

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 Swaraj Sharma  
(the "Agent")

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

This case involved an allegation pursuant to s. 467(1)(c) of the Act. Specifically, it is alleged that the Agent failed to disclose that he was engaged in an occupation or employment other than as an insurance agent when he completed the renewal application forms in relation to his general insurance agent certificate of authority. In so doing it is alleged that he contravened a section of the Act or regulations as contemplated in s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council (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 27, 2016 and he provided the Council with further evidence and submissions by way of letter (with accompanying attachments) dated June 27, 2016.

The Agent is a holder of an insurance agent certificate of authority for the sale of general insurance. He first obtained a certificate on May 30, 2012. Between this date and June 30, 2016 the Agent held General Level 1 certificates of authority through Lundgren & Young Insurance Agency ("L&Y"). On July 13, 2015, the Agent also obtained a General Level 1 certificate of authority to represent Pinks and

Plates Insurance Services Ltd (“P&P”). The Agent’s P&P certificate of authority was renewed on May 1, 2016. His last certificate of authority through L&Y expired on June 30, 2016.

The Report contained copies of the Agent’s online renewal application forms for his L&Y certificates of authority that were submitted on October 30, 2013 and June 27, 2014. The materials also included the paper application that the Agent completed and submitted to obtain his P&P certificate of authority. It was received by the AIC on June 3, 2015.

The online renewal applications asked whether or not the Agent “...engaged in any business or occupation other than the insurance business.” The answer in response to this question on each of the 2013 and 2014 renewal applications was “N” (the system’s abbreviation for “No”). In the 2013 application, the online renewal system recorded that the “License Holder” (the Agent) made a number of declarations including the following:

DECLARATION: I have read and understand the information and the process that is required to complete a License Renewal

ACKNOWLEDGED: AS OF Oct 30, 2013 14:03

MADE BY: License Holder

DECLARATION: I understand that a false declaration in this application could lead to the suspension or revocation of the certificate and/or the levy of a civil penalty under the provisions of the applicable regulation

ACKNOWLEDGED: AS OF Oct 30, 2013 14:05

MADE BY: License Holder

DECLARATION: By submitting this page I certify that the foregoing information is true as of Oct/30/2013

ACKNOWLEDGED: AS OF Oct 30, 2013 14:05

MADE BY: License Holder

DECLARATION: I have read and understand the information and the process that is required to complete a License Renewal

ACKNOWLEDGED: AS OF Oct 30, 2013 14:03

MADE BY: License Holder

In the 2014 online renewal, similar declarations were made including:

DECLARATION: I certify that the foregoing information is true and I agree that by signing the application I accept responsibility for these answers and undertakings.

ACKNOWLEDGED: Y [yes] AS OF June 27, 2014 13:00

MADE BY: License Holder

DECLARATION: I understand that a false declaration in this application could lead to the suspension or revocation of the certificate and/or the levy of a civil penalty under the provisions of the applicable regulation

ACKNOWLEDGED: Y [yes] AS OF June 27, 2014 14:05

MADE BY: License Holder

DECLARATION: I confirm that the information reported is true and correct and that the E&O [errors & omissions] coverage described is valid and in force. I further acknowledge that my Certificate(s) of Authority will be automatically suspended pursuant to section 478 of the Act in the event this coverage expires or is terminated in accordance with the Act and the Insurance Agents and Adjusters regulation unless valid replacement coverage is provided.

ACKNOWLEDGED: Y [yes] AS OF June 27, 2014 13:00

MADE BY: License Holder

On the 2015 paper application, the Agent disclosed that he was engaged in other businesses or occupations as follows: "Mortgage Broker + Real Estate Agent."

On January 12, 2016, the Agent emailed an AIC investigator ("RD") regarding an unrelated matter. In this email he listed four different occupations under his name: Host & Producer, Commissioner for Oaths, Mortgage Broker and Realtor." Given that RD was working on a complaint unrelated to the

Agent's disclosure on applications, a new file was opened and it was assigned to another AIC investigator ("TL")

By letter dated January 13, 2016, TL wrote to the Agent and asked that the Agent provide her with information regarding the disclosure of other occupations or business activity. She asked that the Agent respond on or before January 27, 2016. Following a subsequent exchange of emails between the Agent and TL, the AIC Director of Compliance ("JD") wrote to the Agent by way of Demand for Information made pursuant to s. 481 of the Act on February 18, 2016 and requested that the Agent provide the information that TL previously sought. He was required to respond before March 14, 2016.

The Agent responded by way of letter dated March 7, 2016. As to the general process of renewing his license, the Agent asserted that L&Y's designated representative (Thom Young) couriered paper application forms to the Agent for completion. After the Agent entered the required continuing education courses onto the AIC online system, the Agent stated that he would then return the completed application to Mr. Young and that Mr. Young would enter all of the required renewal information onto the AIC online renewal system to process the renewal of the Agent's certificate of authority. The Agent wrote that his other occupations were disclosed on the paper applications that he sent to Mr. Young. He further wrote that:

I do not recall ever entering ("keying in") a license application through [the AIC] or my Designated Representative online computer system.

Therefore, following what I understood from Thomas Young was the proper protocol; the only thing under my control was my disclosures on actual paper applications which I always provided to Thomas Young. I had no control on the information entered into the AIC computer system by [L&Y].

In summary, I fully disclosed the information in the paper applications to my Designated Representative at [L&Y] being Thomas Young. (emphasis added)

To substantiate this, he enclosed two application forms with his letter. The first of these was a copy of the Agent's initial May 22, 2012 application. It does not bear Mr. Young's signature. As to this application form, the Agent admitted that he disclosed four different occupations. In particular, he wrote:

In that regard my May 22 2012 (sic) Application for insurance [license] stated in handwriting in respect of employment history:

That:

- a. From **1998 till date** – Real Estate agent – part time.
- b. 2008 **till date** – Mortgage Broker – part time.
- c. 2004 **till date** – Radio Host – part time

And that other occupation or employment:

“I shall be doing all of the above along with Full time General Insurance. My real estate & mortgage broker are on a part time basis.’ (sic)

And that I hold:

Real Estate license and a Mortgage Broker license

Clearly the initial Application for Insurance [license] that I completed May 22 2012 (sic) set out clearly that:

1. I had in the past and currently then held employment and occupations as:
  - a. Real estate agent
  - b. Mortgage broker
  - c. Radio host
  - d. General insurance agent as applied for.
2. The dates I started acting as Radio host, mortgage broker and real estate agent

In the result, I believe I fully disclosed my employment and occupation history as requested in that May 22, 2012 application. (bold emphasis in original, underlining added)

The second application form that the Agent attached to his March 7, 2016 letter bears his signature adjacent to the date of October 15, 2013. Mr. Young’s signature appears on this application but the date portion was left blank. Unlike the Agent’s online application that was submitted on October 30, 2016, this application references the Agent’s other occupations and businesses as “Mortgage Brokerage + Realtor”.

In regard to his radio related activities and his role as a Commissioner for Oaths, the Agent indicated that Thom Young and A.J. Young (L&Y’s CEO) instructed him to not disclose these activities. The stated reason for this was that they were voluntary in nature and not another occupation or business.

The Report also included communications that passed between the investigator and Robyn Young (L&Y's Director, Corporate Services). Specifically, the investigator spoke with Ms. Young on the telephone and during this conversation, Ms. Young indicated that L&Y did not send paper application forms to its agents in order to complete renewals nor did L&Y enter the renewal information on behalf of its agents. She also indicated that L&Y did not have access to their agents' passwords and that entering information on their agents' behalf would not be an efficient use of business resources. On March 29, 2016, the investigator wrote a letter to Ms. Young that recounted the investigator's recollection of their telephone conversation. She asked Ms. Young to confirm the accuracy of the investigator's letter by signing and returning it to the investigator. Ms. Young did so on May 25, 2016.

In his June 27, 2016 addendum, the Agent, among other things, submitted that the Report prepared by the investigator was biased and misleading. The allegations of bias largely stem from the fact that Thom Young is a member of the Council. He also argues that the bias is evidenced by the fact that the investigator wrote the March 29, 2016 letter confirming her discussion with Ms. Young rather than asking Ms. Young to write a letter setting out the details of their conversation. The Agent states that this was some sort of "...attempt to exonerate [L&Y] and Mr. Thomas Young (who sits on AIC Board and in past various correspondences (sic) I have asked that he should be asked to step aside during this investigation)." He further submitted that the non-disclosure of other occupations or business was a failure of L&Y rather than his own, that any non-disclosure was unintentional and that maximum penalties would be inappropriate in the event that we found him guilty of any offences.

### **Discussion**

Before commencing our discussion of the Agent's disclosure or non-disclosure, it is appropriate for us to comment on the Agent's allegations of bias. It is true that Mr. Young is an elected member of this Council. Given this fact, Mr. Young was not present during our consideration of this matter and he has not participated in our deliberations or this decision in any way. AIC investigators are employed by the AIC not this Council. While this Council is represented on the AIC Board, Mr. Young is not (contrary to the Agent's assertion) a member of the AIC Board.

Allegations of bias should not be made lightly as they attack the credibility of all of the members of this Council and our processes. While it is true that the investigator summarized the discussion that she had

with Ms. Young regarding L&Y's processes, this is not evidence of bias. The investigator was simply recounting her recollection of the conversation that took place and sought to have Ms. Young confirm those details. The investigator could have taken different steps to obtain the same information. However, in these circumstances there is nothing inherently biased about proceeding in the manner that she did. Apart from general supposition and insinuation, the Agent has referenced no actual evidence of bias other than pointing out that Mr. Young is a member of the Council. However, this has been remedied by the fact that Mr. Young was absent during our deliberations and, as noted above, did not participate in this decision.

As to the main issues regarding the Agent's disclosure on renewal applications, applicants for certificates of authority are, pursuant to s. 467 of the Act, required to provide information to determine whether or not the applicant can and should obtain a certificate of authority to act as an insurance agent. The AIC requires applicants to disclose whether or not they have other businesses or occupations because some occupations or businesses can automatically render an applicant ineligible to hold certain types of certificates (ie. employees of deposit-taking institutions). In other cases, a non-insurance business or occupation can place an applicant in a conflict of interest position or in a position to exert undue influence or coercion when acting as an insurance agent. However, these determinations cannot be made if applicants choose to not disclose their non-insurance activities. This is the case whether an applicant is obtaining his or her first certificate of authority or, like the Agent in this case, attempting to renew a certificate of authority for the upcoming year.

In order to prove that the Agent contravened a section of the Act as alleged in the Report, we must be satisfied that the activities undertaken by the Agent constitute another business or occupation. The evidence must then also prove that the Agent did not disclose the information to the AIC on his renewal documents. The failure to provide the information demanded by the application form is a strict liability offence. In other words, it is not necessary for the AIC to prove that the Agent intentionally withheld information or intended to mislead the AIC. Rather, the AIC only needs to prove that the information was not provided and an onus then shifts to the Agent to demonstrate that he took all reasonable means to avoid committing the offence.

In this case, the Agent disclosed other occupations in the application form he submitted to obtain his first certificate of authority in 2012 and he certified that the information that he provided at that time

was true. Therefore, it was his view that each of the four activities were other businesses or occupations. In the two following years, the AIC processed renewal applications for the Agent's certificate of authority. Neither the 2013 or the 2014 applications referenced the Agent's other business activities. It is equally clear that the Agent continued to be a mortgage broker and realtor during the same time. Therefore, these should have been disclosed to the AIC.

The Agent asserts that L&Y completed the applications on his behalf and that any failure to disclose rests with them rather than him. We disagree. Agents wishing to renew their certificates of authority access the mandatory online renewal application forms through the use of a confidential password. If the Agent chose to give his or her password to someone else so as to allow them to process the renewal of his certificate of authority on his behalf, the responsibility for the accuracy and completeness of the information rests with the Agent. Therefore, we find the Agent guilty of failing to disclose information on his 2013 and 2014 renewal applications.

As to the application that the Agent submitted in 2015, the Agent indicated that he was not paid in relation to his radio-related role and that they were more akin to volunteer activities than a business or occupation. Similarly, it is unclear what he did in regard to his Commissioner for Oaths activities such that they would constitute a free-standing business or occupation. Given these facts, we find the Agent not guilty in relation to the 2015 that he submitted.

In terms of the applicable sanction, we have the ability to levy civil penalties in an amount not exceeding \$1,000.00 pursuant to s. 480(1)(b) of the Act and s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. We also have the ability to suspend an agent's certificate of authority for a period of time or revoke it for one year. Given the circumstances in their entirety, including, among other things, the length of time that the Agent has been licensed, the nature of the occupations that were not disclosed, the fact that they were previously disclosed when he was originally licensed and the fact that he has not been previously sanctioned in disciplinary proceedings, we decline to levy a civil penalty in regard to either of the offences. We similarly do not believe that a license suspension or revocation is appropriate here.

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: September 13, 2016

Original Signed By \_\_\_\_\_

Lorrie King, Member  
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