

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
Avenue Motors Ltd.
(the “Dealership”)

And

Nabeel Jessani
 (“Designated Individual” of the Dealership)

DECISION
OF
The General Insurance Council
(the “Council”)

This matter involves an allegation pursuant to s. 552 of the Act. Specifically, it is alleged that the Dealership falsified client information, either knowingly or recklessly, within an unaffiliated insurer’s online insurance quote generator to gain more favourable quotes for their clients. This information extended to fraudulent client demographics, driving records, and/or incorrect contact information. In so doing, it is alleged that the Dealership failed to manage or supervise the conduct of its employees in accordance with its statutory requirement, and that employees of the Dealership acted as agents on behalf of insurance applicants for the purpose of signing an application for automobile insurance, in contravention of s. 552 of the Act, which subsequently attracts a violation of s. 480(1)(b) of the Act.

If the Council is not satisfied that a breach of s. 552 has been demonstrated, it is alleged in the alternative that the Dealership made false or misleading statements or advertisements to the insured and insurer in contravention of s. 509(1)(a) of the Act, which attracts a subsequent breach of s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated March 31, 2021 (the “Report”). The Report was forwarded to the Dealership for review and to allow the Dealership to provide the Council with

any further evidence or submissions by way of Addendum. The Dealership responded through their legal counsel, and Council considered all submissions tendered.

The Dealership holds a *Restricted Corporate Auto Dealership (Equipment Warranty)* certificate of authority to transact insurance business insurance within Alberta, and concurrently hold a Restricted Certificate Auto Dealership (GAP) insurance certificate (hereinafter the “licenses”). These licenses authorize the Dealership to transact insurance business on restricted terms prescribed by legislation. The Dealership has held these licenses from July 26, 2017, to present. There are no previous records of disciplinary proceedings taken against the Dealership by this Council.

On July 3, 2020, the General Legal Counsel of [S. Insurer][redacted] provided correspondence to the Superintendent of Insurance of Alberta which alleged Dealership misconduct. The Superintendent of Insurance duly forwarded the complaint to the Alberta Insurance Council, as issues involving the misconduct of insurance intermediaries in Alberta, such as the Dealership, are investigated by the Alberta Insurance Council.

The correspondence from S. Insurer’s Legal Counsel provided;

[...] I write on behalf of [S. Insurer][redacted] in relation to concerns we have regarding Avenue Motors Ltd.’s use of the [S. Insurer’s] website to carry out insurance transactions for its own customers. Avenue Motors is located at [redacted].

[S. Insurer] is an online insurance provider where individuals can purchase insurance directly online. It is distinct from a broker-based insurance distribution approach and is designed to be used directly by consumers without intermediaries.

Based on our analytics, we have identified that Avenue Motors’ staff may have been using the [S. Insurer] website to place insurance for Avenue Motors’ own customers. They appear to be acting as agents for their customers to apply for and obtain auto insurance on the [S. Insurer] site, sometimes paying down payments using corporate credit cards, and in some cases using AvenueMotors.ca email addresses. We believe that they have been impersonating customers on the phone at times. We believe that some of the insurance policies in question have been purchased based on incorrect information relating to, among other things, insured’s name, address, email, date of birth, and driver’s license. We have heard this from their customers and identified that the same electronic devices have repeatedly carried out transactions on behalf of different insureds. Some of their customers have also been unable to authenticate themselves to [S. Insurer] online or on the phone, as they apparently were unaware of what information was used by the dealership to set up their account. We have so far catalogued a number of instances where this apparently has occurred.

We recently sent a letter warning Avenue Motors to cease and desist from this conduct, but to no avail, as they chose not to respond to our written request and similar conduct has been observed subsequent to Avenue's receipt of our letter.

Given the foregoing, we write to advise of a potential repeated breach of insurance legislation in Alberta. Based on our analytics, we are concerned that Avenue Motors' conduct may violate section 552 of the Insurance Act (Alberta), which states that *"No person carrying on the business of financing the sale or purchase of automobiles, no automobile dealer ... and no officer or employee of such a person, [or] dealer ... may act as the agent of an applicant for the purpose of signing an application for automobile insurance"*. We are also concerned that Avenue Motors' conduct may not be in the interest of consumers. [...]
[Emphasis added in Source]

In response, the AIC asked for all evidence related to the alleged breach of the Act. S. Insurer responded on August 26, 2020 as follows;

[...] in response to your request of July 9, please see the attached material, which consist of:

- A document setting out information that we have relied on to arrive at the concerns that we've reported about Avenue Motors' conduct. The top portion of most of the pages in this document consists of screen shots taken directly from our internal file notes system at [S. Insurer].
- An audio recording of a call received by [S. Insurer] from an Avenue Motors staff person on May 28, 2020, as referred to on page 22 of the document mentioned above.
- A copy of a cease & desist letter send [sic] by our organization to Avenue Motors on March 19, 2020, as referred to in the document mentioned above. We received confirmation from Canada Post that this letter was delivered and signed for on March 25. [...]

The letter from [S. Insurer] to Avenue Motors Ltd. dated March 19, 2020, provided as follows, in part;

I write on behalf of [S.] Insurance Company in relation to concerns we have regarding Avenue Motors' use of the [S. Insurer] website to carry out insurance transactions for its own customers.

[S. Insurer] is an online insurance provider where individuals can purchase insurance directly. It is distinct from a broker-based insurance distribution approach and is designed to be used directly by consumers without intermediaries.

We have determined that Avenue Motors' staff have been using the [S. Insurer] website to place insurance for Avenue Motors' own customers. They are acting as agents for your customers to apply for and obtain auto insurance on the [S. Insurer's] site, sometimes paying down payments using corporate credit cards, and in some cases using AvenueMotors.ca email addresses. We believe that they have been impersonating customers on the phone at times. Some of the insurance policies in question have been purchased based on incorrect information relating to, among other things, insured's name, address, email, date of birth, and driver's license. We have heard this from your customers, and identified that the same electronic devices are repeatedly carrying out these transactions on behalf of different insureds. We have so far catalogued a number of instances where this has occurred. As a result, [S. Insurer] has insured persons who might otherwise be uninsurable, or for premiums that may be far less than required.

This conduct must end immediately. [...]

Avenue Motors' unlawful conduct has harmed business. We have incurred claims for insurance we either would not have sold or would have sold for more premium. We are calculating the costs because of claims amounts we otherwise would not have paid and for the lost premium.

We request that Avenue Motors and its staff immediately stop this unlawful conduct. Your staff should not use the [S. Insurer] site to place insurance or act as unlicensed insurance advisors for your customers' use of our website. Your staff should not be emailing, calling or otherwise contacting [S. Insurer] under any circumstances; it must be the customer making requests of [S. Insurer]. If your customers wish to use the [S. Insurer] site, they should do so themselves, without involvement from Avenue Motors.[...]

S. Insurer enclosed an analytical data Report generated for the AIC dated August 2020 (the S. Report) which supplied a network analysis and supporting evidence, as follows;

NETWORK ANALYSIS

- [S. Insurer] analytics have identified the same devices purchasing & accessing multiple policies from the same IP address attributed to Avenue Motors
- Network analysis revealed multiple connection points in regards to seemingly unrelated policies (>30 identified)
[...]

IRREGULARITIES OBSERVED

Fraud network analysis observations related to Avenue Motors activity:

- Dealership employees are acting as licensed insurance brokers, purchasing policies on behalf of their customers
- Customers not quoting or purchasing themselves, so have no knowledge of application information provided or coverage obtained & cannot subsequently access account or authenticate, as their information was not used to set up the policy
- Incorrect information provided to quote & purchase, with suspected rate evasion
- Corporate credit card used to purchase insurance on behalf of customers
- Welcome letters/registered letters being returned as undeliverable
- Unauthorized users calling, with evidence of customer impersonation
- Hides drivers with unfavourable driving records in order to obtain more favourable rates
- Higher than average volume of policy cancellations & claims

DEALERSHIP SET UP POLICY WITH THEIR CREDIT CARD

Policy Details:[redacted] **[CLIENT 1 for the purpose of this Decision]**

- Issue date was 22MAR2019
- Claim date of loss 27SEP2019, while date reported was 27NOV2019
- During the claims process, customer stated that the policy was set up by her dealership using their corporate credit card for the down payment

DEALERSHIP SET UP POLICY

Policy Details: [redacted] **[CLIENT 2 for the purpose of this Decision]**

- Issue date was 31MAY2019, cancelled 26AUG2019 for non-payment
- Customer stated dealership set up policy
- Registered letter for cancellation returned as undeliverable

DEALERSHIP SET UP POLICY/INCORRECT INFORMATIONPolicy Details: [redacted] **[CLIENT 3 for the purpose of this Decision]**

- Issue date was 11JUL2019, cancelled 7OCT2019 for non-payment
- Customer stated dealership set up policy & they used their email address
- Customer failed authentication due to not knowing setup details
- Welcome package & registered letter for cancellation returned as undeliverable, indicating wrong address provided

DEALERSHIP SET UP POLICY/INCORRECT INFORMATIONPolicy Details: [redacted] **[CLIENT 4 for the purpose of this Decision]**

- Issue date was 12JUL2019
- Claim date of loss was 1OCT2019 & date reported was 1NOV2019
- Customer stated dealership set up policy, using their email address
- Incorrect information was submitted as part of this application, including address, email & phone #

DEALERSHIP SET UP POLICY/INCORRECT INFORMATIONPolicy Details: [redacted] **[CLIENT 5 for the purpose of this Decision]**

- Issue date was 29JUL2019, cancelled 4NOV2019
- Customer stated dealership set up policy using an email address they created [redacted email address]
- Customer failed authentication on multiple calls, as he did not know name, address, email or phone # on policy
- Real name is [J.A.V.][redacted]
- Welcome package & registered letter for cancellation returned as undeliverable, indicating wrong address provided

[...]

DEALERSHIP SET UP POLICY/CREDIT CARD/INCORRECT INFOPolicy Details: [redacted] **[CLIENT 6 for the purpose of this Decision]**

- Issue date was 15AUG2019, cancelled 20SEP2019 for underwriting reasons
- Customer stated dealership set up policy using their email address & corporate credit card for annual payment, then paid them \$3,500 for insurance
- Incorrect information was submitted as part of this application, including drivers license #, email address
- EFD = Early Fraud Detection team

[...]

DEALERSHIP SET UP POLICY/INCORRECT INFORMATIONPolicy Details: [redacted] **[CLIENT 7 for the purpose of this Decision]**

- Issue date was 18DEC2019
- Claim date of loss & date reported was 7FEB2020
- Customer stated dealership set up policy for a payment of \$800
- Incorrect information was submitted as part of this application, including customer name, address, drivers license #

[...]

DEALERSHIP SET UP POLICY/INCORRECT INFORMATIONPolicy Details: [redacted] **[CLIENT 8 for the purpose of this Decision]**

- Issue date was 6FEB2020
- Customer stated dealership set up policy using an email address they created ([redacted])

- Incorrect information was submitted as part of this application, including insurance coverage, surname (should be [V.r.] rather than [V.h.]) & email

[...]

POLICIES PURCHASED AFTER CEASE & DESIST LETTER

Within a recent two-week period, a device traced to the Avenue Motors network purchased & accessed the following unrelated policies, in violation of cease & desist letter, which is concerning:

Eff. Date	Policy #	Policyholder	Address	Comments
26MAY20	5*****55	[D.S.]	[redacted]	Replaced by # 500594883
28MAY20	5*****83	[K.T.]	[redacted]	[Client D.] & [Client K.] are married
02JUN20	5*****97	[M.H.]	[redacted]	-
0JUN20	5*****47	[C.D.]	[redacted]	-

POLICIES PURCHASED AFTER CEASE & DESIST LETTER

Call Recording Evidence on File:

- Issue date was 26MAY2020 & salesperson [N.B.] calls on 28MAY2020 to cancel the policy because it did not allow as much coverage as [Client D.] required; he initially identifies himself as [N.B.] but then proceeds to impersonate the customer [Client D.] during the rest of the call
- Fails authentication by providing his own phone # ([redacted]) & email address ([redacted][N.B.]@avenuemotors.ca) & hesitates on date of birth
- Acting as [Client D.], he falsely says no one helped him set up the policy & that he did it on [S. Insurer] website himself; in reality, salesperson [N.B.] purchased the policy for [Client D.] using an Avenue Motors' device at their IP address [...]
- During the call, [N.B.] then remembers the password & accesses the customer's account online in order to make the policy change himself
- On 28MAY2020, [N.B.] cancels [Client D.] policy in order to hide [Client D.] poor driving record & purchases a new policy under his wife's name ([K. redacted]), with only ([K. redacted]) listed as a driver of their 2013 Chevy Equinox

The AIC sent the Designated Individual of the Dealership a request for information on September 21, 2020 in response. The AIC did not receive a response. As such, the AIC served a formal Demand for Information pursuant to s. 481(1) and (2) of the Act which required the Dealership's response no later than 4:30 p.m., October 29, 2020.

The Dealership responded on October 29, 2020 as follows;

Upon further investigation regarding complaint 70013, we believe one of our previous employees, who no longer works with us, used a company credit card without authorization to sign up a customer on [S. Insurer].ca. A discussion has been had with all staff regarding the severity of this and as a business we obviously do not want our credit card being used on any recurring items for customers. We are unaware of any conversation had by current employees where they impersonate any customers or used staff emails.

As the Dealership did not respond to the specific questions set out within the Demand the AIC investigator responded on November 17, 2020 as follows;

[...] our investigation surrounds the issue of whether or not a violation of the Act/Regulations has occurred as well as whether or not the alleged violation continues to occur. The evidence we received appears to indicate that at least one of Avenue Motors' staff were engaging in the alleged activities. Further, my search of AMVIC's registry of registered sales people appears to indicate that at least one of the employees allegedly involved remains employed with Avenue Motors Ltd.

As such, please provide me with a written statement detailing your knowledge of the facts in response to [S. Insurers] allegations that Avenue Motors staff obtained insurance policies, impersonated customers when requesting changes to policies, and/or used Avenue Motors corporate credit cards to obtain insurance for customers. In your response, please include all information/documentation which may assist in understanding the material facts.

This email is a formal demand. [...] [Emphasis added in Source]

The Dealership responded through an employee on December 2, 2020 as follows;

After speaking with our staff members we have concluded that basic insurance questions were answered by staff but not that any current staff member used a corporate credit card to obtain insurance for any customer.

As a result, we are unaware of any specific violation of the Act/Regulations in this regard [...]

The Dealership did not respond further. Accordingly, the AIC proceeded with its Report dated March 31, 2020. The Dealership was permitted to respond to the entirety of the Report and the evidence contained therein.

The Dealership responded through its Legal Counsel by way of correspondence dated April 19, 2021;

I have been retained by Avenue Motors Ltd. and [Designated Individual] in terms of representing them with respect to the above mentioned Case No. My client apologizes for not being able to respond previously, but he needed to retain counsel and I wanted to review the complete nature of the allegations prior to submitting my client's response.

As to the Report to Council, my client is not an "Agent" in these allegations so I have advised him not to sign the document. He does not accept that the complaint made by [S. Insurer's Legal Counsel] is proper. [S. Insurer] operates an Online Insurance portal and therefore cannot make allegations of misuse by members of the public in the manner that he has done. If they want to confirm the identity of individuals from the general public (who they hope will purchase insurance from them) they should simply introduce additional identity protocols.

In any event, information from my client confirms that all applicants for insurance did this on their own and there is no suggestion that the client (insured) did not follow the proper steps to identify themselves.

Specific Charges - No jurisdiction

I have reviewed the materials you provided on March 31, 2021. It is our submissions on behalf of our client that the Alberta Insurance Council does not have jurisdiction with respect to both charges.

While my client respects the mandate of the Alberta Insurance Council, it cannot be that allegations by an insurance company, which does not involve an insurance agent, can be accepted and investigated in this manner.

I will provide my brief summary in this letter to the charges and would ask that the Alberta Insurance Council address the preliminary issue of jurisdiction prior to taking any further steps. The manner in which the Charges as laid in the alternative points to different respondents.

Charge 1 - Section 552

Agents

552 No person carrying on the business of financing the sale or purchase of automobiles, no automobile dealer or insurance agent and no officer or employee of such a person, dealer or insurance agent may act as the agent of an applicant for the purpose of signing an application for automobile insurance.

Avenue Motors Ltd. And their staff have never alleged they are an Insurance Agent for [S. Insurance] or that they are an Agent for any client. The test for Agency is well known in law. The Federal Court of Appeal decision in *Canada v. Glengarry Bingo Assn.*, 1999 CanLII 7738 (FCA) confirmed that the one alleging an Agent relationship has the legal onus to prove that there was the relationship and corresponding representations that had Avenue Motors Ltd. Or their staff claiming they were representing the insured individual. None of that is found in the complaint or the investigation.

The complaint also does not allege that Avenue Motors Ltd. Was signing an application for automobile insurance.

Overall, the investigation does not properly address the specific section of the Act. While my client has been open about addressing part of [S. Insurer's] issues, the allegations are not covered under Section 552.

Charge 2 - Section 509

Unfair practices

509(1) No insurer, insurance agent or adjuster may

(a) make a false or misleading statement, representation or advertisement,

My client takes the position that they fully cooperated and indicated that the major concern in the alternate charge was done by an employee who does not work for them anymore. The investigation report provides details of possibly [N.B.][employee of Dealership]. [N.B.] does not fall under Section 509(1) as he is neither an insurer, an insurance agent or an adjustor [sic].

Avenue Motors Ltd. does not impersonate any of their clients. [N.B.] can only speak to his actions.

Conclusion

The Insurance Act was not meant to deal with matters which are outside of their jurisdiction. My client has taken the matter seriously and [S. Insurer] should have no future complaints from my client.

The complaint and the charges are expanding the legislation beyond its specific meaning, my client asks that this matter be dismissed.

If this matter is intended to go forward, I would ask that each Charge be separated and the action violation be particularized in relation to the Insurance Act. Moreover, it may be better to have the clients and Avenue Motors Ltd. former staff member explain their actions as a proper Respondent.

[Emphasis added in source]

Discussion

The Council is cognizant that this is a complicated matter involving restricted certificates, automotive dealerships, and the jurisdiction of the Council over insurance intermediaries in Alberta. From the inception of the Publication Policy in 2013, and from all cases known from the date of the currently in force *Insurance Act* (2000), an alleged violation of s. 552 has not occurred. As such in this case, and in all matters before the Council, the Council carefully weighed all evidence before it before reaching its conclusion.

To address the preliminary matter of jurisdiction, the Alberta Insurance Council (the “AIC”) is the Provincial Regulator of insurance intermediaries in Alberta. The AIC is responsible for the licensing and oversight of market conduct of insurance agents, brokers, and independent insurance adjusters in accordance with the *Insurance Act*, RSA c. I-3, 2000, and its Regulations. The industry specific Councils have further delegated authorities which permit them to oversee the market conduct and licensing of Restricted Certificates within the classes of insurance they oversee. The General Insurance Council, for example, is empowered by Ministerial Directive 02/01¹ as follows (in part);

Appendix: Insurance Act – Delegation to the General Insurance Council

Order

In accordance with section 791 of the Insurance Act, the following powers, duties and functions are delegated to the General Insurance Council:

- (1) To exercise the powers, duties and functions of the Minister pursuant to sections 468, 480 and 481 of the Insurance Act in respect to certificates of authority for general insurance including:**
- a. the power to hold hearings for that purpose
 - b. the power, directly, or with the assistance of the officers and staff of the Alberta Insurance Council, to conduct investigations for that purpose**
 - c. exercising the authority given by section 482.1 of the Insurance Act.

¹ [Ministerial Directive 02/01, July 31, 2001 Patricia L. Nelson Minister of Finance, to the General Insurance Council \(of Alberta\)](#)

[...]

(3) To **approve and refuse applications for restricted insurance agents' certificates in respect of classes or types of general insurance** specified by the General Insurance Council in accordance with section 454 of the Insurance Act.

[...]

(7) To revoke, suspend or refuse to renew or reinstate an insurance agent's certificate of authority for general insurance and impose terms and conditions pursuant to **section 480 of the Insurance Act**.

(8) To **impose penalties against** the holder or former holder of an insurance agent's certificate of authority for general insurance pursuant to **section 480 of the Insurance Act**.

[...]

[Emphasis added]

The AIC's counterpart in Regulation is the Superintendent of Insurance (Government of Alberta, Ministry of Treasury Board and Finance) who is responsible for the oversight of Insurance Companies ("Insurers"). As such, the AIC and the General Insurance Council are the appropriate authorities to consider the conduct of the Dealership in accordance with legislation.

To address the ability to receive complaints from an insurer; the Alberta Insurance Council is also empowered by legislation to receive complaints from any individual regarding an alleged violation of the Insurance Act. This is confirmed by [clause 6. of the Ministerial Directive 01/11 to the Alberta Insurance Council](#).² The AIC is also appointed as an Examiner through the meaning inferred by the Insurance Act itself to collect evidence for the purpose of investigating an alleged breach of the Insurance Act.

In that regard, the Council rejects the Dealership's position that the Council is not the correct authority to investigate the alleged breach of the Act or its Regulations for holders or former holders of restricted certificates (pertaining to general insurance) in the Province of Alberta.

The Council also considered the Dealership's role as an intermediary in the current case before them. Primarily, if the actions of one or more employee of the Dealership should affect the Dealerships ability to operate or should be considered as committed by the Dealership itself.

² [Ministerial Directive 01/011, March 8, 2011, Delegation to the Alberta Insurance Council Order and appended PROTOCOL AGREEMENT INSURANCE INQUIRY AND COMPLAINT REFERRALS](#)

The Act sets out the scope of a restricted certificate holder as follows (in part);

1(1) DEFINITIONS

(cc) “insurance agent’s certificate of authority” includes a restricted insurance agent’s certificate of authority;

(bb) “insurance agent” means a person who, for compensation,

- (i) solicits insurance on behalf of an insurer, insured or potential insured,
- (ii) transmits an application for insurance from an insured or potential insured to an insurer,
- (iii) transmits a policy of insurance from an insurer to an insured,
- (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or
- (v) enrolls individuals in prescribed contracts of group insurance, but does not include an insurer;

Restricted insurance agent’s certificate

454(1) The Minister may issue a restricted insurance agent’s certificate of authority to a business

(a) that is a deposit-taking institution, or

(b) that operates

- (i) a transportation company,
- (ii) a travel agency,
- (iii) an automobile dealership, or**
- (iv) another prescribed enterprise.

(2) A restricted insurance agent’s certificate of authority authorizes the holder and the holder’s employees to act or offer to act, subject to prescribed conditions and restrictions, as an insurance agent in respect of classes or types of insurance specified by the Minister.

Restricted certificate holders — designated individual

457 Every business that holds a restricted insurance agent’s certificate of authority must designate an individual to be responsible for receiving notices and other documents under this Act.

[Emphasis added throughout]

The Council also relies on ss. 9 and 10 of the *Interpretation Act’s*, RSA 2000 c. I-8, which acknowledges the broad power of an enactment to speak from its intention;

Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

Enactments remedial

10 An enactment shall be construed as being remedial, **and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.**

[Emphasis added]

In that regard, the Act clearly indicates that a restricted certificate holder is an “*insurance agent*” for the purpose of the sale of insurance products in the Province of Alberta, and with respect to the application of the legislation itself. In that regard, the Dealership’s position that a restricted certificate holder is not an insurance agent is also rejected.

In terms of the alleged violation of s. 552 of the Act, the Council considered all evidence before it in accordance with the civil burden of proof, being the balance of probabilities. That test requires that the Council must prove that it is more likely than not that the breach occurred as alleged. There is also a requirement for ‘*clear and cogent evidence*’ to tip the scales and substantiate guilt. The requirement of clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. In *F.H.v. McDougall* 2008 SCC (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada discussed this principal:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

Section s. 454 of the Act confirms that the Dealership and its employees are authorized to transact insurance business through the restricted certificate itself. This places a positive obligation on the Dealership to confirm its’ employees are knowledgeable in terms of the products they offer and are acting in accordance with the Act and its Regulation. The Dealership has several employees, all of which answer to the Designated Individual.

It would be negligent of the Council to absolve the Dealership of its statutory responsibility merely because the Dealership had terminated an employee who was allegedly solely responsible for the misconduct. Even if that were to be the case, it would send a dangerous message to the industry that

sanctions and penalties against a Restricted Certificate could be avoided by blaming a singular employee empowered under the Restricted Certificate. The Act is clear; the Dealership and employees are treated as one entity and must act within the parameters of that certificate. To direct otherwise would undo the power of the certificate itself and would instead require that each employee obtain their own individual certificates. This is not the design nor intent of the legislation.

As to the evidence of a s. 552 breach itself, in considering the evidence in its entirety, the Council is satisfied that the Dealership directed its clients to the site of S. Insurer to obtain independent insurance quotes, and that that act extended beyond simply recommending the site but also included completing the insurance application on the client's behalf. The Dealership is not associated nor sponsored by S. Insurer and do not have working knowledge of the products offered by them, nor would they be able to assess the appropriateness of the products recommended through the site. Directing clients to the site and completing applications on their behalf meets the definition within the Act of acting as an insurance agent. As such, the Council agrees that a breach of s. 552 has been substantiated, which also attracts a violation of s. 480(1)(b) of the Act.

In terms of the applicable sanctions, the Council has the ability to levy civil penalties in an amount not exceeding \$1,000.00 per demonstrated violation of s. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The Council also has the ability to revoke or suspend the Dealership's active certificates of authority. In our view, the Dealership's actions attract a civil penalty at the high end of the available scale. Therefore, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Dealership for each proven violation, of which there were eight, for a total civil penalty of \$8,000.00. The Council agreed that revocation or suspension was not a necessary penalty given the evidence presented.

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, interest will begin to accrue, and the Dealerships certificates of authority will be suspended in accordance with the Act. Pursuant to s. 482 of the Act (copy enclosed), the Agency 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.

June 11 , 2021

[ORIGINAL SIGNED BY]

Janice Sabourin, 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