

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 Sheena Mcdonell  
(the "Agent")

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

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

**Facts and Evidence**

This matter proceeded by way of a written Report to Council dated September 23, 2019 (the "Report"). The Report was forwarded to the Agent for review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not respond.

In July 2019 the AIC commenced audits to verify that the Continuing Education credits ("CE") claimed on licensees' renewal applications were correct. Auditees were randomly selected from a pool of agents who renewed their certificates of authority during the May/June renewal period. Particularly, the Agent, herein, was asked to provide proof of her CE credits to the AIC for the licensed period of 2018-2019 within thirty (30) days.

The Agent is the former holder of an accident & sickness ("A&S") certificate of authority, and held this certificate of authority between the period of November 16, 2018 to August 26, 2019. On August 26, 2019 the Agent's certificate of authority was suspended due to her failure to respond to the AIC.

On July 15, 2019 the AIC emailed the Demand to the Agent requiring her to provide proof of CE credits on or before August 15, 2019. The AIC then emailed the Agent a reminder on July 29, 2019 on August 8, 2019. The AIC attempted to contact the Agent on August 14, 2019 via telephone however her personal and business lines

were no longer in service. As such, the Agent did not produce the CE certificates in response to the Demand within the timeline specified, or thereafter.

### **Discussion**

As we have noted previously, 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 of the Insurance Act 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 the “... 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 Agent’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus shifts to the Agent to demonstrate that she 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 Agent was given a reasonable opportunity to respond. Given the fact that the Agent failed to respond to the Report, she has not met the burden of establishing the due diligence defence and the Council finds her guilty as alleged in the Report.

The offence of failing to respond to a demand 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 Agent’s failure to respond was intentional. Once the AIC proves that the Demand was made, the onus then shifts to the Agent to demonstrate that she made 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, and that the Agent was given a reasonable opportunity to respond. Given the facts in their entirety, it is clear that the Agent did not satisfy the due diligence defence and we find her guilty.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints, and the Act requires that licensees provide information when called upon to do so. Therefore, the public is not well-served when an agent fails 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 Agent did not respond to the Demand. As such, the Council orders a civil penalty in the amount of \$750.00 be levied against the Agent.

The civil penalty of \$750.00 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 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 Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: December 19, 2019

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[Original signed by]  
Michael Bibby, Chair  
Life 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