

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 Brian Koester  
(the "Agent")

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

This case involves an allegation pursuant to s. 480(1)(a) of the Act or, in the alternative, s. 467 (1)(c) of the Act. Specifically, it is alleged that the Agent failed to disclose the existence of a previous conviction, as required by the application to renew his certificate of authority. In so doing, it is alleged that the Agent is guilty of dishonesty or untrustworthiness as contemplated by s. 480(1)(a) of the Act, or, alternatively, as the Agent failed to provide the information requested by the Minister, it is alleged that the Agent is guilty of violating s. 467(1)(c) of the Act, and subsequently s.480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of written Reports to Council dated September 12, 2018 and October 30, 2018 (collectively referred to as the "Reports"). The Reports were forwarded to the Agent for his review and to allow the Agent to provide further evidence or submissions to support his position. The Agent, through his lawyers, provided materials dated July 25, 2018, August 20, 2018, September 4, 2018, October 3, 2018 and November 19, 2018.

The Agent is the holder of a general insurance agent's certificate of authority, and has held the certificate from June 9, 1997 to January 9, 2006, and again between the period of July 4, 2017 to present. On July 4, 2017, the Agent submitted his application, and declared that the information provided on that application was true and accurate. The Agent failed to indicate that he had been convicted of an offence under the Insurance Act in 2008, and that he had previously held a certificate of authority in the Province of Alberta.

Particularly, on completion of his 2017/2018 application the Agent responded "No" to the question "[...] [have you been] licensed as an insurance agent in Alberta or elsewhere?". The Agent also responded "No" to the question "[...] [have you been] convicted of an offence under the Insurance Act, the Criminal Code or any other enactment?"

However, a review of the Agent's license history revealed that the Agent had been found guilty of violating ss.480(1)(a) and s. 481(2) of the Act, and that he had also previously held a license in Alberta.

On June 4, 2018, the AIC contacted the Agent and advised him that a civil penalty in the amount of \$3,500.00 was levied against him in 2008, which was still outstanding. The Agent duly paid the civil penalty on June 5, 2018, along with the interest accumulated, without contest. In the interest of fair process, the AIC queried the Agent on June 6, 2018, as to why he failed to disclose the existence of a previous offence and license.

The Agent responded on July 24, 2018, as follows:

Please note I wish to advise that I made an error on my application for licensing for the current term. In response to question 12 d I did not realize this until your email and letter of June 4, 2018.

As I had not been licensed since January 9, 2006 when I resigned my license, I misunderstood the question. I apologize and regret the mistake.

The legal counsel retained by the Agent provided correspondences dated October 3, 2018 and November 19, 2018. The Agent's lawyer stated that the Agent "*did not hold a license for the 10 years preceding his application*" and that the Agent "*was aware of the prior conviction, but not of the date on which it [was] issued, because he was neither given notice of the outcome, nor were any documents given to him in that regard.*"

### **Discussion**

As noted above, the Agent is alleged to have acted in a dishonest or untrustworthy manner by failing to disclose his conviction and previous license history. In the alternative, it is alleged that the Agent provided insufficient or inaccurate information, as required by the Minister, on his 2017/2018 application. In so doing, it is alleged that the Agent contravened s. 467(1) (c) of the Act, and subsequently, breached a section of the Act as contemplated under s. 480(1)(b).

Section 467(1)(c) of the Act provides that:

467(1) An application for a certificate of authority must [...]  
(c) contain the information, material and evidence required by the Minister [...]

As such, an applicant must provide information requested on the application forms in order to meet the criteria required by the Minister. One of the questions posed to applicants asks whether or not the applicant has been convicted of an offence under the *Insurance Act* or any other enactment. The reason for this is that an applicant is not entitled to hold a certificate of authority if he has been convicted of an offence that renders him unsuitable to hold a license, as contemplated by ss.5(1)(d) and 5(2) (e) of the *Insurance Agents and Adjusters Regulation, A.R.*

122/2001 as amended (hereinafter referred to as the “Regulation”). A following question found on the application asks whether or not the applicant has “3. *Been licensed as an insurance agent in Alberta or elsewhere [...]*”. Failing to provide this information impedes the Council’s ability to effectively determine an applicant’s eligibility to act as an insurance Agent.

It is the view of the Council that the findings under the 2008 Decision of the Council meets the definition of a conviction as contemplated under the Act and Regulation, and the Agent was required to disclose its existence, when asked. Further, the Agent was required to disclose that he had held a previous license in Alberta, and he did not. As a result, the Council finds him guilty of failing to provide the information requested by the Minister as considered by s. 467(1)(c) of the Act, and has subsequently violated s. 480(1)(b) of the Act as a result.

The Council did not pursue the alleged offence of untrustworthiness or dishonesty as contemplated by s. 480(1)(a) of the Act, which was the greater of the two offences alleged, as guilt had already been found in the alternative under s. 467(1)(c) of the Act.

As to the appropriate sanction, the Council has the ability to levy civil penalties in amounts not exceeding \$1,000.00 for these types of matters pursuant to s. 480(1)(b) of the Act and s. 13(1)(b) of *the Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. Given the situation set out in the Reports, a substantial civil penalty is warranted as to convey to the Agent the seriousness of the circumstances. Therefore, the Council levies the maximum penalty in the amount of \$1,000.00.

The 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, the Agent’s certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (excerpt 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: January 17, 2019

[Original signed by]

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Amanda Sawatzky, Vice-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)