thereafter 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 these tests to the facts before us, the Council is of the view that the Agent's conduct in and around Client A's file and the investigation was deplorable, immature and completely unprofessional. This is especially the case given the length of time he has been licensed and the fact that he is purportedly responsible for the management and supervision of an agency and other insurance agents. Were he to have exhibited the level of maturity and ethics that Agent B did in this matter the investigation would probably have not been necessary. Given these facts, it was completely appropriate for the investigator to invite us to consider whether or not the Agent committed the more serious offence as alleged in the Report. We are, however, prepared to give the Agent the benefit of the doubt as it pertains to the allegation made under s. 480(1)(a) of the Act and find him not guilty. The same cannot be said, however, to the alternative allegation made under s. 509 of the Act.

In this case, a number of things were clear and beyond dispute. Client A obtained insurance for his business through MIB in 2010. This policy had an effective date and a corresponding expiry date. The policy was in force from June 11, 2010 to June 11, 2011. Had the Agent and Client A done nothing further, the policy would have expired.

As noted by KP, Portage issued renewal policies 45 to 60 days in advance to facilitate timely policy transmittal and a seamless transition from coverage under the old policy to coverage under the new one. The Agent's chosen method of conducting the renewal in this case was agency billing. In other words, MIB took it upon itself to pay Client A's premium and sent the funds to Portage. Of the $1,118.00 premium, MIB paid Portage $894.00 for the policy. The difference of $224.00 was presumably the 20% commission payable to MIB and so this was retained.

However, Client A did not request or otherwise agree to MIB or the Agent renewing the policy on his business' behalf. Instead, the Agent imposed a negative billing option on Client A such that he put the onus on the client to inform MIB that he did NOT wish to engage MIB's services to renew a policy that was set to expire. Having not agreed or otherwise requested that MIB and the Agent renew the policy, Client A assumed that he did not have to pay for a new policy or the Agent's services as a broker. This is not an unreasonable assumption.

Portage indicated that in the event that a client does not reimburse one of its agents or agencies in an agency bill situation, it is the agent's responsibility to advise Portage and it would then cancel the policy. Portage indicated that it would have cancelled the policy on a flat basis had the Agent notified Portage within thirty days of the new policy coming into force.

In this case, MIB sent Client A the notice of renewal on May 31, 2011. This was approximately two weeks before the old policy expired. Despite not having paid the premium, MIB did not send any further payment request to Client A until August 25, 2011. As set out above, this notice indicated that the policy would be cancelled on September 5, 2011 if payment was not made. However, MIB did not submit a cancellation request to Portage when the payment was not received by September 5, 2011 and the policy was not cancelled.

More letters threatening cancellation were sent out by MIB but the Agent took no steps to get the policy cancelled until December 2011 when matters were finally brought to a head. The Agent finally requested that Portage cancel the policy. On December 22, 2011, the Agent sent his numerous faxes to Client A and also spoke with Client A by telephone.

The reason that Client A's business policy was not cancelled earlier is that the purportedly overdue account was (in the repeated words of the Agent) "lost in their system." The Agent also confirmed the careless state of MIB's accounting practices in his email to Agent B when he was making excuses for his abusive telephone conversations with clients.

As noted above, the tenor of many of the communications that the Agent sent to Client A were completely unprofessional and inappropriate. Apart from the numerous insulting and aggressive comments the Agent made, on one occasion, he threatened to appear at Client A's place of business by stating that "…[i]f you need further explaining I can drop by your office and discuss this with you."

Section 509 of the Act prohibits agents from making any "false or misleading statements, misrepresentations or advertisements." It also prohibits them from committing any "unfair, coercive or deceptive practice…." The Merriam-Webster dictionary defines "unfair" as "being marked by injustice, partiality, or deception: unjust" or "not equitable in business dealings". The same dictionary defines

"coerce" as "to achieve by force or threat." "Deceptive" means "tending or having the power to deceive" and one of the definitions of "deceive" is "to cause to accept as true or valid what is false or invalid."

In applying these definitions to the documented facts as set out above, it is clear to us that that the Agent acted in an unfair manner such that he contravened s. 509(1)(c) of the Act. Client A did not request that the Agent or MIB perform any services on his behalf. He did not request to renew his business' insurance policy. After the initial invoice was sent out, Client A's file was "lost in the system." The Agent could have requested a flat cancel within thirty days but because it was lost, he did not do so. Indeed, numerous communications went to Client A explaining that the policy would be cancelled much earlier but, once again, this was not done because the file was lost. After waiting five months, the Agent finally requested that Portage cancel the policy. However, despite the fact that he and MIB created the problem, he continued to demand that Client A pay not only the amount that MIB paid to Portage but the commission for services that the client did want. The Agent additionally kept demanding that Client A pay for supposed time on risk that was caused by the fact that MIB's accounting was, in the Agent's words, "…not being done correctly and we were out money" and that "[t]he only good period of time without incident was when you [Agent B] were doing the books…." It is interesting that the Agent accused Client A of being dishonest and wanting others to pay for his bills when the whole cause of the situation was that the Agent did not do his job properly and he wanted his client and others to take responsibility for his errors.

We are also satisfied that the Agent made false or misleading statements to the AIC regarding Agent B's knowledge of the conversations that he had with Client A. As noted above, on February 1, 2012, he categorically told the AIC investigator that Agent B had heard his conversation with Client A and that she could vouch for the fact that he did not speak in an abusive nature with Client A. The Agent then approached Agent B to provide corroborating evidence of the Agent's statement. As noted extensively above, Agent B refused. Not satisfied, the Agent again requested that Agent B corroborate his story. This time he even went to the length of suggesting that she say that "she did not hear any profanation" thereby giving the AIC the impression that he did not use inappropriate language when, in fact, she did not have any recollection of the conversation. Once again, Agent B refused to comply with the Agent's attempts to coach her to mislead the AIC. On the contrary, she told the Agent that she had heard the

Agent yelling and swearing at people in conversations but was not prepared to say whether he was swearing at Client A or someone else in any given conversation.

In terms of the sanctions available to us, pursuant to s. 480 of the Act and s. 13(1)(b) of the Certificate Expiry, Penalties and Fees Regulation, A.R. 125/2001, we have the jurisdiction to levy a civil penalty in an amount not exceeding $1,000.00. We also have the authority to revoke the Agent's certificate of authority for one year or suspend it for up to a year.

In viewing the circumstances in their entirety, we are of the view that a substantial civil penalty and suspension are appropriate. The Agent's conduct in relation to Client A was disgraceful. Further, the conduct that he exhibited through the course of the investigation is an aggravating factor that suggests a relatively onerous sanction is necessary. In particular, the communications that he sent to Agent B illustrate the lengths to which the Agent was prepared to go so as to avoid taking responsibility for his actions. We are also mindful of the fact that in 2011 the agent was sanctioned for acting in a dishonest and untrustworthy manner in the course of collecting an alleged overdue account. In that case, the Agent adopted a false identity, calling himself "Bob Anderson", and in this guise he sent inappropriate text messages to a client. In short, the Agent's conduct is a discredit to the insurance industry. Therefore, we order that a civil penalty in the amount of $1,000.00 be levied against the Agent. We also order that his general insurance certificate of authority be suspended for a period of six months. . 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 Agency has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance. The suspension will commence on the eighth (8^{th}) day after the mailing of this decision. 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: June 18, 2013

Original Signed by
Jim Harris, 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