Court of King's Bench of Alberta

Citation: General Insurance Council v. Bentley, 2024 ABKB 16

Date: 20240108
Docket: 2201 01630
Registry: Calgary

Between:

General Insurance Council

Appellant

- and -

Anthony Bentley and Insurance Councils Appeal Board of Alberta

Respondents

Decision of the
Honourable Justice S.E. Richardson
Appeal from the decision Insurance Councils Appeal Board of Alberta
dated January 12, 2022

Introduction

[1] Following a two-day hearing, the Insurance Councils Appeal Board of Alberta (*Appeal Board*) set aside the decision of the General Insurance Council (*Council*) which had found Anthony Bentley to be in breach of s 480(1)(a) of the *Insurance Act*, R.S.A. 2000, c I-3 (the *Act*).

[2] The *Council* appeals the decision of the *Appeal Board* and seeks to return the dispute to the *Council* for reconsideration.

[3] For the reasons that follow, the appeal is granted. The matter is returned the *Appeal Board* for a determination of whether the Respondent Bentley contravened s 509(1) of the *Act*. The evidence will be confined to that received by the *Appeal Board* during the initial two-day hearing.

Background

[4] Mr. Bentley was a licensed insurance agent from 1995 until the end of 2019. He represented himself at the *Council* hearing, at the *Appeal Board* hearing and before the Court on this appeal.

[5] In 2019, Mr. Bentley was an insurance agent with his own book of clients, and he was employed with the brokerage firm Insuraline. He was in the process of gradually transferring his existing client book of business to Insuraline as he progressed toward retirement.

[6] Mr. Bentley had clients to whom he sold insurance policies. He would complete the paperwork with the client and then forward the documents to the representative of Insuraline who would then load the client information into the Insuraline portal and go in and bind the policy, thus providing insurance coverage. Mr. Bentley was not given open access to the Insuraline portal, although on occasion, he was given limited access. Since Mr. Bentley was in the process of transferring his book of client business to Insuraline, it was the Insuraline representative who usually completed this final task, of binding the insurance coverage.

[7] Throughout the summer and autumn of 2019, Mr. Bentley and the Director of Insuraline had many conflicts, ostensibly about the quality and calibre of Mr. Bentley's work. The conflict continued and resulted in an increasingly acrimonious relationship between Mr. Bentley and the Insuraline representatives.

[8] On November 6, 2019, the concern over Mr. Bentley's work product resulted in the brokerage firm instructing him to stop writing any policies with Insuraline. Insuraline claimed that despite this instruction, he continued to complete applications and issue temporary pink cards for motor vehicle insurance. During this time, Insuraline alleged that the insurance applications and required supporting documentation was not submitted by Mr. Bentley, as required. So, despite the fact that the client obtained temporary pink cards from Mr. Bentley indicating they had vehicle insurance, no insurance coverage was ever obtained.

[9] When confronted with this instruction to stop writing policies, Mr. Bentley continued to issue temporary pink cards to clients without insurance coverage being provided and perform endorsements for clients by taking instructions for changes to policies. It is this cumulative conduct that resulted in his termination for cause on December 11, 2019. He also contacted an insurance company on behalf of a client on January 7, 2020, despite the fact that he had been terminated by Insuraline the month before, and thereby did not have an active licence to act as an insurance agent. This conduct was also the subject of a complaint under the *Act*.

[10] On December 4, 2019, well after being put on notice in early November 2019 to cease writing policies with the brokerage company, Mr. Bentley issued a pink card for a client purporting to bind a policy if insurance. No policy was provided to the client. No policy was ever issued. There was no "work in progress" noted in the brokerage's system. On January 7, 2020, Mr. Bentley contacted a client and represented himself as working with the brokerage, and he advised that the brokerage had taken over the policy when there was no paper to confirm this suggestion.

[11] On December 10, 2019, as required by the *Act*, Insuraline wrote to the Alberta Insurance Council to advise that Mr. Bentley was terminated for cause. Insuraline claimed that after Mr. Bentley was terminated for cause, he continued to issue temporary pink cards for motor vehicle insurance through Insuraline, without insurance coverage actually being bound.

[12] It is this post termination conduct that was the subject of the complaint to the Alberta Insurance Council, and the subsequent decisions of the *Council* and the *Appeal Board*.

[13] After Mr. Bentley's termination, the brokerage firm reviewed all their files and determined that 78 clients were given the impression by Mr. Bentley that they had vehicle insurance when in fact no coverage was bound. The deficiencies in these 78 client files extended back several months. There is no allegation that Mr. Bentley retained any of the premium money from these clients.

[14] A pink card is proof of vehicle insurance issued by the insurance carrier. Agents selling insurance can provide a temporary pink that is good for a limited period of time. This temporary pink card is the "proof" of insurance between the time the policy is applied for, and coverage is formally granted. As an insurance agent, Mr. Bentley had the ability to issue temporary pink cards to clients, however, these cards could only be issued by him after the client had applied for insurance and after the application form had been submitted to the insurance provider.

[15] After Mr. Bentley's termination, all 78 clients were contacted in writing by the brokerage company and advised that their temporary pink card was not valid and that they did not in fact have vehicle coverage.

[16] During the period that Mr. Bentley provided temporary pink cards for these 78 clients, and during which time they did not have insurance, one of these clients was in a minor collision. Insuraline's lawyer contacted the third-party insurer and arranged to make payment to the insurer for this loss.

[17] After receiving the complaint from Insuraline, The Alberta Insurance Council undertook a review, seeking written input from Insuraline and from Mr. Bentley. The Alberta Insurance Council sent a formal demand to Mr. Bentley with a deadline for reply that was eventually extended to August 7, 2020. The formal demand articulated the "allegation regarding your conduct as an insurance agent" and sought specific information from Mr. Bentley to address the allegations. Mr. Bentley did not reply to the formal demand.

[18] The Alberta Insurance Council investigator advanced the complaint in late March 2021, and sought Mr. Bentley's written comments on the entirety of the report that had been compiled. Mr. Bentley responded to the report in mid-April 2021. He denied the allegations of inadequate paperwork and not submitting insurance applications. With respect to a specific client, he wrote that the client obtained coverage from another agent in the office, not from him. With respect to the January 7, 2020 phone call and the claim that he was holding himself out as an agent after he was terminated, he indicated that he was simply making a call to the client's insurer at the request of the client, and this did not engage duties as an agent but rather was a courtesy to the client.

The Legislative Scheme

[19] The *Act*, and its regulations establish the statutory regime for oversight of the insurance professionals and the authority of Alberta Insurance Council to license and discipline insurance agents and adjusters in Alberta. The *Insurance Councils Regulation*, Alta Reg 126/2001, [the *Regulation*] establishes institutions and the regime for receiving, reviewing, and determining complaints against insurance agents.

[20] Section 408(1)(a) and s 509(1) of the *Act* are the offence sections in issue. Section 408(1)(a) states: 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 of 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.

[21] Section 509(1) of the *Act* is an included offence to s 480(1)(a) and states: No…insurance agent…may make a false or misleading statement, representation…engage in any unfair, coercive or deceptive practice.

[22] For the complaint against Mr. Bentley, the *Council* was the initial review body. Their decision can be appealed to the *Appeal Board* as set out in s 13 to s 25 of the *Regulation*. The decision of the *Appeal Board* can be appealed to the Court of King's Bench pursuant to s 26 of the *Regulation* which holds that the Court is "confined in making its order to the evidence submitted to the panel unless the Court allows new evidence to be admitted". No such application was made in this case.

[23] The power of the Court on the appeal includes making any order that the *Appeal Board* may make or referring the matter back to the *Appeal Board* for reconsideration on any point.

The decisions below

[24] The *Council* considered all the written submissions received from Insuraline, from the investigator and from Mr. Bentley, considered the offence section under s 480(1)(a) of the *Act*, applied the civil standard of proof, and referenced jurisprudence on the requisite test to ultimately conclude that an offence under s 480(1)(a) of the *Act* had been made out.

[25] The *Council* found that Mr. Bentley's willingness to negate the brokerage process by issuing temporary pink cards without ensuring that insurance coverage was bound for the 78 clients and his conduct in acting as an insurance agent under the *Act* by placing a call to an insurer directly on behalf of a client on January 7, 2020 after his employment was terminated, were deliberate and intentional actions, and concluded that he had breached s 480(1)(a) of the *Act*.

[26] The *Council* imposed the maximum penalty of $5,000 for the offence and noting that Mr. Bentley was not presently licensed – he having retired – the matter of his suspension and revocation was not considered.

[27] Mr. Bentley appealed this decision to the *Appeal Board*. That hearing was conducted over two days: November 26, 2021 and December 17, 2021. It was a *de novo* hearing, and witnesses were called by the *Council*. Mr. Bentley testified on his behalf. The *Appeal Board* issued a decision on January 12, 2022.

[28] Before the *Appeal Board*, Mr. Martz, counsel for the *Council*, took the position that Mr. Bentley created fraudulent insurance documents for non-existent policies (the 78 clients) and that Mr. Bentley knowingly provided falsified documents to these 78 clients (the temporary pink cards), thus breaching s 480(1)(a) of the *Act*. Mr. Martz argued Mr. Bentley issued pink cards without obtaining insurance and that he intended to do so because he never followed up and obtained insurance.

[29] Counsel argued in the alternative, that Mr. Bentley's conduct in relation to these 78 clients included making false or misleading statements to clients as contemplated by s 509(1) of the *Act*.

[30] Counsel before the *Appeal Board* also argued that Mr. Bentley held himself out as an insurance agent on January 7, 2020 when he placed the call to an insurance company on behalf of a client, knowing that he did not have a licence and that this conduct also breached s 509(1) of the *Act.*

[31] Before the *Appeal Board*, Mr. Bentley argued that he followed the usual procedure for an agent and issued pink cards after submitting the appropriate information through Insuraline's computer portal or in the case of Wawanesa by submitting applications and associated information to Insuraline to submit to Wawanesa. He denied issuing any pink cards after the brokerage terminated him and he denied that he held himself out to anyone as a licensed insurance agent after he was terminated.

[32] The *Appeal Board* commented on the lackluster state of the evidence before it from both parties. On Mr. Bentley's part, the *Appeal Board* said that he "clearly could have produced other relevant documents" but did not. On *Council's* part, the *Appeal Board* commented that "there is a dearth of evidence which could have been obtained from Insuraline, and the departure of the Investigator [mid-way through his investigation] caused further problems." The *Appeal Board* concluded that they were "left with an incomplete evidentiary picture…[however]…It is the Council's burden to prove its case".

[33] The *Appeal Board* also commented on the contractual relationship between Mr. Bentley and Insuraline, and that Insuraline stood to benefit from Mr. Bentley's clients and paid nothing for his book of business that they accumulated, finding that these facts "raises serious questions". As well, the *Appeal Board* commented that the investigator's evidence in passing on two occasions that he had "other information about [Mr. Bentley]…was most inappropriate and begs obvious questions." Those obvious questions were never articulated by the *Appeal Board*.

[34] The *Appeal Board* considered the same two distinct allegations of improper conduct by Mr. Bentley as had the *Council*: the January 7, 2020 telephone call placed by Mr. Bentley to an insurance company on behalf of a client, and the 78 clients to whom Mr. Bentley issued pink cards for vehicle insurance, but for whom the required paperwork was either not submitted to the insurance company or for whom incomplete paperwork was submitted to the insurance company.

[35] On the first issue of the telephone call of January 7, 2020, the *Appeal Board* concluded that no offence under s 509(1) of the *Act* was made out. The Appellant does not seek to disturb this finding.

[36] The more serious allegation is the provision of temporary pink cards to 78 different clients without having submitted the required paperwork to the insurance company to bind insurance coverage or submitting incomplete paperwork resulting in the same lack of coverage. On this claim, the *Appeal Board* found that the onus being on the *Council* to prove this claim, they had failed do to so under s 480(1)(a) of the *Act* as the "evidence is incomplete and, as such, does not show such intention or even the necessary deliberate underlying act or omissions by [Mr. Bentley]". The Appellant does not seek to disturb this finding.

[37] This ended the analysis by the *Appeal Board*. They never went on to consider whether an offence under s 509(1) of the *Act* was proven in relation to the uncontroverted evidence that the

78 clients obtained temporary pink cards from Mr. Bentley without him providing the required documents or complete applications to the insurance company.

Grounds of Appeal

1. Did the *Appeal Board* err is law in failing to consider the included offence under s 509(1) of the *Act* in relation to the 78 client files?
2. Did the *Appeal Board* err in law by taking judicial notice of that the Wawanesa computer portal was problematic without giving the parties an opportunity to address this point?

Standard of Review

[38] Both issues are questions of law: the first is the incomplete statutory analysis on an offence section, and the second is the improper application of a legal doctrine and procedural fairness.

[39] Section 26 of the *Regulation* limits appeals before this Court to questions of law or jurisdiction. Subsection 28(1) of the *Regulation* sets out the scope of the Court's authority to dispose of an appeal and authorizes the Court to make any order that the *Appeal Board* may have made or refer the matter back to the *Appeal Board*.

[40] The standard of review for questions of law and jurisdiction is correctness: ***Alberta Life Insurance Council v Simpson and Insurance Councils Appeal Board of Alberta***, 2022 ABQB 396, at para 4.

Position of the parties

[41] In keeping with the practice of review of decisions from administrative tribunals, the certified record of proceedings before the *Appeal Board* was filed and no one attended to argue on their behalf.

[42] Mr. Bentley's position at all three hearings has been the same. He denies any misconduct on his part. While he presented oral arguments on this appeal, no written materials were filed.

[43] Mr. Bentley argued that the claims against him were false and motivated by his former employer's desire to obtain his "book" of insurance clients without compensating him according to standard industry practice. He maintains the value of his "book" was over one million dollars and states that he has never been provided with any compensation for this asset, which remains with Insuraline, his former employer.

[44] Counsel for the Appellant asserts that the *Appeal Board* fell into error in two respects. First, that it failed to consider the included offence under s 509(1) of the *Act* and second, that it took judicial notice of fact not within its purview and without any notice to the parties in advance and that the fact that the *Appeal Board* took judicial notice of, did not apply to all the complaints, and the remaining complaints were left unaddressed.

Issue 1: Did the *Appeal Board* err in failing to consider s 509(1) *Act*?

[45] Counsel for the Appellant is correct that s 509 is an included offence of s 480 *Act* and he is correct when he argues that the *Appeal Board* was required to consider s 509 once it had decided that an offence under s 480(1) was not established.

[46] Sections 480 and 509 are directed at similar conduct. Section 480 prohibits misrepresentation, fraud, deceit, untrustworthiness or dishonestly. It is a full *mens rea* offence and requires a finding of intention, recklessness or willful blindness: ***Roy v Alberta (Insurance Councils Appeal Board)***, 2008 ABQB 572, at para 27.

[47] Section 509(1) prohibits false or misleading statements or representations or engaging in any unfair or deceptive act or practice. Section 509 is a strict liability offence, where if it has been established that a breach occurred, the onus shifts to the respondent to establish the due diligence defence: ***LIC v Koss, Case #67629***

[48] Before the *Appeal Board*, the Appellant argued that in the event that an offence under s 480(1)(a) of the *Act* was not established, then, in the alternative, Mr. Bentley was guilty under s 509(1) of the *Act* in relation to the same conduct. The *Appeal Board* did address a separate 509 issue involving the January 7, 2020 telephone call made by Mr. Bentley. However, the *Appeal Board* did not apply any s 509 analysis its finding that 78 of Mr. Bentley's clients had been given pink cards despite the fact that the paperwork for their policies was either incomplete or not submitted.

[49] This alternative argument was squarely before the *Appeal Board*. The *Appeal Board* understood that s 509 was a strict liability offence. They directed themselves to consider s 509 in relation to the January 7, 2020 phone call Mr. Bentley placed to an insurance company on behalf of a client, concluding that the *Council* has not shown the *actus reus* required for a conviction under s 509(1) on that conduct.

[50] The Appellant is correct that the *Appeal Board* erred in law by not considering s 509 of the *Act* as it related to Mr. Bentley's conduct in issuing pink cards to 78 of his clients without their paperwork having been forwarded to the insurance company for binding of the policies. This is an error of law, and this issue is returned to an *Appeal Board* to consider the application of s 509(1) to Mr. Bentley's conduct.

Issue 2: Did the *Appeal Board* err in taking judicial notice of the issues with the Wawanesa computer portal without giving notice to the parties of its intention to do so?

[51] The Appellant argues that the *Appeal Board* erred in law by concluding, in the absence of any evidence on this point, that the Wawanesa computer portal was "problematic and that the procedure described by the [Mr. Bentley] accorded with industry practice at the time".

[52] The *Appeal Board* heard evidence from Mr. Bentley that the Wawanesa portal was slow and cumbersome to work with and this resulted in delays in coverage compared to other insurers.

[53] In its discussion of the s 480(1)(a) offence, the *Appeal Board* had this to say: "It is well known to the Panel's industry members that the Wawanesa portal at the material times was problematic and that the procedure described by the Appellant accorded with industry practice at the time. Further it was well known that turnaround time for Wawanesa was lengthy, several or more months, as described by the Appellant. No one ever probed Insuraline about these matters".

[54] The Appellant argues that in regard to this finding, Mr. Bentley did not lead evidence that the Wawanesa portal was problematic. Rather, the Appeal Board took judicial notice of this fact without giving advance notice to the parties and inviting submissions.

[55] The Appellant is not strictly accurate in their position that Mr. Bentley did not lead evidence that the Wawanesa portal was problematic. Mr. Bentley testified to that fact, and his testimony was direct evidence of that fact. The *Appeal Board* was entitled to accept that evidence even in the absence of any corroborative evidence. In fact, the *Appeal Board* averred to the fact that Mr. Bentley testified that the "turnaround time with Wawanesa was lengthy and no one ever probed Insuraline (or their witness before the Appeal Board) about these matters".

[56] The doctrine of judicial notice is an exception to the rule that all matters relevant to an action must be established by formal proof. Where a fact is so notorious or generally accepted to be uncontroverted such that it cannot reasonably be doubted, the doctrine of judicial notice permits the court to consider that fact, without formal proof of that fact. The threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy: ***R v Find***, 2001 SCC 32 at para 48.

[57] The doctrine of judicial notice applies with some modification, to administrative tribunals. Administrative tribunals, by their very nature, have a level of expertise and knowledge about the matters before them in order to efficiently dispatch their statutory obligations. Tribunals have a broader ability than courts, to take judicial notice of background facts within their areas of expertise: deVillars Jones, *Principles of Administrative Law*, cited in ***Intact Insurance Company v Parsons*** 2021 ABCA 123.

[58] Where, as with the *Appeal Board*, a tribunal operates within an industry specific framework, and where tribunal members are specialists in the area of the tribunal's authority, they have greater latitude in the areas which they can take judicial notice. The *Appeal Board* is constituted by Regulation with 15 members: 3 lay members appointed by the Minister and without a certificate of authority nor employed by an insurer or a person who has a certificate of authority, 4 people elected pursuant to the Regulations and who are engaged in the general insurance business and hold agent's certificates of authority to act as general insurance agents, 4 people who are elected pursuant to the Regulations and who are not engaged by an insurer but are engaged in the life insurance business and hold agents certificates of authority to act as life insurance agents, and 4 people elected pursuant to the *Regulations* and who are engaged in the insurance business and hold adjusters certificates of authority: s 13(2) *Regulation.*

[59] The *Appeal Board* is required to have one lay person, appointed by the Minster and two elected members who are, by definition, actively engaged in the insurance industry and who hold certificates of authority to act as general or life insurance agents, or insurance adjusters.

[60] While two of the three *Appeal Board* members were insurance industry specialists, it was nevertheless an error of law for the *Appeal Board* to take judicial notice of the problems with the Wawanesa insurance portal for several reasons.

[61] First, there was no contextual anchor to the "fact" that the Wawanesa portal was problematic. There was no amplification of where this notorious information came from. Was there a widely known legal proceeding in the insurance industry where this issue was discussed

and proven? Was it known within the insurance industry that Wawanesa computers were slow? What time date range did this apply to? What geographic area did this computer problem apply to? And what was the problem? Was it that the portal was slow, so applications took longer? If that was the case, why did the *Appeal Board* not deal with the fact that some applications were never processed. And how did this notorious fact relate to the fact that some of the 78 client applications were incomplete when submitted?

[62] Second, the *Appeal Board's* decision to take judicial notice of this fact was dispositive of Mr. Bentley's claim. By taking judicial notice of this fact, and thereby offering corroboration to one of the litigants on a material fact, without raising this issue with the parties before the decision was made, thereby breaching procedural fairness as the *Council* was unable to make argument or lead evidence on this point.

[63] Third, by taking judicial notice of the problems with the Wawanesa portal, and making that dispositive of the complaint, the *Appeal Board* ignored that not all of Mr. Bentley's 78 clients made application for insurance from Wawanesa. The judicial notice of the problematic Wawanesa portal completely ignored Mr. Bentley's conduct in relation to the 78 clients whose insurance applications were with other insurance providers.

[64] The *Appeal Board* fell into error they engaged the doctrine of judicial notice to consider the problematic nature of the Wawanesa computer portal.

Conclusion

[65] The appeal is granted. The matter is returned to a properly constituted *Appeal Board* reconsider the application of s 509(1) of the *Act* to the evidence of Mr. Bentley's actions in relation to the 78 clients in issue. The record is limited to the evidence received at the initial hearing on November 26, 2021 and December 17, 2021.

Heard on the 10th day of October, 2023
Dated at the City of Calgary, Alberta this 8th day of January, 2024.

S.E. Richardson
J.C.K.B.A.

Appearances:

Robert Martz
For the Appellant

Anthony Bentley
Self-Represented