DECISION OF AN APPEAL PANEL APPOINTED PURSUANT TO *THE INSURANCE ACT AND THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*

In the Matter of an Appeal under subsection 10-34(2) of *The Insurance Act, SS 2015, c. I-9.11*

BETWEEN:	Edilberto Arevalo Eniceo	**APPELLANT**
AND:	The Life Insurance Council of Saskatchewan	**RESPONDENT**

BEFORE: An Appeal Panel of the Financial and Consumer Affairs Authority of Saskatchewan

Peter Carton (Panel Chairperson)
The Honourable Eugene Scheibel (Panel Member)
Howard Crofts (Panel Member)

APPEAL: Conducted by way of Webex conference call on January 7, 2021

APPEARANCES:	For the Appellant:	Self-Represented
	For the Respondent:	April Stadnek, Director Compliance and Enforcement

DATE OF DECISION: February 11, 2021

Introduction

[1] This is an appeal by Mr. Edilberto Eniceo (the "Appellant") pursuant to subsection 10-34(2) of the *Insurance Act* (the "Act") to this Appeal Panel from the decision of the Market Practices Committee (the "Committee") of the Life Insurance Council dated October 7, 2020 (the "Decision"), with respect to the fine the Appellant was ordered to pay in regards to the violation of Bylaw 4-1(2)(k) of the Life Insurance Council's Bylaws. The Appeal was brought pursuant to section 10-34 of the Act.

[2] In its Decision, after setting out the circumstances it took into account in making its decision, the Committee ordered that the Appellant pay: (i) a fine of $250 for violation of Bylaw 4-1(1)(c); (ii) a fine of $750 for violation of Bylaw 4-1(2)(k); and (iii) $330 for the costs of investigation.

[3] On this appeal, the Appellant is appealing only the part of the Decision in which the Committee ordered that the Appellant pay a fine of $750 related to the violation of Bylaw 4-1(2)(k). The Appellant is not challenging the order imposing a fine related to the violation of Bylaw 4-1(1)(c) or the order that he pay the costs of investigation.

[4] On November 3, 2020, the Appellant's request for an appeal regarding the imposition of the fine for the violation of Bylaw 4-1(2)(k) dated October 24, 2020 addressed to the Insurance Councils of Saskatchewan (the "ICS") was forwarded to the Chairperson of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA").

[5] In correspondence dated November 9, 2020, the Registrar for the FCAA confirmed receipt of the Appellant's request for an appeal and notified the parties that they would be advised once an Appeal Panel had been appointed.

[6] On November 20, 2020, Chairperson of the FCAA appointed this Appeal Panel to hear the Appellant's appeal in accordance with section 10-34 of the Act and section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act* (the "FCAA Act").

[7] On November 26, 2020, the Appeal Panel held a conference call with the parties to set a date for hearing the appeal. An Order setting a date to hear the appeal was set for January 7, 2021 to commence at 9:00 am CST and to be held by way of a Virtual Hearing unless otherwise ordered by the Appeal Panel. During this conference call, the Appeal Panel requested that the Appellant file the grounds of his appeal with the Registrar by December 4, 2020 and also requested that the Life Insurance Council of Saskatchewan (the "Council") to provide a copy of the record, in accordance with subsection 10-36(4) of the Act, with the Registrar by December 4, 2020.

[8] In correspondence dated November 30, 2020, the Appellant filed his grounds of appeal regarding the shortcomings of the ICS with the Registrar. At the direction of the Appeal Panel, the Registrar sent correspondence to the Appellant on December 3, 2020 requesting that the Appellant provide further clarification regarding his appeal and to provide the information as required by subsection 10-36(1) of the Act.

[9] On December 1, 2020, the Council filed the materials required by subsection 10-36(4) of the Act with the Registrar and a copy was provided by the ICS to the Appellant in accordance with subsection 10-36(5) of the Act. The Appellant was provided with the opportunity to object to its completeness. No objection to the completeness of the materials was received, and accordingly the Appeal Panel accepted the Record as filed as being complete.

[10] In correspondence to the Appeal Panel dated December 9, 2020, the Appellant indicated that he wished to appeal the penalty decision of the Committee regarding violation of Bylaw 4-1(2)(k) of $750 and set out the following grounds to support his case:

> **INACCURATE EXAMINATION OF THE APPLICATION**
> I indicated in my letters that the Licensing Committee FAILED TO ACCURATELY EXAMINE THE APPLICATION given to them, with all the access to records, reports, files, emails and telephone conversation.

ERROR

The Council admitted and it was stated in the Memorandum on letter sent to me dated September 29, 2020 that it was not returned for correction and it was not provided to Compliance and Enforcement Branch so the Misstatement was not addressed.

[11] On January 7, 2021, the hearing of the appeal proceeded by way of a Webex conference call. At the hearing, the Appellant acted on his own behalf. The Council was represented by April Stadnek, Director of Compliance and Enforcement with the ICS. The Appellant indicated that he had examined the Record provided to the Appeal Panel for the purposes of the appeal and had no dispute with any of the findings of fact by the Committee in its decision. The Appellant did not apply under subsection 10-37(2) of the Act to introduce new or additional evidence on this appeal and did not seek to have the Appeal Panel make any new findings of fact during the hearing of the appeal.

Background

[12] The Record in this appeal includes the Investigation Report submitted to the Committee dated September 1, 2020, the Notice of Proposed Action dated September 2, 2020, enclosing the Investigation Report and Consensual Agreement and Undertaking, the Appellant's written representations to the Committee dated September 18, 2020, the Memorandum from the Compliance Officer of ICS to the Committee dated September 29, 2020 and the Decision.

[13] The Appellant held a Life including Accident & Sickness licence which was initially issued on March 13, 2013. In response to concerns that were raised following receipt of the Appellant's 2020 online Annual Reporting Form on March 12, 2020, Staff of the Compliance and Enforcement Branch of the ICS conducted an investigation into the Appellant's conduct and provided the Investigation Report to the Committee on September 1, 2020. The Investigation Report indicated that with respect to Bylaw 4-1(2)(k), the Appellant failed to disclose on his 2018 Application Form and on his 2019 and 2020 Annual Reporting forms that his licence had been suspended when he allowed his errors and omissions insurance coverage to lapse on January 21, 2017.

[14] On September 2, 2020, a Notice of Proposed Action, including reasons for the proposed action, pursuant to subsection 10-11(2) of the Act was provided to the Appellant regarding the violation of Bylaw 4-1(2)(k).

[15] In response to the Notice of Proposed Action, the Appellant did not accept the proposed Consensual Agreement and provided written representations to the Committee in accordance with clause 10-11(3)(b) respecting why the Appellant felt the actions identified in the Notice should not be taken. In response to the written representations submitted by the Appellant, the Staff of the Compliance and Enforcement Branch of the ICS filed the Memorandum dated September 29, 2020 with the Committee and provided a copy of the Memorandum to the Appellant.

[16] The Committee considered the Appellant's written representations in accordance with clause 10-11(10)(a) of the Act on September 30, 2020 and rendered its written decision on October 7, 2020 making the monetary penalty order now under appeal.

[17] The facts in the case are not in dispute. The Record reveals the following relevant facts:

- On January 25, 2017, the ICS received notice by email from Advocis Broker Services that the Appellant's Errors and Omissions certificate of insurance had not been renewed and his coverage had lapsed as of January 21, 2017. The Appellant was also copied by email on this notice.

- On January 26, 2017, the Licensing Branch of the ICS (the "Licensing Branch") sent an email to the Appellant advising him that they had received notice that he had allowed his E&O insurance coverage to lapse and advising him that if he wished to keep his licence he would need to provide proof of valid E&O insurance coverage for the policy period January 1, 2017 to January 21, 2018. The email indicated that there was a base fine of $1,000 for allowing his E&O insurance coverage to lapse.

- Having received no response, the Licensing Branch formally notified the Appellant by email on January 30, 2017 that his licence would be suspended on February 3, 2017 for failure to provide a copy of valid E&O insurance coverage.

- The Licensing Branch then sent a third email dated February 6, 2017 confirming that the Appellant's life and accident and sickness licence was suspended for failing to provide a copy of valid E&O insurance coverage.

- The Appellant did not respond to any of the three emails and the agency and sponsoring insurer were made aware of the Appellant's suspension.

- BMO Life Assurance Company subsequently terminated their sponsorship of the Appellant's licence and confirmed it by letter to the ICS dated February 16, 2017.

- The Appellant submitted a new Application Form dated January 21, 2018, in which he answered "No" to the question: "Has any insurance licence held by you, or other licence registration for selling financial products, ever been suspended or revoked anywhere in Canada or in another country?"

- In a telephone conversation on March 23, 2018, the Appellant was advised of the misstatement and told his licence was suspended previously and he would have to correct the application.

- The application was not resubmitted and the misstatement was not addressed. His Life, Accident & Sickness licence was issued on March 23, 2018.

- Despite having been advised of his licence suspension, the Licensee subsequently answered "No" to the question related to the suspension or revocation of his licence on both his March 5, 2019 and March 12, 2020 annual reporting forms.

[18] In his written submissions to the Committee dated September 18, 2020, the Appellant argued that it was his belief that his licence was not suspended or revoked and as such answered "No" to the question on the 2018 application for licensing and the 2019 and 2020 annual reporting forms. He stated that he "also did not receive a letter nor informed that my license was suspended and to my knowledge I just thought my E&O lapse". In addition, he argued that the Council in charge of reviewing his application had all the information to grant him a new one in their system. He requested that the $750 fine regarding the violation of Bylaw 4-1(2)(k) (the fines of $250 for each of the years 2018, 2019 and 2020) be waived as the fines could have been avoided if during the application period the Licensing Committee had prevented him from having a licence, if their records showed that he had been suspended.

[19] In its Decision, the Committee held that based on the evidence the Appellant was made aware that his licence had been suspended and the licensee knew or ought to have known that his licence had been suspended for his failure to maintain a valid policy of E&O. The Committee unanimously agreed that the fine originally proposed for violation of Bylaw 4-1(2)(k) be maintained as proposed in the Notice of Proposed Action and ordered that the Appellant pay a fine of $750 regarding the violation of Bylaw 4-1(2)(k).

Grounds of Appeal

[20] In his Request for an Appeal dated October 24, 2020, the Appellant indicates that:

> I will no longer argue with the misconduct and bylaw violations that the council would like to impose against me. The reason for this appeal are the charges for **BYLAW 4-1(2)(k) $250 for 2018, 2019 & 2020** that should have been prevented if the licensing committee accurately examines each application.
>
> **SPECIFY "SHORTCOMING FO THE ICS" PAGE 2 A**
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> Licensing committee has access to my records, reports, file, email, and even telephone conversation such as those attachments that your office provided, I even have a PREVIOUS LICENCE NUMBER 057816 that would trigger a thorough investigation on your part. It is also the Committee's responsibility to accurately examine each application.
>
> On page 2 of the Memorandum you sent me last September 29, 2020, item # 8, it is stated that it was not returned for correction and it was not provided to the Compliance and Enforcement Branch so the misstatement was not addressed. (see attached memo).
>
> So I continue to answer "NO" on my application for 2019 and 2020. This matter will not be here today if I did not file for Consumer Proposal. My question is if I continue to answer "No" every time I renew my license for 10 years will you charge me $2500? $5000 for 20 years? with all the resources in your hand?
>
> I am appealing to your office again to revise the charges, not only because of my reason but also due to the pandemic and to the fact that I am under Consumer Proposal with a "STAY IN PROCEEDING'' status. Financially, every dollar counts right now.

[21] The Appellant set out the following grounds of appeal in his correspondence to the Appeal Panel dated December 9, 2020:

> **INACCURATE EXAMINATION OF THE APPLICATION**
> I indicated in my letters that the Licensing Committee FAILED TO ACCURATELY EXAMINE THE APPLICATION given to them, with all the access to records, reports, files, emails and telephone conversation.
>
> **ERROR**
> The Council admitted and it was stated in the Memorandum on letter sent to me dated September 29, 2020 that it was not returned for correction and it was not provided to Compliance and Enforcement Branch so the Misstatement was not addressed.

Submission on Appeal

[22] During the hearing of the appeal, the Appellant requested that the $750 fine that was imposed regarding the violation of Bylaw 4-1(2)(k) be waived or revised due to the pandemic and the fact that he was under a Consumer Proposal. In support of his request, the Appellant submits that the ICS with all of their access to records and reports, failed to accurately examine the application and therefore should have caught the error. He indicated that he felt the ICS should bear responsibility or part of the blame for his misstatement or error.

[23] The Council submits that the fine that was imposed for the violation of Bylaw 4-1(2)(k) was reasonable and the appeal should be dismissed.

Issue to be determined

[24] The central issue to be determined on this appeal is whether the fine of $750 regarding the violation of Bylaw 4-1(2)(k) as outlined in the Committee's Decision should be set aside or varied?

Standard of Review

[25] Neither party made submissions on the appropriate standard of review that should be applied by the Appeal Panel in the present appeal.

[26] In considering the appropriate standard of review to be applied in this case, the Appeal Panel has adopted the approach recently applied by the Saskatchewan Court of Appeal in *City Centre Equities Inc. v. Regina (City)* 2018 SKCA 43[*City Centre Equities*] and concluded that the determination of the applicable standard of review should be determined by conducting a full exercise in statutory interpretation.

[27] In *City Centre Equities*, Whitmore, J.A., after conducting an exhaustive review of the different approaches in the Canadian case law, concluded that the standard of review to be applied in the context of an appeal from a first-instance administrative decision-maker to an appellate administrative decision-maker always depends on the language of the enabling statute and is a matter of statutory interpretation. At paragraph 58 of that decision, he states:

> [58] Conflicting approaches have been taken in the above-noted decisions but, in general terms, there is one common element among them: the intention of the legislature as revealed by statutory interpretation ultimately determines what standard of review an appellate tribunal should apply. I agree with Jenkins C.J.P.E.I., who expressed the following in *Dyment*:
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> > [40] Counsel cited jurisprudence in this and other jurisdictions as examples of hybrid standards of review. While this case law provides a window on the world of internal standard of review, it provides only limited assistance on the standard of review issue in this appeal. It always depends on the language of the enabling statute; all cases cited share the view that standard of review is a matter that depends on statutory interpretation. None suggest that a new standard is called for only because *Dunsmuir* and its progeny call for deference in judicial review of administrative decision-making. Those cases come to a variety of conclusions; and most do not necessarily prescribe deference. It always depends. Some, or most, of the decisions acknowledge virtues of deference; however, the particular decision on extent of deference is often left with the appellate tribunal rather than being imposed as a judicial requirement.
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> [59] In my view, this is the proper approach to determining the standard of review that the Committee should apply in the present case. The standard of review should be determined by conducting a full exercise in statutory interpretation, which ultimately will answer what respective roles the Legislature intended the Committee and Board to fulfill. Consequently, I will now turn to the governing principles of statutory interpretation, which demonstrate the Legislature intended for the Committee to fulfill a traditional appellate role such that it gives deference to the Board on questions of fact.
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> [60] The modern principle of statutory interpretation was established in *Rizzo & Rizzo Shoes Ltd., Re*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, which adopted Elmer Driedger, *Construction of Statutes*, 2d ed (Toronto: Butterworths, 1983): "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (at 87).

[28] In 2019, the Supreme Court of Canada in a trilogy of cases, including *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] revised the framework for determining what standard of review should apply to statutory appeals from administrative bodies to the courts. Although *Vavilov* was decided after *City Centres Equities*, it did not address the standard of review to be applied in the context of an appeal like this one, where the appeal is not to a court but to another tribunal.

[29] While we are of the view that *Vavilov* does not change the "statutory interpretation" approach set out in *City Centres Equities* to be applied in determining the standard of review for internal administrative appeals, we note that the Supreme Court of Canada in *Vavilov* also sought to clarify how to apply the reasonableness standard, including an explanation as to what the standard means and how it should be applied in practice. Accordingly, for the purposes of internal administrative appeals, we are of the view that if, as a matter of statutory interpretation, it is determined that the reasonableness

standard should be applied, the following clarification by the Supreme Court of Canada in *Vavilov* may provide guidance in internal appeals regarding the how the reasonableness standard should be applied:

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
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> [14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 *U.T.L.J.* 458, at pp. 467-70.

Relevant Statutory Provisions

[30] In the within matter, two statutes are relevant: *The Insurance Act* (the "Act") and *The Financial and Consumer Affairs Authority Act* (the "FCAA Act"). As a starting point, the Act provides the legislative framework for the regulation of insurance agents in Saskatchewan. Although not expressly stated in the Act, the objective of the Act is to govern and regulate the insurance industry in order to protect consumers of insurance (see *Ituna Investment LP v. Industrial Alliance Insurance and Financial Services Inc*. 2019 SKQB 75). In our view, safeguarding the public is the overriding consideration and objective of the legislation.

[31] The Superintendent of Insurance is responsible for the administration of the Act and is tasked with general oversight and supervision of insurance industry. The Superintendent is responsible under the Act for licensing and regulating insurance companies and insurance intermediaries, including insurance agents and adjusters. However, the Superintendent has, in accordance with the legislation, delegated responsibility for the oversight of intermediaries to the ICS. The Superintendent approves the bylaws of the ICS and insurance agents are required to comply with the Bylaws.

[32] Insurance agents are governed by the Act, *The Insurance Regulations* (the "Regulations") and the Bylaws of the ICS. In order to participate in the insurance business, they agree to subject themselves to a regulatory regime. As noted in *Québec (Autorité des marchés financiers) c. Souveraine, cie d'assurance générale*, 2013 SCC 63 (S.C.C.) at para. 49, they agree in advance to adhere to strict standards of conduct, and they accept that the Superintendent may hold them accountable for any departures from these standards. In accordance with the legislative framework, licensees in this sector are required to be competent and trustworthy and must not act in a way that is contrary to the best interest of the public. An important function of the ICS is to ensure licensed insurance agents act within a professional framework.

[33] In accordance with section 5-27 of the Regulations, the ICS has been delegated responsibility for licensing insurance agents and conducting investigations into the conduct of insurance agents to determine whether there has been a breach of any of the provisions of the Act, the Regulations or the Bylaws. Pursuant to clause 5-27(e) of the Regulations, the ICS is authorized to make decisions respecting penalties and other charges to protect the public and promote compliance with the legislation. Clause 5-27(f) of the Regulations provides that the ICS is authorized to subdelegate its powers to employees, subcouncils, committees or agents, subject to any terms and conditions imposed by it. The Committee has been authorized under section 2-3 of the Life Insurance Councils Bylaws to investigate complaints and to make decisions respecting penalties and other charges pursuant to clause 5-31(3)(k) of the Regulations.

[34] Regulatory proceedings before the Committee are governed by section 10-11 of the Act. Before taking action, the Committee must serve notice on the licensee setting out the action proposed to be taken and informing the person of their right to make representation on why the action should not be taken. The person on whom the notice is served may then request an oral hearing or provide written representations to the Committee. In oral hearings, the Committee hears first-hand evidence from witnesses in under section 10-11 of the Act.

[35] As noted in *Cities Centre Equities*, the role assigned to an appeal panel by the governing statute is of central importance in determining the standard of review. An appeal panel's authority to hear an appeal of the decision of the Council or a Committee of the Council is set out in subsection 10-34(1) of the Act as follows:

> **Appeal of decision or order of insurance council**
> **10-34**(1) A decision or order made by an insurance council or a committee of an insurance council pursuant to Part V may be appealed to the appeal panel by:
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> (a) an applicant who has been refused a licence or endorsement if the Superintendent's powers to issue or refuse a licence have been delegated to the insurance council;
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> (b) an applicant or licensee whose licence or endorsement is made subject to any limitation, restriction, term or condition or any new, additional or amended limitation, restriction, term or condition if the Superintendent's powers to impose limitations, restrictions, terms and conditions on licences or endorsements have been delegated to the insurance council;
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> (c) an applicant who has been refused reinstatement of a licence or an endorsement if the Superintendent's powers to reinstate licences or endorsements have been delegated to the insurance council;
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> (d) a licensee whose licence has been suspended or cancelled if the Superintendent's powers to suspend or cancel licences or endorsements have been delegated to the insurance council; or
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> (e) a person required to pay a penalty or costs assessed in accordance with the regulations.

[36] For the purposes of the Act, "appeal panel" is defined in subsection 1-2(1) to mean a panel established pursuant to section 17 of the FCAA Act. Section 17 of the FCAA Act provides that the Minister may, by order, establish a list of persons to serve on a panel appointed to this section and that the Chairperson may appoint a panel to hear any matter that the FCAA is authorized or required to hear pursuant to the FCAA Act or any financial services legislation.

[37] An appeal panel, like the Committee, is an administrative tribunal created under the legislation to fulfill a statutory function. The only limitations placed on the membership of an appeal panel are that at least one of its members must be a member of the Financial and Consumer Affairs Authority of Saskatchewan and any other persons that are appointed to the appeal panel must be persons from the list established by the Minister. However, unlike the Committee, an appeal panel provides independent oversight by acting as an appellate administrative tribunal when hearing appeals of the decisions or orders made by the Council or a Committee regarding the matters set out in section 10-34 of the Act.

[38] As mandated by subsection 10-37(1) of the Act, the appeal is to be determined on the basis of:

> (a) the notice of appeal;
> (b) any information provided pursuant to subsection 10-36(2); and
> (c) the materials provided pursuant to subsection 10-36(4).

[39] The relevant parts of section 10-36 of the Act state that:

> **Notice of appeal**
> **10-36**(1) A written notice of appeal must set out:
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> (a) all grounds on which the appeal is based, including:
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> (i) the nature of any error alleged in the superintendent's or insurance council's decision or order, as the case may be; and
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> (ii) the specific grounds on which it is alleged that an error exists;
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> (b) in summary form, the material facts on which the appellant relies; and
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> (c) an address for the appellant for service of documents relating to the appeal.
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> (2) If, in the opinion of the appeal panel, a person fails to provide information required pursuant to subsection (1), the appeal panel may, at any time before determining the appeal, require the person to provide the information within a specified time, and, if the person does not provide the information within that time, the appeal panel may dismiss the appeal.
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> . . .
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> (4) After receiving a notice of appeal pursuant to subsection (1), the superintendent or insurance council, as the case may be, shall as soon as is reasonably possible provide to the appeal panel a copy of:
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> (a) any information, evidence or material the superintendent or insurance council relied on or considered in making the decision or order that is the subject of the notice of appeal;

(b) the transcript of any hearing conducted by the superintendent or insurance council respecting the decision or order that is the subject of the notice of appeal;

(c) the decision or order that is the subject of the notice of appeal and any reasons for the decision or order provided to the appellant by the superintendent or insurance council.

[40] In addition, subsections 10-37(2) and (3) of the Act allow for new or additional evidence to be introduced and considered by an appeal panel in certain circumstances and state that:

10-37(2) If the appellant or the appellant's lawyer or agent applies to the appeal panel to present new or additional evidence, the appeal panel may authorize the appellant to introduce the new or additional evidence.

(3) If the appellant or the appellant's lawyer or agent presents new or additional evidence during the hearing of an appeal, the appeal panel may, if it considers it to be appropriate to do so:

(a) consider the new or additional evidence;

(b) exclude the new or additional evidence;

(c) direct a new hearing by the superintendent or the insurance council on the basis of the new or additional evidence and the materials mentioned in subsection 10-36(2); or

(d) direct further inquiries by the superintendent or the insurance council.

[41] The powers of an appeal panel on appeal are broad and are set out in subsection 10-37(4) of the Act as follows:

10-37(4) on an appeal pursuant to sections 10-33 and 10-34, the appeal panel may do any of the following:

(a) dismiss the appeal;

(b) allow the appeal;

(c) direct a new hearing or further inquiries by the superintendent or the insurance council;

(d) vary the decision or order of the superintendent or the insurance council;

(e) substitute the appeal panel's own decision for the decision of the superintendent or the insurance council;

(f) in the case of an appeal pursuant to section 10-34, order the insurance council to issue or reinstate the licence or endorsement;

(g) if applicable, vary any terms and conditions imposed by the superintendent or insurance council on the appellant's licence or endorsement;

(h) make any order as to costs that the appeal panel considers appropriate.

[42] Section 10-38 of the Act provides that any person who is directly affected by a decision of the Appeal Panel pursuant to the Act may appeal the decision to the Court of Appeal on a question of law only.

[43] The Act does not expressly set out the standard of review that the Appeal Panel should apply when reviewing decisions of the Council or the Committee. It provides that the record of the earlier proceedings is to be filed with the Appeal Panel and that the appeal is to be determined solely on the basis of the record, unless the Appellant applies and the Appeal Panel authorizes the introduction of the new or additional evidence in accordance with subsection 10-37(2) of the Act. The Act is silent as to the possibility of holding hearings *de novo* and, in our view, does not contemplate a new hearing or re-conducting the entire proceeding before the Appeal Panel.

[44] In considering the scheme of the legislation as a whole, including the particular duties and expertise of the Council or the Committee, it is our view that the provision allowing the introduction of new or additional evidence on appeal is not intended to displace the presumption that the appeal is on the record but rather is intended to provide the Appeal Panel with flexibility in how it handles appeals. In our view, the intent of the legislation is to allow new evidence to be admitted with caution to avoid undermining the proceedings before the Council or the Committee. We do not think that a generalized right to adduce evidence that could have been introduced in the first instance is consistent with the nature and purpose of the right of appeal to the Appeal Panel on the record. In the present appeal, no new evidence was introduced, so the Appeal Panel's role was limited to examining the material and documentary evidence that the Committee relied on or considered in making its decision.

[45] Having regard to the legislative scheme and the purposes of the Act, it is clear that the Legislature intended the Committee to play an important role within the regulatory framework. The Committee is intended to be a specialized tribunal with acquired expertise in determining the issues brought before it. It has the obligation to decide a number of matters that cannot be appealed to the Appeal Panel. The Committee also has the advantage of hearing first-hand evidence from witnesses if an oral hearing is held. Unlike the Committee, the Appeal Panel is not a tribunal of first instance and is charged with hearing and determining appeals.

[46] While the Appeal Panel has that authority under subsection 10-37(4) of the Act to substitute its own decision for the decision of the Committee, this does not, in our view, determine the standard of review that is to be applied. In City Centre Equities, after reviewing the broad corrective powers of the Assessment Appeals Committee in *The Cities Act*, SS 2002, c. C-11.1, Whitmore J.A., stated:

> [85] I do not accept this view. While these corrective powers are broad and provide that errors are to be corrected, they do not speak to the standard of review to be applied by the Committee in reviewing decisions of boards of review. In *Corman Park*, Caldwell J.A. describes the relationship between reviewing the decision for error and these corrective powers:
>
> > [67] On the basis of the jurisprudence, it should be well-understood that the Committee must review the decision of the board of revision *for error*. If the Committee finds error, then the Committee may exercise its *corrective* powers and do what it concludes the board

> of revision ought to have done in the circumstances. Failing which, the Committee may remit the matter to the assessor and leave it in the assessor's hands to "ensure that: (i) errors in and omissions from the assessment roll are corrected; and (ii) an accurate, fair and equitable assessment for the property is placed on the assessment roll". (Italic emphasis in original)

While s. 226(b)(i) authorizes the Committee to correct errors, this provision does not dictate the standard of review the Committee applies when reviewing for error.

[47] The language in subsection 10-37(4) is expansive, but as noted earlier, the Appeal Panel is to hear appeals, "not to re-conduct the entire proceeding de novo".

[48] Based on our review of the legislative framework, we conclude that the most appropriate standard of review to be applied in reviewing the Committee's Decision ordering that the Appellant pay a fine of $750 related to the violation of Bylaw 4-1(2)(k), is reasonableness. It is our view, that we should generally show deference to the decisions of the Committee and not substitute our own view for that of the Committee simply because we might have reached a different conclusion in the circumstances. However, it is our view that the Legislature intended that we intervene if we conclude that the Committee's decision is unreasonable. Accordingly, we must consider whether or not the appealed order imposing a fine of $750 is reasonable in context of the present case.

Analysis

Should the order directing the Appellant to pay a fine of $750 for the violation of Bylaw 4-1(2)(k) be set aside or varied?

[49] The relevant provisions of Bylaw 4-1(2)(k) read as follows:

> **Bylaw 4 - 1 Professional misconduct**
>
> (1) For the purposes of the Act, the regulations and these bylaws, professional misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonourable that:
>
> …
>
> (c) is a breach of the Act, the regulations or these bylaws.
>
> (2) Without limiting the generality of the subsection 4-1(1), a licensee may be guilty of misconduct if the licensee:
>
> (k) makes a material misstatement in an application for licence or report to continue a licence, pursuant to clauses 5-39(1)(a) and 5-64(1)(a) of the Act.

[50] As previously stated, the fact that the Committee made a finding of professional misconduct is not in issue in this appeal. The only issue is the sanction imposed regarding the violation of this Bylaw.

[51] The relevant provisions of section 5-39 of the Act provide as follows:

> **Penalties affecting insurance intermediary's licence**
> **5-39**(1) The Superintendent may act pursuant to subsection (2) if the Superintendent is satisfied that the holder or a former holder of an insurance intermediary's licence:
>
> (a) has made a material misstatement in the application for the licence;
>
> (b) has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty;
>
> (c) has contravened any provision of this Act or the regulations or similar legislation in another jurisdiction or a predecessor to this Act or the regulations;
>
> (d) has unreasonably failed to pay any premium collected by the holder within the period stipulated in the holder's agency contract to an insurer or an insurance intermediary who is entitled to the premium;
>
> (e) has placed insurance with an insurer not licensed in Saskatchewan pursuant to this Act or a predecessor to this Act without complying with the provisions of this Act or the predecessor to this Act relating to unlicensed insurers; or
>
> (f) has demonstrated incompetence to act as an insurance intermediary.
>
> (2) In the circumstances mentioned in subsection (1) and subject to section 10-11, the Superintendent may do all or any of the following:
>
> (a) revoke, suspend or refuse to reinstate one or more of the licences held by the holder;
>
> (b) impose prescribed terms and conditions on one or more of the licences held by the holder;
>
> (b.1) order the holder or former holder to pay restitution in the prescribed circumstances and in an amount not exceeding the prescribed amount;
>
> (c) impose any prescribed penalty that the Superintendent considers appropriate on the holder or former holder

[52] Subsection 5-15(2) of the Regulations provides as follows:

> **Penalties affecting insurance intermediary's licence**
> **5-15**(2) For the purposes of clause 5-39(2)(c) of the Act, the Superintendent may impose the following penalties on a holder or former holder:
>
> (a) in the case of an individual, a penalty in an amount not exceeding $25,000;
>
> (b) in the case of a body corporate, a penalty in an amount not exceeding $50,000.

[53] As the Committee was acting under a delegation of authority the reference to "Superintendent" in the above provisions should be read as referring to the Committee in this case.

[54] The Appellant does not dispute the Committee's authority to impose the penalty or argue that the penalty is disparate with penalties imposed by the Committee in other cases. In his submissions, the Appellant essentially makes two arguments to support his position that the penalty should be set aside or that a lower penalty is warranted.

[55] The Appellant's first argument is that the ICS should bear responsibility or part of the blame for his misstatement on his 2018 application for licensing and his 2019 and 2020 annual reporting forms. In his Request for an Appeal dated October 24, 2020, he makes the following assertions:

- It is also the Committee's responsibility to accurately examine each application" and that "the charges for **BYLAW 4-1(2)(k) $250 for 2018, 2019 & 2020** that should have been prevented if the licensing committee accurately examines each application"; and

- "Licensing committee has access to my records, reports, file, email, and even telephone conversation such as those attachments that your office provided, I even have a PREVIOUS LICENCE NUMBER 057816 that would trigger a thorough investigation on your part".

[56] In reviewing the Appellant's argument, we note that same argument was raised by the Appellant in his written submissions to the Committee dated September 18, 2020. In his submission, he also stated that:

> My understanding and what I believed was right, my license was not suspended nor revoke that is why I continuously answered "NO" on my Annual renewal for 2018, 2019 and 2020. I also did not receive a letter nor informed that my license was suspended and to my knowledge I just thought my E&O lapse.

[57] In response to this argument, Staff of the Compliance and Enforcement Branch of the ICS, in their Memorandum to the Committee dated September 29, 2020, submitted that it was the licensee's responsibility to accurately complete his application form and annual reporting forms. The evidence before the Committee was that the Appellant had been advised both by email in 2017 and verbally in 2018 that his licence had been suspended and the Appellant's Application Form specifically contained the following declaration:

> I, Edilberto Eniceo, solemnly declare that all statements and answers in the foregoing application including attachments are true and correct, and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

[58] The evidence before the Committee also indicated that his 2019 and 2020 annual reporting forms contained similar declarations and that the Appellant had spoken with ICS Staff on March 23, 2018 and asked if he could pay the anticipated fine in installments.

[59] In its Decision, the Committee determined that based on the evidence the Appellant was made aware that his licence had been suspended, the Appellant knew or ought to have known that his licence had been suspended for his failure to maintain a valid policy of E&O and concluded that the fine originally proposed for the violation of Bylaw 4-1(2)(k) be maintained as proposed in the Agreement. Although a somewhat more complete discussion of the reasoning may have assisted, it is apparent from the Decision that the Committee considered the evidence and the submissions made by each of the parties in making its Decision regarding the imposition of the fine and that the Committee did not accept the Appellant's argument that it was the ICS's responsibility to examine and correct the misstatements on his 2018 application for licensing and his 2019 and 2020 annual reporting forms.

[60] The Appellant's second argument is that while the facts of the violation are not in dispute, the monetary penalty is inappropriate and the penalty should be waived or varied. To support his Argument, the Appellant refers to the following mitigating factors which he submits should be taken into account:

> . . .due to the pandemic and to the fact that I am under Consumer Proposal with a "STAY IN PROCEEDING'' status. Financially, every dollar counts right now.

[61] Although in its Decision the Committee does not enumerate the factors it considered in determining the penalty, it is evident from the Decision that the Committee considered the Appellant's submission that the fine be waived or reduced and after considering the evidence before it determined that fine originally proposed for violation of the Bylaw be maintained as proposed in the Consensual Agreement and Undertaking. In its Decision, the Committee indicates that it considered the Appellant's representations regarding the misconduct identified and specifically refers to the Consumer Proposal filed by the Appellant on October 30, 2019.

[62] Applying the reasonableness standard of review to the penalty in this appeal, we have concluded that the Committee's Decision is reasonable and should be upheld. We find no basis on which to set aside or vary the Committee's order that the Appellant pay a $750 fine for the violation of Bylaw 4-1(2)(k) of the Life Insurance Council's Bylaws.

Conclusion

[63] In making this decision, we have carefully considered all the evidence before us and the submissions of the parties, whether or not they have been referred to in these reasons.

[64] Based on the foregoing, we dismiss this appeal and confirm the Decision of the Committee with respect to the fine the Appellant was ordered to pay in regards to the violation of Bylaw 4-1(2)(k) of the Life Insurance Council's Bylaws.

[65] This is the unanimous decision of the Appeal Panel

Dated at Regina, Saskatchewan this 11th day of February, 2021.

Originally signed by:

Peter Carton, Chairperson

Originally signed by:

The Honourable Eugene Scheibel

Originally signed by:

Howard Crofts