

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 Nandini Mahajan  
(the "Agent")

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

This case involves allegations pursuant to s. 480(1)(a) of the Act or, in the alternative, s. 509(1)(a) of the Act. Specifically, it is alleged that the Agent falsely declared the completion of continuing education ("CE") hours, when, in fact, the CE hours had not been completed. In so doing, it is alleged that the Agent acted in a, deceitful, dishonest or untrustworthy manner in violation of s. 480(1)(a). In the alternative, it was alleged that the Agent made false or misleading statements as contemplated in s. 509(1)(a) of the Act when the Agent reported that the required CE hours had been completed to renew the general certificate of authority for the 2020/2021 certificate term (July 1, 2020 to June 30, 2021) when, in fact, they were not completed and subsequently violated s. 480(1)(b).

**Facts and Evidence**

This case proceeded by way of written Report to Council dated October 15, 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 Agent is the holder of a General Insurance – Level 1 certificate of authority. The Agent has continuously held the certificate since February 22, 2021.

As part of the AIC's annual CE audits, an "Alberta Insurance Council Continuing Education (CE) Audit" request was sent to the Agent by way of email correspondence dated August 23, 2021 (the "Demand"). The formal Demand was provided in accordance with s. 481(2) of the Act and required the Agent to produce CE

certificates regarding all declared CE within the 2020/2021 certificate term. The Demand provided for a response within 30 days of receiving the Demand, being September 21, 2021.

On September 7, 2021, the Agent responded to the Demand with a course record, which listed courses completed or in-progress.

On September 8, 2021, the AIC Compliance Department sent an email to the Agent advising that they “...will require the actual CE certificate.”

By way of email dated the same, the Agent responded to the AIC, attaching course results for Course No. O\*\* [redacted] and Course No. C\*\*\* [redacted]. The AIC Compliance Department responded on the same date advising that the Agent may wish to go back to the course provider as the Agent “will need to provide the certificate”.

By email dated September 8, 2021, the Agent responded to the AIC and attached the same course results for Course No. C\*\*\* [redacted] and Course No. O\*\* [redacted].

On September 13, 2021, the Agent sent a follow up email, attaching a CE certificate for Course No. C\*\*\* [redacted], with a completion date of July 2021.

By way of email dated the same, the AIC Compliance Department emailed the Agent to advise:

This is not the course you declared. We are looking for course # 5\*\*\*\* [redacted] dated Feb 19, 2021.

On September 14, 2021, the Agent responded to the AIC via email, attaching course results for Course No. C\*\*[redacted].

By way of email dated the same, the AIC Compliance Department emailed the Agent advising the following:

We still require the CE certificate for this course. Please contact your course provider.

On September 14, 2021, the Agent responded with the following information, along with Course Results for Course No. C\*\* [redacted]:

I would like to advise that after clearing My [sic] OTL [Course Provider 1] [redacted] gives an option for taking a credit for C\*\* [redacted] course after paying certain fees associated with it. I have taken that Credit

from [Course Provider 1] [redacted]. I have also attached the Document received from the [Course Provider 1] [redacted].

The AIC Compliance department responded on the same date via email, clarifying the following for the Agent:

All courses approved for credits with the AIC, have specific criteria for certificates being issued. You need to certificate as per AIC guidelines. Your course provider knows the certificate requirements and would have this. Please get the certificate from them. This is a requirement for the audit.

On September 17, 2021, the AIC sent a follow-up email reminding the Agent of the September 21, 2021, deadline to satisfy the audit.

By way of email dated the same, the Agent responded with the following explanation:

I have received the Email From [Course Provider 1] [redacted] and they have advised that they can only provide the C\*\* [redacted] grades Not the certificate. Could you let me know what needs to be done. I am following up the [Course Provider 1] [redacted] but No response it. [sic]

By way of email dated the same, the Agent requested clarification on the deadline to respond to the Demand.

By email dated September 20, 2021, the AIC Compliance Department clarified that the deadline is 30 calendar days, being September 21, 2021.

By way of email dated the same the Agent provided the following information to the AIC Compliance Department:

Below is the Response I have received from [Course Provider 1] [redacted] as they have escalated it further.  
Hi Nandini,  
We are not approved by the AIC to provide a Continuing education certificate or award Continuing Education hours for a course that was not taken with us. Furthermore, you received the C\*\* [redacted] credit because you completed your licensing exam with us, however, we do not award Continuing education hours for licensing exam since you were not actually licensed at the time you wrote the exam.  
The specific criteria AIC is speaking to is in relation to participation in a class with us and the grade in which you received for that course. You did not participate in a C\*\* [redacted] class or write a C\*\* [redacted] exam with us and therefore, we cannot provide you with a continuing education certificate or award you with continuing education hours for C\*\* [redacted].  
If you can let me know what needs to be done next because I was in conversation with [Course Provider 1] [redacted] since couple of weeks Now.  
I have completed C\*\*\* [redacted] in July and also received Continuing Education Hours certificate for that Course. If you can guide me what further is required to be done As [Course Provider 1] [redacted] cannot provide CE hours.

On October 27, 2021, after receiving the Report, the Agent, by way of email, attached an explanation of the events as well as CE Certificates for courses completed prior to the June 30<sup>th</sup> renewal deadline.

The attached explanation dated October 25, 2021 stated the following:

[...] I completed the ON OTL training and obtained my licence on February 6, 2021. I then applied for, and obtained, my non-resident General Level 1 Licence on February 22, 2021.

The ON OTL exam provides an individual working towards their CIP with an exemption from taking C\*\* [redacted]. Individuals apply to the [Course Provider 1] [redacted] for the exemption. The [Course Provider 1] [redacted] communicates this exemption as a “credit” which I interpreted as meaning I would receive CE credits for this course.

When it came time to renew my AB licence, I looked up the course id number for the C\*\* [redacted] on your website and entered it as a course I completed. Because it is accredited for 28 credits it appeared that my CE requirements were fulfilled, and I renewed the licence believing everything was in order.

It wasn't until I received the Audit Notice and I reached out to the [Course Provider 1] [redacted] that I realized that I receive [sic] an exemption from taking C\*\* [redacted] as part of the CIP course curriculum but did not receive CE credits. I am new to the industry and have never been through an audit. On July 17<sup>th</sup> I complete [sic] the C\*\*\* [redacted] and forwarded to you in place of C\*\* [redacted]. I understand now that this is not acceptable. This was a misunderstanding on my part and not an intentional attempt to deceive the Alberta Insurance Council.

The pro-rated number of credits required to renew the licence June 30, 2021, was 6.25. I did complete 5 [Course Provider 2] [redacted] courses that provided me with 5 CE credits. I did not enter them into the licensing portal at time of renewal because the C\*\* [redacted] fulfilled the CE requirement. I am including the CE Certificates for these courses. That leaves me with a 1.25 credit deficit. Please confirm if 1.25 credits from C\*\*\* [redacted] can be applied or if you require me to complete another course to fulfill the 6.25 credits. [...]

### **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 prove, 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 findings of the Council 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]

With respect to the Report, the Council was satisfied that the Agent did not possess the CE credits required by the Regulation for the 2020/2021 certificate term. However, the Council did not conclude that the Agent made deliberate misrepresentations with the intent to deceive the AIC during this audit process. To do so, the Council would need to prove on the balance of probabilities that it is more likely than not that the Agent provided the information to the AIC intentionally, knowing that the information was false. The Council did not find the Agent guilty of such a violation and, as such, the Council turned to the alternative allegation of a s. 509(1)(a) offence under the Act.

Section 509(1)(a) of the Act provides that “[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement.” Offences such as those considered under s. 509(1)(a) of the Act are strict liability offences. As such, the AIC only has the onus to prove that the Agent’s statement that the required CE hours had been completed was false. Once this occurs, the onus then shifts to the Agent to establish a defence of due diligence. To establish this, the Agent must prove that all reasonable measures were taken to avoid making the false statement.

The Council considered all the evidence before it, in particular the information shared by the Agent with respect to the misunderstanding the Agent had with respect to the “credit” received for Course No. C\*\* [redacted], leading the Agent to believe they had obtained enough CE hours to renew the certificate or

authority. Once the Agent realized the mistake, the Agent enrolled in courses to complete the CE hours required. However, with insurance agents working for clients and completing their applications, it is the responsibility of the insurance agent to ensure a high level of due diligence and accuracy when completing their own applications. Therefore, the Council finds that the Agent made a false or misleading statement as contemplated by s. 509(1)(a) of the Act and therefore has breached s. 480(1)(b) of the Act.

As to the appropriate sanction for this conduct, the Council may levy civil penalties in an amount up to \$1,000.00 for an offence pursuant to s. 480(1)(b) and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, AR 125/2001. The Council considered that this was the Agent's first renewal, and that they were new to the industry however, the mistake made by the Agent was "*not acceptable*". Based on these factors and the evidence before the Council, the Council orders that a civil penalty of \$1,000.00 be levied against the Agent.

The civil penalty must be paid within thirty (30) days of the mailing of this decision. If 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 General Insurance Council. The motion was duly recorded in the Minutes of that meeting.

Date: December 24, 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](mailto: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*