

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 Ashleigh Ahern  
(the "Former 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, as well as ss. 30(1)(a) and (b), and 31(1) and (2), of the Insurance Agents and Adjusters Regulation. Specifically, it is alleged that the Former Agent made representations on her 2014, 2015 and 2016 life insurance renewal applications that she had completed the required continuing education ("CE") courses when she did not. In so doing, it is alleged that she committed an offence pursuant to s. 480(1)(a) of the Act. Alternatively, it was alleged that the Former Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act by reporting that she had completed CE courses to renew her certificate of authority for life insurance in the 2014, 2015 and 2016 certificate terms when this was not the case. Finally, it was alleged that the Former Agent, during an audit of her continuing education compliance, failed to submit the necessary records to confirm she met the CE requirements to renew her life certificate of authority in the 2014, 2015 and 2016 certificate terms, or that she failed to keep a record of her certificates. As a result, her conduct violated s. 480(1)(b) of the Act.

**Facts and Evidence**

By way of background, the Former Agent submitted her renewal applications for life insurance certificate of authority on June 29, 2014, June 30, 2015 and June 30, 2016, and on each of those occasions, 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." Pursuant to a random audit of continuing education compliance, the Former Agent was selected to provide the AIC proof of her CE

and the AIC sent her an email on November 2, 2016. The email indicated that she had to respond within 30 days. It went on to tell her that her certificate of authority would be cancelled if she did not comply with the request. The Former Agent and the AIC investigator thereafter exchanged a number of voice messages.

The Former Agent did not provide the required CE records within 30 days and her certificate of authority was cancelled. While the Former Agent provided some CE records on January 17, 2017, the investigator noted discrepancies between the records and what the Former Agent reported on her renewal applications. For example, the Agent reported that she completed course # 12740 (a course offered by Equitable Life of Canada) on July 29, 2014, however, she was unable to produce a completion certificate. The investigator contacted Equitable Life to confirm the Former Agent's completion of the course. In response, an Equitable Life official indicated that they had searched their attendance sheets and that there was no indication that the Former Agent completed the course.

The Former Agent also declared she had completed courses 3523, 18341, and 18336. These courses were offered by Oliver's Publishing Inc. ("Oliver's). Once again, after the investigator contacted Oliver's, they confirmed that the Agent completed course #3523. However, courses 18341 and 18336 were not offered through Oliver's.

With respect to the CE provider Dynamic Funds ("Dynamic"), the Former Agent declared she had attended course #'s 18341 and 18336 (the same as the course #'s referenced above), and provided the completion certificates. Upon communicating with Dynamic directly, he learned the two courses had been offered from 2010 to 2012, but that the Agent could not have taken them on June 29, 2014 as reported by the Agent.

After removing the CE credits for the courses where the Former Agent's attendance could not be verified, the Former Agent's CE record indicated the following:

- (a) she required 15.00 CE hours in the 2014 certificate term but only earned 8.00;
- (b) required 22.00 CE hours in the 2015 certificate term but only earned 14.00; and
- (c) required 23.00 CE hours in the 2016 certificate term but only earned 14.50.

As a result, the investigator alleged that the Former Agent failed to meet her CE requirements for life insurance in the 2014, 2015 and 2016 certificate terms. The Former Agent offered no additional information with respect to these findings.

### **Discussion**

In order to conclude that the Former 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 Former 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).

[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 Former Agent did not complete the CE that was required of her and reported on her renewal applications. It is equally clear to us that the representations were more than mere inadvertence. CE providers are required to keep detailed records of attendance and completion for their courses. Failing to do so could result in the provider losing the ability to offer CE. As such, we view the provider records with more reliability. For this reason, we accept the representations of the CE providers in this matter and we conclude that the Former Agent made misrepresentations and acted in a dishonest or untrustworthy manner when completing her renewal applications. Therefore, we find her guilty pursuant to s. 480(1)(a) of the Act, with respect to each of the certificate years 2014, 2015, and 2016, for a total of three offences. Given this finding it is unnecessary for us to consider the alternative allegation pursuant to s. s. 509(1)(a) of the Act.

Having dealt with the question of the false statements on her renewal applications, we turn next to s. 31(1) and (2), which requires that an individual retain their CE certificate for a prescribed period. This section falls into a category of offences called strict liability offences. As such, the AIC only has the onus to prove that the Former Agent statement did not retain her CE completion certificates for the period required. Once this occurs, the onus shifts to the Former Agent to establish a defense of due diligence. To establish this, she must prove that she took all reasonable measures to avoid the offence. As noted above, it is clear the Former Agent did not retain certificates that were issued to her and it cannot be said that she acted with due diligence in this regard. Therefore, we find that the Former Agent breached a section of the Act pursuant to s. 480(1)(b) of the Act.

As to the appropriate sanction for this conduct, we can levy civil penalties in an amount up to \$5,000 for offences pursuant to s. 480(1)(a) and up to \$1,000 for offences pursuant to s. 480(1)(b). Based on these factors and the evidence before us, we order that a civil penalty of Five Hundred Dollars (\$500.00) as to each offence under Count 1, for a total of \$1,500.00, and that a civil penalty of \$300.00 be levied against

the Former Agent in relation to the matter under Count 2. Therefore, we issue civil penalties totaling \$1,800.00.

The civil penalties must be paid within thirty (30) days of the mailing of this decision. If the civil penalties are not paid within thirty (30) days, the Former 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.

Date: June 27, 2017

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Ken 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