

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 Ethan Zaherie  
(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 provided incorrect advice to his client (the "Client") when the Client specifically asked about the extent of insurance coverage provided by a home insurance policy. In so doing, it is alleged that the Agent is guilty of misrepresenting information to his client. In the alternative, it is alleged that the Agent made a misleading or false statement to the client in relation to protection offered by his home insurance such that he contravened s. 509(1)(a) of the Act. In the further alternative, the Report alleges that the Agent demonstrated incompetence to Act as an insurance agent as contemplated by s. 480(1)(e) of the Act.

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated June 7, 2017 (the "Report"). The Report was forwarded to the Agent for review and to allow him to provide the Council with any further evidence or submissions by way of Addendum. No further information was received. The Agent is the holder of a general insurance Level 1 certificate of authority that authorizes him to act as a general insurance agent under the supervision of a Level 2 or Level 3 agent. He first obtained this certificate of authority on April 17, 2015.

The Client lodged a complaint about the Agent in an email to the AIC on March 7, 2017. He indicated that his next-door neighbour's water service line "blew" on May 11, 2016. As a result, he felt it prudent to determine whether his own insurance covered such a loss. He indicated that he contacted the Agent and that the Agent told him not to worry as this coverage was included in his house policy with Saskatchewan Mutual Insurance Company ("SMI").

In or around September 11, 2016, the Client's service line ruptured and the repairs cost approximately \$8,700. The Client said that he was under the impression this would be covered by his insurance policy because of what the Agent told him. However, when speaking about the loss the Agent told the Client that the sewer lines coverage was something available through a different insurance company but not through SMI.

While a variety of explanations were proffered, we believe that the misunderstanding that occurred between the Client and the Agent is explained in an email that the Agent sent to the Client on May 11, 2016. In this email, the Agent references coverage for damages for "waterlines" rather than "service lines". It is unclear from the evidence before us how the Client exactly framed the question and it appears that the Client and Agent may have been thinking about different types of losses and damage.

### **Discussion**

In order to conclude that the 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 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, we are of the view that there is insufficient evidence for us to conclude that the Agent committed any of the offences charged. Specifically, the email from the Agent to the Client suggests that there was some confusion at play. In particular, it appears that each may have been speaking about "waterline" or "service line" coverage and there are important distinctions to both. Therefore, we find the Agent not guilty of the offences as alleged in the Report.

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

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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