

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 Matthew Fraser
(the "Agent")

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Agent failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated October 4, 2021 (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 AIC conducted an audit in August 2021, which sought to verify that the CE credits declared on the licensing applications for the 2020/2021 certificate term were correct. The auditees were selected at random and asked to provide proof of continuing education ("CE") credits, in accordance with the requirements of s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agent was selected as an auditee and, in this instance, was asked to provide records relating to the 2020/2021 certificate term.

The Agent concurrently held both Life and Accident and Sickness ("A&S") insurance agent certificates of authority during the period of March 15, 2021, to September 7, 2021, when the Agent terminated the certificates of authority.

Section 31 of the Regulation provides:

(3) If the individual does not provide the records **within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

On August 23, 2021, the AIC emailed the Demand to the Agent which provided a deadline of 30 days to respond and produce the required CE certificates. The deadline provided was September 21, 2021. On September 7 and September 13, 2021, an email was sent by the AIC reminding the Agent to respond by the deadline provided in the Demand. A final reminder email was sent by the AIC on September 20, 2021.

On September 20, 2021, the Agent responded to the AIC providing screenshots of the courses that were reported in the licensing portal. The Agent also provided the following information:

I've done my best, this is the information available from the abcouncil, where my login is still active. As I said previously, I haven't worked in the industry in months, all my accounts are closed/terminated, so I don't have access to these records if they even exist anymore. I was an associate advisor barely learning the job for less than 6 months, and you guys are hammering me for records I wasn't even aware I had to keep. My licenses were active, I reapplied with CE credits which were obviously verified because they issued my license (which is now revoked because I don't work in this industry). I also wrote my LLQP in the same year I was active, so that in itself should be proof that I had more than enough credits? No one at your organization has actually told me what proof is, what exactly you want. I am at a total loss here, I'm not sure what else I can do besides provide these screenshots.

The AIC responded to the Agent on September 20, 2021, indicating the requirement to provide CE certificates as reported in the licensing portal. The AIC also advised the Agent may wish to contact the course provider to obtain copies of the CE certificates.

By the date the Report was sent to the Agent, the AIC still had not received a response from the Agent relating to the confirmation of CE certificates.

After receiving the Report which detailed the above, the Agent provided the following response by way of email dated October 12, 2021:

I'm collecting the information requested. As has been the case with this entire investigation I don't really understand what's happening, what is expected or where I am in the process.

I've collected certificates from [S.L.] [redacted] which actually covers most of the CE credits I think you are auditing, I'm waiting for a response from [Course Provider 1] [redacted] which provided me a CE credit, and I'm currently paying money I can't afford to [Course Provider 2] [redacted] so they can provide me a certificate for my LLQP since I believe credits from it were used.

I simply asked what proof you were asking for, is it certificates? Is it transcripts? Is it an authorized letter? It wasn't my intention to come across as "refusing" to provide proof. I have no idea what proof is as I have no experience in this. Neither do the agents I consulted. It's been extremely difficult to track these down for the reasons I mentioned. Everyone I've talked to (including agents with over ten years experience from two different corporations) have never heard of this auditing process, they didn't know they had to keep personal

records either, everyone is guessing at what you are asking for. This is why I was asking all the questions. People keep telling me to goto [sic] the AIC, and are shocked to learn it is the AIC asking for the proof.

I can't really stress how little experience I have with this industry, I wrote my LLQP, and was an associate advisor/"agent" to an actual agent. I never had any clients, I barely had any training. I worked part time hours 4 days a week for a few months learning the role and found it wasn't for me. I was a glorified secretary that answered the phone. I wasn't in a position where I could even have clients, I was like a helper, or apprentice.

[...]

I wasn't ignoring the initial notices, or at least didn't mean to. I had other major life events happening at the time and as you can tell by my first response I didn't think the audit applied to me because I wasn't working in the industry anymore and thought my license was cancelled.

My hope is to have certificates for all the CE credits in the next day or two, but I'm worried about [Course Provider 1] [redacted] certificate as they don't appear to be responding to my requests. I'm trying to find money to put on my credit card so I can pay the fee for the [Course Provider 2] [redacted] LLQP certificate as well. (They never provided me one initially).

I'm not sure if it's too little too late but I'm doing my best.

By way of email dated October 18, 2021, the agent provided the CE certificates he had been able to obtain along with a letter, which stated in part:

[...] In March of 2021 I was offered a role as an "Associate Advisor" aka "associate agent" with a very small [S.L.] [redacted] branch in [...]

I studied for the LLQP exams, passed and was issued a license. Less than 3 months later I was being told I needed to renew my license. This was very confusing but I was told it didn't matter when I received my license, they renew in June/July. I was also told by my Senior Advisor (an actual agent) that I didn't need to worry about getting CE credits as my LLQP was worth more than enough CE credits to cover me for the renewal. Thinking I didn't have to worry about gaining more credits, I continued to work for 4-5 hours a day, 4 days a week, making marketing calls. I was learning on the job little by little, but at no point was I ever considered an actual "agent", I was a glorified secretary with no experience or training.

As time went on I kept getting reminders to renew my license, and so I tried. This is when the AIC portal didn't seem to recognize I'd just written my LLQP 2 months prior, and there was no extra credits. My Senior Advisor assured my there was a mistake and to call the AIC, which I did. Eventually I got through to someone at the AIC, and they told me the LLQP wouldn't provide credits for this renewal, or so I think. There was a significant language barrier in trying to communicate with the person, and the information they were giving me was confusing. I went back to the portal and seen that I didn't really need that many credits, so I decided to just do a series of courses that I would need anyway, get the credits and apply them as I was very close to the deadline and didn't want to risk a suspension. I managed to get them all done, pay the licensing fee, again, and renew my license (which I had just been issued 2 months ago). Almost immediately after this I had a series of life events that prevented me from working at all, and was very rarely in the office. My attendance tapered off until finally I had to put my notice in and resign. It would be difficult to say that I even worked a solid month in this role, as an entry level Associate Advisor (associate agent). What I'm trying to illustrate is my extreme lack of experience, training, and extremely short time in this industry.

At no point do I recall being told or reading that I would need to *personally* keep records of my CE credits. With only a couple of part time months in the role I barely know how to make professional phone calls. I did not respond to the first few notices from the Compliance Team because they were forwarded to my junk mail folder automatically. Which was another confusing aspect, for a matter as serious as this has become, I never received a phone call or a letter, just emails which are easy to miss. To this day the first communication I received other than an email was the "case" documentation sent to my door.

It was by chance that I checked my junk mail and seen them, at which point I promptly responded to inform the team that I was no longer working in the business and asked how to cancel my license. The response was a section of code I'd never seen before copy and pasted in an email reply. I then tried to explain how I didn't have access to my company email, or laptop where those documents would be stored, because I was no longer employed by the company. I asked for assistance in alternative options, but was again sent a reply with code copy and pasted and told to contact the providers. My issue was I had no idea who the providers were. Eventually I was able to login to the AIC portal and see a list of the credits, but they are vaguely named and don't say who issued them.

Not realizing that the compliance team was the was one in the same as the AIC portal, I sent a screenshot of the CE credit list from the portal in hoping it would suffice. I received a response saying they needed certificates from the credit providers.

I was at a total loss, I was and continue to struggle to understand how when a person does a CE credited course, they are required to enter the CIPR number, and when you enter it into the licensing portal it appears to go through a verification process, but now I am being asked to provide proof outside of that process.

My issue was that I wasn't completely sure which companies issued which credits, and what timeline the credits were from, because of the off-year renewal period. As the difficult to understand AIC rep tried to explain to me on the phone, there seems to be another break in the year of what credits can be used for which licensing year, which is why my LLQP wouldn't qualify me (according to him). It may seem simple to people in the business, but I am not one of those people, I am an unemployed mechanic with next to no experience with any this, as I said in my emails with the Compliance Team, it's extremely confusing and difficult to follow.

At a loss and not seeing a solution I left the matter hoping the team would see I made my best effort. I was shocked when [S.D.] [redacted] emailed me a bit later with a completed investigation that says I **refused** to provide proof, and recommended a \$750.00 fine. Which is apparently 75% of the maximum penalty? It seems very, very extreme when it is fairly clear I am not being fraudulent, and I by no means refused, I'm just inexperienced and having a difficult time understanding what proof is required and where to get it from.

After receiving the case notification, I became extremely stressed and have been extremely stressed and have been losing sleep over this matter. I replied to [S.D.] [redacted] and again tried to explain my situation, while going to great lengths to do whatever I can to collect whatever proof possible from my position outside of [S.L.] [redacted]. My email did not receive a reply, so I can only assume it hasn't been given any consideration and I am still being fined \$750.00.

What I have been doing to reaching out to the CE credit providers I am able to identify, and getting advice from agents with experience. I can say that I've talked to 4 agents from both [S.L.] [redacted], and [I.G.] [redacted], with over 10 years' experience, one of which is actually the head trainer for Alberta, and no one, absolutely no one, heard of this auditing process. They were shocked to hear at how this has been going for me, and apologized. I was able to get certificates from two providers which include multiple CE credits, and reached out to [Course Provider 2] [redacted] who provided my LLQP exams. [Course Provider 2] [redacted] informed me that for a fee they could send a special certificate for the course. This strikes me as odd as well, how would a person normally keep personal proof if it is not a part of the process to be issued a certificate?

What strikes me the most, is how is it possible these people with a wealth of experience are not aware of this process? None of them were aware they had to personally keep records of their CE credits. They wondered where is it that agents are made aware of this requirement? I also wonder that, I know it's very possible that it is in some fine print somewhere, but I don't remember it in the LLQP, and that has been my only real exposure to this industry.

It seems exceptionally unfair that a person with so little time and experience in the business is being treated with such heavy handed discipline, for a requirement that isn't widely known throughout the industry. [...]

I can genuinely say that I am broke, [...]. I know this doesn't absolve me of failing to be aware of the requirement to keep this CE credit proof, but I am asking for some compassion and consideration. I don't believe what has happened here is fair, being labelled an "agent" is misleading, I was hardly an agent, I had no clients, it wasn't even possible for me to have clients. I had no training, and no experience, and I barely worked. I also think saying I "refused" to provide proof is misleading, I've been struggling my through [sic] this since I became aware and have had no assistance of value.
[...]

On October 22, 2021, the AIC Compliance Department informed the Agent that five (5) CE certificates remained outstanding.

Discussion

The Minister of Treasury Board and Finance has delegated its authority to the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to Ministerial Directive 01/11 to the AIC "[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 "... A person served with a direction ... who has the information **must** provide the information in accordance with the direction" [Emphasis added].

The Demand referenced compliance with s. 31 of the Regulation. Specifically, this section provides;

Records

- 31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.
- (2) The records must be kept for a period of 3 years following the expiry of the certificate term and **must be provided to the Minister upon request.**
- (3) If the individual **does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

The Demand itself is formed under s. 481(2) of the Act.

Section 481 of the Act provides, in part;

Demand for information

481(1) The 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 section 480(1).**

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

Section 480 of the Act provides:

Sanctions affecting certificates

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority [...] (b) **has contravened any provision** of this Act **or the regulations** or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations, [...]

Section 780 of the Act stipulates:

Offences

780 A person who contravenes any of the following provisions is guilty of an offence: [...] (c) in Part 3, sections [...] 481(2)

In this regard, the act of failing to provide the CE certificates (or “credits”) in accordance with s. 31(3) of the Regulation, and the potential violation of s. 481(2) of the Act regarding the Demand prompted the AIC to commence an investigation.

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent, proper in the sense that they meet all the requirements under the Act, and that the Agent did not comply. Once this occurs, the responsibility then shifts to the Agent to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Agent must prove that all reasonable means were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Agent’s failure to respond was intentional.

In consideration of the evidence before it, and the appropriateness of the request to confirm CE records under the Regulation, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was given a reasonable opportunity to respond to the Demand. Given the fact that the Agent failed to respond when called upon, the Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act, and also finds that the Agent has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The public is not well-served when agents fail to comply with demands, like the Demand 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 levy a civil penalty in an amount up to \$1,000.00. In this case, the Agent did not satisfy the audit by the deadline provided. In consideration of all of the evidence, the Council orders that a 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 the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. If the Agent has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agent's active certificates of authority will be suspended in accordance with s. 480(4) of the Act. Pursuant to s. 482 of the Act (excerpt enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: December 6, 2021

[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.

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*