

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 Patrick B. Stanton
(the "Agent")

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

This case involved an allegation pursuant to ss. 481(1) & (2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information requested in a demand for information.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated August 2, 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 did not adduce any further evidence.

The Agent was the holder of a certificate of authority that allowed him to act in the capacity of a general insurance agent. He held this certificate from December 18, 2002 to October 17, 2012.

On April 9, 2012, the AIC sent a letter to the Agent that requested that the Agent provide information to the AIC in relation to his procedures for enrolling clients in contracts of insurance after his certificate of authority was out of force. The AIC investigator also asked that the Agent provide information as to his business practices while he was licensed. Specifically, the investigator asked the Agent whether or not he charged additional fees to clients before obtaining their written agreement to pay such fees.

On April 17, 2013, the AIC received an email from the Agent, in which the Agent stated "this sort of activity in search of any alleged 'wrongdoing' is not permitted under Canadian law and Canadian legal precedent" and suggested the AIC obtain a search warrant to collect the requested information from him.

On July 18, 2013, the AIC sent another letter to the Agent that highlighted the fact that even former holders of certificates of authority are obligated to respond to formal demands for information made under the Act. The letter went on to invoke ss. 481 (1) and (2) of the Act and also warned the Agent that failing to provide the requested information constituted an offence. This letter was delivered to the Agent on July 25, 2013. To date, the Agent has failed to provide the requested information.

Discussion

The AIC operates under a delegation from the Minister of Treasury Board & Finance. Through this delegation, the AIC has authority to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in section 480(1).” Subsection 2 states that the “...person served with a direction ... who has the information must provide the information in accordance with the direction.”

The evidence is clear that the AIC investigator was investigating, among other things, whether or not the Agent had obtained the written consent to charge fees to clients as is required in s. 505 of the Act. Given this, the investigation falls clearly within s. 480(1) of the Act. It is equally clear that as a former certificate holder the Agent was obligated to respond and that he failed to do so. His arguments to the contrary are, quite simply put, wrong. The provisions of the Act are clear and the AIC has properly requested information in accordance with its terms; therefore, we find that he failed to respond as required by s. 481 and thereby contravened a section of the Act as contemplated in s. 480(1)(b).

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and even former holders provide information when called upon to do so. This mandate cannot be realized where individuals, such as the Agent, choose to ignore the clear provisions of the Act. We have the jurisdiction to levy penalties for offences such as these in an amount not exceeding \$1,000.00. As the Agent does not presently hold a certificate of authority we cannot order the suspension or revocation of his privilege to act as an insurance agent. In light of all of the evidence before us, we order that a civil penalty in the amount of \$1,000.00 be levied against the Agent pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The civil penalty

must be paid within thirty (30) days of receiving this Decision. If it is not paid within this period, 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: November 20, 2013

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