

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 Belinda Peacock
(the "Agent")

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

This matter involves an alleged violation of s. 480(1)(a) of the Act. It is specifically alleged that the Agent requested payments from clients, deposited those payments into her personal bank account and forged documentation to the clients. As such, it is alleged that the Agent acted contrary to s. 480(1)(a) of the Act and is guilty of fraud, deceit, dishonesty, untrustworthiness, and/or misrepresentation. In the alternative it is alleged that the Agent made false or misleading statements, representations, or advertisements in contravention of s. 509(1)(a) of the Act and has consequently violated s. 480(1)(b) of the Act.

Facts and Evidence

The matter proceeded to Council by way of written Report dated July 27, 2021 (the "Report"). The Report was provided to the Agent for review. The Agent was permitted, and was given a number of opportunities, to provide further evidence or submissions in response to the Report by way of addendum.

The AIC's investigation commenced in response to a Notice of Termination received from the Agent's former employer, the "Former Agency", which advised that the Agent was terminated for cause. The Agent previously held a certificate of authority authorizing her to act in the capacity of a general level two insurance agent. The Agent held the certificate from January 8, 1996 to March 18,

2021, when the Agent was terminated ‘for cause’.

The Former Agency contacted the AIC through written correspondence entitled “*Termination of Belinda Peacock* dated March 18, 2021;

We wish to report to the Alberta Insurance Council, recent activity that was conducted by a prior employee of [Former Agency], Belinda Peacock. Belinda most recently worked for [Former Agency] from June 18, 2018 to March 17, 2021, at which time she was terminated for cause. Belinda was licensed with [Former Agency] [...]

Recent findings found that Belinda had requested payments from various [Former Agency’s] clients, deposited those payments into her own personal bank account, forged documentation to clients and left numerous clients without proper coverage. Belinda has acknowledged that these events did occur and admitted to depositing client funds into her own bank account for a period of roughly a year.

Effective March 17, 2021 Belinda Peacock was terminated with cause. [...]

In response to a request for information, the Former Agency provided a copy of the termination letter that was sent to the Agent dated March 17, 2021 (hereinafter the “Termination Letter”);

[...] This is to confirm our conversation today during which you were advised that your employment is being terminated by [Former Agency] effective immediately for cause. Your employment has been terminated with cause because you requested payments from various [Former Agency] clients, deposited those payments into your personal bank account, forged documentation to clients and have left numerous clients without proper coverage. You have acknowledged that these events did indeed occur and admitted that you stole the money and deposited it into your own account for a period of roughly a year. Accordingly, we have concluded that your conduct has made continued employment with the Company untenable. [...]

On April 9, 2021, the Former Agency advised the AIC;

[...] Please note that our forensic analysis is not yet fully complete, however we had gathered enough evidence to determine that Ms. Peacock was intercepting e-mail money transfers from [Former Agency] clients and placing those funds in her own bank account. Attached you will find a working list of the clients we have currently discovered that have been affected by Ms. Peacock’s actions. We are working diligently to complete this list in it’s entirety as well as ensuring the affected clients are “made whole”, if required, by working with our insurance providers and/or issuing refunds to the clients.

Please note that in some of the examples the money that was deposited into Ms. Peacock’s bank account were agency bill accounts. Our current list of affected policies is attached for your reference. [...]

The Former Agency alleged that their current investigation disclosed 22 insurance clients being affected by the Agent's activities.

On May 11, 2021 the Former Agency provided copies of email correspondence between the Agent and the 22 clients. In addition, insurance certificates and interac e-transfers were also provided. The Former Agency's investigation disclosed in part;

Client Code	Client Name	Policy #	Carrier	Coverage	
209****_** [redacted]	P.J. & S.J. [Client 1] [redacted]	166***** & 166***** [redacted]	[Insurer 1] [redacted]	Gap from Jul 11/20 on 166***** [redacted]. Cov no longer needed as they sold home. Coverage backdated by [Insurer 1] [redacted] to Dec 11/20 on 166***** [redacted], so no gap on that one.	New policy written Feb 11/20. Etransfer sent to Belinda Jan 30/20 for \$994.00. Etransfer reminder for the Jan 30/20 etransfer sent to Belinda Feb 5/20. A second etransfer sent to Belinda on Feb 10/20 for \$994.00. \$994.00 paid in office via debit card ending in ...8126 April 27/20. Etransfer sent July 14/20 to Belinda for \$401.00 email says COC renewal Jul to Oct, no extension of coverage on file. Etransfer sent Oct 9/20 to Belinda for \$134.00 email says extension for a month, no extension of coverage on file. Etransfer sent to Belinda Nov 10/20 for \$268.00, no extension of coverage on file. Etransfer sent to Belinda Dec 10/20 for \$1165.00, no extension of coverage on file. One of the \$994.00 etransfers were cancelled by the client, so removed from balance. [Property] [redacted] was sold on Dec 21/20 so no extension needed past Dec. Coverage gap from Jul-Dec on this location. [Client 1] [redacted] advised there should be a COC on [Property] [redacted] with a Dec or Jan start. That is what the Dec 10/20 \$1165 payment was for. Client confirmed all payments were correct. Sent me a copy of the COC COI for [Property] [redacted] bound for Dec 11/20. Received confirmation from [Insurer 1] [redacted] they agree to backdate new business under next cert # of 166***** [redacted] eff Dec 11/20. Sent revised certificate to [Insurer 1] [redacted] with correct cert/policy # for their records. Invoiced on system. Will need to write off amount of \$1165.00.
194****_** [redacted]	B.H. [Client 2] [redacted]	774***** [redacted]	[Insurer 2] [redacted]	Yes.	Renewal policy April 27/20. Etransfer sent to Belinda April 27/20 for \$1041.42 with message "down payment for renewed insurance premium". Another etransfer sent to Belinda on July 3/20 for \$500.00 with message "Down payment for insurance premium". There was a second etransfer of \$500 sent to Belinda on July 6/20 with message "Down payment on insurance premium business. [sic] Etransfer sent to Belinda on November 4/20 for \$916.00 with message "remaining payment on insurance premiums". Client also paid two payments via cheque May 21/20 for \$2542.00 & July 31/20 for \$3938.00. Annual policy premium is \$7396.00 Coverage in force premium confirmed with [Insurer 2] [redacted]. Client file shows balance owing of \$916.00 which is not correct with etransfers above. Belinda sent an email on Mar 2/21 for the \$916 balance owing, sent to the incorrect email address, she received an undeliverable message back but did not re-send to the correct email address.
BU***** [redacted]	M.V. [Client 3] [redacted]	PR***** [redacted]	[Insurer 3] [redacted]	Gap from Aug 17/20 to present	C.A. [redacted] spoke to the client and they advised they brought in cash for the policy paid in full \$2290.00, then Belinda sent them an etransfer refund for -\$197.00. There is no proof as to how much was sent back to the client but it was sent to [email address] [redacted] stating she was sending on Feb 15, 2021. On Feb 18, 2021 Belinda emailed the invoice for the balance asking for payment, but sent the

					email to herself not the client. Email attached to file. I did try to pull the calls but there were only two one for April 2019 and one for May 6, 2020. BB Call stated \$2308 “, that quote I sent, can you sign it, Belinda “all I have to do on the second page is change the premium”, “you like to pay cash”, “I’ll pay but it might be 2 weeks” Call#202***** [redacted]. All emails with the client in sent folder and deleted are not accessible. There is a signed cancellation on file for August 17, 2020. Spoke to [Client 3] [redacted] today and she thought she had a policy, she never asked for the policy to be cancelled. She paid in full for they [sic] year. She never received any documentation on the cancellation.
DA*****_** [redacted]	D.K. & S.K. [Client 4] [redacted]	166***** [redacted]	[Insurer 1] [redacted]	Yes.	Etransfer sent to Belinda Feb 17/21 for \$1117.00. Client asked for a COC extension but then there was no attached documentation to support. COI of COC extension was emailed to the client (now attached to file). [Insurer 1] [redacted] has been notified of the extension. Coverage is in force until April 22/21. Epic has been updated. Client file has now been billed the \$1117 extension so showing balance owing.
	G.B. [Client 5] [redacted]				Etransfer sent to Belinda on Jan 24/20 for \$1250.00
PI*****_** [redacted]	J.H. [Client 6] [redacted]	BW***** [redacted]	[Insurer 4] [redacted]	Yes.	Etransfer sent to Belinda July 13/20 for \$562.50 with message “Down Payment – Policy 230**** [redacted]”. Another etransfer sent to Belinda on July 14/20 for \$562.50. C.A. [redacted] has sent a second request to [Client 6] [redacted] for verification of what was paid on this account. I have called & left a msg Mar 24/21 asking the client to contact me about the etransfers, as we are doing an account reconciliation. [Client 6] [redacted] called back and left msg for me Mar 26/21 advising there was an issue with the password for the downpayment [sic] transfer, so he cancelled it and sent a new one. Downpayment [sic] was only paid once. \$562.50 balance on clients account that will need to be written off.
KI*****_** [redacted]	K.L. [Client 7] [redacted]	SR***** [redacted]	[Insurer 5] [redacted]	Gap from Feb 11/21 to Mar 15/21. Coverage now bound eff Mar 15/21.	Etransfer sent to Belinda Feb 12/21 for \$1100 with message “payments for account KI***** [redacted]”. COI given to insured, no policy doc’s on file. Reached out to [Insurer 5] [redacted] about doc’s, was sent email from uw where Belinda asks for the new business policy to be flat cancelled/not issued as client got coverage elsewhere. Belinda confirmed via email she was going to mail a cheque and confirmed no documents given to client. [Insurer 5] [redacted] went back to carrier & asked for it not to be issued, so new policy was not issued. Went back to [Insurer 5] [redacted], had client sign a no claims form. [Insurer 5] [redacted] got back to me and advised coverage bound Mar 15/21. Documents received, invoiced and sent to client. Coverage gap from Feb 11/21 to Mar 15/21. Once policy received and invoiced there will be abalance [sic] on clients account of \$1100.00 that will need to be written off.
LA*****_** [redacted]	L.H. [Client 8] [redacted]	Multiple policies	[Insurer 1] [redacted]	166***** [redacted] Gap from Nov 29/20 to Feb 28/21. Home now sold. 166***** [redacted] Gap from Oct 19/20 to Nov 19/20. Home added to	Etransfer sent to Belinda Sept 22/20 for \$544.00. Debit payment made in office Sept 22/20 for \$272.00 debit card ending in ...8126, then cash payment made in office Oct 30/20 for \$272.00 on clients account. Etransfer sent to Belinda Oct 26/20 for \$272.00, cash payment made on clients account Oct 30/20 for \$272.00. Etransfer sent to Belinda Nov 24/20 for \$398.00. No correspondence with client was on file. Did find one email Feb 19/20 asking if COC extension needed on [Property] [redacted] (COC 44). Client responded back it was sold Feb 5 th . COC not showing extended from Nov 29/20 expiry in system. No other documentation on file for extension from Nov to Feb. This extension would have been \$398, same amount as Nov 24/20 etransfer above.

				master policy Nov 19/20.	
MA*****_** [redacted]	M.M. [Client 9] [redacted]	917***** [redacted]	[Insurer 7] [redacted]	Yes.	Etransfer sent to Belinda Feb 8/21 for \$700.00. Another etransfer sent to Belinda on Feb 10/21 for \$50. Confirmed full term premium with [Insurer 7] [redacted] is \$750.00 for the bond. Currently a \$750.00 balance on clients account that will need to be written off.
PE*****_** [redacted]	P.R. [Client 10] [redacted]	69**** [redacted]	[Insurer 8] [redacted]	Gap from Aug 10/20 to Nov 10/20. Coverage now in place as of Nov 10/20.	Etransfer sent to Belinda Aug 10/20 for \$1782.00. This pays off the policy in full, policy downloaded directly from [Insurer 8] [redacted] with full term premium of \$1782.00. UW was going to issue policy at \$1732 as SEF27 was charged for twice on quote, Belinda responded back to UW to just issue at original quote of \$1782, the re-issued the new business at \$1782 [sic]. This email was not attached to file, it is now attached. Found a couple more emails [sic] communication with client and attached them to the file as well. Signed app was received back Aug 10/20, client provided with a 30 day temp pink card eff Aug 10/20. Sept 11/20 another 30 day temp pink card emailed to client, found email now attached to file. Oct 7/20 another 30 day temp pink card emailed to client. Client was advised policy still not issued, found email now attached to file. Nov 9/20 another 30 day temp pink card emailed to client. Belinda advised [Insurer 8] [redacted] will be issuing policy eff in Nov, providing him 3 months of free insurance, found email now attached to file. Finally on Nov 9/20 Belinda sent in the signed application and other documents to [Insurer 8] [redacted] to issue new policy. Effective date on application was changed to Nov 10/20. Currently a \$1782.00 balance on clients account that will need to be written off.
SU*****_** [redacted]	S.G. & R.G. [Client 11] [redacted]	166***** [redacted]	[Insurer 1] [redacted]	Yes.	Etransfer sent to Belinda Nov 5/20 for \$1264.00 with message "Payment for 3 month course of construction insurance extension for [Property]". Another etransfer sent to Belinda Feb 4/21 for \$726.00 with message "COC insurance 2 month extension". No additional emails on file by broker that client requested COC or that COI of the COC extension was given to insured. Contacted insured and got copies of the emails and COC extensions. [Insurer 1] [redacted] will provide the extensions of coverage as requested – provided them with proof of payment and COC COI's issued.
RI*****_** [redacted]	RFES [Client 12] [redacted]	770***** [redacted]	[Insurer 2] [redacted]	Yes.	Etransfer sent to Belinda Dec 10/20 for \$2973.00. Another etransfer sent to Belinda Dec 14/20 for \$2973.00. Do not know if either one was cancelled. Policy pre-billed by CITT's team Dec 11/20 as direct bill, as broker had policy in system as direct bill. Have asked CITT's to reverse and re-invoice as agency bill. Once completed there will be a balance on clients account of \$2973.00 that will need to be written off.
TR*****_** [redacted]	TRI [Client 13] [redacted]	917-***-*** [redacted]	[Insurer 7] [redacted]	Yes.	Etransfer sent to Belinda Sept 11/20 for \$500.00. Payment made on client file Jan 8/21 for \$300.00 cash. Payment made on client file Jan 13/21 for \$200.00.
PR*****_** [redacted]	A.U. [Client 14] [redacted]	917***** [redacted]	[Insurer 7] [redacted]	Yes.	Etransfer sent to Belinda Dec 7/20 for \$750.00. Belinda has noted the AGB\$ activity on file that client paid cash. Deposit has been done, money will be applied to the account. No cash was given to reception to do any deposit. No payment made on account. There is a balance on account of \$750.00 that will need to be written off. Etransfer from [Client 14] [redacted].
PR*****_** [redacted]	A.U. [Client 14] [redacted]	774***** [redacted]	[Insurer 2] [redacted]	Cancelled by insured	Belinda inflated the renewal quote by \$5000, insured shopped around and placed coverage elsewhere eff Feb 11/21. Cancellation documents have been sent to [Insurer 2] [redacted], waiting for doc's back. Etransfer sent to Belinda Dec 23/20 for \$2500.00. Another etransfer sent to Belinda on Dec 29/20 for \$2500.00 Belinda forged a receipt in January 2021 and sent to the insured for the \$5000 payment received. Client has provided screen shots of the email from

					TD confirming funds were deposited. Once cancellation has been received from [Insurer 2] [redacted] and invoiced. We will need to refund the client the \$5000 minus what the TOR is from [Insurer 2] [redacted] from Dec 19/20 to the cancellation date of Feb 11/21. Etransfers from [Client 14] [redacted].
89***** [redacted]	895 [Client 15] [redacted]	BINDER	[Insurer 2] [redacted]	Yes.	[Vehicle] [redacted] being removed from [Insurer 7] [redacted] policy #: 765***** [redacted] - request sent in. New policy bound with [Insurer 2] [redacted] eff Mar 10/21 for the [Vehicle] [redacted]. Application has been submitted to [Insurer 2] [redacted] for issuance. Waiting for documents. Etransfer sent to Belinda on Mar 9/21 for \$3000.00. Another etransfer sent to Belinda on March 11/21 for \$822.00. Mar 21/21 reminder notice sent to Belinda to deposit the \$822.00 payment. So this one was not deposited. Removed from balance. Called and spoke to J.A. [redacted] to let her know we cannot accept the transfer. Have sent her an email with the AB etransfer instructions for them to re-send to the correct email. Advised if there are any fees from the bank for cancelling the transfer to provide me with a copy of the charged fee and we will reimburse them for it. [Insurer 2] [redacted] policy quoted premium \$3822.00. Has been pre-billed on client screen. Balance on clients account of \$3000.00, this will need to be written off.
WA***** [redacted]	W.H. [Client 16] [redacted]	BINDER	[Insurer 2] [redacted]	Coverage not placed - gap Jul 27/20 to Jul 30/20	Etransfer sent to Belinda Jul 27/20 for \$570.00. There were no attachments on file, APOL was closed with notes client could not afford BB call 202***** [redacted]. Listened to call, client couldn't afford full year, but needed to get vehicle home. Took a 3 day temp policy with [Insurer 2] [redacted] for \$570.00. There were no attachments on the file. Found a sent email (now attached to file) where Application and cancellation form were sent out.
91***** [redacted]	911 [Client 17] [redacted]	SW***** ** [redacted]	[Insurer 9] [redacted]	Coverage not placed - gap Mar 12/20 to Mar 12/21	Etransfer sent to Belinda Mar 18/20 for \$1650.00 with message "Commercial General Liability 2 million dollars". Mar 12/20 renewal policy flat cancelled by Belinda. Signed cancellation sent to [Insurer 9] [redacted] May 6/20. Belinda sent email to [Client 17] [redacted] Feb 3/21 advising policy coming up for renewal and needs new application completed for renewal terms. There was emails back and forth about GR and policy dates 12 mth 6 mth (now attached to file) for the 2021 term. Received email from [Client 17] [redacted] confirming he does not want coverage for March 12 2021-2022 term. He also confirmed that he did need the coverage for last year up until March 2021.
TH***** [redacted]	T.M. [Client 18] [redacted]	770***** [redacted]	[Insurer 2] [redacted]	Cancelled Short Term Policy	Etransfer sent to Belinda May 30/19 for \$292.00. This was a 3 day policy with [Insurer 2] [redacted]. Policy was issued and cancelled for the 3 days coverage. Invoiced correctly in the system at \$290.00 (\$3634 new & -\$3344 cancellation). Client overpaid by \$2 to Belinda. Debit payment made in office on Feb 12/20 debit card ending in ...8126 for \$299.20. Which was the TOR of \$290.00 plus late fees.
JA***** [redacted]	J.A.L. & J.B.L. [Client 19] [redacted]	5N***** [redacted]	[Insurer 7] [redacted]	Cancelled by ins	Etransfer sent to Belinda Oct 11/19 for \$1820.00. Doc's attached via download, premium correct. Policy cancelled via ins request Jan 2/20. Home at [Property] [redacted] was put on their home policy under LA***** [redacted] 7V***** [redacted]. Home was sold and deleted from policy Jan 20/21. Debit payment made on account Jan 3/20 for \$600.00 debit card ending in ...8126. Another debit payment made on account Feb 12/20 for \$300.00. Refund of -\$75.00 sent to client June 10/20. Policy was \$1820.00, cancellation was -\$995.00, making time on risk \$825.00. Client paid \$1820.00, they should have received a refund of -\$995.00. They only received a refund of -\$75.00, so we still owe the client an additional refund of -\$920.00.
RE***** [redacted]	RCLS [Client 20] [redacted]	770***** [redacted]	[Insurer 2] [redacted]	Now cancelled	Etransfer sent to Belinda Oct 22/19 for \$890.50 with message "Down payment". Debit payment made on account Oct 29/19 for \$890.50 debit card ending in ...8126. Coverage was placed and policy received. Policy came in

					higher than quoted and was cancelled. Insured was not happy with missquote [sic], manager C.D. [redacted] worked with client on this one. Since the cancellation a new policy was put into place and file moved to a different broker Jun 17/20.
12*****_** [redacted]	N.A. [Client 21] [redacted]	770***** [redacted]	[Insurer 2] [redacted]	Cancelled Short Term Policy	Etransfer sent to Belinda on Oct 29/19 for \$651.00. Debit payment made on account Jun 1/20 for \$427.00. This was a short term policy from Oct 30/19 to Nov 19/19. [Insurer 2] [redacted] issued the policy at \$3354.00, policy cancelled with return premium of -\$2927.00. Time on risk was \$427.00. As client paid \$651.00 and TOR was only \$427.00 we will owe a refund to the client of -\$224.00.
HA*****_** [redacted]	H.T. [Client 22] [redacted]	770***** [redacted]	[Insurer 2] [redacted]	Yes	Etransfer sent to Belinda on Aug 22/20 for \$643. Another etransfer sent to Belinda on Oct 28/20 for \$32.00. Policy in force, premium correct. FIFC Financed, client paid Belinda the downpayment [sic]. There is a balance of \$675.00 on the clients file that will need to be written off. Belinda sent an email to the client on Mar 4/21 requesting payment, but she did not use the correct email address, she missed an "s" and an "a" in the email. Email was not delivered – email found in deleted items saying delivery has failed to these recipients or groups: [Email address] [redacted], so she received notice of the email not being delivered and did not follow up further. There is a balance of \$685.12 on the clients account that will need to be written off. (\$675.00 plus late charges)

On June 11, 2021 the AIC provided the Agent with a request for information, which requested, amongst other things, the Agent's version of events relating to the Former Agency's allegations.

On July 7, 2021, the AIC sent an additional request for information to the Agent. The Agent responded on July 22, 2021, in part;

[...] I have been in the insurance industry for 30 years with a perfect record. [...]

[...] My intention was not stealing, I had full intentions of replacing it. But it got bigger than me and fully out of control. [...]

I have ruined my career and my life in general from my actions which I take full responsibility for.

I am very regretful [...]

On August 3, 2021 the AIC sent a further letter to the Agent requesting a response to the allegations made by the Agent's Former Agency. The Agent did not respond.

Discussion

In order for the Council to conclude that the Agent has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must provide on the basis of clear and cogent evidence, that it is more likely than not that the Agent committed the act as alleged. The requirement of clear and

cogent evidence reflects that the Council's finding can dramatically impact an insurance agent's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it prior to reaching its Decision.

The applicable legal test to determine the Agent's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queens's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter "*Roy*"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to completing the required continuing education hours when he did not, in fact, complete the required continuing education hours. The *Insurance Councils Appeal Board* also found the agent guilty on appeal. The agent advanced the decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote as follows at paragraphs 24 to 26:

[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 sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. 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 a 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". (emphasis added)

The evidence in these types of cases is based on the concept of “*clear and cogent*” evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principal of clear and cogent evidence and provided as follows;

The Life Insurance Council stated in the Decision that there is a requirement “for ‘clear and cogent evidence’ because our findings can dramatically impact an insurance agent’s ability to remain in the industry”. However, the requirement for 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 all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.** In *F.H.v. McDougall* 2008 SCC (sic); [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[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.

Contraventions of s. 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, [...]
the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

The Report alleged that the Agent was guilty of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when she collected former client

funds for her own personal use, falsified records, and intentionally left numerous former clients without proper coverage.

The Agent disclosed the details of a significant personal hardship endured during the course of approximately one year during which her actions occurred. The Agent cites this as the primary cause of her conduct. The Agent expressed minimal remorse for her behaviour.

Consumers who purchase insurance products expect that insurance agents will act with the utmost good faith while carrying out their work. Honesty and integrity are the hallmarks of a good insurance agent, especially when client funds are involved. 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 insurance policies lapse, are erroneous or inadequate, as they expose clients to undue risk.

In light of the Agent's admission, the evidence submitted by the Former Agency confirms that the Agent requested payments from her former clients, intercepted email money transfers, deposited those funds in her personal bank account, and even after she was terminated, she continued to contact some of her former clients to borrow money, the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated pursuant to s. 480(1)(a) of the Act.

The *Insurance Act* and its Regulations act as a mechanism of public protection. It is the view of the Council that the Agent's deception was self-serving, as it was deliberate and without any consideration to the risk that she was subjecting her former clients to. Accordingly, a significant civil penalty is warranted under the circumstances. As such, the Council orders a civil penalty per demonstrated offence in the amount of \$5,000.00 resulting in twenty-two (22) offences, equaling a total civil penalty of one hundred and ten thousand dollars (\$110,000.00 total). If the Agent was

presently licensed, the Council would have exercised their authority to revoke the Agent's certificate of authority.

The civil penalty must be paid within thirty (30) days of receiving this notice. If the penalty is not paid within thirty (30) days, interest will begin to accrue at the rate of 12% per annum as prescribed by s. 13(2) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001.

Pursuant to s. 482 of the Act (copy 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: September 28, 2021

[Original Signed By]

Janice Sabourin,
Chairperson, 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.

Contact Information and Useful Links for Appeal:

Email: tbf.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*