

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 Jessica Legare  
(the "Agent")

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

This case involves allegations pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Agent copied a client's signature from an old document and placed it on a different document. In so doing, it is alleged that she is guilty of untrustworthiness or dishonesty. In the alternative, pursuant to s. 509(1)(a) of the Act it is alleged that the Agent made a false statement or representation by photocopying an old client signature on new documents.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated June 5, 2017 (the "Report"). The Report was forwarded to the Agent for her review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent provided the Council with further submissions by letter dated June 19, 2017.

The Agent was the holder of a general insurance agent's Level 1 certificate of authority. She was first licensed on May 4, 2016 and she held this license until her employer, Western Financial ("WF") terminated her employment on January 11, 2017. In the letter terminating her certificate of authority WF indicated that the reason for the termination was "a breach of trust related to providing falsified client documents to WF".

An AIC investigator contacted WF to obtain more details of this matter. It appears that on November 25, 2016, the Client went to WF's Camrose branch office to sign documents to facilitate the payment of his insurance. However, when he arrived branch personnel told him that he had already signed the documents. Given the fact that the Client had been out of town he adamantly contended that he did not sign any

document. He also pointed out that he had changed the style of his signature and that the document in question bore his old signature style. When branch personnel investigated the matter the Agent admitted that she had copied a previous client signature onto the document in question.

The Agent explained that her actions resulted from having little support or training from WF and that she was simply trying to deal with the fact that the Client was not available to sign the document and she wanted to avoid the cancellation of the policy for non-payment. She stated a co-worker advised her to photocopy the Client's old signature onto the new contract.

WF indicated that it's protocol for dealing with situations where a branch manager was not present to answer questions was to refer the matter to a manager who would answer on their cell phone. Alternatively, WF said that employees could contact a "buddy" manager or Regional Director. The Agent's direct manager (the "MGR"), told the AIC investigator she was available by cell phone on date this transaction occurred and that, had she been contacted, she would have told the Agent to request cancellation of the policy for non-payment. She was adamant that under no circumstances would she have condoned the transfer of the Client's signature from one document to another. The co-worker who allegedly advised the Agent to photocopy the signatures denied that she suggested this course of action. She said that she would have told the Agent to contact her manager or any other senior associate for assistance. In any event, the Client was not impacted due to the Agent's behaviour.

On June 19, 2017, the Agent emailed a further response to the Report to Council. In this, she indicated, among other things, that she had received inadequate training upon arriving at the branch and that she was never introduced to the concept of a "buddy system". She further indicated that there were numerous times in which she sought advice from her direct manager but that she did not receive a response. The Agent also referenced a previous issue that had arose in relation to the Client and a credit card payment where she sought management direction but received no response. Notwithstanding this, the Agent acknowledged the fact that she copied the signature but stated that she followed the advice that she obtained from the co-worker that she consulted.

### **Discussion**

The first allegation in the Report is that the Agent acted in a dishonest or untrustworthy manner pursuant to s. 480(1)(a) of the Act when she falsified the Client's signature. The applicable legal test in

determining whether the Agent is guilty of this offence was set out 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 when this was not, in fact, the case. 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 reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote 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)

Regarding the evidence in these types of cases and the concept of “clear and cogent” evidence, Chairperson Hopkins dealt with this issue in *The Matter of the Appeal of Arney Falconer* (<http://decisions.abcouncil.ab.ca/abic/icaba/en/111052/1/document.do>) wherein she wrote:

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for clear and cogent

evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities. In *F.H.v. McDougall* 2008 SCC) (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

The evidence in the Report clearly proves that the Agent added a false signature to a document and then passed it off as an original. Given the Agent's admission, the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct and it is obviously dishonest and untrustworthy as contemplated pursuant to s. 480(1)(a) of the Act and we find her guilty of the offence as alleged in the Report.

Pursuant to s. 13(1)(a) of the *Certificate Expiry, Penalties and Fees Regulation*, we have the jurisdiction to levy civil penalties in an amount not exceeding \$5,000.00 in relation to our finding that the Agent acted in a dishonest or untrustworthy manner. Were the Agent presently licensed we would also have the jurisdiction to suspend her certificate of authority to act as a general insurance agent for a period of up to 12 months or we could order that it be revoked for one year.

In our view, a civil penalty is warranted in these circumstances. Regardless of the Agent's motivation the Act of photocopying an old signature onto a new document is a dishonest or untrustworthy act. Honesty and transparency are the hallmarks of any Agent's conduct, especially when Client funds are

involved. On the other hand, we are mindful of the fact that the Agent had been licensed for only a short period of time and that this was not done for personal gain. Further, we also note that, despite everything that happened, the Client was not adversely harmed as a result of the Agent's actions. We therefore order that a civil penalty in the amount of \$750.00 be levied against the Agent. As the Agent no longer holds a certificate of authority we cannot order the suspension or revocation of her certificate.

The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, 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: August 18, 2017

Lorrie King  
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

