

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 Lets Ride Ltd. o/a Lets Ride  
(the "Dealership")

And

Evan Sim  
(the "Designated Individual")

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

This case involved an allegation pursuant to s. 481(2) of the Act. Specifically, it is alleged that the Dealership failed or refused to provide information and documentation requested by the AIC through a Demand for Information (the "Demand"). In so doing, it is alleged that the Dealership, through the DI, contravened a provision of the Act as contemplated in s. 480(1)(b).

### **Facts and Evidence**

This matter proceeded by way of a written Report to Council dated May 7, 2018 (the "Report"). The Report was forwarded to the Dealership via the Designated Individual for review, and to allow the DI to provide the Council with any further evidence or submissions by way of Addendum. The DI did not provide any additional material by way of Addendum.

Through audit activities initiated in 2017, the AIC conducted audits to verify that Errors and Omissions insurance ("E&O") coverage indicated on licensees' renewal applications were correct. The AIC randomly selected auditees from a pool of agents that renewed their certificates of authority during the final weeks of the renewal period. Resulting from this audit, in March 2018 the AIC required the Dealership to provide proof of E&O insurance coverage. This investigation arose out of the Dealership's failure to provide proof of E&O insurance coverage.

The Dealership holds Certificates of Authority for the sale of equipment warranty and GAP insurance products, and has held the licenses from December 1, 2015 and December 13, 2017, respectively. The AIC emailed the DI

on March 16, 2018, and requested that a copy of the E&O summary page be provided in accordance with the Demand. On April 4, 2018 the AIC emailed the DI and requested that the Dealership respond to the audit within the timeline provided. Subsequently, on April 17, 2018 the AIC telephoned the DI to request a response to the Demand. The Dealership, through the DI, did not respond.

### **Discussion**

As previously noted, the AIC operates under a delegation from the Minister of Treasury Board and Finance that authorizes the AIC to investigate complaints against holders and former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that “[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in s. 480(1).” Subsection 2 states that “... A person served with a direction ... who has the information must provide the information in accordance with the direction.”

The offence of failing to respond to a demand for information is one of strict liability. This means that in order to be found guilty, the AIC only needs to prove that the Demand was properly made and delivered. There is no requirement that the AIC prove that the DI’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Dealership via the DI to demonstrate that it took all reasonable efforts to avoid committing the offence. From the evidence in the Report, the Council is satisfied that the AIC’s Demand meets the requirements of s. 481 of the Act. The investigation arose out of matters found in s. 480 of the Act and the Dealership was given a reasonable opportunity to respond. Given the fact that the DI failed to respond to the Report in any way, the Dealership has not met the burden of establishing the due diligence defense and the Council finds the Dealership guilty as alleged in the Report.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders and former holders provide information when called upon to do so. Therefore, the public is not well-served when agents fail to comply with demands like those made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to assess a civil penalty in an amount up to \$1,000.00. In this case, the DI has not responded in any way and the Council believes that a significant civil penalty must be assessed to demonstrate the importance of responding, not only the DI, but to all licensees. Therefore, the Council orders a civil penalty of \$1,000.00 be levied against the Dealership. The civil penalty must be paid within thirty (30) days of the mailing of this Decision.

In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the applicable prescribed rate and the license will be suspended, if it is active. Pursuant to the Act, s. 482 (relevant excerpt enclosed), the Dealership 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.

Dated: July 20, 2018

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[Original signed by]  
Lorrie King, Chair  
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  
Email: [tbf.insurance@gov.ab.ca](mailto:tbf.insurance@gov.ab.ca)