

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 Charol Novillero-Bulet  
(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. Specifically, it is alleged that the Former Agent made representations to the effect that she had completed her continuing education ("CE") requirements to renew her certificates of authority for life and accident and sickness ("A&S") insurance in the 2016 certificate term when, in fact, she did not. In so doing, it is alleged that she made misrepresentations under s. 480(1)(a) of the Act. Alternatively, it is 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 life and A&S certificates of authority for the 2016 certificate term when she did not.

**Facts and Evidence**

The Former Agent was licensed for life insurance and A&S insurance from April 17, 2015 to March 29, 2017. Her certificates of authority were terminated on March 29, 2017 when she failed to submit her CE records in response to an AIC request made pursuant to s. 31 of the Insurance Agents and Adjusters Regulation, A.R. 122/2001 (the "Regulation").

The facts of this case are straightforward. The Former Agent submitted her renewal applications for life insurance and A&S insurance on June 30, 2016. In the course of doing so she declared: "I confirm that I have completed the [CE] required by the regulation for the certificate in the class of [A&S] [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." As part of the AIC's CE compliance monitoring, the Former Agent was randomly selected to submit her CE records for verification.

The Former Agent responded on March 24, 2017, and provided some – but not all - CE certificates. Specifically, the certificate for course # 2594 (“Business Legal issues”) offered by Oliver Publishing Inc. was missing. Additionally, she provided a certificate for course # 40095 (“LTC and Life Insurance in Canada”) offered by United Insurance Educators, Inc., however, because it was a recent course with a completion date of March 23, 2017, it was ineligible to be considered for her CE requirements for the earlier 2016 certificate term.

The AIC investigator assigned to this matter then contacted Oliver Publishing Inc. directly to obtain a copy of the completion certificate for course # 2594, but was told no such certificate was available. The reason given for this was that the Former Agent never completed the course.

After the investigator adjusted the Former Agent’s CE records to deduct credits for course #'s 2594 and 40095, it is clear that the Former Agent carried forward 7.50 CE hours from the 2015 certificate term to the 2016 certificate term. Therefore, she had a 7.50 CE hour requirement in the 2016 certificate term. However, she reported 0.00 CE hours in the 2016 certificate term.

### **Discussion**

To conclude that the Former Agent 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 she committed the acts 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)

As to s. 509(1)(a) of the Act, it states 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 Former Agent’s statement that she had earned the reported CE credits was false. 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 making the false statement.

In applying these sections and tests to the evidence before us, we find that the Former Agent made a false statement or representation in contravention pursuant to s. 509 of the Act. It is clear that the Former Agent did not possess the required CE credits as of June 30, 2016 and it is equally clear that she did not act with due diligence in order to avoid committing the offence. The Former Agent did not ensure that she had the certificates to substantiate the courses that she said he completed. Had she taken

to the time to contact the providers for certificates prior to her renewal she presumably would not have made the representations that turned out to be false.

As to the appropriate sanction for this conduct, we can levy civil penalties in an amount up to \$1,000.00 for offences pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Based on these factors and the evidence before us, we order that a civil penalty of \$300.00 be levied against the Former Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If 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 Former 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: June 27, 2017

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Ken Doll  
Ken 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