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 Sean Ronson Nethercott
(the "Agent")

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

This case involves two alleged violations of s. 480(1)(a) of the Act or, alternatively, two violations of s. 509(1)(a) and subsequently s. 480(1)(b) of the Act. Specifically, it is alleged that the Agent concealed policy information, altered policy coverage without the consent of the insured, misrepresented premium amounts, and issued insurance contrary to client instructions. In so doing, it is alleged that the Agent acted in a dishonest, deceitful, fraudulent or untrustworthy manner as contemplated by s.480(1)(a) of the Act. In the alternative, it is alleged that the Agent made false or misleading statements as contemplated by s. 509(1)(a) of the Act, and subsequently violated s. 480(1)(b) of the Act.

It is also alleged that the Agent contravened s.452(2)(a) of the Act by acting in the capacity of an insurance agent without valid certificate of authority to do so, and subsequently violated s.480(1)(b) of the Act.

Finally, it is alleged that the Agent contravened s.467(1)(c) of the Act by incorrectly reporting information on his application for the reinstatement of his certificates of authority. In doing so, it is alleged that the Agent violated s. 467(1)(c) of the Act by failing to provide the information requested by the Minister, and subsequently violated s.480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to the Council dated April 8, 2019 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with further evidence or submissions by way of Addendum. The Agent submitted substantial material for the Council's consideration. In arriving at their conclusion, the Council carefully weighed all of the evidence presented. Given the breadth of the material provided, the Council did not outline each item of evidence submitted in its' reasons for Decision.

The Agent holds a certificate of authority authorizing him to act in the capacity of a general level 2 insurance agent. The Agent concurrently holds certificates authorizing him to act as a life and accident and sickness insurance agent. The general insurance certificate of authority, which is addressed in this decision, has been held at various levels from January 29, 2016 to July 20, 2018, August 15, 2018 to November 19, 2018 and again between the period of November 27, 2018 to present.

In correspondence dated October 12, 2018, the Agent's employer, [redacted] (hereinafter referred to as "the Insurer") informed the Alberta Insurance Council (the "AIC") of the following:

> …It has come to our attention that Mr. Nethercott **submitted forged insurance applications on at least two occasions** [..] and other items, Mr. Nethercott was terminated on July 19, 2018. The matter was investigated by our internal Sr. Fraud Examiner (SFE) [..]
> [Emphasis added]

Accordingly, the AIC commenced its' investigation into the allegations against the Agent. On October 15, 2018, the AIC received a detailed internal investigation report, dated October 10, 2018, (hereinafter referred to as the "Investigation Report"), from the Insurer's Senior Compensation and Compliance Manager, which reported the Agent for "non-compliance". The investigation report reads:

> **[Redacted client information] (hereinafter referred to as "[A.S.]") – 400****246 – 197*** Alberta Ltd. O/A [Redacted] (the "Spa Business")**
> **[A.S.] (client of the Agent) – 400***33- [Redacted] (the "Consulting Business")**
>
> **RE: [the Spa Business]**
> The policy referenced is a Commercial General Liability policy. Attachment 1 to [A.S.]'s statement, the Quotation, is actually an excel spreadsheet previously used by [Insurer] in order to obtain coverage information from a proposed insured and provide coverage documentation. This spreadsheet is no longer in use as the current system […] enables direct quoting and preparation of coverage documents for this type of business.
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> An email from Mr. Nethercott to [A.S.] containing the policy declarations provided to [A.S.] was identified […] dated March 9, 2018 and included scanned declarations document created using the superseded excel spreadsheet. […] In addition to the coverage amounts, of note is the premium amount of $1,293.00.
>
> [A.S.] references a "Certificate of Insurance" in his statement. This document is […] automatically mailed to the client. […] This document was prepared on February 19, 2018, and contains the coverage limits as entered within [internal software application]. In addition to the date, […] the premium amount is **$1,994.00 and coverage amounts are significai1tly different from the document that [A.S.] received on March 9, 2018,** a date well after the date that the actual system-generated policy documents were created.
>
> [A.S.] did send an email to Mr. Nethercott on March 24, 2018, that included a photograph of a document with a premium amount of $1,994.00. […] While Mr. Nethercott never responded via email that this was a mistake, a series of 11 emails were exchanged regarding a meeting to discuss this issue. In these emails, not once did Mr. Nethercott say that the premium amount showing in the attachment was the correct premium for policy 400****246.

Mr. Nethercott should have been fully aware of the coverage amounts and premium requirements on policy 400****246 on February 19, 2018, the date of issue. By sending fictitious policy documents to [A.S.] on March 9, 2018 and by his failure to immediately explain the document that [A.S.] sent to him on March 24,2018, Mr. Nethercott demonstrated that he wanted to withhold the actual coverage and premium amounts for policy 400****246 from [A.S] for some reason known only to Mr. Nethercott.

In addition, [A.S.] received a "Payment Schedule" […] dated July 20, 2018. [A.S.] claims that, upon explanation of this document by [the Insurer], **he discovered that the coverages had been reduced to the point of him incurring a significant risk in the event of a claim**.

These reductions in coverage were made based upon Policy Change request work order [redacted] submitted on July 18, 2018 by Mr. Nethercott. [Internal application] screen captures of the request and work order […] **[A.S.] claims that he did not authorize or request these changes and no email record of such a request was located. As these changes essentially reduced the coverage on the policy to the point where a claim would have placed undue hardship on [A.S.],** it is unlikely that he requested that these policy changes be made. **The effect of these changes was to reduce the required premium substantially.**

In summary, the coverages [A.S.] was quoted, and had cause to believe that he had purchased, were never recorded with [the Insurer] in policy 400****246.
Subsequent attempts at obtaining adequate explanations from Mr. Nethercott regarding the documentation received from [the Insurer] were unsuccessful and requested information appeared to have been deliberately withheld. […] These coverage changes reduced the value of the policy to the point where [A.S.] business may have been in peril in the event of a claim.

RE: 400*33 [Redacted] [Consulting Business]**
[A.S.] explained that this policy was intended to include Errors and Omissions insurance coverage. Such coverage was required by himself/[Consulting Business] in order to meet the contractual requirements of a client and this need was made known to Mr. Nethercott.

Policy 400*33 is a Commercial General Liability policy and was never an Errors and Omissions insurance policy.**

While Errors and Omissions policies are issued by [the Insurer], they are a separate product and these coverages are not included in a Commercial General Liability policy

Holding Out as an Agent for [the Insurer]
[…] During the period from July 19, 2018 to August 27, 2018, numerous clients contacted the [redacted location] and [redacted location] [the Insurer] agencies mentioning that they had contacted Mr. Nethercott or that he had contacted them.
[…] At no time was [Client ~~3~~] informed by Mr. Nethercott that he was not working for [the Insurer] any longer. […] [SW], the Office Manager for the [location redacted] and [location redacted] [Insurer] Agencies provided a statement documenting her experiences with clients who were unaware that Mr. Nethercott was not employed by [the Insurer] […]
In summary, Mr. Nethercott was holding out as an insurance agent during the period July 19, 2018 to August 27, 2018, when he was not licensed to do so. These actions included providing product advice and claiming to act on behalf of [the Insurer] when he was unable to do so.

Additional Information:
It should be noted that during this investigation, a number of other instances relating to client complaints of premium discrepancies [..]. These instances are currently under review by agency staff and such details have not been included in this investigation due to time constraints.

It was also identified that Mr. Nethercott would routinely apply unauthorized discounts to policies in order to reduce the premium requirement. These discounts were typically not available to the client (such as Hybrid Vehicle discount for a non-hybrid vehicle) and would not have been applied for under typical circumstances. These discounts, as applied were used contrary to Company policy and would not have

been available to the clients affected. These instances are currently being reviewed and any premium changes are being discussed with clients by agency staff.

Conclusion:
Based upon the above and the statements and documentation included in the attachments […]

- Mr. Nethercott intentionally misrepresented premium requirements to clients [..]
- Mr. Nethercott failed to deliver and explain the premium requirements […]
- These clients made premium payments on the insurance policies, issued in good faith by [the Insurer], without their knowledge or consent; and
- Mr. Nethercott continued to act as an insurance agent, contrary to licensing and employment, during the period of July 25, 2018 to August 23, 2018, when he was not licensed to do so.

[Emphasis added]

The Insurer also provided a copy of the termination letter to the Agent dated July 19, 2018, which states, in part; *"[the Insurer] has elected to terminate your 36 month Employment Agreement […]* ***effective July 19, 2018 […]"*** **[Emphasis added]**

On October 29, 2018, the AIC corresponded with the Agent requesting responses to the allegations against him. The Agent responded and, in an email dated November 9, 2018, provided a chronology of events relating to the alleged activity:

[…] **Chronology leading up to Termination:**
I was hired in February 2016 [...] I was rushed through training that did not include […], auto or home insurance training […] I was given 1 week of life training, 1 day of commercial training, a correspondence course from Home and farm insurance […]

In May 2018, I believe, I was asked to come to the district office to review an audit of my personal lines policies that I had written. The audit showed that I had provided discounts and or deviation for personal lines that clients were not entitled to, not rated drivers or vehicle properly for the auto policies. I agreed on a course of action with Management to correct these issues […] I was also asked to improve my note taking […] and was given some training by the district coordinator […]

[…] in June we had a follow up meeting and it appeared that I had complied with all of the requirements as set out by management […]

In July 2018 […] At that meeting, I was let go […] Management advised I was being let go without cause, that I would be paid severance in lieu […] Finally I asked why I was being terminated. They said it was an issue of trust and reputation, and that they were just exercising the right under my employment contract to terminate me […] I asked had their being any complaints [sic] or other issues that I was not aware of related to clients, and they said no. Specifically, the District Manager said they did not expect any complaints since the clients were charged less then they should have been. The DM specifically said it was a really terrible situation, because I had made a small error and she regretted that I couldn't continue, but that her hands were tied.

Over my time […], a large amount of discretion for deviation, applying discounts and management of customers was provided to the "Agents". For example most gents have substantial deviations on premiums across personal lines, Commercial and Farm lines which were used at their sole discretions, so I was fairly confused about the concerns from district about discounts and deviation.

[…]**Client Complaints:**

> […] I specifically asked at the time of my termination if it was related to any client complaints, and was told it was not, and that none had been filed that related to my termination. […] I do understand that [the Insurer] was very concerned about my solicitation of clients, and has spent significant time seeking to prevent clients leaving or contacting me. As noted, I have not been soliciting clients, but because I was not provided a company mobile phone, many clients contact me through my personal phone which was provided on my cards and other company communications, Several clients 3 months after my termination stated that I was still shown on the company website as their "agent" and contacted me as a result.
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> **Misrepresentation, Rebating, Signatures:**
> Whilst at [the Insurer], I followed the best practices related to provision of binding sales of insurance products as provided by the company. With the exception of misquoting of personal lines polices […] I did not have an incidents of client or company concerns or complaints about sale practices. […] it was typical for independent [the Insurer] Agencies to "pay" premium balances, fees and other costs […]

In response to the Agent's version of events, and the Investigation Report of the Insurer, the AIC contacted [A.S.] to recount his interactions and experiences with the Agent. On January 14, 2019, [A.S.] provided the following statement:

> […] I would also like to state that at no time during my engagement with Sean, did we meet face to face to sign any physical/printed documents. Whilst most of our discussions happened via email, some of it was carried out via phone or text messages.
>
> **Regarding policy #400****246 [Redacted] [Spa Business]**
> […] He then sent me 'Retailers Package Policy Declaration' document […] The premium quoted on the document was $1,293. […]
>
> I contacted Sean a few days after for an update and was told the policy was already in effect. I then asked for an "Confirmation of insurance" for the landlord so that I could cancel the existing insurance for the same business. I received that from Sean in a follow up email. The contents of this insurance confirmation were in line with our discussions, so I went ahead and cancelled the previous insurance. However, some time after I received a 'Certificate of Insurance' from [the Insurer], stating my premium to be $1994. On March 24, 2018, I sent an email with a photograph of the document to Sean at his [the Insurer] email address, raising my concerns about the increased premiums, but was told the company made a mistake and that he will take care of it. […]I also requested him for a meeting to deliver to me official copies of all my policies, terms, coverages, withdrawal schedules, source of funds etc. He agreed to meet with me on March 29, 2018. […]
> he was late and said he forgot to bring the package but can pull up some of the information on his laptop. We exchanged details on the payments made to date and their allocations to the various policies issued for us. He promised to send me the other requested details in a follow up meeting, which never happened either.
>
> I then received in the mail a "Payment Schedule" document from [the Insurer], stating that my premium for this policy had been changed to $98.67 per month and that I have 5 remaining payments for the current policy year. I then send Sean 2 emails to his [Insurers] address and both of them returned as undeliverable and error code […]. I then sent an email to Sean's Gmail account [..] with the same query, expressing my frustration about the incorrect premium amounts and that even after 6 months of repeated communications we could not address the inconsistences. On Aug 3, 2018 he responded to the email via his Gmail address, that he would get this looked after.
>
> Subsequently, during Aug I contacted […] office […]. At that time, I was informed that the premium on this policy was not $1293 but was actually higher.
>
> […] Considering the gross inconsistencies in the communications from Sean and my understanding of our coverages, [SW] suggested that we meet to discuss my existing policies in detail. […] at that meeting I was

informed, that the last adjustments made to this policy, that resulted in the new $98.67 premium payment, **had actually reduced my coverage** and altered other terms and compared to the original quotation and subsequent discussions with Sean. This was done without my knowledge or consent.

The reduced policy coverages that he had put in place […] put us at significant risk in the event of a claim and it is possible that we would not have been able to replace essential equipment, leasehold improvements, etc for us to continue operations after such an event.

[…] the policy that was issued by [the Insurer] carried a higher premium that what Sean made me believe over 6 months. And ultimately, the coverages were reduced to a far lesser level than what was required.

[…]**Regarding policy 400***33 [Redacted] [Consulting Business]**
[…] I had contacted Sean for a Commercial General Liability and Errors & Omission policy for a new business Sean asked me to confirm if I only required to add E&O policy or privacy breach as well. During a subsequent phone conversation, I had confirmed that I need the equal or greater E&O and CGL coverage as listed in the document that I had already provided a few times. […]

After another phone conversation, I sent him an email […] on June 28, 2018, again highlighting the required insurance and specifically requesting him to clarify which terms from the request are covered and which are not covered under the policy quotation he had provided. Although Sean responded to the email, saying he will look into it, I never received an answer for the query.

[…] I was told that the E&O would be listed under the detailed terms of the full policy document and that I should wait for the policy documents to arrive in regular mail. [...]

Sean was representing [the Insurer] till about a month after leaving
[…] on or around Aug 20, 2018 I finally decided to reach out for help from the local […] branch […] To my shock, I was told that Sean was no longer working with [the Insurer] and that I should talk to someone at the Strathmore branch, who would have access to my files. It was at this time, that I got in touch with [SW], who informed me that Sean had indeed left the company around July 19, 2018.

During the period between July 19, 2018 to August 20, 2018, I had exchanged numerous emails and text messages with Sean, discussing my policies. On August 2, 2018 while sending him one of the communications I noticed I was responding to an email from his Gmail account. I tried sending the email to his [Insurer's] account but it was returned with an error message. I sent the email to his Gmail account, also asking why the [Insurer's] email wasn't working, but did not receive a response to that query. On Aug 3, he sent me a Confirmation of Insurance document, which seemed to be issued by [the Insurer], for a CGL [Commercial General Liability] policy for [policy 400***33 [Redacted] [Consulting Business]]. I responded statig the name of the business was incorrect on the policy and he responded the same day with an edited copy of the same document.

Further, on Aug 7, 2018, I sent him [the Agent] my bank details for switching the auto insurance policy for [Client 3] Business Analytics. Had I known he was no longer at [the Insurer], I would not have shared this confidential information with him. On August 8, 2018 I received a response from Sean stating that he will make the bank account changes. Now, I am really uncertain as to how he could have done that, since he was no longer working at [the Insurer]. […]

In cooperation with the Insurer's investigation against the Agent, [A.S.] provided the Insurer with an email dated September 20, 2018 which attached several text messages between himself and the Agent. This document comprised a portion of the Investigation Report:

[Cell phone message] August 13, [2018]
[Agent] Refund [redacted] and 141.69 comm **I'll call you about the e&o payment**

> [A.S.] According to the data I have life should be 337 and **company should have been 296.** So we are still off […] Please send the payment allocations up to now for me to check against my numbers. Thanks
> [Agent] Ok I'll look again
> [A.S.] And please sent it today. Thanks
> [Emphasis Added]

The Investigation Report also included an email from [A.S.] to the Agent dated June 19, 2018, which provided a screenshot of the "business liability quote" (unspecified policy). [A.S.] requested clarity regarding the following information;

1. On Dec 27.2018- card ending*** was charged 288.01, please provide an OFFICAL breakdown of this charge against the different policies
2. On Jan 27.2018- card ending*** was charged 311.01, please provide an OFFICAL breakdown of this charge against the different policies
3. On Mar 08, 2018- card ending*** was charged 217.34, please provide an OFFICAL breakdown of this charge against the different policies
4. On Apr 16, 2018- bank account ending *** was charged 498.51, please provide an OFFICAL breakdown of this charge against the different policies
5. On Apr 17, 2018- bank account ending *** was charged 293.40, please provide an OFFICAL breakdown of this charge against the different policies
6. On the 16th of every month, I am seeing a monthly withdrawal of $129.06 from the bank account I gave for the business insurance [..] This is not in line with the quoted premium of $102/ mth
   [..] As you can see some of these dates are back from December 2017 and I still can't get closure on these items. Can you please look into this at the earliest and provide ITEMIZED responses for the above.

Further, in an email dated August 3, 2018, [A.S.] corresponded with the Agent at his personal email address, requesting information with respect to policy #400****246, the Spa Business, as follows;

> Hello Sean
> Got a mail from [the Insurer] saying the premium for the policy 400****246[redacted] will be $98.67 starting Aug 16. After that there will be 5 more payments of the same amount. According to my calculations, this is still way overpaid compared to the $1200+ quote we agreed upon.
> Honestly this is 6 months into the policy and I still don't have clarity on this. Is there someone else at [the Insurer] that I should be dealing with? […]

To which the Agent responded on August 3, 2018; *"I understand, I'll get the looked after for you.* [sic]"

The Investigation Report included the accounts of two staff members of the Agency which addressed encounters they had experienced with the Agent. In a statement dated September 14, 2018 an employee of the Agency advised;

> […] I worked with Sean Nethercott since 2016. During this time Sean issued multiple policies incorrectly and provided incorrect advice to clients when it came to their insurance. Sean was advised on numerous occasions by co-workers, management and myself that he was incorrectly writing new business, processing policy changes and advising clients. I have noted multiple files in ECM that the client's policy was incorrect, and I would ask Sean to correct it. Sean's response was "not to worry about it, he would take care of it". I also noted this in ECM. He never corrected the policies.

In a statement dated September 14, 2018 the Agency Office Manager stated:

> […] After Sean's termination, it was fairly common to receive phone calls from clients who were upset about premiums or coverages. Many of these clients expressed surprise when told that Sean was no longer working with [the Insurer], and some said they had been in contact with him recently and he had not told them that he was not with the company […]
> She [a client] advised me that she has called and messaged Sean several times and he had not informed her that he is not with [the Insurer], he assured her that everything was being taken care of. She had been in contact with Sean prior to his departure about coverage for jewelry, and advised that she had provided Sean with a copy of the appraisal. I apologized that there was no record of the document in our system and requested that she provide a new copy to keep on file. She stated that the appraisal was still in her safety deposit box and would be troublesome to get another copy of- requested I contact Sean to ask for a copy. I declined due to the fact Sean was no longer an employee. Later that day I received an email copy from Sean of the appraisal in question. […]

Unrelated to [A.S.]'s policies, the Report provided an email from the Agent to the Agency, dated August 26, 2018, which stated;

> Can you please call her and add this stuff to [Client's name] condo policy she's been texting me. Thanks.

On January 23, 2019 the Senior Fraud Examiner emailed a further statement collected from the Office Manager which states:

> [..] As requested, some estimates on the financial cost of correcting the problems left after the departure of Sean Nethercott:
>
> Auto policies:
>
> In the 3-month period from January 1, 2018 to March 31, 2018 Sean issued over 100 auto policies. [..]
>
> The majority of these policies were rated incorrectly by adjusting the postal code/garaged territory, applying hybrid vehicle rating, adding discounts including anti-theft devices that did not exist…..vehicles were rated for incorrect use[..]
>
> Home policies:
>
> There are a number of home insurance policies that are also incorrectly rated. Year built was incorrectly entered and in some cases changed to reduce premium. The majority of polices we have discovered so far use 2015 as year built, and include incorrect ratings of loss prevention items such as alarm systems and sump pumps with battery back-up. RCT/replacement cost coverage was manipulated in some cases, and coverage type, limits of insurance, and deductibles were changed at times without the client's knowledge or consent. [..]

In an email dated January 29, 2019, the Senior Fraud Examiner provided impact estimate regarding the alleged activity of the Agent;

> […]Approximately 400 auto policies issued (estimated)
> Conservative estimate premium impact [to Insurer] $200-500k
> Approximately 100-150 home policies impacted
> Premium impact estimated to be 75k […]

The Agent expressed a desire to stay in the industry and, on August 15, 2018, the Agent applied for, and was issued a general level 2 insurance agent certificate of authority. Under the "Employment History" section of the licensing Application the Agent disclosed that he had been employed as a "*Financial Advisor*" by the Insurer from January 22, 2016 to August 10, 2018.

The Agent was provided with the entirety of the Report, setting out the above, and responded:

> […] I have worked in insurance since 1992, without any complaints or concerns under multiple Licensing bodies […]
> […] When I left [the Insurer], I was inundated with calls from clients who could not get service from the office […]
>
> In my time with [the Insurer] we dealt with a number of similar complaints to these below, and referred them to District. The solution was always to work with the client to resolve the complaint, provide compensation or write offs for fees, gift cards, retroactive changes to policies, refunds. […] When I left [the Insurer], I was inundated with calls from clients who could not get service from the office. My personal cell phone was the main point of contact for me during my time with [the Insurer], and was on my business card, email signature, even the corporate website. [the Insurer] had made a big deal that I had to use my personal cell phone […] As per my email to [the Insurer] legal, I had changed my voice mail to state I did not work there and they should call the office for service. […] The suggestion of [Insurer] was that I should change my phone number […] In fact my name was listed on their website as the Agent with my personal cell phone as a contact until at least November 2018.
>
> […] I did forward a large number of texts, emails and communications to the chestermere office and they acted upon them until this had happened, and they were told to stop accepting communications. […] Therefore, I was put into an impossible position of having my personal phone as a published contact for them, staff at the agency telling people that they should "Call Sean" when there was a problem […] Clearly [the Insurer] are hoping to escalate even minor complaints into the AIC complaints, without bothering to address or even listen to client complaints. […]
>
> [A.S.] [Redacted]
> We originally wrote home and auto policies for [A.S.], and then added some commercial lines and life insurance policies […] [A.S.] had a very complicated structure for his policies that required vehicles on different companies, paid by different credit cards, a number of business names, numbers and payment sources […]
>
> [Regarding Holding Out]
> I did not hold myself out as an agent, or sell or service any insurance, only passed information between clients and staff sent by text, voicemail or email (to my gmail account) […] I continue to get 2-3 calls per week about [the Insurer] even now. I have had a message on my personal phone that I don't work there since August, 2018, and have worked with other brokers since then, with a valid AIC license.
>
> [A.S.] […] I acknowledge that there was some miscommunication with [A.S.] about their various policies, options and payments. I had worked with him to resolve these, **and asked my staff to help him after I had left.** However, there was nothing nefarious about the communications, they did request a large number of changes throughout the time I dealt with them, and were quite knowledgeable about the insurance they were buying. […] I believe that I was clear in advising them of their options, and agreed to remove the optional coverages once they asked me to […]
>
> I do not believe that the evidence presented in any of these cases demonstrates intentional dishonesty, only honest errors made in an agency that was severely short staffed and did not have reasonable controls set up for payments, policy deliveries, etc. […] **I am not clear on how the act defines "acting as an agent" since I did not bind, change or cancel any policies, or offer advise about coverage during that time. At the time, I was told by [the Insurer] that they had only elected to end my contract early, and that they wanted me to assist in the transition and pay for career advisory Services to help me find another role. Basically, I did everything I could to fend off all request for services and complaints from clients, by forwarding them to [the Insurer], and asking them to act, to try to retain the business for them. Therefore, I reject that I acted as an agent before starting with All City. I clearly took reasonable steps to inform clients I WAS NOT WORKING THERE, OR ANYWHERE, AND THAT THEY SHOULD CALL THE OFFICE FOR SERVICE. To the contrary, [the Insurer] did not, to my knowledge, email, mail or call the clients to advise them that I was not there, that my personal cell is a personal cell phone, or make any constructive steps to resolve this situation.** […] It should not have been my sole responsibility to inform 3000+ policyholders not to call me, particularly while all documents, website and other forms of communications continued to have my name and contact information all over them for at least 3 months. Sending a letter, email or even removing me from their website would have helped tremendously in this regard.
>
> […] Misrepresentation on the license application, I do not know why I put that date on the application, I can only surmise that I included the three week notice period provided to me as part of my employment, not the date my license had been terminated. I did not know the date my licenses with [the Insurer] had been terminated exactly until I looked at

> it in November. I continued to be paid by [the Insurer] as an AIT until the middle of August 2018. It was not intentional, and was clearly an error in dates. […]
> **[Emphasis added by Agent]**

> **Addendum**
> [..] with respect to the number of claims of "acting" as an agent after leaving [..] I was indeed contacted by numerous clients after I left, since as noted, [insurer] declined to pay for or provide me with a business mobile phone, and actually required that \i use my own phone as a condition of employment. This meant that I also sent a lot of emails via my default email on my phone, my gmail, my personal cell phone, and used those to contact me. [..] Since I had little or no choice when they had me on the phone to respond [..]

Discussion

Undeniably, a finding under s. 480(1)(a) of the *Insurance Act* can have a long lasting, negative professional aftereffect on those found guilty. Here, and in all cases of 480(1)(a) allegations, the Council applies stringent tests to weigh the evidence presented based on the balance of probabilities. Clear and cogent evidence must be provided to prove that it is more likely than not that the accused committed the violations, as alleged. The elements of s.480(1)(a) violations are discussed in the Decision of the Court of Queen's Bench of Alberta in *Roy v. Alberta* (*Insurance Councils Appeal Board*), 2008 ABQB 572 (hereinafter referred to as "*Roy*"). In *Roy*, the Life Insurance Council found that an agent was guilty of contravening s.480(1)(a) of the Act. The agent falsely attested to completion of required insurance related continuing education credits ("CE") when in fact, he had not completed the training. At the time, the agent concurrently held a securities license and believed that those educational courses applied to his insurance agent certificates of authority. This was not the case, and the Life Insurance Council found the agent guilty of contravening s. 480(1)(a) of the *Insurance Act*. The agent advanced the decision of the Life Insurance Council to appeal before the *Insurance Councils Appeal Board* of Alberta.

The *Insurance Councils Appeal Board* subsequently set aside the findings with respect to misrepresentation, fraud, deceit and dishonesty as contemplated by s. 480(1)(a) of the Act, but upheld the finding of untrustworthiness, also contemplated by s.480(1)(a) of the Act. The agent advanced the Decision to the Court of Queen's Bench of Alberta for judicial review.

In his reasons for judgement, Mr. Justice Marceau reviewed the requisite test to find a contravention of s.480(1)(a) of the Act has been demonstrated, and expressed it at paragraphs 24 to 27, as follows:

> [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 set out the two step approach, namely the court or tribunal **must first decide whether objectively one or more of the disjunctive elements have been proved. 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 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".**
>
> [27] Clearly the false answer was one which the Alberta Life Insurance Council could not trust as a basis for renewing the Applicant's Life Insurance Certificate of Authority. That satisfies the objective element. Just as clearly the finding that "the best that can be said of the Appellant's approach to the required statements is that he did not know if he had the required credits or not and likely gave the form little or no thought**" is a finding of willful[sic] blindness, of recklessness, and that is sufficient to prove intent in this context. The Board was aware that recklessness could satisfy the intent requirement and made no error on that score.** Having read the transcript of the hearing, I find that it was not unreasonable for the Appeal Board to conclude that the evidence of the Applicant about vaguely thinking that among all the courses he took he believed there would be enough crossover from courses taken for his securities licence to the life insurance requirements **fell far short of the due diligence expected of someone entrusted with fiduciary and good faith obligations.**
> [Emphasis added]

The Council contemplated; under the circumstances, has the Agent demonstrated willful blindness, or recklessness in his actions, and has the Agent exercise due diligence in his practices. Further, with respect to the disjunctive elements, was the Agent acting in good faith, and was the Agent's conduct deceitful, untrustworthy, dishonest or fraudulent in nature.

Turning to the evidence, the extensive materials (in excess of 1,000 cumulative pages) were duplicated throughout the Report. It was verified that [A.S.] owns several companies, and there was a high degree of complexity relating to his various insurance products. [A.S.] placed great deal of faith in the Agent, as evidenced by his communications, and relied on the Agent to recommend and effect insurance coverage, as discussed. Speaking to his level of expertise, the Agent himself declared that he has been engaged in the insurance industry from 1992, and licensing records confirm that the Agent has held a certificate of authority to transact in general insurance business for at least 10 years.

When evidence of a disparity in insurance premiums relating to the Spa Business, 400****246 – 197*** arose by way of the issued Certificate of Insurance, the Agent was presented with an opportunity to rectify, or at the very least research the source of the issue. Certificates of Insurance are binding on the insured, and the Certificate of Insurance would supersede what was initially quoted by the Agent. That industry knowledge would be known to the Agent from his experience in the industry. In this relationship of client and insurance agent, the agent is duty-

bound to act in his best interest of his client. Try as the client may to understand the content of his insurance policies, the terms are often complex and sophisticated. Licensed insurance agents in the Province of Alberta not only satisfy yearly continuing education requirements, but also challenge and pass a provincial qualifying general insurance examination. Here, there was a demonstrated inequality in product knowledge that forced client to rely on the recommendations made by the Agent. The Council noted that the Agent had failed to advise his client of a substantial policy change, which was reckless in nature, and demonstrated a willful intent to deceive or withhold information that could only be understood by an insurance agent.

Further, the unwillingness or inattentiveness to respond to his client's queries showed a lack of transparency in the Agent's insurance transactions. [A.S.] relied on the Agent to facilitate both his personal, and business insurance policies. As verified by the insured and the Insurer, the Commercial Errors and Omissions policy was not properly constructed, if at all. If this insufficiency remained undiscovered by the Insurer, the client would have subjected risk and potentially, to significant loss. Product knowledge of this level would have, or ought to have, been known by the Agent. When the Agent was questioned with respect to the E&O policy, and again an opportunity was presented to probe, clarify and confirm the client's coverage. Instead, the client's questions remained unanswered and the risk remained at play.

It is not unreasonable to expect that a high standard of due diligence be practiced by insurance agents when soliciting insurance products. Understandably, clients can experience severe difficulties when incorrect policies are put into force. Lapsed, erroneous, or inadequate placed insurance coverage exposes the clients to undue risk. Here, the Council was satisfied that the Agent's actions demonstrated untrustworthiness and dishonesty.

The Insurer also claimed considerable loss as a result of the actions of the Agent. Although not expanded upon, the Insurer's Senior Fraud Examiner estimated a cumulative loss in excess of $575,000.00, on the high scale. The Insurer's Investigation Report concluded;

> **Conclusion:**
> Based upon the above and the statements and documentation included in the attachments […]
> - Mr. Nethercott intentionally misrepresented premium requirements to clients [..]
> - Mr. Nethercott failed to deliver and explain the premium requirements […]
> - These clients made premium payments on the insurance policies, issued in good faith by [the Insurer], without their knowledge or consent; and
> - Mr. Nethercott continued to act as an insurance agent, contrary to licensing and employment, during the period of July 25, 2018 to August 23, 2018, when he was not licensed to do so.

Based on all of the evidence presented, the Council is satisfied that there is sufficient, clear and cogent evidence that the elements of an violation of s.480(1)(a) have been demonstrated, and that the Agent misrepresented information, was dishonest in order to willfully deceive, was deceitful and is therefore untrustworthy as

contemplated by s.480(1)(a) of the Act. Therefore, the Council finds the Agent guilty of 2 counts of 480(1)(a) of the *Insurance Act*.

As the Council is charged with the protection of the public, the Council believes that a substantial civil penalty is warranted under the circumstances. Honesty and transparency are the hallmarks of a trustworthy agent, especially when advising and presenting services to their clients. Given the seriousness of the offences the Council orders the maximum civil penalty for each finding of guilt under s. 480(1)(a) of the Act, being 2 counts in the amount of $5,000.00 each, for a aggregate civil penalty of $10,000.00, to be levied against the Agent pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

Under findings of 480(1)(a) of the Act the Council also has the ability to suspend an agent's certificates of authority for the period of up to 12 months or, alternatively, to revoke the certificates of authority for the period of up to one year. Given the conduct of the Agent, the Council orders that for each finding of guilt under 480(1)(a) the Agent's certificates of authority shall be revoked for the period of one year. The two revocations shall be served concurrently.

The Council then turned to the alleged violation of s. 452(2)(a) of the Act, that the Agent acted as an insurance agent during a time when he did not hold valid certificates of authority to do so. The Agent was terminated from the Insurer on July 19, 2019 which was noted as "*effective immediately*". The Agent states that the circumstances surrounding his termination were not made clear to him, and that it was not relayed that his termination was due to his misconduct. Further, the Agent maintains that the Insurer failed to remove his contact information from the Insurer's public website, causing clients to assume the Agent was still employed by the Insurer.

However, the Council observed that the Agent was afforded ample opportunity to advise his clients that he was no longer employed under the Insurer or at the Agency. Given the Agent's years of experience, and in any event, an insurance agent must not transact or offer insurance business if they do not hold a certificate of authority permitting them to do so under the Act. The Act is clear;

> **452 (2) No individual may act or offer to act as an insurance agent in respect of a class of insurance unless the individual**
> (a) is an employee or independent contractor of a business that holds a valid and subsisting insurance agent's certificate of authority for that class of insurance **and the employee or independent contractor holds a valid and subsisting insurance agent's certificate of authority for that class of insurance[…]**

Notwithstanding the Agent's explanation, when the Agent received client communications past the date of termination the Agent was duty-bound to advise his clients that he was not able to act in the capacity of an insurance agent under the Insurer. The Agent went so far as to collect banking information to attempt to rectify policy issues

with [A.S.] The Council found that these actions demonstrated offering or acting as an insurance agent while unlicensed and, as such, the Council finds the Agent guilty of violating s. 452(2)(a) of the Act. In so doing, the Agent has subsequently violated s. 480(1)(b) of the Act.

The Council has the ability to levy civil penalties in an amount not exceeding $1,000 pursuant to s.480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. In the context and seriousness of the findings herein the Council orders the maximum civil penalty allowable under s. 480(1)(b) of the Act, levying a penalty of $1,000.00 against the Agent.

Under findings of 480(1)(b) the Council also has the jurisdiction to suspend the Agent's certificate of authority for a period of up to 12 months or alternatively, to revoke the certificate of authority for the period of up to one year. As such, the Council orders that the Agent's certificates of authority be revoked for the period of one year.

Finally, it is alleged that the Agent contravened s. 467(1)(c) of the Act when he failed to accurately respond to the employment history section of his application for a certificate of authority. In doing so, it is alleged that the Agent failed to deliver the information requested by the Minister, as contemplated by s. 467(1)(c) of the Act.

Section 467(1)(c) of the Act is considered a strict liability offence. In other words, when it is proven that the Agent gave a statement that was incorrect, the essential elements of a contravention of s. 467(1)(c) of the Act are proven. The onus then shifts to the Agent to prove that he took all reasonable steps to avoid making the mistake. In the Agent's statement, the Agent acknowledges that his termination was dated July 19, 2018. However, the Agent only understood his erroneous response retroactively after completing the applications. Based on his given statement, the Agent has not demonstrated that he took all steps to diligently, attentively and accurately complete his applications for a certificate of authority. As such, the Council finds the Agent guilty of violating s. 467(1)(c) of the Act and subsequently s. 480(1)(b) of the Act.

As aforementioned, findings under s. 480(1)(b) of the Act allow the Council to levy a civil penalty in an amount not exceeding $1,000.00, pursuant to s.13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. In consideration of all of the above, the Council orders a civil penalty in the amount of $500.00 be levied against the Agent.

Conclusion:

The Council finds the Agent guilty of contravening the following sections of the *Insurance Act*:

- s. 480(1)(a) – 2 counts, resulting in a revocation of the Agent's certificate of authority on both counts, for the period of one year, to be served consecutively;

- s. 452(2)(a) and subsequently s. 480(1)(b) – 1 count, resulting in a revocation of the Agent's certificate of authority for the period of on year, to be served consecutively with revocations ordered above; and
- s. 467(1)(c) and subsequently s. 480(1)(b) – 1 count.

The Council has ordered the following civil penalties be levied against the Agent as a result of each finding:

- s. 480(1)(a) of the Act; $5,000.00 for 2 counts, for a sum of $10,000.00;
- s. 452(2)(a) and subsequently s. 480(1)(b) of the Act; $1,000.00 for 1 count found; and
- s. 467(1)(c) and subsequently s. 480(1)(b) of the Act; $500.00 for 1 count found.

All of which, in their totality, accumulate to the sum of $11,500.00 in civil penalties.

The civil penalties must be paid within thirty (30) days of receiving this written decision. In the event that the penalties are not paid within thirty (30) days, interest will begin to accrue at the prescribed rate. 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: October 29, 2019

[Original signed by]

Amanda Sawatzky, 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