Court of King's Bench of Alberta

Citation: Franklin v Alberta (Life Insurance Council), 2026 ABKB 86

Date: 20260209
Docket: 2501 08347
Registry: Calgary

Between:

TREVOR FRANKLIN

APPLICANT

- and -

ALBERTA LIFE INSURANCE COUNCIL and INSURANCE COUNCILS APPEAL BOARD OF ALBERTA

RESPONDENTS

Reasons for Decision
of the
Honourable Justice J.T. Eamon

Appeal from the Decision by
the Insurance Councils Appeal Board of Alberta
Dated the 2nd day of May, 2025

I Introduction

[1] The Appellant applied for certificates of authority (or licenses) to act as a life insurance agent and accident and sickness insurance agent under the *Insurance Act*, RSA 2000, c I-3. The Life Insurance Council ("**LIC**") denied his application for the licenses. He appealed to the Insurance Councils Appeal Board. The Appeal Board dismissed his appeal. The Appellant has now appealed to this Court.

[2] The Minister under the *Insurance Act* decides whether to grant a certificate of authority (*Insurance Act*, s 468).

[3] The Minster's functions can be delegated to a variety of councils or boards under the *Insurance Act*. These include LIC[1] and the Alberta Insurance Council ("**AIC**").

[4] LIC held delegated authority of the Minister to decide whether to issue the certificates of authority for which the Applicant had applied (Certified Record, pp 25 – 26). AIC acted in an administrative support role for LIC in relation to the Appellant's application for certificates of authority (Certified Record, pp 25 – 26).

[5] The issue before LIC was whether the Appellant satisfied the requirements for issuance of a certificate of authority, given his history with the criminal justice system and the alleged lack of candour in his answers to AIC's inquiries about that history during the application process.

[6] The licensing requirements for a new license are established under the *Insurance Act* or prescribed under the *Insurance Agents and Adjusters Regulation*, Alta Reg 122/2001 (the "**IAAR**"). At the material times[2], s 5 of the IAAR included among the requirements:

> 5(1) In addition to the requirements of the Act, the requirements to be met by an individual in respect of a new insurance agent's certificate of authority are as follows:
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> …
>
> (c) the individual must be trustworthy;
>
> (d) the individual must not have been convicted of any offence the nature of which, in the opinion of the Minister, would render the individual unfit to receive a certificate of authority;
>
> …
>
> (Underlining added).

[7] In its decision of October 17, 2024, LIC found the Appellant did not meet the requirement of s 5(1)(d) because he had two past convictions: first, a conviction in 1993 for assault with a weapon, and second, a "conviction" in 2019 or 2020 for criminal harassment.

[8] The second criminal matter was a finding of guilt in 2019 of criminal harassment for which the Appellant received a conditional discharge in 2020. It was not a conviction under the *Criminal Code*. There was a legal issue, not explicitly addressed by LIC, whether the word "conviction" in the IAAR includes a conditional discharge. As mentioned, s 5(1)(d) of the regulation was amended well after the Appeal Board's decision was pronounced to replace "not have been convicted" with "not have been found guilty".

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[1] Both councils were established by the *Insurance Councils Regulation*, Alta Reg 126/2001.
[2] Subsection 5(1)(d) was amended well after the decision of the Appeal Board to provide: "(d) the individual must not have been found guilty of any offence the nature of which, in the opinion of the Minister, would render the individual unfit to receive a certificate of authority;" (Alta Reg 224/2025, underlining added).

[9] LIC further found the Appellant did not meet the requirement of s 5(1)(c) because he had a history in the criminal justice system and did not candidly disclose all of it to AIC in the early stages of the application process.

[10] The Appeal Board has authority to hear appeals of decisions of LIC (*Insurance Councils Regulation*, ss 16 and 23). The Appellant appealed to that board. It convened an oral hearing of the appeal on April 2, 2025, and heard oral testimony from the Appellant and submissions of the Appellant and counsel for LIC. It issued written reasons on May 2, 2025 dismissing the appeal. It found the Appellant was not trustworthy under s 5(1)(c). It did not explicitly address the requirement of s 5(1)(d).

[11] In the appeal to this Court, the Appellant submits the Appeal Board committed errors of law or jurisdiction:

(a) Erred in law by conflating the Appellant's 2020 conditional discharge under the *Criminal Code* with a conviction under s 5(1)(d) of the IAAR.

(b) Erred in law or exceeded its jurisdiction in finding the Appellant was not trustworthy under s 5(1)(c) of the IAAR. Specifically, it considered irrelevant factors in its analysis.

[12] For the reasons set out herein, I find that the Appeal Board committed an error of law in interpreting the trustworthiness standard, failing to consider the effect of the conditional discharge, and applying irrelevant considerations in its assessment. Therefore, the Appeal Board decision must be set aside and the appeal remitted to another panel of the Appeal Board for redetermination.

II Background and Appeal Board's findings

[13] The Appellant was convicted of assault with a weapon in 1993. His sentence included a five year weapons prohibition under the *Criminal Code*. The prohibition expired in 1998.

[14] The Appellant was charged under the *Criminal Code* with criminal harassment and dangerous operation of a motor vehicle arising from alleged incidents in the summer 2018. At a criminal trial in October 2019, the Appellant was found guilty of criminal harassment. The other charge was dismissed.

[15] At the sentencing hearing in December 2020, the Appellant was given a conditional discharge. The Court also made a weapons prohibition order against him. The Order provides for a prohibition for 10 years for certain firearms, restricted weapons, and various other devices, ammunition and explosives, and for life for prohibited and restricted firearms and for various other prohibited things, all as set out in s 109(2) of the *Criminal Code* and the Court's order (Certified Record p 63). A letter from the Appellant's former defence counsel (Certified Record p 36 ff) indicates the ban was made "due to a factual finding that there was an implicit threat to use violence in your criminal harassment behaviour".

[16] The Applicant completed the prescribed forms for his application to AIC for certificates of authority on July 22, 2024, and caused them to be submitted for approval. His application included answers to the questions on the standard template application form and approval of the major insurance company which had agreed to hire him.

[17] One of the questions in the prescribed form was whether the applicant has ever been convicted of an offence under the *Insurance Act*, the *Criminal Code*, or any other enactment. The Applicant answered yes, provided the date of his assault conviction, and attached a police search disclosing (1) the Appellant's assault conviction in 1993 and the sentence including the five year weapons prohibition order, and (2) the lifetime weapons prohibition order of 2020[3]. The form and search result did not include mention of the conditional discharge.

[18] The Appellant's answers triggered further inquiries by AIC commencing July 31, 2024, including requests for information concerning the 2020 prohibition order including (1) if the order was related to the 1993 conviction, then what happened between 1993 and 2020 and (2) what gave rise to the second prohibition order of 2020 and why the Crown started that process.

[19] The Appellant initially told AIC he understood the 2020 order related to the 1993 conviction, and in a later communication stated he did not know why the second entry in the police check references a lifelong prohibition.

[20] On August 14, 2024, the Registrar of AIC informed the Appellant *inter alia*, that LIC needs to understand the circumstances that gave rise to the 2020 prohibition to make an informed decision. The Registrar demanded under s 467(4) of the *Insurance Act*, all records giving rise to this prohibition including charges, guilty pleas, plea deals and conditional discharges.

[21] The Applicant did not disclose the existence of the criminal charges of 2018 or the finding of guilt on the harassment charge, until September 3, 2024 when the Applicant provided information to the effect that the Appellant was charged with criminal harassment and dangerous driving of a motor vehicle, found guilty of criminal harassment, given a conditional discharge, and subjected to a weapons prohibition order. The other charge was dismissed.

[22] AIC then issued additional inquiries in the late summer and early fall 2024 asking whether the Applicant's previous responses to AIC over the summer 2024 had been truthful and complete. The Applicant provided explanations, as set out in the LIC decision at pp 89-90 of the Certified Record, to the effect that he did not understand there was a connection between the prohibition and the conditional discharge until he made inquiries with his former defence lawyer in seeking information to respond to AIC's requests for additional information. He pointed out that a conditional discharge is not a conviction (*Criminal Code*, s 730) and said it therefore did not relate to the 2020 prohibition order.

[23] LIC considered whether the Appellant's prior criminal history made him ineligible for a license under s 5(1)(d) and whether his initial omission to disclose the 2019 incident and resulting finding of guilt and his criminal history generally raised "significant questions" over his ability to meet industry standards of honesty, transparency and trustworthiness. It denied his application due to his "criminal convictions" and the "associated concerns over trustworthiness and transparency". The Appellant's explanation for his initial omission to disclose the finding of guilt on the charge of criminal harassment did not "alleviate the Council's concerns, particularly given the serious nature of the offences and the potential risk to the public trust".

[24] In coming to these findings, LIC probably assumed that the conditional discharge of 2020 had the same effect under s 5(1)(d) as a conviction. Although one passage in its reasons

[3] The Order provides for a 10 year ban for some types of weapons and a lifetime ban for others, as described earlier.

distinguishes between a finding of guilt vs a conviction, another passage equates these two concepts.

[25] This finding raised a legal issue over the meaning of "conviction" in the IAAR. A conditional discharge may be imposed following a "finding of guilt" (*Criminal Code*, s 730(1)) but the *Criminal Code* explicitly states there is no "conviction" (*Criminal Code*, s 730(3)). The sentencing court may impose a prohibition order depending on the finding of guilt (*Criminal Code*, ss 109, 110), The legal issue was whether the word "conviction" under the IAAR should be interpreted any differently.

[26] LIC also had to make a finding under s 5(1)(d) whether the convictions that it found rendered the Appellant unfit for a license. Although LIC did not explicitly refer to this requirement, it is clear from its reasons that it considered that this disqualification was established.

[27] The Appeal Board did not explicitly address these problems with LIC's decision. Instead, it focussed on question whether the Appellant was not "trustworthy" under s 5(1)(c). The Appeal Board found that the Appellant was not trustworthy and dismissed the appeal.

[28] In its written reasons, the Appeal Board recited the Appellant's positions on the appeal and detailed the evidence before it as s 25 of the *Insurance Councils Regulation* requires. Then, in a short discussion, it made a number of remarks about the Appellant, his background, his conduct of the appeal as a self-represented litigant, and the plausibility of some of his evidence. This portion of its reasons is as follows:

> REVIEW OF ARGUMENTS AND EVIDENCE
>
> The Panel acknowledges the many professional designations the Appellant has obtained in his career, many of which relate to the financial industry broadly speaking. That said, there was no evidence proffered by the Appellant as to the levels of disclosure met in applying or renewing some or all of those designations.
>
> The Appellant embarked on this appeal in a confrontational manner from early on. He accused the Panel, as originally constituted, of being racially biased and seemed to assume throughout that such was the motivation of the Panel and the process. He regularly responded to the Chair as acting in a racist manner. When he finally levelled a fact-based allegation or apprehension of bias against one Panel member, that member was replaced to remove any such apprehension.
>
> The certificates were denied partially on the basis of lack of apparent trustworthiness of the Appellant. Having heard the evidence, the Panel finds the Appellant to be less than forthcoming and more focused on repeating that "a conditional discharge is not a conviction" than actually explaining his career, change of jobs on multiple occasions and eventual move to Alberta.
>
> It was abundantly clear that he did not want to disclose the 2020 conviction and he fails to understand the nature of regulation and the duty of regulators. He states that he was never guilty of breach of trust, fraud or theft and seems to believe that he should be given certificates therefore.

He stated that a licence was not required for wholesaling when he was with Industrial Alliance. Panel members' experience is that wholesalers are licensed.

The Appellant denies his guilty finding from 2020 and states that he is only guilty of being "mouthy" and defending himself because he is "jittery about discrimination". He repeatedly stated that there was no weapon involved.

His lawyer's letter, generated and produced during his communications with the Council, clearly explains what appears to have been the state of events as of December 23, 2020. It correctly sets out the proper interpretation of the *Criminal Records Act*. It begs the question as to whether there is a reporting letter from the lawyer at that time. It further impugns the Appellant's position as it infers that he has known about the weapons prohibition ever since. He, in effect, blames his lawyer for not being clear, without any corroboration of same.

His answers to questions about whether he told SunLife about the 2020 court decision are equivocal and hard to rationalize. On the one hand, he says he told Sunlife about what he refers to as "2019" and that they were fine with it when they asked why it was taking so long to be licensed. On the other hand, he says Sunlife was being copied on communications with the Council and that its lawyers were in touch with Ms. Yaqoob, counsel at the Council. Sunlife withdrew its sponsorship.

The Appellant throughout the process has raised the issue of racial bias. There is no evidence that the Council knew of his race or acted in any way with such bias. The Appellant stated that all his communications were by email. There were no meetings with Council staff.

The Appellant alleged at the hearing that the Council was planting messages in his LinkedIn messaging function. There is no evidence of same. He raised this for the first time at the hearing.

In summary, the Panel finds that the Appellant is without remorse for his behaviour and the victims in relation to the June 2018 harassment event. Further, the Information contains a second count from August 2018, which appears to relate to an event at or near his condominium wherein he allegedly operated a vehicle in a manner dangerous to persons. He never spoke about this but one would have to infer that the same people were involved because one peace officer files the Information containing both counts shortly thereafter.

The Panel believes that the Appellant is likely ungovernable. He does not show the traits of trustworthiness and respect that are suited to and required for this industry.

The appeal is, therefore, dismissed.

III Nature of appeal to the Court

[29] The appeal to this Court is limited to a question of law or jurisdiction (*Insurance Councils Regulation*, s 26).

[30] The first ground of appeal is that LIC, and allegedly the Appeal Board, found the Appellant's 2020 conditional discharge was a criminal conviction and disqualified the Appellant under s 5(1)(d) of the IAAR.

[31] The issue of disqualification under that provision is a question of mixed fact and law, because the decision maker had to decide whether the conditional discharge of 2020 was a conviction within the meaning of the IAAR, and if so, whether the convictions "in the opinion of the Minister" disqualified the Appellant from holding the licenses he sought.

[32] A question of law includes extricable errors of law in findings of mixed fact and law as recognized in the well-known Supreme Court of Canada decision in ***Housen v Nikolaisen***, 2002 SCC 33. Questions of law are reviewed on the correctness standard the appeal from the Board's decision (see ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at paras 36 – 37).

[33] Therefore, the first ground of appeal is a question of law: the meaning of the word "convicted" in s 5(1)(d) of the IAAR is an extricable question of law in the question whether the Appellant's conviction history disqualifies him in the opinion of the Minister.

[34] The second ground of appeal is that the Appeal Board erred in finding the Appellant was not trustworthy under s 5(1)(c) of the IAAR. This was a finding of mixed fact and law. The Court may only review extricable errors of law or errors of jurisdiction arising from such finding.

[35] The parties did not brief the law respecting the scope of a question of jurisdiction under the appeal provisions of the *Insurance Councils Regulation* or the extent to which the Court can review for errors of fact or mixed law and fact under such an appeal structure generally.

[36] In the context of judicial review, a true question of jurisdiction arises "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter" (***Vavilov*** at para 65).

[37] The law appears unclear whether the statutory appeal on questions of jurisdiction in the present case is limited to a true question of jurisdiction in the sense described in judicial review cases, particularly ***Vavilov***, or whether it contemplates a jurisdictional question in the much wider historical sense as described in detail by the minority in ***Vavilov*** at paras 207 – 210.

[38] If "jurisdiction" in the regulation contemplates the wider sense, the Court might extend appellate review to questions of fact or of mixed fact and law such as cases where "the evidence, viewed reasonably, is incapable of supporting a tribunal's findings of fact". If so, then the statutory provision might allow reasonableness review of factual issues or might return us to the perplexing standard of "patent unreasonableness" which invokes the notion that the Court can discern different "shades of irrationality". The Supreme Court of Canada has previously rejected the patently unreasonableness standard in judicial review cases because it is difficult to apply in practice, nonsensical, not meaningful, and unpalatable (***Dunsmuir v New Brunswick***, 2008 SCC 9 (CanLII), [2008] 1 SCR 190 at paras 41-42).

[39] In Alberta, the scope of appeal provisions limited to questions of law and jurisdiction is debatable. See the recent decision of ***Northback Holdings Corporation v Alberta Energy***

Regulator, 2025 ABCA 186 (CanLII) per Fagnan JA for the majority at paras 45-53 and per Khullar CJA, at para 130 and following, particularly paras 170, 181-196, 214-215.

[40] However, it is not necessary in the present case to consider the scope of an appeal based on a question of jurisdiction. The appeal can be resolved by addressing whether the Appeal Board committed errors of law.

[41] In verbal submissions, the Appellant's counsel confirmed they were not asserting a jurisdictional error or error of law on the basis of lack of sufficient evidence. Rather, counsel submitted that the Appeal Board erred in law because the Board relied on irrelevant criteria including whether the Appellant is governable.

[42] I accept the Appellant's submission that failures to consider relevant evidence or criteria or considering irrelevant evidence or criteria amount to errors of law which may be reviewed (See ***R v JMH***, 2011 SCC 45, paras 24-32, [2011] 3 SCR 197; ***Ball v Imperial Oil Resources Limited***, 2010 ABCA 111 at para 28; ***Tempo Alberta Electrical Contractors Co Ltd v Man-Shield (Alta) Construction Inc***, 2025 ABCA 282 at para 16).

[43] The Appellant further submitted that the Appeal Board failed in its duty to provide adequate reasons under s 25 of the *Insurance Councils Regulation* and thereby frustrated the Court's ability to perform its function of appellate review. It submits that although a failure to provide adequate reasons is not a standalone ground of appeal, the Court in this case cannot be assured that the Appeal Board did not consider irrelevant factors or did address the issues raised by the Appellant at the hearing before it.

[44] In support of this submission, counsel cited, *inter alia*, ***Lor-al Springs Ltd v Ponoka County Subdivision and Development Appeal Board***, 2000 ABCA 299 at paras 10-15. In that case the tribunal was required to address conflicting land uses in deciding whether to allow a proposed land use. The applicant sought approval to use land as a piggery. A nearby land user, who ran a water bottling operation, objected. The tribunal addressed the potential for environmental contamination by the proposed piggery of the bottling operation but did not explicitly address whether the land uses conflicted in any commercial sense or the meaning of "conflicting use" in its reasons.

[45] Picard JA granted leave to appeal where the tribunal failed to address the central or vital issue on the appeal of whether the competing land uses conflicted. The lack of reasons required by its governing statute raised the issue whether the tribunal erred in law or jurisdiction in failing to consider or improperly considering whether the land uses conflicted as mandated by the applicable municipal development plan.

[46] I conclude that the alleged failure to provide adequate reasons is an issue of law which may be considered in the analysis of whether the Appeal Board correctly interpreted the standard of trustworthiness or considered relevant factors and excluded irrelevant factors in applying the standard.

IV Parties' positions on appeal to the Court

[47] The Appellant detailed, in written and verbal submissions before this Court, several of the Board's observations which it submits were irrelevant considerations:

(a) The Appellant was confrontational in the appeal.

(b) The Appellant accused the panel as originally composed, of being racially biased, and throughout seemed to assume this was the motivation of the panel and the process. He regularly responded to the chair of the panel as acting in a racist manner.

(c) The Appellant appeared more focussed on repeating that a conditional discharge is not a conviction than actually explaining his career, multiple changes of jobs, and eventual move to Alberta.

(d) The Appellant denies his guilty finding from 2019 and stated he is only guilty of being "mouthy" and defending himself because he is "jittery about discrimination".

(e) It is abundantly clear the Appellant fails to understand the nature of regulation and the duty of regulators.

(f) The Appellant must have had a reporting letter from his criminal lawyer in 2020 when he received the prohibition order. The letter from his former criminal lawyer dated August 30, 2024 explaining the prohibition order "infers" the Appellant had known of the weapons prohibition ever since it was imposed.

(g) The Appellant suggested the AIC was planting messages in one of his social media accounts using the messaging function.

(h) The Appellant is without remorse for his behaviour in 2018 toward the victims of the criminal harassment.

(i) The Appellant did not address the alleged driving offence in the hearing.

(j) The Appellant is likely ungovernable.

(k) The Appellant does not show the traits of trustworthiness and respect that are suited to and required for this industry.

[48] The Respondent LIC submitted that the considerations were relevant given the broad meaning of the word "trustworthy". Further, if some were not relevant, then the errors were inconsequential because the primary finding that the Appellant was ungovernable is well supported.

V Analysis of the decision under appeal

[49] The context of this appeal is a statutory licensing scheme for the protection of the public.

[50] Under s 467(1) of the *Insurance Act* an application for a certificate of authority must be filed with the Minister, contain the information, material and evidence required by the Minister, and be accompanied with proof that the requirements respecting financial guarantees referred to in section 465(1) have been met.

[51] The Minister may refuse to issue an applicant's new certificate of authority if the requirements of the *Act* and the regulations relating to the certificate have not been met (s 468(1)).

[52] As to matters such as competence, character, and trustworthiness, the prescribed requirements are set out in s 5 of the IAAR as previously described.

[53] The meanings of "trustworthy" and "convicted" of an offence in the IAAR must be ascertained using the modern approach to statutory interpretation expressed in such cases as ***Rizzo & Rizzo Shoes Ltd (Re),*** 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21 and ***Vavilov*** at para 117 – 122: the words of a statute must 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".

[54] Previous case law in this Court recognizes that the regulation is to receive a broad and purposive interpretation in the context of the legislative goal to promote public safety and consumer protection (***Hinkkala v Alberta Life Insurance Council***, 2021 ABQB 675 at para 35; ***Alberta Life Insurance Council v Simpson and Insurance Councils Appeal Board of Alberta***, 2022 ABQB 396 at para 9).

[55] The context of the regulation is akin to a professional regulatory scheme. Such schemes are designed to secure two overarching goals.

[56] First, they protect the public from loss by ensuring that the licensed agents with whom they deal are not only honest but also competent in the sense of being aware of their obligations and willing and able to comply with their obligations.

[57] Second, they maintain confidence of the public in the integrity and reliability of the financial services industry and the fundamental pillars thereof which include insurance products and their distribution. Harm to consumers of such products arising from dealing with undependable or unreliable agents reflects adversely on the entire system. Licensing of agents who would not be perceived by the public as honest and reliable erodes confidence in the system.

(a) Convicted of an offence

[58] In the case of criminal offences, the concept of a conditional discharge is defined in the *Criminal Code*. Section 730 of the *Criminal Code* provides that a conditional discharge is deemed not to be a conviction. Further, there are significant sentencing considerations that distinguish a conditional discharge from entering a conviction. Conditional discharges are reserved for cases where it would not be contrary to the public interest to grant one. They are not granted as a matter of routine. Although the IAAR should be broadly construed, it would strain the meaning of "convicted" beyond what is reasonable to include a Court's finding which is deemed under the legislation governing sentencing for the offence not to be a conviction and is based on different sentencing considerations.

[59] LIC could have reasoned that the 1993 conviction alone was disqualifying in all the circumstances but it conflated the 2020 conditional discharge as a further conviction. Its conclusion that the convictions were disqualifying was therefore fatally flawed.

[60] There was no error of law or jurisdiction on the part of the Appeal Board with respect to applying s 5(1)(d) of the *IAAR* because it did not apply this provision. It based its decision only on its conclusion that the Appellant was not trustworthy under s 5(1)(c). Having found the Appellant disqualified on that ground, it was not required to consider s 5(1)(d).

[61] However, as explained later in these reasons, the Appeal Board did not recognize the considerations in deciding to grant a conditional discharge rather than enter a conviction, which include proportionality, character of the offender and the public interest. It effectively equated the meaning of a conviction under the IAAR with a conditional discharge under the *Criminal*

Code in its assessment of whether the Appellant was trustworthy. I will deal with this matter in part (b) below.

(b) Trustworthy

[62] The word "trustworthy" could be used in a wide sense or a narrow sense and there may be uncertainties or room for differences of opinion over its boundaries particularly where the issues relate to private "off-duty" conduct.

[63] The narrow sense is the way courts sometimes describe witness credibility, in terms of honesty as opposed to reliability.

[64] The wider sense frequently appears in ordinary language and dictionaries. As the Respondent points out, the meaning of the word goes beyond honesty and includes dependability or reliability and whether one is worthy of confidence. Dictionary definitions denote

> Worthy of confidence: dependable; Trustworthiness is the quality of a person or a thing that inspires reliability.

[65] In the context of the regulatory purposes of the licensing provisions discussed earlier in these reasons, it is unquestionable that "trustworthy" carries a wider meaning under the IAAR. However, even in its widest sense there are boundaries to the legal standard. Particularly with "off-duty" conduct the standard must be construed in the context of the regulatory objectives, thus there must be a sufficient nexus between the conduct of concern and the industry or profession. Further, it must be based in evidence not speculation, and the evidence must "tend to increase or decrease the probability of a fact at issue" and "have some tendency in logic and human experience to make the proposition for which it is advanced more likely that the proposition would be in the absence of such evidence" (***R v Schneider***, 2022 SCC 34 at para 39).

[66] The Appeal Board did not explicitly discuss the meaning of "trustworthy". I recognize that a tribunal does not necessarily have to do so. A tribunal's reasons must be assessed in the context of the record before it. In ***Vavilov*** at para 123 the Court stated:

> ... There may be other cases in which the administrative decision maker has not explicitly considered the meaning of a relevant provision in its reasons, but the reviewing court is able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable.

[67] Unlike ***Vavilov,*** the present case is an appeal where the standard of review for questions of law is correctness. The reasons and the record must enable the Court to ascertain whether the Board's interpretation of the standard is correct, otherwise the Board has not met its legal obligation to provide reasons pursuant to s 25(1)(c) of the *Insurance Councils Regulation*. Such a failure is an error of law. Although such an error is not a standalone ground of appeal, it may justify the Court in remitting the matter where the Court is not satisfied that the Board correctly interpreted the legal standard of being trustworthy.

[68] Taken together, (1) I am not satisfied that the Board correctly addressed the content of the applicable legal standard, (2) I am satisfied that the Board did not appreciate the important consideration inherent to a conditional discharge that it may only be granted if not contrary to the public interest, and (3) I am satisfied that some of the Board's findings are irrelevant to the Appellant's alleged lack of trustworthiness. I will explain these matters in the following paragraphs.

[69] As to the content of the legal standard, the Appeal Board accepted a wide definition of the word “trustworthy” but did not define the concept. Given the breadth of the Board’s criticisms of the Appellant, it probably did not apply contextual limits on the concept. It did not address the Appellant’s submission of the important condition to granting a conditional discharge, that it not be contrary to the public interest. It made findings that are incomplete or neutral but found they indicated lack of trustworthiness. It did not explain why or how these demonstrated the Appellant is not trustworthy in the professional regulatory context. The Board also included a requirement of “respect” but left unanswered “respect to whom” or whether every absence of respect renders an applicant less trustworthy for regulatory purposes or whether respect is a standalone requirement additional to the requirements of the IAAR.

[70] I note that many of the Board’s findings were relevant to the task of assessing trustworthiness in a professional regulatory context. With reference to the alleged irrelevancies advanced by the Appellant (listed at para 47 above), the following matters were relevant to the assessment.

[71] Governability is relevant to the issue of trustworthiness. Governability in a professional regulatory context is based on a professional’s honesty, candour (including in dealings with their regulator), diligence in maintaining awareness of their professional obligations, and commitment in complying with their legal obligations. An ungovernable professional is not trustworthy because they are either unwilling or unable to comply with their obligations and would not be perceived by the public as worthy of trust in relation to their professional obligations.

[72] The matter of the Appellant’s understanding of regulation and the duty of regulators is relevant to the trustworthiness assessment for the same reasons.

[73] It was relevant for the Appeal Board to consider the sufficiency of the Appellant’s evidence of his previous employment record. The Appellant was encouraged by the Board to describe his previous employment and the Appellant did so using a social media bio. It appears from the Board’s reasons that it was suspicious that the Appellant was not providing frank disclosure of his past history as a licensed representative in Ontario.

[74] The Board obviously had concern over the reliability or credibility of the Appellant’s evidence -- was he being forthright and candid in disclosing his professional history? The question of what weight to place on such evidence is for the Board and does not give rise to an extricable error of law.

[75] The lack of reliability or plausibility of the Appellant’s evidence that he did not require a license when he was working for a company wholesaling insurance was a relevant consideration that went to the credibility of the Appellant’s testimony.

[76] However, in certain instances the Appeal Board committed errors of law, which I will describe in the following paragraphs.

[77] The Appeal Board found that the Appellant did not want to disclose the “2020 conviction”.

[78] I do not suggest that candour in response to a regulator’s inquiries is not a component of trustworthiness. A licensed professional who cannot be relied on to cooperate and comply with regulatory processes might not be trustworthy depending on the circumstances. The Appeal Board was entitled to assess the credibility and reliability of the Appellant’s explanation that he was unaware of the 2020 weapons prohibition or how it arose.

[79] However, the Appeal Board's description of the 2020 finding as a "conviction" discloses an error of law. The Board's reasons demonstrate its awareness that a conditional discharge of a criminal offence is not a conviction under the *Criminal Code* but did not address in its reasons whether a conditional discharge is a conviction under IAAR for regulatory purposes. I do not think the Board's use of the word "conviction" in the context where it appeared was a mere misstatement or typographical error. Rather, it indicates a failure to appreciate the fundamental nature of a conditional discharge.

[80] The Appellant's written submissions to the Board included that a conditional discharge is less serious than a conviction because it is only available where the trial judge is satisfied that granting a conditional discharge is not contrary to the public interest (*Criminal Code*, s 730(1)).

[81] The Board ought to have considered the requirements for a grant of a conditional discharge and related them to the Appellant's trustworthiness. It did not recognize the underpinnings of a conditional discharge in contrast to those of registering a conviction. This error of law tainted the Board's assessment of trustworthiness.

[82] Conditional discharges are not to be granted as a matter of routine and should be granted sparingly (***R v MacFarlane***, 1976 ALTASCAD 6 at paras 12 - 13). In ***MacFarlane***, the Court provided the following non-exclusive list of factors for consideration in deciding the matter of public interest:

> 1) The nature of the offence;
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> 2) The prevalence of the particular offence as it may exist in the community from time to time;
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> 3) Whether an accused stood to make some personal gain at the expense of others;
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> 4) Where relating to property, the value of the property destroyed or stolen;
>
> 5) Whether the crime was committed as a matter of impulse and in the face of unexpected opportunity, or whether it was calculated;
>
> 6) Whether the fact that the accused has committed the offence should be a matter of public record so that members of the community have the opportunity of becoming aware of that fact.
>
> (***MacFarlane*** at paras 15 – 20).

[83] The Appellant's conditional discharge was granted by a Court in Ontario. Different jurisdictions might have slightly different tolerances when exercising discretion to grant a discharge but, generally speaking, conditional discharges are based on the sentencing Court's assessment of the public interest and are not a matter of routine. The Appeal Board's failure to acknowledge that a conditional discharge is not a conviction for regulatory purposes obscures such considerations as the gravity of the offence, the sentencing Court's assessment of whether specific deterrence of the Appellant was important, and the Court's finding that the public interest did not require registering a conviction.

[84] These sentencing considerations may not be determinative. But they ought to have been weighed along with any concerns about the 2020 prohibition order or other aspects of the

Appellant's previous interactions with the criminal justice system in coming to the answer on the overarching question of trustworthiness.

[85] The Appeal Board further found the Appellant lacked remorse for the criminal harassment. The issue whether the Appellant had taken responsibility for his criminal harassment was before the Appeal Board (Appellant's submissions to the Board, Certified Record p 114). The Appeal Board obviously disagreed with the Appellant's assertion that he was able to hold his private opinions of the trial court's recent finding of guilt without compromising his reliability and the public's perception thereof as a licensed professional. The record did not indicate that the Appellant appealed the trial court's finding of criminal harassment or brought appropriate legal proceedings to set the finding aside.

[86] The Appeal Board was entitled to consider whether Appellant's beliefs compromised his professional integrity and reliability and thereby, his trustworthiness. However, as mentioned the Appeal Board did not explicitly address in its reasons the lesser gravity of the offence as demonstrated by the grant of a conditional discharge nor relate this non-professional or "off-duty" misconduct to the regulatory objectives.

[87] In the above circumstances, I am not confident that the Appeal Board addressed the legal issue of the meaning of the trustworthiness standard, particularly the nature of any required nexus between off-duty conduct and the objectives of the regulatory requirement. Further, the Board did not take into account a relevant consideration, being the effect of the conditional discharge which must have been based on a finding of the sentencing Court that it was not contrary to the public interest to grant the discharge.

[88] There were also instances where the Appeal Board went beyond those matters in issue before LIC and that the parties placed in issue before the Appeal Board, and in doing so it made findings of fact which were irrelevant in the sense of being incapable of making the conclusion more likely than it would have been in the absence of such findings.

[89] In this regard, the Appeal Board relied on the following matters:

(a) The manner in which the Appellant dealt with the Chair leading up to the hearing in expressing concerns for racial bias or being confrontational. The Appeal Panel did not make known to the Appellant that his trustworthiness was being assessed on his conduct or beliefs as a self-represented litigant with a sensitivity to racial issues.

(b) The lack of an explanation of the events leading up to the criminal charge of dangerous driving. The Appellant was not informed that he would be judged based on the Appeal Board's undisclosed concerns over a charge on which he had been acquitted and was presumed innocent.

[90] The Board did not explain which communications with the Chair were of concern. The Board did not find that the Appellant's conduct of the appeal or expressions of racial concerns were frivolous. The Board did not contextually relate these communications to lack of trustworthiness in carrying out professional duties or the impact of his behaviour on the public confidence in the insurance businesses. In these circumstances, the mere fact he sent communications was irrelevant.

[91] The finding against the Appellant for not explaining (as opposed to disclosing) the dangerous driving charge was also an error of law. I do not suggest the Board could not have

inquired into the underlying circumstances of the charge. However, it did not do so and the mere fact of an acquittal without more was neutral and irrelevant. A person charged with a criminal offence is presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

[92] Returning to the Board's finding that the Appellant's evidence of licensing requirements for wholesaling was inconsistent with the experience of the Board members, I pause to note that I am concerned that the Appellant was not informed that his evidence would be assessed on the Appeal Board's undisclosed experiences whether a license was required and given an opportunity to explain the matter. If this were an error, it was one of procedural fairness. The Appellant's counsel advised during verbal submissions that the Appellant was not asserting procedural fairness errors. I therefore have not considered this potential error further, however in any new hearing greater care should be taken in ensuring the Appellant has an opportunity to know and respond to the Appeal Board's concerns.

[93] In summary, the Board's reasons and findings indicate that it likely gave an overbroad meaning to the concept of trustworthiness, failed to consider the distinction between a conviction and conditional discharge in assessing whether the Appellant was trustworthy, and considered irrelevant considerations. I am satisfied that the Board committed extricable errors of law.

[94] The next question is whether the matter should be remitted, or whether (as the Respondent submits) any errors are sufficiently inconsequential that the Court should dismiss the appeal.

VI Result

[95] Although the Alberta Rules of Court and the *Insurance Councils Regulation* do not specifically say the Court has discretion to dismiss an appeal for an inconsequential error of law, this Court has the same power that the Alberta Court of Appeal has under the Rules of Court to do so. This Court may dismiss an appeal "despite a harmless error, where no substantial wrong or miscarriage of justice has resulted, and the decision would have been the same notwithstanding the error: r. 14.75(2) Alberta Rules of Court" (***Radi v Audet***, 2024 ABKB 168 at para 62; ***YI v MM***, 2025 ABKB 138 at para 132; ***Doroshenko v Villanueva***, 2025 ABKB 245 at paras 96 - 97).

[96] Counsel for LIC submitted that the real focus of the Appeal Panel's trustworthiness assessment was the Appellant's failure to be candid with AIC about the 2020 prohibition order. If there were other errors of law, they were inconsequential.

[97] The regulator is best suited to determine whether a candidate for licensing is governable (see ***Zuk v Alberta Dental Association and College***, 2018 ABCA 270 at para 144) and therefore sufficiently trustworthy. The decisions whether to admit candidates into, or remove members from, a profession are among the most difficult and fact sensitive decisions of professional regulatory tribunals. I am not satisfied that the Board's decision necessarily would have been the same notwithstanding the errors of law. The Appellant and the public should have the benefit of the regulator's decision whether to allow the Appellant to enter the industry.

[98] The appeal is allowed and the matter remitted to the Appeal Board, composed of members other than those who sat on the panel appealed from.

[99] The parties may address costs, by brief written submissions. A party claiming costs must provide such submission to the other party and the Court within a month. Brief responses are due within a month thereafter, and a brief rebuttal if any within two weeks of the response.

Heard on the 07th day of January, 2026.
Dated at the City of Calgary, Alberta this 09th day of February, 2026.

J.T. Eamon
J.C.K.B.A.

Appearances:

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