

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 1951010 Alberta Ltd. o/a Penhold Car Farmers
(the "Dealership")

And

As represented by
Kyle Blazenko
(“Designated Individual”)

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

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Dealership 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 Dealership, violated a provision of the Act as contemplated by s. 481(2), and subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated May 23, 2023 (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.

This matter arose due to the Dealership’s failure to respond to a Demand made in the course of an investigation into a complaint made against the Dealership.

The Dealership has been the holder of a Restricted Insurance Agent, Auto Dealership Equipment Warranty Insurance certificate of authority since January 30, 2018.

On December 20, 2022, the AIC investigator sent a request for information to the Dealership, via email, with a response deadline of January 6, 2023.

On April 13, 2023, the AIC investigator sent the Demand to the Dealership by way of email and regular mail, with a deadline of April 28, 2023.

By the date the Report was provided to the Dealership, the AIC still had not received a response to the Demand from the Dealership.

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 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 a response to the Demand is a potential violation of s. 481(2) of the Act.

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 Dealership, proper in the sense that they meet all the requirements under the Act, and that the Dealership did not comply. Once this occurs, the responsibility then shifts to the Dealership to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Dealership must prove that all reasonable means were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Dealership's failure to respond was intentional.

In consideration of the evidence before it, and the appropriateness of the request to provide a response to the allegations against the Dealership, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Dealership was provided a reasonable opportunity to respond to the Demand and the Dealership failed to respond when called upon, therefore the Dealership has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Dealership guilty of violating s. 481(2) of the Act as alleged, and also finds that the Dealership has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The Council is of the view that the public is not well-served when insurance intermediaries simply ignore demands, like the Demand made in this case.

Pursuant to s. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. Given the facts in their entirety, the Council is of the view that a significant civil penalty is warranted in the circumstances. Therefore, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Dealership. The Council ordered that the Dealership's certificate of authority be suspended until such time as the Dealership produces an adequate response to the Demand sent by the AIC. The suspension shall commence immediately upon the service or attempted service of this Decision.

In the event that the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt enclosed), the Dealership 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.

Dated: June 29, 2023

[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.

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*