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 Cameron Clay
(the Former Designated Representative "Former DR")

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

This case involves allegations pursuant to s. 480(1)(a) of the Act. Specifically, it is alleged that the Former DR entered into an insurance policy rollover agreement with an insurer that consequently initiated changes to clients' policies without the clients' informed consent. This included sixty-four thousand seven hundred and seven (64,707) occasions of endorsements being added to the clients' policies in the book of business the Former DR's Agency had with an insurer, without the clients' informed consent. In so doing, it is alleged that the Former DR is guilty of misrepresentation, fraud, deceit, untrustworthiness, or dishonesty, as contemplated by s. 480(1)(a) of the Act. In the alternative, it is alleged that the Former DR failed to properly manage and supervise the business of the Agency, as contemplated by s. 10(2)(c) of the *Insurance Agents and Adjusters Regulation*., A.R. 122/2001 and has 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 28, 2024 (the "Report"). The Report was forwarded to the Former DR for review and to allow the Former DR to provide the Council with any further evidence or submissions by way of Addendum. In arriving at its conclusion, the Council carefully reviewed all evidence presented.

The Former DR held a General Insurance certificate of authority from July 4, 1996, to June 30, 2024, when his certificates of authority were not renewed.

The Former DR was licensed as a Designated Representative from December 10, 2002, to April 10, 2024.

This matter arose in response to an email received by the AIC from the Office of the Superintendent of Insurance (hereinafter the "SOI") on May 31, 2023, regarding a complaint they had received from [A.H.] [redacted] (hereinafter the "Complainant"), relating to the conduct of [A.I.F.I.] [redacted] (hereinafter the "Agency"):

> […]
> …there are concerns about the conduct of the broker as well. [The Complainant] [redacted] advised that on [the Complainant's] [redacted] auto and property policy renewals, there were changes made to [the Complainant's] [redacted] limits as well as endorsements added without [the Complainant's] [redacted] consent.
> At [the Complainant's] [redacted] renewal last year, the same changes were made and when [the Complainant] [redacted] brought it up with the broker, they were removed at [the Complainant's] [redacted] request. Now at this new renewal term, those same changes were made again without [the Complainant's] [redacted] consent and [the Complainant] [redacted] was not notified.
>
> [The Complainant] [redacted] explained the concern to the broker manager and was told that "they asked [I.I.] [redacted] to do a total book enhancement for inclusion of the added TPL limits and additional endorsements. [The Broker Manager] [redacted] confirmed they do not tell clients what they are doing and only deal with those who question the changes to the renewal offer."
> […]

On June 7, 2023, the AIC investigator requested the following information from the Complainant:

> […]
> - Any/all correspondence with [the Agency] [redacted] and any of their affiliated agents regarding this matter; and,
> - Policy documents and renewal documents; and,
> - Any other information you feel may be relevant.
>
> […]

On June 7, 2023, the Complainant provided the following information to the AIC investigator:

> […]
> I have no correspondence to or from [the Agency] [redacted] or any of their affiliated agents with respect to this year's offer to renew, which I received directly from the insurer.
> The following is a copy of my email exchange with [the SOI] [redacted].
> Attached are the documents I submitted to [the SOI] [redacted].
> Please let me know if I can provide any further information on this matter.
> […]
>
> **This is a copy of my email to and from [the SOI] [redacted].**
> […]
> Thanks for looking into my concern with our insurance renewals.
> […]
> Also, I recall having told our broker last renewal to delete unwanted endorsements – which magically reappeared on this years [sic] renewal again. I can also confirm it was me who contacted the broker to discuss these unwanted endorsements – they did not contact me about them being included on the renewal offer.
> After receiving your email I contacted the broker manager and explained my concern to [the Broker Manager] [redacted]. [The Broker Manager] [redacted] indicated that they asked [I.I] [redacted] (hereinafter the "Insurer") to do a total book enhancement for inclusion of the added TPL limits and additional endorsements. [The Broker Manager] [redacted] confirmed they do not tell clients what they are doing and only deal with those who question the changes to the renewal offer.
> Here are the changes/additions to our renewal offer:
> Increased TPL limits on both cars.
> [Vehicle 1] [redacted] added Minor conviction and Plus Pac endorsements […]. I do not know what the added cost is for the additional TPL limits
> [Vehicle 2] [redacted] added TPL limits […]

> Home Insurance they have added two endorsements […]- Lifestyle Advantage and My Identity. I believe I asked for these same endorsements to be removed from last years [sic] policy.
> […]
> [Emphasis added in original document]

On June 8, 2023, the AIC investigator requested the following information from the Former DR:

> […]
> - A detailed timeline and explanation of the events that pertain to this matter; and,
> - Any/all correspondence with [the Insurer] [redacted] regarding this matter; and,
> - Any/all correspondence with [the Complainant] [redacted] regarding this matter; and,
> - Policy documents, including renewals for the last three years; and,
> - Any other information or documentation which you feel may assist in the understanding of the material facts.
>
> […]

On June 13, 2023, the Former DR provided the AIC investigator with the following information:

> […]
> [The Agency] [redacted] is dedicated to providing our clients with the most comprehensive coverage available to protect their assets and liabilities. As part of this commitment, we have a renewal portfolio agreement in place with [the Insurer] [redacted] to include specific coverages policyholders become eligible or qualify for and/or do not have on their policy.
>
> As auto liability limits were being exceeded in recent years, we determined an increase in the auto liability limits on our [Insurer] [redacted] portfolio to $2,000,000. [sic] was in the best interest to protect our clients.
>
> The additional coverages have benefited and protected client's premiums and claims coverage.
> […]

On June 20, 2023, the Vice President Operations for the Agency, provided the following information on behalf of the Former DR:

> […]
> - Your renewal portfolio agreement with [the Insurer] [redacted]; and,
>
> To clarify our description of renewal portfolio agreement, this is not a stand alone document, it is an ongoing agreement, changes are made depending on factors such as [the Insurer's] [redacted] coverage offerings, economic and claims conditions.
> […]

By way of email dated the same, the AIC investigator requested the following information:

> […]
> Please provide the full contract/agreement documents you have with [the Insurer] [redacted] including any correspondence regarding the agreement. […]

On June 22, 2023, the Agency responded to the AIC investigator as follows:

> […]
> [The Agency] [redacted] has no formal portfolio contract or agreement.
> […]

On July 4, 2023, the Agency provided the AIC investigator an email from the Insurer dated June 30, 2023, which stated:

> […] I can confirm that [the Insurer] [redacted] does not have any formal agreements in place with [the Agency] [redacted] with regards to portfolio additions. […]

On July 17, 2023, the AIC investigator requested the Former DR provide the following information:

> […]
>
> Between June 13, 2023 and July 12, 2023, I have received contradictory information. Here is a summary of the information you and [the Agency] [redacted] have provided to the AIC.
>
> **June 13th, 2023** – You told me that you had a portfolio agreement between [the Insurer] [redacted] and [the Agency] [redacted]. The agreement in place required [the Agency] [redacted] to add all endorsements a client may qualify for at renewal. You provided this information as justification for the arbitrary addition of endorsements without client consent.
>
> **June 19th, 2023** – I requested from you a copy of the portfolio agreement you described on June 13, 2023.
>
> **June 20th, 2023** – You stated that the agreement is not a stand-alone document and is part of an ongoing agreement.
>
> I then requested from you all your contracts/agreement documents with [the Insurer] [redacted].
>
> **June 22, 2023** – You advised that no contract existed.
>
> **June 23rd, 2023** – You told me that [the Agency's] [redacted] requirement to add endorsements at renewal was based on a verbal contract.
>
> I then emailed you and asked you to provide the full contract/policy documents between [the Insurer] [redacted] and [the Agency] [redacted].
>
> **July 4th, 2023** – You provided me with an email from a Business Development Manager (from [the Insurer] [redacted]) saying no contract existed.
>
> **July 5th, 2023** – I issued a Demand for Information to you for your contracts/agreements with [the Insurer] [redacted].
>
> **July 12th, 2023** – I was advised by your VP of Operations on behalf of you that [the VP] [redacted] was providing two contracts with [the Insurer] [redacted] to satisfy our investigation. No agreement between [the Agency] [redacted] and [the Insurer] [redacted] was provided within the documents that you provided.
>
> As a matter of policy, [the Agency] [redacted] adds endorsements that insureds qualify for at renewal. These endorsements are added arbitrarily without direction from the insured. In justification of this policy you first stated that there is a portfolio agreement between [the Insurer] [redacted] and [the Agency] [redacted] directing [the Agency] [redacted] to do this. You then stated that the agreement was verbal. After a demand was issued [the Agency] [redacted] claims there is no written agreement.
>
> […]
> Please respond to the following questions:
>
> A. If there isn't an Agreement between [the Insurer] [redacted] and [the Agency] [redacted] directing [the Agency] [redacted] to add endorsements at renewal.
>
> - On what basis did [the Agency] [redacted] institute the policy of adding endorsements at renewal without the client's consent?
> - Why did you provide me with false information?

B. If there is an Agreement between [the Insurer] [redacted] and [the Agency] [redacted] directing [the Agency] [redacted] to add endorsements at renewal.
   - Why are you failing to provide the agreement?
   - Are you going to provide the agreement?
   - Why did you agree to follow direction from [the Insurer] [redacted] that is misleading and potentially harmful to clients?

[…]
[Emphasis added in original document]

On July 17, 2023, the Former DR responded to the AIC investigator as follows:

> Contradictory information: It is not our intent to provide conflicting information, there may be some description and interpretation misalignment. If we inadvertently lead [sic] you to believe there was a formal written portfolio agreement in place that was based on a terminology description and explanation.
>
> June 13 2023:
>
> Portfolio agreement terminology may not accurately reflect the process. [The Agency] [redacted] and [the Insurer] [redacted] have agreed to place specific endorsements that clients qualify for on renewals. As you have described, a better wording may be "adding endorsements at renewal a client qualifies for".
>
> [The Agency] [redacted] is not required nor directed to add all endorsements a client may qualify for at renewal. [The Agency] [redacted] has voluntarily made the decision to add endorsements as it is in a clients [sic] best interests.
>
> June 20 and 22 2023:
>
> There is no formal written portfolio contract or agreement, it is the process to add endorsements at renewal a client qualifies for no different than we agreed to increase liability limits from $1M to $2M at renewal.
>
> June 23 2023:
>
> [The Agency] [redacted] is not required to add endorsements at renewal but as stated above [the Agency] [redacted] and [the Insurer] [redacted] have agreed to add endorsements as it is in a clients [sic] best interest.
>
> July 4 2023:
>
> No formal portfolio agreements/contracts.
>
> [The Insurer] [redacted] does not have any formal agreements in place with [the Agency] [redacted] with regards to portfolio additions.
>
> Questions:
>
> A: The basis of adding endorsements at renewal is to provide the coverage clients are eligible for to protect them for future claims and against premium increases. If our clients request that the endorsements be removed, we ensure they understand the coverage and will remove. Renewals are typically received by a client 45 days prior to the renewal date. At this time it is only an offer to renew. We are acting as Insurance professionals offering our clients the highest level of Insurance protection they qualify for.
>
> We do not believe we provided false information, it appears the terminology description of agreement may have been misinterpreted.
>
> B: There is no written agreement or addendum to our contract between [the Insurer] [redacted] and [the Agency] [redacted] directing [the Agency] [redacted] to add endorsements at renewal. [The Insurer] [redacted] does the renewals and forwards them directly to the clients on our behalf.

> We reach out to clients regularly on care calls as an example, to request underwriting information, to follow up on prior conversations etc. You must accept that in many instances many calls and emails are not returned. We can only follow up so many times. […]

On August 16, 2023, the Former DR hand delivered a letter to the AIC investigator in response to a request for information. The letter provided the following information:

> […]
>
> [The Agency's] [redacted] determination of clients' best interest [sic] is to protect our clients for claims and premium increases with specific endorsements they are eligible and qualify for and do not have on their policy. The coverage is dependent on factors such as becoming eligible for auto accident forgiveness or conviction waiver, economic and claims conditions. As auto liability limits were being exceeded in recent years, an increase to $2,000,000 was implemented and recommended on renewal and new policies.
>
> Our administration processing team reviews the insurance carrier renewal policy document downloads for missing specific insurance carrier coverages and sends an activity to the assigned [Agency] [redacted] representative.
>
> Our [Agency] [redacted] representatives complete Care Calls with clients by conversation. The checklists are embedded in our broker management system. These can be completed at renewal or at time of a change in information or risks. Activities are entered in our broker management system to capture the details of the conversation.
>
> [The Agency's] [redacted] management conduct audit's [sic], have individual employee Coffee and Conversations, host team meetings, coaching, mentoring, providing guidance on concerns and questions about coverage, provide insurance carrier training opportunities on coverage and products, industry webinars and online training and utilize real claims examples to support acting in our clients' best interests.
>
> Our overall philosophy is to offer clients the most comprehensive coverage, it is embedded in our day-to-day corporate strategy.
>
> […]
>
> The [Insurer's] [redacted] Personal lines policy renewal process is automated by their systems and generates approximately 45 days prior to renewal, including the addition of endorsements that clients qualify for, unless there is [Insurer] [redacted] underwriting intervention. [The Agency] [redacted] may also have notes in our broker management system to identify an action or review is required on a renewal. Direct Bill payment policies (automatic withdrawal, payment plans, etc.) are sent directly from [the Insurer] [redacted] to the client. Agency Bill payment policies are sent to [the Agency] [redacted] to invoice and send to clients, however 95+% of our clients are Direct Bill.
>
> As the renewal process is automated, we don't give direction to [the Insurer] [redacted] to add the endorsements on a case-by-case basis, unless our broker management system notes prompt us on a specific policy. [The Agency] [redacted] would not request the deletion of endorsements unless directed by our client. […]

On February 16, 2024, the AIC investigators met with [F.V.] [redacted], VP of Business Development, [D.P.] [redacted], Legal Counsel and [M.G.] [redacted], Legal Counsel, for the Insurer at their offices. Legal Counsel was present through Zoom.

On February 16, 2024, the AIC investigator requested confirmation of the information received during the Zoom meeting with the Insurer, as follows:

> […]
>
> - All agencies are treated the same, regardless of whether they are under the parent company of [I.F.C.] [redacted] (hereinafter the "Parent Company").

- The Business Development Manager reviews the agency books at the beginning of the year to recognize possible gaps.
- If gaps are found, it is up to the agency's DR (designated representative) if they want to do a mass roll-up at renewal or if they would like to do it manually for each client.
- Most liabilities are over 1M (maybe a few at $500K) but not under this amount.
- For roll-ups, [the Insurer] [redacted] does it by periods, and if the DR wants it for the new renewal, they can request it and will [sic] be added to a new roll-up.
- [The Insurer] [redacted] is of the idea that the agency obtains the implied consent to debit insured's bank accounts, and [the Insurer] [redacted] does not confirm this with the insured.
- Most communication between [the Insurer] [redacted] and the agencies is by phone or email, aside from the formal contract.

[…]

On February 28, 2024, Legal Counsel for the Insurer provided the following information:

[…]
Thank you for the summary below. We have added some further clarifications to make sure we are all aligned. Please see our comments below […]

- All agencies are treated the same, regardless of whether they are under the parent company of [the Parent Company] [redacted].
    - [The Insurer] [redacted] does not control or dictate the operations of brokerages, regardless of whether they are owned by [the Parent Company] [redacted].
- The Business Development Manager reviews the agency books at the beginning of the year to recognize possible gaps.
    - Yes, the Business Development Manager will review as many agency books as possible on a regular basis throughout the year. It may not always be at the beginning of the year.
- If gaps are found, it is up to the agency's DR (designated representative) if they want to do a mass roll-up at renewal or if they would like to do it manually for each client.
    - Yes, if a brokerage's representative decides to add coverage(s) based on their clients' best interests, they can do so through a mass roll up at renewal or manually client by client.
- Most liabilities are over 1M (maybe a few at $500K) but not under this amount.
    - More than 95% of [the Insurer's] [redacted] personal lines book of business in Alberta has liability coverage at $1M or higher, the majority of which is over $2M. However, there may be a small percentage of [the Insurer's] [redacted] book that is under $1M.
- For roll-ups, [the Insurer] [redacted] does it by periods, and if the DR wants it for the new renewal, they can request it and will be added to a new roll-up.
    - If a brokerage's representative requests that coverage(s) be added at renewal, they will have the option to continue the additions for multiple renewal periods (until they ask [the Insurer] [redacted] to stop) or limit it to a 1-year period.
- [The Insurer] [redacted] is of the idea that the agency obtains the implied consent to debit insureds' bank accounts, and [the Insurer] [redacted] does not confirm this with the insured.
    - As discussed in our meeting, we cannot comment on the specific situation mentioned, but we are happy to look into this further if you would like to give us more information.
    - Depending on the specific situation, [the Insurer] [redacted] may be relying on the consent obtained by a broker or a business transaction exemption. Again, we are happy to look further into this if needed.

[…]

On February 22, 2024, the AIC investigator requested the following information from the Agency:

[…]
Please provide me with a list of all renewals with [the Insurer] [redacted] for the period of January 1, 2022 to December 31, 2023, for [the Agency] [redacted].
[…]

On March 5, 2024, the Agency provided their book of business with the Insurer for all renewals within the requested period.

On April 12, 2024, the AIC investigator met with the Former DR. The Former DR disclosed the following information, as provided in the notes of the AIC investigator:

- To the question of who in the business was responsible for the policy changes, the Former DR responded,

  The Former DR would communicate with [the Insurer] [redacted] to add endorsement enhancements at renewal if the client qualified for them or increase liability limits ($2mil) to protect his customers. The addition of endorsements is based on the risk to the insured's financial position.

- To the request for an explanation of why the endorsements were included at renewal after the Complainant had requested the removal of them, the Former DR explained,

  The Complainant called to remove endorsements, to which the Agency complied. At the following renewal, endorsements were added as [the Complainant] [redacted] qualified for them. The complainant needed to contact the Agency and ask for the removal. Can you demand that they never get added back on again? Well, I guess you know what we would have to physically go to [the Insurer] [redacted] and or flag [the Complainant's] [redacted] file on our end to cherry pick this one client to make sure these weren't added on next to them.

- To the question of who communicates to the Insureds the changes in their policies, the DR stated,

  We live in a world of automation, and he believed the Agency has around 40,000 clients. Back in the day, they'd go line by line on every policy their agency had. This is not possible in the current world. In today's world, we cannot review every single policy. When the insurer runs its database, it decides if the Insured qualifies for the endorsement or not. It is not up to the insurer to sell it; it is up to us (the broker) to sell the renewal. The brokers have a lot less hands-on influence on each and every file, solely due to automation.

- In addition, the Former DR added,

  Consumers are not always compliant with returning emails or voice messages. The Former DR stated it was impossible to touch every single customer through an annual term. The onus is on the client; their obligation is to review and understand their policy. The broker is an intermediary, and its obligation is to do what is in the best interest of the Insured, to help them, and to educate.

- In response to previous communications with the Former DR, the Former DR stated how he interprets what's in the client's best interest. The Former DR provided the following explanation,

  The Former DR stated that they do what is in their clients' best interest, which is making sure they have the best possible coverage. He would decide which endorsement is actually good for their clients, then would flip it to the insurer to see if the client qualifies and to add the endorsement to the renewal offer.
  […]

- The Former DR also stated:

  The Former DR states that when the endorsements get added, it's still an offer to renew, issued 45-60 days prior to the renewal date. It falls under the principles of offer and acceptance. Insureds have an obligation to review their policies. The renewal is not a legal contract, it is only an offer. The renewal process is more automated than when the original policy/contract is issued and received. When an Insured receives renewal documents, the Insured has the right to say they do not want it. Acceptance is allowing the renewal and the insurer to auto-withdraw the premiums.

- The Former DR was asked the following question, "The expectation is that you should actually discuss the policy with your client every year?", in response to his question, he added,

  In the courts of Alberta, legal instruction from one year does not apply to renewals as in a new term, the Agency. The Former DR would then be open to liability. The Former DR was unaware of any case law regarding this issue and stated it was his interpretation.

- The Former DR stated,

  The Former DR says he is open to liability and an errors & omissions claim if the client does not have all the endorsements they qualify for.

- In response to the Complainant's request for removal, the Former DR stated,

  This is the first complaint they've had.
  […]

- The Former DR added,

  They do this renewal process with [redacted], [redacted], all of the companies. The Former DR feels he is being investigated for something everyone else does and it's unfair. He feels the Treasury needs to address all the carriers. This issue should be addressed to the entire industry and not [the Agency] [redacted]. The Former DR states he has not done anything wrong as a principal or DR of his past agency.

- In response to the question of how they determine the liability limits and endorsements that get added, the Former DR stated,

  As a business owner and professional within an industry, I have the right to determine how I conduct my business, provided it's within legislation and within the act of the AIC.

Discussion

In order for the Council to conclude that the Former DR 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 Former DR committed the act as alleged. The Council is cognizant that findings of guilt under s. 480(1)(a) can dramatically impact an insurance intermediary's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it before reaching its decision.

The applicable legal test to determine the Former DR's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queen's Bench of Alberta decision, *Roy* v. *Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as "*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 decision of the Insurance Councils Appeal Board was subsequently upheld, its findings confirmed, and the agent was found guilty of an offence pursuant to s. 480(1)(a) of the Act.

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 principle 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.
>
> [Emphasis added]

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 Former DR was guilty of sixty-four thousand seven hundred and seven (64,707) counts of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when the Former DR entered into an insurance policy rollover agreement with the Insurer that consequently initiated changes to clients' policies without the clients' informed consent. This included sixty-four thousand seven hundred and seven (64,707) occasions of endorsements being added to the clients' policies in the book of business the Former DR's Agency had with the Insurer, without the clients' informed consent.

Section 4 of the *Insurance Councils Regulation*, A.R. 126/2001, sets out the composition requirements of the General Insurance Council. The Council is comprised of eight members: two appointed by the Lieutenant Governor in Council that do not hold (insurance) certificates of authority, one appointed by the Insurance Bureau of Canada that is engaged in general insurance business and employed by a licensed insurer that does not restrict its agents from acting as general insurance agents for other insurers, three elected in accordance with the *Insurance Councils Regulation*, A.R. 126/2001 that hold general insurance certificates of authority and are not employed by an insurer and are not restricted by contract from acting as an insurance agent for more than one insurer, and two appointed by the Insurance Bureau of Canada that are engaged in the general insurance business and employed by a licensed insurer that are restricted from acting as a general insurance agent for other insurers.

Council quorum is established by the *General Insurance Council By-Laws*, adopted July 11, 2007:

> **4. QUORUM**
> 4.1 The quorum for all meetings of the General Insurance Council shall be 5 members.

Although quorum was present to conduct the Council meeting, quorum was lost with respect to this investigation and could not be repaired as three of the five Council members recused themselves due to a conflict of interest. Accordingly, the Council struck a *Review Committee* in accordance with *Articles I and IV* of the *General Insurance Council By-Laws* duly approved July 11, 2007:

> **ARTICLE IV – COMMITTEES**
> **1. ESTABLISHING COMMITTEES**
> 1.1. The General Insurance Council may at any meeting establish any standing or ad hoc committees that it deems necessary to carry out the **objects** of the General Insurance Council and may by resolution set out the duties and function of such committees. […]
>
> **ARTICLE I – OBJECTS**

> 1.1 The General Insurance Council has its objects:
> […]
> (i) to revoke, suspend and/or impose penalties against the holder or former holder of an insurance agent's certificate of authority pursuant to section 480 of the *Insurance Act*, […]
>
> [Emphasis added]

The *Review Committee* was comprised of two voting members of the Council. The *Review Committee* was charged with reviewing the Report and making recommendations for the Council to accept. The Council conceded that the recommendations of the *Review Committee* would be accepted by the Council and binding on the Council as if the Council had rendered the decision as a whole.

The *Review Committee* convened. The *Review Committee* recommended that the Former DR was guilty of one (1) violation of s. 480(1)(a) of the Act. The *Review Committee* recommended that a civil penalty of $5,000.00 be levied against the Former DR. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The June 7, 2023, initial email from the Complainant was of significance to the Council as it provided the following:

> […]
> Also, I recall having told our broker last renewal to delete unwanted endorsements – which magically reappeared on this years [sic] renewal again. I can also confirm it was me who contacted the broker to discuss these unwanted endorsements – they did not contact me about them being included on the renewal offer.
> After receiving your email I contacted the broker manager and explained my concern to [the broker manager] [redacted]. [The Broker Manager] [redacted] indicated that they asked [the Insurer] [redacted] to do a total book enhancement for inclusion of the added TPL limits and additional endorsements. [The Broker Manager] [redacted] confirmed they do not tell clients what they are doing and only deal with those who question the changes to the renewal offer.
> […]

In the June 13, 2023, email from the Former DR it was stated that the Agency has a renewal portfolio agreement with the Insurer to add endorsements to their clients' policies. The Former DR also stated that the Agency made the unilateral decision to increase liability limits on all auto policies to $2,000,000:

> […]
> As part of this commitment, we have a renewal portfolio agreement in place with [the Insurer] [redacted] to include specific coverages policyholders become eligible or qualify for and/or do not have on their policy.
>
> As auto liability limits were being exceeded in recent years, we determined an increase in the auto liability limits on our [Insurer] [redacted] portfolio to $2,000,000. was in the best interest to protect our clients.
> […]

The Council was concerned with such decisions made by the Former DR to enter into a rollover agreement with the Insurer which resulted in changes to clients' insurance policies without the informed consent of the clients.

The Council was also concerned with the inconsistencies in statements made by the Former DR regarding the existence of a formal agreement with the Insurer to add endorsements to clients' policies without the informed consent of their clients. The Council noted that when the Agency was requested to provide a copy of this agreement to the AIC, the Agency stated in their correspondence dated June 22, 2023, that the Agency does not have a formal portfolio contract or agreement.

The Council was concerned by the explanations of the Former DR provided in the July 27, 2023, letter related to the existence of a portfolio agreement with the Insurer and the Former DR's decision to include endorsements at renewal without the express consent of clients:

> Contradictory information: It is not our intent to provide conflicting information, there may be some description and interpretation misalignment. If we inadvertently lead you to believe there was a formal written portfolio agreement in place that was based on a terminology description and explanation.
>
> June 13 2023:
> […]
> [The Agency] [redacted] is not required nor directed to add all endorsements a client may qualify for at renewal. [The Agency] [redacted] has voluntarily made the decision to add endorsements as it is in a clients [sic] best interest. […]

Additionally, the Council was concerned by statements made by the Former DR in the August 16, 2023, letter, which included:

> […]
> [The Agency's] [redacted] determination of clients' best interest is to protect our clients for claims and premium increases with specific endorsements they are eligible and qualify for and do not have on their policy. […] As auto liability limits were being exceeded in recent years, an increase to $2,000,000 was implemented and recommended on renewal and new policies.
> […]
> As the renewal process is automated, we don't give direction to [the Insurer] [redacted] to add the endorsements on a case-by-case basis, unless our broker management system notes prompt us on a specific policy. [The Agency] [redacted] would not request the deletion of endorsements unless directed by our client.
> […]

The Former DR's statements made it clear that a unilateral decision was made to increase the automobile liability limit to $2,000,000 and to add endorsements to clients' policies without the informed consent of those clients. Additionally, his statements also clarified that there was a verbal agreement and understanding between the Former DR and the Insurer to add these endorsements to clients' policies without the informed consent of those clients, and that the initial statement regarding a formal portfolio agreement being in place with the Insurer was in fact, false.

Collectively, the Council is comprised of both industry and public members who are well-equipped to assess consumer risk and industry competence. The Council weighed the effects of the alleged actions, the evidence presented, and the accounts of all parties involved when arriving at their conclusion.

The Council weighed the effects of the Former DR's alleged actions, the evidence presented, and accounts of all parties when reaching its conclusion.

Designated representatives have a special role in the operation, management and supervision of an insurance agency. The same fiduciary obligation that is owed to a client from an insurance agency is owed from the designated representative of that insurance agency. Insurance consumers have expectations that an agency will be managed in such a way that their rights as insurance consumers are respected and followed. A designated representative can make decisions for the agency within the limits of legislation, but they cannot make decisions for clients where the informed consent of those clients is required. Clients must be provided with the relevant information for their insurance policies in order to make fully informed decisions, and clients should be provided insurance product options that best meet their needs.

Designated representatives operate in a profession which necessitates placing the clients' interests first and foremost when determining policy coverage, including engaging in a discussion with clients on their insurance needs, informing clients of different insurance product options, and obtaining the full and informed consent of their clients. Clients have a right to be made aware of changes in their insurance policy coverage and clients have a right to execute the action of informed consent. If there was no responsibility on the insurance intermediary to seek the full and informed consent of their clients, then this would leave clients at risk of having products that are not suitable for them or that they do not want and paying increased premiums for insurance products that they did not consent to. Therefore, it is not unreasonable to expect a high standard of due diligence, honesty, and integrity to be practiced by designated representatives when making changes to their clients' insurance policies. The relationship between the agency and the client, and the agency and the insurer, results in a fiduciary duty, one which requires insurance intermediaries to act in the best interest of their clients. Clients are never well served when information regarding their policies is not fully and properly disclosed to them, and when they are not presented various options and given the opportunity to properly consent to any insurance policy changes.

In light of the Former DR's statements regarding entering into a rollover agreement with the Insurer, the inconsistencies in the Former DR's statements regarding the existence of a formal portfolio agreement with the Insurer, and the resulting unilateral action taken to add endorsements to clients' policies without the informed consent of the clients, the objective and subjective elements of the applicable legal test under s. 480(1)(a) of the Act are met. The Council has determined that the sixty-four thousand seven hundred and seven (64,707) counts alleged in the Report will be adjudicated as a single incident. As such, the Council finds, on one (1) count, the Former DR's conduct was intentional, and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(a) of the Act not exceeding $5,000.00 per demonstrated offence, pursuant to s. 36.1(1)(a) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. Given the evidence that the Former DR entered into a rollover agreement with the Insurer and had the Agency add endorsements to clients' policies without the clients' informed consent, the Council ordered that a total civil penalty of $5,000.00 be levied against the Former DR.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Former DR 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: January 22, 2025

[Original Signed By]

Amanda Sawatzky, 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*