

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 Esraa Hamdan  
(the "Agent")

DECISION  
OF  
The General 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, 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 August 22, 2023 (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.

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

The Agents has been the holder of a General Insurance – Level 1 Agency certificate of authority, periodically, since December 16, 2013.

On May 10, 2022, the AIC investigator sent a request for information to the Agent, via email, with a response deadline of May 26, 2022.

On May 27, 2022, the AIC investigator sent the Demand to the Agent by way of email and regular mail, with a deadline of June 13, 2022.

Between May 27, 2022 and July 31, 2023, there were various communications between the Agent and the AIC investigator, however, the Agent did not provide the required information.

By the date the Initial Report was provided to the Agent on August 9, 2023, the AIC still had not received the required information.

On August 18, 2023, after receiving Initial Report, the Agent provided the AIC investigator with the information requested.

On August 22, 2023, the AIC investigator provided an Updated Report to the Agent.

### **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 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 provide a response to the allegations against the Agent, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was provided a reasonable opportunity to respond to the Demand and the Agent failed to respond to the AIC in an appropriate manner, until such time as the AIC recommended the suspension of the Agent's certificate of authority. Therefore, the Agent has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act as alleged, and also finds that the Agent 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 respond to the AIC in a timely, complete and professional manner when called upon. The Council is of the view that the public is not well-served when insurance intermediaries simply disregard demands from the AIC, such as the Demand made in this case. In addition, the Council was concerned by the manner in which the Agent was corresponding with the AIC investigator. Specifically, when the Agent responded to the AIC as follows:

*"Can I get an answer that isn't a copy paste email?"*

*"This was not a complaint nor an investigator, but rather an inquiry by my previous Broker and taken as an investigation. Please reach out to them for clarification."*

The responsibility falls to the Agent to respond to a Demand from the AIC. The Agent was provided with the information which was required to be provided to satisfy the Demand sent by the AIC. The Agent failed to take action when she received a Demand.

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, due to the Agent's lack of timely, complete and professional response to the AIC's Demand prior to receiving the AIC's recommendation to suspend the Agent's certificate of authority. Therefore, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Agent.

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: October 3, 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](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*