



# Insight

## The Voice of the Alberta Insurance Council

### BANK ACTION AGAINST THE GOVERNMENT OF ALBERTA

In 2000 the Government of Alberta passed amendments to the Insurance Act requiring that automobile dealerships, travel agencies, sales finance companies and deposit-taking institutions obtain restricted certificates of authority to sell creditor's group insurance and travel insurance. When these amendments were proclaimed into force in 2001, eight chartered banks (Canadian Western Bank, the Bank of Montreal, CIBC, HSBC Bank Canada, National Bank of Canada, RBC, the Bank of Nova Scotia and Toronto Dominion Bank) commenced a lawsuit against the Government of Alberta challenging the constitutional validity of the provincial licensing regime. The banks argued that the sale of certain forms of insurance was part of the business of banking and that by requiring banks to be licensed to sell insurance the province was passing legislation that only the federal government was constitutionally entitled to enact. The province, on the other hand, argued that the distribution of insurance was within the constitutional jurisdiction of provinces and that, to the extent that banks wanted to act in the capacity of insurance agents, they had to submit to provincial licensing and regulation.

The Alberta Insurance Council sought, and was granted, intervener status in the action. Joanne Abram, AIC Chief Executive Officer and Tom Hampton, Chief Operating Officer of the AIC were examined for discovery in the matter while it was before the Court of Queen's Bench.

In 2003 Justice Slatter ruled that the province did have jurisdiction to legislate in the area of insurance regulation and that the sale of creditor's group insurance was not banking *per se*. Among other things, he found that "...the primary reason the banks want to promote authorized types of insurance is because they make a profit from it. The sale of insurance is simply another product line, no more and no less." The banks appealed this decision to the Alberta Court of Appeal. In

2005 the Court of Appeal dismissed the appeal, again concluding that the provincial legislation was really about regulating the sale of insurance, not banking, and that this was a provincial responsibility under the constitution.

The banks sought leave to appeal to the Supreme Court of Canada and the case was heard by that court in April of 2006. Once again, the Alberta Insurance Council participated as an intervener. On May 31, 2007 the Supreme Court of Canada released its reasons upholding the Alberta legislation and dismissing the banks' appeal. Among other things, the Supreme Court agreed that the promotion of insurance was not an essential or core element of banking. Apart from the fact that the *Bank Act* itself appeared to treat insurance as a business separate from banking, the Court noted that credit-related insurance promoted by the banks was not mandatory and that it "...was only loosely connected to the eventual payment of the debt." One of the other factors that the reasons for judgment noted was that the granting of loans was not, in practice, based on the existence or non-existence of insurance coverage and that in some cases the insurance was not even purchased until after the debt had arisen. The full text of the Supreme Court of Canada reasons can be found through the following web address: <http://scc.lexum.umontreal.ca/en/2007/2007scc22.html>

As of November 28, 2007, fifty-one deposit-taking institutions held restricted certificates of authority to transact creditor's group insurance and 12 held restricted certificates to sell group travel. In total, as of the same date, there were almost 1000 restricted certificates of authority issued to entities other than deposit-taking institutions such as automobile dealerships, travel agencies and sales finance companies. In early 2008 the Alberta Insurance Council will be conducting random practice assessments of a portion of all restricted certificates holders to assist them in meeting product disclosure and training requirements as set out in the *Insurance Act* and Regulations.



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## MANDATORY ON-LINE RENEWALS

The AIC will be implementing a mandatory on-line renewal system. The next renewal process for your certificate of authority will be the last cycle in which we will generate and mail renewal applications. Future renewal applications will be forwarded to you via email. Your certificate(s) may be renewed on-line at the AIC website [www.abcouncil.ab.ca](http://www.abcouncil.ab.ca). To use this service you must have a User ID and Password and completed your profile. The AIC has previously provided each licensee with that information, however if you have lost it you must contact the AIC to obtain a new password. Without this information, you cannot complete your renewal. If you previously completed your profile, including the security question, and have lost or forgotten your password a new one can be obtained off the web site. Payments for renewals can be made on-line using either Visa or Master Card. Immediately after the certificate is issued on-line it will be sent to the agent by email. Once your certificate(s) has been issued you may retrieve a copy of the certificate (s) under your logon at any time through the year. Copies of the certificate printed by the AIC may only be requested at the time the renewal is completed.

The AIC is positioned to accommodate bulk payments in cases where the agencies, adjusting firms or insurers wish to make the payment for their agents' or adjusters' certificates. Agencies, Adjusting Firms or Insurers wishing to use this service should contact one of the AIC offices for further information.

The AIC website contains a service for licensees to record the Continuing Education courses that they have taken. The requirement for completing and confirming that the appropriate continuing education credits have been earned will in the future be tied to this service. The renewal process by an agent or adjuster will not be permitted unless sufficient Continuing Education credits have been entered on this site. As a result, all agents and adjusters would be well-served to enter their continuing education credits on the web site prior to the adoption of mandatory online renewal.

On-line demonstrations of these processes will be added to the AIC web site in early 2008 to instruct agents and adjusters how to renew their certificates online.

## CONTINUING EDUCATION

The AIC continues to conduct audits on licensees in regards to the continuing education (CE) credits they have earned. It has become apparent that many agents and adjusters do not understand the requirements for obtaining continuing education credits each year. When renewing their certificates, agents and adjusters must make a declaration regarding the continuing education they have taken in the previous year. In short, every agent or adjuster must obtain 15 CE credits for each class of certificate they hold. An agent or Adjuster may also carry forward a maximum of 7.5 CE credits from one term to the next term. Any CE credits earned in excess of 22.5 credits may not be carried forward.

The AIC web site contains a service that allows licensees to enter and record their continuing education course information under their personal profile. Once entered, you will be able to determine that the course(s) you have entered are valid. In the event that you enter a course which has not been approved by the Accreditation Committee, an indication that the course is not valid will be displayed. If you see such a message please contact the provider of the course to confirm its validity. Invalid courses are not included in the calculation for audit purposes. Additionally, a summary of all courses is provided and a trial audit for compliance is performed as you enter and save your information.

During the course of conducting Continuing Education audits we have noted that many Agents and Adjusters are depending on the use of carry forward from one year to the next to satisfy the requirements. In those cases it would be necessary to enter all continuing education credits earned since inception of the requirement on February 16, 2002. Agents and Adjusters must maintain a record and original copies of the Continuing Education certificates provided by the Course Providers as they will be required when audited for compliance in the future. We trust that you will find the service useful in meeting your compliance requirements.

You will find a section in this edition of the *Insight* regarding sanctions imposed by the Councils for false declarations of continuing education credits.

On-line demonstrations of these processes will be added to the AIC web site in early 2008 to assist in accomplishing this requirement

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## SANCTIONS IN REGARD TO FALSE DECLARATIONS OF CONTINUING EDUCATION (C/E) CREDITS

In the past number of months all three industry Councils have taken disciplinary action against agents and adjusters regarding continuing education credits and making false declarations as to CE credits on certificate renewal documents.

By way of background, on July 1, 2001 the Government of Alberta amended the *Insurance Agents and Adjusters Regulation*, A.R. 122/2001 making continuing education a basic eligibility requirement to renew a certificate of authority to act as an insurance agent or adjuster. Through this regulation, the Government stated that for each certificate year, not only did an agent or adjuster have to obtain 15 hours of CE credits per certificate, but the only courses that were eligible to meet this requirement were those approved by a government appointed Accreditation Committee. The regulation further required that agents and adjusters maintain a record of the CE courses they took.

After the accumulation of CE credits became a basic eligibility requirement to renew a certificate of authority, the AIC included a question on the renewal certificate that asks the agent or adjuster to declare they have sufficient hours to renew the certificate or will obtain sufficient CE credits prior to their existing certificate expiring. The renewal document also contains a warning to agents and adjusters that a false declaration in regard to CE could lead to disciplinary proceedings and the levying of a civil penalty and/or license suspension or revocation.

Following the completion of a number of random CE audits, compliance files were opened and several have resulted in disciplinary sanctions. Civil penalties in this regard can, depending on the circumstances, range from \$250.00 and upwards for each year that an agent or adjuster falsely claimed on their renewal that they completed sufficient CE credits.

We would highly recommend that agents and adjusters input their CE credits online under their personal profiles to ensure they have sufficient CE hours prior to renewing their certificates of authority. An article in this edition of *Insight* deals with this topic.

## RECENT DISCIPLINARY ACTIONS

### *In the Matter of the General Insurance Council (GIC) and Agent J*

This case involved two allegations pursuant to s. 480(1)(a) of the Act. Specifically, it was alleged that the Agent manipulated the computer system of the agency at which she worked so as to avoid paying for insurance coverage on her automobile. Further, it was alleged that she offered policy premium discounts where they were not applicable. In so doing it was alleged that the Agent acted in a deceitful, dishonest or untrustworthy manner.

The evidence indicated that the Agent's insurance premium payments were repeatedly suspended so as to allow the Agent to avoid paying the premiums in regard to her auto insurance. The Agent stated that this was done by co-workers and the co-workers disputed this. Additionally, one of the co-workers stated that the Agent had used that co-worker's computer to suspend the premium payments in issue. In the GIC's view, the evidence, in its totality proved that the Agent manipulated the agencies computer system to avoid paying her premiums. First, the suggestion that the Agent's co-workers suspended the Agent's premiums made no sense in that the co-worker's had no motive or incentive to assist the Agent in not paying her premiums. Second, on at least one occasion that the payment was suspended the co-worker upon whose computer the suspension was processed was not even at work. As such, the GIC concluded that the Agent acted in a deceitful, dishonest or untrustworthy manner. In relation to this finding the GIC levied a civil penalty in the amount of \$2,500.00 and ordered that her certificate of authority to act as a general insurance agent be suspended for a period of two months.

As to the allegation about improperly applied premium discounts, the GIC concluded that there was insufficient evidence to find the Agent guilty in this regard.

### *In the Matter of the Life Insurance Council (LIC) and Agent L*

This case involved numerous allegations pursuant to s. 480(1)(a) of the Act. Specifically, it was alleged that the Agent recommended an alleged investment plan through some entity to a number of his clients. This "plan" involved the transfer of funds invested in mutual



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funds and the like or the deposit of funds from other sources directly into one of three bank accounts in the name of the Agent and his son-in-law. These funds were subsequently sent to various accounts around the world. The Agent apparently lost a significant amount of his own funds in an online lottery scam, and was attempting to make-up such amounts quickly through this plan and thus convinced his clients to invest. In so doing, it was alleged that he was guilty of misrepresentation or, in the alternative, untrustworthiness or dishonesty in his dealings with his former clients and that this constituted an offence pursuant to s. 480(1)(a) of the Act.

In the LIC's opinion, the facts, as set out in the Report, clearly proved that the Agent made numerous misrepresentations and acted in a dishonest and untrustworthy manner in relation to his dealings with the various clients on a number of fronts. First, the Agent indicated that one of the reasons that he solicited the clients' funds that he subsequently wired overseas was that he needed to recoup losses that he sustained in relation to another scam. He admits that he made representations to the clients that he would be investing their money in construction projects and that they would be receiving

elevated returns in short order. None of the clients received any of their funds back. Nor, at any time, was he able to produce documents evidencing the investments. The clients trusted that the Agent would not expose their assets to such an unreasonable risk and the LIC had no hesitation in concluding that the Agent, on this basis alone, was guilty of the allegations as set out in the Report.

However, beyond this, the Agent admitted that he was only authorized to sell approved investments. Despite this fact he solicited hundreds of thousands of dollars from unsuspecting clients and he blindly wired their money around the world on the strength of a few emails and nothing more. His actions and complete disregard for his clients' interests demonstrated why such a prohibition was in place and by ignoring it the LIC found that the Agent acted in a dishonest and untrustworthy manner. In terms of the sanction that could be levied, the LIC was constrained by the fact that the Agent no longer held a certificate of authority and, as such, there was no privilege to act as an insurance agent that could be revoked or suspended. In terms of a monetary penalty the LIC levied a civil penalty in the amount of \$2,500.00 in relation to each of seven clients involved for a total civil penalty of \$17,500.00.



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